Ceremonies Set for New Bench Members
By J.W. Brown
Maricopa Lawyer
A steady stream of investiture ceremonies start off the new year, as 10 new members of the Superior Court bench are honored by judges, commissioners, friends and family during six separate swearing-in events over the next few weeks.
Judge Kristin Hoffman kicks off the investiture season with her ceremony at 12:30 p.m., Fri., Jan. 27, in the Maricopa County Board of Supervisors Auditorium, adjacent to the Central Court Building in downtown Phoenix (the same hour and location for all the upcoming investitures.)
Hoffman served as a Superior Court commissioner since 2001 and handles a civil calendar as her first assignment as a judge. She is a graduate of the University of California, Hastings College of Law. Hoffman fills a newly-created judicial division, which is the 92nd judgeship for the court.

The next investiture ceremony is the following week, on Fri., Feb. 3 for Judge Timothy Ryan, who came to the court from private practice, as a partner at Begam, Lewis, Marks & Wolfe in Phoenix. He served as a prosecutor with the Maricopa County Attorney’s Office.

Reputation Matters: Supreme Court Decision Sets Bar High
By Daniel P. Schaack
Maricopa Lawyer

When Hamm was admitted to the ASU College of Law, I wrote a commentary arguing that his crime shouldn't automatically preclude his possible bar admission. "Snapshots, Even Black and White Ones, Don't Define Hamm's Life," Maricopa Lawyer, Oct., 1993. His conviction, I wrote, should not absolutely bar him from being admitted because it "does not completely define Hamm any more than my dorky fifth-grade school picture defines me."

On the other hand, I urged close inspection: "I'm not saying that Hamm should definitely be admitted to the bar…. When and if he applies for admission, the bar should take a hard look at him…. [A] prior conviction for first-degree murder casts a long shadow."

Now the Supreme Court has rejected him, I will not chime in on whether Hamm should have been admitted, on whether the Supreme Court got the result right. But I will offer that the court got the process right: it established and followed the right protocol in reaching its decision.

First, the court refused to use his conviction as an absolute bar to admission. Chief Justice Ruth V. McGregor wrote that "the rules and standards governing admission to the practice of law in Arizona include no per se disqualifications. "[(W)e] consider each case on its own merits…. [O]ur concern must be with the applicant's present moral character."

This is as it should be. If we were to impose an outright ban, we would in effect be turning our backs on rehabilitation. It doesn't make much sense to urge miscreants to climb out of their holes if all we are going to do is shove them right back in.

But even if the past crime is not an automatic bar, it is relevant because it reflects on present moral character. And the more serious the past crime, the more doubtful it is that the applicant has changed enough—or can change enough—to demonstrate the necessary moral fitness to practice law. Hamm's crime was as bad as it gets. "[N]o more serious criminal conduct exists than committing first-degree murder," McGregor wrote. "When Hamm committed first-degree murder in 1974, he demonstrated his extreme lack of good moral character."

The court therefore set an extremely high standard for Hamm to demonstrate current moral fitness, requiring him to "make an extraordinary showing of rehabilitation and present good moral character to be admitted to the practice of law."

McGregor acknowledged that "[i]t[he]paraphrasing such a thing is, in practical terms, a near impossibility." The court also closely parsed his life—his crime, his rehabilitation, his bar application, and his present circumstances—looking at them under a powerful glass.

Again, this is as it should be. Lawyers wield great power and influence people's lives to an extent matched by few other callings. That is reason enough to be fickle about who receives the privilege to practice.

But there's another reason—one that plays more to selfish interests—our professional image. Many people, like Ken Doerfler, already have a low impression of the bar. They're not going to laugh at yourself. But Ken Doerfler's letter reminds us that the public generally doesn't see the underlying feelings should make us vigilant about securing and bolstering our collective image. Many people, like Ken Doerfler, already have a low impression of the bar. They're not going to laugh at yourself. But Ken Doerfler's letter reminds us that the public generally doesn't see us. When someone who has committed the worst of crimes seeks to join us, we ought to be quite careful about letting him in.

I offer no opinion on whether Hamm should be allowed to practice law. I'm just grateful that the Supreme Court set a high bar.

Maricopa Lawyer and the MCBA do not reflect the views expressed by contributors.
New Year Marks A Time For More Progress

As incoming president of the Maricopa County Bar Association, I look forward to another year of progress in the improvement of our existing member services, programs and events. 2005 for the MCBA was a year of innovation with the development of new programs like the “Going Paperless & Mandatory e-Filing” CLE seminar, the recent mega-networking MCBA Annual Meeting at the U.S. Airways Arena and the YLD 5K Fun Run, just to name a few. Having made those accomplishments, I am confident that, with our new board members and able staff, 2006 will be marked with additional milestones of progress that will benefit both the professional development and personal enhancement of our membership. Specifically, my goals for this year are to increase the number of networking events to assist in member-to-member relations, to provide CLE programs that focus on the nuts and bolts of business development for lawyers and career enhancement strategies, and to create programs to assist members in stress management.

There is, however, an additional area in which the organization needs some improvement and that is in the diversity of its members and leaders. Since the MCBA came into existence in 1893, the organizations records reveal that we have only had three women presidents (I am the third), three African American presidents (I am the third and the second of which was also the second female president), zero Latino presidents and zero Asian American presidents out of the total 113 presidents over the organizations history. To address the need for diversity in our legal community, in 1993 the State Bar of Arizona’s Committee on Minorities and Women (CMVWL) along with the MCBA Task Force on the Retention and Recruitment of Women and Minority Lawyers launched a recruitment and retention program wherein 54 law firms signed on to the program to increase the existing 20 percent of women lawyers and 4 percent ethnically diverse lawyers in Arizona’s legal community.

The CMVWL is expected to release a report in March 2006. It will be interesting to see the results of the report and how much progress Arizona’s top firms have made in the last 10 years. If the results for the last 10 years are similar to the results of the NALP Directory of Legal Employers 2004/2005 collective demographic report on almost 54,000 partners and more than 61,000 associates, senior attorneys, and staff attorneys nationwide, which revealed that Attorneys of color accounted for 4.32 percent of partners and 15.06 percent of associates and women were 17.06 percent and 47.74 percent, respectively, I would say we have our work cut out for us.

Paralegal Division Solid as it Enters its Fifth Year

There is a saying that things get better with age and since I just celebrated another birthday, I’m sticking with that saying! As the MCBA’s Paralegal Division enters into its fifth year, it continues to get better and better. I am thankful to have followed behind four very exemplary paralegals that have served as president before me. They have paved the way for the future of the MCBA Paralegal Division and have done great things for the profession and the community. I am confident we will do the same this year. As all the other presidents before me will attest, we don’t accomplish these great tasks alone. We do so collectively as a Board of Directors and they too should be commended and recognized.

Your 2006 Board of Directors consists of the following Officers: President-Elect Monica Rapps, CP; Secretary Kathy Bunch; and Treasurer Candee Marsh and Directors Scott Hauert, J.D.; Cha-Cha Powers; Koren Lyons; Brent Miller; Maureen Zachow; and Paula Tilson, CP.

But wait, that’s not all! The division has many committees and events throughout the year that are led by some of our other talented paralegal members, so check out our website at www.maricopaparalegals.org to see who they are and if you are interested in volunteering your time and expertise to help, then please contact them.

We have wonderful things planned for this year and hope you will join us in making them happen.

On behalf of the 2006 MCBA Paralegal Division Board of Directors, we look forward to serving our membership and the community.

Realistic Resolutions: Can These Two Words Be Used in the Same Sentence?

Resolutions...Tis the season after all.

This year I will absolutely, positively (fill in the blank). The blank is usually something like, diet and exercise, bill more hours...We’ve all made them and we’ve all broken them. Maybe we should start making realistic resolutions. For me and for most young lawyers, that involves separating what I probably should do (fill in the blank rears its ugly head again here) from what I want to and am able to do. What am I able to do that will help me grow both professionally and personally this year, that can be done without adding too many more hours into my schedule and without taking away from my other responsibilities?

The answer is right in front of you. Get involved in the MCBA Young Lawyers Division. Yes, ladies and gentlemen, the fill in the blank you can actually fill in—in pen. The realistic resolution is YLD.

Paralegal Division Solid as it Enters its Fifth Year

YLD can help you get involved in the community, meet other young lawyers and develop a great network to help you succeed both personally and professionally. YLD has many projects and events, and involvement can range from becoming a member and attending a YLD CLE to joining or chairing a committee for one of our many projects. Decide what is realistic for you and commit to that this year.

Can you only spare an hour or two? Sign up to visit a classroom for the Student Outreach Program, grade student essays for Law Week or help distribute necessities to shelters for victims of domestic violence. Have a bit more time to spare? Why not serve as a committee member, helping to plan our new 5K event for 2006 or get involved with the highly successful Barristers Ball committee. You can get involved with your peers and the community and can do so in a time that is realistic for you.

Check this column for upcoming events and keep at least one resolution this year. It will be more fun than the diet and easier than billing more hours. I promise. See you this year!
MCBA to Launch Membership Insurance Package

As MCBA members have expressed a particularly strong desire for professional liability, disability and health insurance plans, the Maricopa County Bar Association is working to make this a reality, beginning with group disability insurance.

Did you know one out of every five 35-year-olds will experience a disability that lasts three months or more before age 65? And 82 percent of people have no long-term disability insurance or believe their coverage to be inadequate. With the number of insurers drastically declining over the past 15 years, quality of coverage has decreased while premiums have increased—especially for women. Premiums for women may rise from 20 to 220 percent more than a male, with most charging 50 to 70 percent more.

Dedicated to providing tools and benefits to aid its members, the Maricopa County Bar Association is working to establish a long-term relationship with stable, committed insurers who can provide a secure source of insurance to members.

MCBA Ad-Hoc Insurance Task Force

While interested in providing the best coverage at the lowest possible price, MCBA is also looking at the carrier’s commitment to Maricopa County's legal community.

To achieve this, an MCBA ad-hoc task force has been created to examine the insurance needs of MCBA membership and the availability of endorsed insurance products. Currently, the committee is evaluating group disability insurance programs.

The select committee consists of top insurance professionals: Gregory Harris of Lewis and Roca; Vista Brown, formerly of the Department of Insurance; David Childers of Low & Childers; Edward Glady of Shughart Thomson & Kilroy; and Ralph Adams, sole practitioner and MCBA board member.

The committee will negotiate exclusive agreements similar to those of other bar associations to ensure quality service at competitive rates while easing members’ burden of having to shop around for coverage.

The Maricopa County Bar Association-endorsed program for group disability insurance will offer a policy that would be fully portable, non-cancelable, and guaranteed renewable. The ideal program will feature terms favorable specifically to the local community, including own-occupation definition as well as benefits designed for sole practitioners and small partnerships.

The MCBA and Ad-Hoc Insurance Task Force look forward to launching these programs early in 2006.

MCBA Welcomes This Year’s New Officers and Board Members

The Maricopa County Bar Association has appointed four new officers and elected five new board members to its 2006 governing body.

President-elect Judge Louis Araneta, Treasurer Superior Court Commissioner Glenn Davis and Secretary Kevin Quigley join MCBA president Jo Ana Saint-George as 2006’s newly elected officers. Jay Zweig is the immediate past president.

Saint-George is an attorney at Gust Rosenfeld, practicing commercial litigation, real estate and finance law, while Zweig is a partner at Gallagher & Kennedy, P.A., practicing employment law.

Araneta is a judge for Maricopa County Superior Court’s juvenile department, and Davis, a commissioner for the Superior Court. Quigley is a partner at Quarles & Brady Storch Lang LLP, practicing commercial litigation and administrative and regulatory law.

The terms of the elected officers are automatically extended an additional year.

The newly selected board members are David Benton, Lori Higuera, Dan Lowrance, Jennifer Ratcliff, and Jennifer Green. Higuera was re-elected to the board.

Local Attorney Named President of National Conference of Bar Presidents

By Yvonne Hunter
Special to Maricopa Lawyer

Lonnie J. Williams, Jr., a partner in Quarles & Brady Streich Lang LLP’s Labor and Employment Group, has been installed as the new president of the National Conference of Bar Presidents.

The National Conference of Bar Presidents was founded to provide information and training to state and local bar association leaders. The organization hosts bi-annual state and local bar president conferences that are held in conjunction with American Bar Association midyear and annual meetings. These conferences feature joint programming with the National Association of Bar Executives and the National Conference of Bar Foundations, organizations whose meetings also take place during ABA meetings.

Williams served as the past president-elect in the National Conference of Bar Presidents arms him with an understanding of the tools bar presidents need to be successful. He, along with his fellow officers, strive to provide local bar presidents with information on current subjects along with presentations, workshops and materials that can assist them in providing relevant and stimulating programming during their terms as bar leaders. Williams was installed as the new president during the Chicago annual meeting.

When asked about his involvement with the organization, Williams said, “I am humbled by the opportunity to serve as its president. The National Conference of Bar Presidents is an organization of people who believe in providing services to their profession. Hopefully, we can continue the tradition of providing information and resources to better help in that process.”

Having lifelong ties to Arizona and the Phoenix area, Williams has served on numerous civic boards and commissions and supported several community organizations. He currently serves on the board of trustees for the Phoenix Police Foundation.

Williams was president of the Maricopa County Bar Association’s board of directors in 1995-96. After his term was complete, he continued to represent MCBA as a delegate to the American Bar Association. He remains active in several national and local bar associations.

Williams focuses on civil litigation with an emphasis on employment related matters, tort, banking, and real estate disputes. He possesses an extensive trial background serving as lead counsel which led to his induction into the American College of Trial Lawyers in spring 2004.

Yvonne Hunter is a past MCBA board member, serving as president in 2003.
At common law, no special privilege attaches to transactions between a client and his accountant, and an accountant is generally deemed competent to testify to any and all communications with his or her client in both civil and criminal proceedings. See 33 A.L.R. 4th §39 (1984); see also 1 Am. Jur. 2d Accountants § 15 (1994). Nonetheless, several jurisdictions have enacted accountant-client privilege statutes in direct derogation of this common law practice. The reasoning for enacting these statutes is similar to the attorney-client privilege: to encourage free and open communications between client and accountant. Although a surprise to some, Arizona is a jurisdiction with a statutory accountant-client privilege.

The accountant-client privilege in Arizona found in A.R.S. Section 32-749(A) reads as follows:

Certified public accountants and public accountants practicing in this state shall not be required to divulge, nor shall they voluntarily divulge, client records or information which they have received by reason of the confidential nature of their employment. Information derived from or as a result of such professional source shall be kept confidential as provided in this section, but this section shall not be construed as modifying, changing or affecting the criminal or bankruptcy laws of this state or the United States, nor shall it be construed to limit the authority of this state or any agency of this state to subpoena and use the information in connection with any investigation, public hearing or other proceeding.

Limited cases

Although this statute has been around for decades there are only four Arizona state cases that even reference the privilege and then only in passing and without interpretation. From the brief analysis provided by two of these cases, Brown v. Superior Court In and For Maricopa County, 137 Ariz. 327, 670 P.2d 725 (1983), and State v. O’Brien, 123 Ariz. 578, 601 P.2d 341 (Ct. App. 1979), a few things can be stated with certainty.

The Brown Court affirmed the text of the privilege when it wrote that the Arizona accountant-client privilege “applies to communications between accountant and client when those communications pertain to the client’s financial affairs.” To this end, the Arizona Supreme Court held that the privilege does not apply to “communications received by the client from an accountant employed as an expert to examine the affairs of a non-client,” which was the situation in the Brown case. The O’Brien Court cautioned against a liberal application and construction of the privilege, but affirmed the spirit of the statute when it stated that “the statute [A.R.S. § 32-749] and privilege it accords must be strictly construed, since no such privilege exists at common law [.], and the statute tends to prevent full disclosure of facts.” The Arizona Court of Appeals went on to hold that the privilege does not apply in criminal matters, as was the case in O’Brien, because the “express language of the statute precludes its application to a criminal prosecution.”

Who’s entitled?

Thus, neither of these discussions of the accountant-client privilege resolve one key issue: who is entitled to assert the privilege—the client or the accountant? After exhausting the very limited interpretation and construction of this statute by the courts of Arizona, one must turn to decisions premised upon similar statutes in other states.

It appears that at least ten other jurisdictions have held that an accountant-client privilege exists by virtue of specific statutory provisions: Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, New Mexico and Pennsylvania. Two helpful cases illuminating the accountant-client privilege, and, more importantly, who may invoke the privilege, occurred in Florida and Maryland—two jurisdictions which have an accountant-client privilege on the books.

Client knows best

The 1981 case of Affiliated of Florida, Inc. v. U-Need Sundries, Inc., involved an action for breach of an oral contract to purchase a business. Respondents, U-Need, sought to compel discovery of a memorandum that Affiliated’s accountant prepared concerning a meeting at which the parties allegedly entered into a contract. The accountant-client statute in effect in Florida at that time read as follows:

All communications between a certified public accountant or public accountant and the person whom such certified public accountant or public accountant shall have made any audit or other investigation in a professional capacity, and all information obtained by a certified public accountant and public accountant in his professional capacity concerning the business and affairs of a client, shall be deemed privileged communications in all of the courts of this state, and no such certified public accountant or public accountant shall be permitted to testify with respect to any of said matters, except with the consent in writing of such client or his legal representative.

The court held that, “[c]learly under this section, Affiliated could refuse to produce the confidential memorandum which Mr. Bartz, acting as its accountant, prepared for it.” Thus, this case seems to indicate that the privilege lies with the client.

Held accountable

The 1971 case of Hare v. Family Publications Service, Inc. on the other hand, involved an action for breach of contract and conspiracy to induce a breach of contract in which interrogatories were directed at an accountant in New York. The United States District Court for the District of Maryland, applying Maryland law, found that the interrogatories directed at the accountant presented a problem different than the other interrogatories sought in the case; namely, that the accountant would “have the information sought only by virtue of communications addressed to him or his firm in the course of his work in rendering a professional accounting service.” The accountant objected to the interrogatories on the ground that they sought the contents of communications privileged by the provisions of Art. 75A, § 21 Md. Ann. Code, it provides:

Except by express permission of the person employing him, or of the heirs, personal representatives or successors of such person, a certified public accountant or public accountant or any person employed by him shall not be required to, and shall not voluntarily, disclose or divulge the contents of any communication made to him by any accountant-client privilege on the books. 

Accountant-Client Privilege 

In Florida at that time read as follows: 

The accountant-client privilege on the books. 

Accountant-Client Privilege 

The 1981 case of Affiliated of Florida, Inc. v. U-Need Sundries, Inc., involved an action for breach of an oral contract to purchase a business. Respondents, U-Need, sought to compel discovery of a memorandum that Affiliated’s accountant prepared concerning a meeting at which the parties allegedly entered into a contract. The accountant-client statute in effect in Florida at that time read as follows: 

All communications between a certified public accountant or public accountant and the person whom such certified public accountant or public accountant shall have made any audit or other investigation in a professional capacity, and all information obtained by a certified public accountant and public accountant in his professional capacity concerning the business and affairs of a client, shall be deemed privileged communications in all of the courts of this state, and no such certified public accountant or public accountant shall be permitted to testify with respect to any of said matters, except with the consent in writing of such client or his legal representative. 

The court held that, “[c]learly under this section, Affiliated could refuse to produce the confidential memorandum which Mr. Bartz, acting as its accountant, prepared for it.” Thus, this case seems to indicate that the privilege lies with the client. 

Held accountable 

The 1971 case of Hare v. Family Publications Service, Inc. on the other hand, involved an action for breach of contract and conspiracy to induce a breach of contract in which interrogatories were directed at an accountant in New York. The United States District Court for the District of Maryland, applying Maryland law, found that the interrogatories directed at the accountant presented a problem different than the other interrogatories sought in the case; namely, that the accountant would “have the information sought only by virtue of communications addressed to him or his firm in the course of his work in rendering a professional accounting service.” The accountant objected to the interrogatories on the ground that they sought the contents of communications privileged by the provisions of Art. 75A, § 21 Md. Ann. Code, it provides: 

Except by express permission of the person employing him, or of the heirs, personal representatives or successors of such person, a certified public accountant or public accountant or any person employed by him shall not be required to, and shall not voluntarily, disclose or divulge the contents of any communication made to him by any
Voice Over Internet Protocol Explained

I promised a few months ago that I would give you more information about the way I use the voice over Internet protocol (VOIP) service from Vonage. Since that time, there have been a number of improvements in both Vonage and some of the other competitors such as Verizon and AT&T.

What is VOIP?

First let me explain what voice over Internet protocol is. In simplest terms, it is the process of sending voice over the Internet just as you would send e-mail. Because voice files consume a lot of space you must have a high-speed Internet connection, either DSL or a cable modem, to handle it. About a half million Arizonans have high speed access to the Internet, and I expect that VOIP will become a very common form of Internet usage in the near future.

There are basically two ways that VOIP can support a voice connection. One of them is a direct computer-to-computer connection. That requires a microphone and headset on both ends of the conversation. The other is to utilize a service such as Vonage to access the Internet directly without having a computer connection at all. All you need to have to utilize that kind of service is a high-speed Internet connection and a small portable box that can hook up a standard telephone to the Internet. I will talk a little bit about both in this article. But since the cost of trying out this service is so low I really recommend that you invest a couple of dollars and see whether or not VOIP can be useful for you. Go to www.Vonage.com for more information.

Vonage and other providers

Vonage’s service costs $14.95 or $24.95 a month. They provide you with a “Magic Box,” allowing you to connect to a telephone directly to the Internet and use it like an ordinary telephone. There are several options ranging from free to less than $100. All you do is to run a cable from your high-speed Internet modem to the Magic Box and then plug your telephone into the Magic Box and you are off and running. The $15 service provides you with 500 anytime minutes per month. You can call anyone in the United States or Canada for no charge. Most European and other North American telephones can be reached at a cost of less than 10 cents per minute. The person that you call does not have to have a VOIP service because Vonage sends your voice over the Internet to the hardwired telephone service you are calling.

The $25 service provides you with unlimited anytime calling, and the same inexpensive per minute charge for international calls. In addition, because Vonage and other VOIP providers are not regulated by the FCC, those substantial surcharges that you receive on your Qwest bill do not occur. The total cost of your telephone service is remarkably inexpensive.

Vonage provides you with a full range of supplemental telephone services at no extra cost. You get voice messaging, call forwarding, and other standard add-on services such as Caller ID, Call Waiting, 3-Way Calling and a lot more for free! I have my phone set up so that when I am unable to answer a call, it forwards my voicemail to the Internet, sending it to me as an e-mail attachment that plays in Windows Media Player. I would pay much more than $25 a month for that service alone.

There are some other advantages that are worth considering. The Magic Box contains your telephone number so that wherever you plug it into the Internet you have your home number available to you from the Magic Box. If you’re in London, and you have your Magic Box hooked up to a high-speed Internet connection at the hotel, all calls to your home number will ring in London. And if you have the rollover to an e-mail attachment feature activated, you will either get your phone calls directly or via e-mail. The box is very small and weighs just a few ounces. It does have a power supply that weighs more than the Magic Box itself and of course you have to have a telephone available to plug into it.

You can’t do it yet, but in a few months Vonage and some of its competitors will offer you a wireless phone that will allow you to utilize VOIP anywhere you can find a wireless Internet connection. In short, this is a service that can dramatically expand your productivity, while at the same time, saving you a lot of money. Go to the Vonage web site and check it out. I guarantee that you will be impressed.

Quality issues

A few years ago when VOIP first became easily accessible to non-techies, the quality left a lot to be desired. Now, I find that my service is absolutely as good and absolutely as reliable as my landline phone. If you think about it for a minute, a very large percentage of our telephone time today is spent on a cell phone, and we have learned to tolerate a very low level of quality and lots of call interruptions and disconnects. VOIP quality, at least from the major providers, is far better than a cell phone and far more reliable.

The second bad rap that VOIP got was the lack of a 911 service. That has now been solved, and most of the larger VOIP providers are now able to provide 911 services, at least to the place where the phone service is based. There have been some problems and if 911 capability is critical to your needs, you will want to check on the status and functionality of the 911 service on the VOIP system that you choose. Obviously a fully functional 911 service cannot be provided when you are traveling with your Magic Box, anymore than it could when you are traveling with your cell phone. But for me, 911 is not a deal breaker, even if it did not work at all.

There are VOIP options now available from large traditional phone companies that are attempting to break in to this new market. From my investigation Vonage is far better and far cheaper than any of its competitors. You can check out the options www.voipproviderslist.com. If all you want is VOIP service through your computer, it is available for free from an outfit called Skype which was recently purchased by eBay. Skype has just come out with a telephone-like device that plugs directly into your computer through the USB port and allows you to dial calls all over the world for free. Skype doesn’t offer the kinds of high-end services that Vonage does, but still, as we used to say in Indiana, free is good. You can check out Skype at www.skype.com.

I think if you try the Vonage service, you will want to stick with it. You may not want to give up your landline completely, but VOIP does allow you to have a second and third phone number at minimal cost. And, by the way, Vonage offers a service called “virtual phone number”, which for $4.95 a month gives you a telephone number in any area code that you wish in North America and Great Britain. Do you want to establish a virtual office in San Francisco or London or Mexico City? All you need is to get an area code number from Vonage and all of your friends and clients who live in that area can call you at no cost. And, you can list those numbers on your business card if you wish. You can have your virtual office in London for only $4.95. Don’t leave home without it!
A New Year’s Resolution: Implement a Proofreading Plan

One of my favorite war stories about potentially embarrassing typographical errors is a story about an error I made in a draft of an important Motion for Reconsideration. Instead of typing “the United States,” I typed “the United States” in several key paragraphs. No red or green squiggly lines appeared on the computer screen to alert me to the error, as “untied” was recognized as a proper word choice by the computer’s dictionary. More importantly, I obviously failed in my effort at proofreading the document, even though I knew better than to rely on the computer’s spelling checker and grammar checker as the final editor of my work. Thankfully, the careful eye of my senior partner caught this embarrassing typographical error before the document was submitted to the court, and I learned a valuable lesson about having a systematic plan for proofreading a document for errors—especially a document composed on the computer.

The first step in a proofreading plan is to know the idiosyncratic errors the typist or writer makes. I suggest making a list of these errors and using it as a checklist during the proofreading stage; my personal proofreading list is kept in a binder next to my computer. On my personal list of errors are (obviously) typing “untied” instead of “united” and typing “form” instead of “from.” The most common errors typists/writers make include: (1) transposing letters, (2) transposing words, (3) typing double of small words (such as “in”), (4) omitting one of a set of quotation marks or parentheses, (5) typing the first letter of a word as the last letter of the preceding word (such as “for the test” instead of “for the test”), (6) omitting needed spaces, especially in citations, and (7) omitting articles (the, a, an).

The final step in a proofreading plan is to have a method that ensures a careful review. If proofreading on a computer, the writer can scroll line by line, scroll line by line going backwards through the document, or use a straight edge placed against the screen to ensure a careful review. Other writers find it helpful to enlarge the font size and to double or triple space the text, while others resort to printing out the document and proofreading the paper copy.

New Members

continued from page 1

from 1996 to 1999 and is a graduate of the University of Arizona College of Law. Ryan fills the vacancy created by the retirement of Judge Penny Wärlich. He is assigned to a civil calendar.

The next investiture is scheduled for Fri., Feb. 10, honoring Judge John Hannah Jr., who is handling a juvenile court calendar.

Hannah was a partner with Hoidal & Hannah, P.L.C., immediately before joining the bench. During his legal career, he practiced criminal, civil, commercial and business law. He served seven years as a federal public defender for the District of Arizona.

He was appointed to the vacancy created with the retirement of Judge William Sargeant and has actively served a variety of legal associations, including the Sandra Day O’Connor Inn of Court, Federal Bar Association Phoenix Chapter Board of Directors, National Association of Criminal Defense Layers and Arizona Attorneys for Criminal Justice.

Judge Michael Gordon, who was assigned to a criminal calendar, is being sworn in on Fri., Feb. 24. Before joining the bench he served as a federal public defender and is a former professor at Arizona State University College of Law. His appointment fills a newly created division for the court that increased the number of judges to 93.

The investiture of Judge Robert Miles will be on Tues., Feb. 28. Formerly a partner with Quarles & Brady Streich Lang, LLP, Miles fills the vacancy created by the retirement of Judge John Foreman.

Since 2000, Miles has been co-editor of the Arizona Appellate Handbook. He has served as a charter member of the Silent Witness, Inc. Board of Directors and volunteered for youth educational and sports programs.

He joins his wife, Judge Linda Miles, on the Superior Court bench.

Another February investiture combines ceremonies for five newly appointed Superior Court Commissioners. The event, set for Mon., Feb. 6, honors Commissioners Frank Johnson, Kirby Kongable, Scott McCoy, Phemonia Miller and Barbara Spencer.

Three of the new commissioners—Johnson, Kongable and Spencer—are assigned to criminal cases. McCoy is assigned to handle family court, civil and probate matters and Miller handles probate and civil cases.

This latest round of investitures isn’t going to be the end for the near future. These events are becoming so frequent that it can be problematic for court staff to get the events scheduled.

At press time, 13 candidates were being considered for two more Superior Court vacancies—those created by the retirements of Judges Frank Galari and Rebecca Albrecht.

Members of the Maricopa County Commission on Trial Court Appointments solicited written public comment for the nominees. Public interviews by the commission were scheduled for Dec. 16. Following the interviews, the commission was expected to recommend at least three nominees for each vacancy to Governor Janet Napolitano. The governor appoints from those final candidates.

Among the nominees are three of Superior Court’s 48 commissioners.

Write a Letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. Maricopa Lawyer reserves the right to edit all letters for length.

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

Stay the stay of the curve.

Earn a Master of Laws (LL.M.) in Biotechnology and Genomics

"Each class I attended is amazing. Each of my fellow classmates brings something different to the program, bringing a unique dynamic to each experience."

- Miguel A. Rodriguez, J.D., LL.M.,environmental toxicology, energy and clean technology.

Arizona state university college of Law. 1101 N. University Drive Tempe, Arizona 85281-5105.

Phone: 480.965.2000 • Fax: 480.965.2010 • www.asu.edu/collaw

© 2017 | Arizona State University

All rights reserved. Biotechnology and Genomics. 1101 N. University Drive Tempe, Arizona 85281-5105.
Privilege

continued from page 4

person employing him to examine, audit or report on any books, records, accounts or statements nor any information derived therefrom in rendering professional service; provided that nothing in this section shall be taken or construed as modifying, changing or affecting the criminal laws of this State or the bankruptcy laws.

The district court reasoned that “[t]he state’s affirmative action in carving out in absolute terms of a privilege creating an exception to the general rule of testimonial compulsion, in this court’s view, constitutes the enunciation of a strong public policy in favor of the protection of accountant-client communications,” and that requiring the disclosure of such communications here “would be violative of that public policy.” Accordingly, the court denied the motion to compel the accountant to answer the interrogatories at issue. Thus, this case seems to indicate that the privilege lies with the accountant.

Following suit

Other cases that have decided the issue of whether the client or the accountant is entitled to invoke the privilege seem to follow suit, holding that the privilege lies with the accountant. For example, the 1967 case of Ash v. H.G. Reiter Co., involved an action by an employee against his employer to recover the bonus owed under an oral contract of employment. On appeal, the employer claimed that the trial court erred in admitting the testimony of an accountant employed by the employer to audit its records and prepare the necessary annual reports. The employer’s objection to the testimony was premised on the contention that it should have been excluded as privileged. The court noted that, during trial, the accountant made no objection to testifying nor was an objection made on his behalf. Therefore, the court found that since the objection was ignored, it could not have been sustained by the trial court for the reason that “the assertion of the privilege under this statute is available only to the accountant” under section 67-23-26 N.M.S.A.

In the same case, the employer, on appeal, asserted that the testimony of the accountant was also inadmissible under another related 1953 New Mexico statute, section 20-1-12(e) which reads:

In the courts of the state of New Mexico, no certified public accountant or public accountant shall be permitted to disclose information obtained in the conduct of any examination, audit or other investigation made in a professional capacity, on which may have been disclosed to said accountant by a client, without the consent in writing of such client or his, her or its successors or legal representatives.

Thereafter, it was pointed out by the appellate court one statute applied only to the accountant, while another one stated that the “privilege is available only to the client.”

Where does Arizona fall?

For purposes of determining where the Arizona accountant-client privilege falls, the court’s analysis to the first statute should be instructive. The language of A.R.S. § 32-749(A) is almost identical to that found in § 67-23-26 N.M.S.A., presumably giving only the accountant the right to assert privilege with language such as “shall not be required to divulge” and “which they have received by reason of the confidential nature of their employment.” Other courts which have analyzed similar statutes have come to the same conclusion. For example in applying Illinois law, a court held that the accountant-client privilege insured only to the accountant and therefore the accounting firm could not be ordered to produce documents listed. It observed that the statute creating the privilege did not mention the word “client,” the court concluded that the privilege was created for the benefit of, and could be claimed only by, the accountant. Based on this case law from other jurisdictions, it appears that the privilege is usually found to belong to the accountant, rather than the client. Arizona, courts, if presented with the issue, would probably rule similarly based upon the similarity of the language used in Arizona’s statutory accountant-client privilege and the established precedent from sister jurisdictions.

However, because Arizona courts are silent on the issue, an argument could be crafted to support either position.

David Edward Fankhauser III is an attorney at Quarles & Brady Streich Lang LLP, where he practices commercial litigation.

Document Depositories Make Job Easier

January’s featured expert is Francisco Diaz, president of DocuTrust, LLC, a full-service document depository that handles document storage, identification and scanning, copying, and printing. DocuTrust provides traditional paper depository as well as documents scanned to cd-roms and secured Web sites.

Diaz explains what a document depository is and why it is helpful to use one.

Q: What is a document depository?

A: A document depository is a facility that manages documents for law firms that are involved in complex and/or class action lawsuits. Each party deposits their non-privileged documents at the depository so that adverse counsel and its representatives can review and order copies upon request. These documents are organized by case and each depository party. It provides a neutral location for all the parties to meet, take depositions and review documents.

Q: What kind of documents can be deposited?

A: All formats are available to be deposited. Documents may be deposited in hard copy form or electronically on CDs/DVDs. They range from photographs, oversize plans, receipts, etc. Parties deposit their non-privileged documents that have been Bates labeled and indexed. This index provides adverse parties the ability to review a description of the documents at the depository or on-line.

Q: Why use a document depository?

A: There are several reasons to use a document depository:

• Documents are stored in an organized and maintained facility which allows easy access to all parties involved.

• Rather than deal with each party individually to review, request or produce documents, you only have to utilize the resources of the depository.

• Reviewing the documents at the depository or online enables you to order just the documents you need.

• It frees up your staff’s time in filing, maintaining and producing documents.

• It is a cost efficient way to manage small to large cases. Rather than having to incur copying expenses and request payment, the depository bills each party directly for the copies they request.

• During trial preparation the depository can be used as a multi-purpose war room. All documents from all parties are available at one location. Preparation of all hard and electronic copies can seamlessly be created.

• Parties can utilize the various conference rooms for depositions, meetings and mediations.

• Taking depositions at facility enables all parties to have access to important documents pertaining to their case. This alleviates having to deliver and produce multiple documents at the deposition to share with counsel. They can be simply copied and distributed during the deposition and marked as exhibits.

Francisco Diaz can be reached at (602) 595-4101 or fdiaz@docutrust.biz. DocuTrust, LLC is located at 2001 N. Third Street, Suite 204, Phoenix, Arizona 85004.

Tell Us!

We welcome letters to the editor. Letters generally should be no more than 300 words long. Maricopa Lawyer reserves the right to edit all letters for length. Letters to the editor can be e-mailed to kbrieske@mchbar.org or mailed to: Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004.
This calendar includes CLE seminars presented by MCBA as well as MCBA meetings, luncheons and events and those of other voluntary bar associations and law-related organizations. The divisions, sections and committees listed here are those of the MCBA, unless noted otherwise. Everything takes place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix, Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, 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.maricopabarium.

**JANUARY 2006**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>MCBA Offices Closed</td>
</tr>
<tr>
<td>3</td>
<td>Barristers Ball Meeting (TBD), 5:30 p.m.</td>
</tr>
<tr>
<td>7</td>
<td>Family Law Meeting (Fresh Start), 5:30 p.m.</td>
</tr>
<tr>
<td>5</td>
<td>Construction Law Section Meeting (A), noon</td>
</tr>
<tr>
<td>9</td>
<td>YLD Board Meeting (A), noon</td>
</tr>
<tr>
<td>10</td>
<td>Paralegal Board Meeting (A), 5:30 p.m.</td>
</tr>
<tr>
<td>11</td>
<td>MCBA EC Meeting (A), 7:30 a.m.</td>
</tr>
<tr>
<td>17</td>
<td>LRS Committee Meeting (A), noon</td>
</tr>
<tr>
<td>19</td>
<td>PI/Negligence Board Meeting (A), noon</td>
</tr>
<tr>
<td>20</td>
<td>MCBF Meeting (A), 7:30 a.m.</td>
</tr>
<tr>
<td>23</td>
<td>Minority and Women Task Force (A), noon</td>
</tr>
<tr>
<td>24</td>
<td>Employment Law Section Meeting (A), 11:30 a.m.</td>
</tr>
<tr>
<td>25</td>
<td>Criminal Law Section (A), 7:30 a.m.</td>
</tr>
<tr>
<td>26</td>
<td>EP Probate/Trust Board Meeting (A), 7:30 a.m.</td>
</tr>
<tr>
<td>27</td>
<td>De-Mystifying Intellectual Property</td>
</tr>
<tr>
<td>28</td>
<td>Task Force Brown Bag (A), noon</td>
</tr>
<tr>
<td>29</td>
<td>Barristers Ball Meeting (TBD), 5:30 p.m.</td>
</tr>
<tr>
<td>30</td>
<td>EP Probate/Trust Board Meeting (A), 7:30 a.m.</td>
</tr>
<tr>
<td>31</td>
<td>Barristers Ball Meeting (TBD), 5:30 p.m.</td>
</tr>
</tbody>
</table>

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

---

**Professional Legal Office Space**

Several very nice suites available in one of downtown’s more popular small office buildings. Close to all courts. Amenities include a receptionist, phone system, two conference rooms, library, full Kitchen, gym with Jacuzzi, and lots of free parking. Perfect for solo practitioner or two person firm, private detective or court reporter. This is a highly desirable location and space usually does not last long.

Call Dave Rose at (602) 340-8400

1440 East Washington
Phoenix, AZ 85034
AVAILABLE IMMEDIATELY
(602) 340-8400
Failing to Predict the Future Proves Successful

Attorney Stephen Benedetto should be thankful he does not possess fortune-telling powers.

Ten years ago, Benedetto wrote his undergraduate college admission essay, which required placing himself in the year 2010 and providing a fictional explanation of what he had accomplished since graduation.

At the time, he was so unsure of what the future held for him that he wrote the essay as a third-party letter of regret from his brother, informing the alumni committee that after practicing law for five years, he spent two years on a Peace Corps mission in Africa where he caught an airborne strand of a lethal disease and died.

“I knew I wanted to be a lawyer; everything else has been an ongoing project.”

“To say the least.

Moving west

Stephen Benedetto was born and raised in New Jersey. Like many others, he first moved a little west—to Philadelphia to attend college at Villanova University—and then kept going until he reached Arizona, attending law school at Arizona State University.

After receiving his law degree, he served a judicial clerkship for Justice Rebecca White Berch at the Arizona Supreme Court before working at Shughart Thomson & Kilroy. He just recently moved to Fennemore Craig, joining its business and personal injury torts practice group.

Benedetto has always enjoyed being an advocate and considered fighting for someone else’s interests an ideal job.

He admits to sounding clichéd, but his interest in practicing law was pretty much solidified as a high school freshman watching “To Kill a Mockingbird.”

“I couldn’t imagine any more honorable profession than one where people like Atticus Finch risk their careers, reputations, and lives to defend the defenseless.”

Balancing act

Benedetto practices commercial litigation, primarily in the tort arena.

“It’s a pretty big leap from defending the Tom Robinsons of the world, but I realized fairly early on in law school that criminal law probably wasn’t for me.

“But like criminal law, personal and business torts involve one party’s attempt to balance the scales of justice and right a wrong—that’s something that I guess I’ve always responded to.”

Matters of the heart

Benedetto has somewhat of a unique career accomplishment—traveling to Louisiana with donated supplies to help Hurricane Katrina victims.

Making that cross-country trek to allow Benedetto to clear his head and realize what brought him into law in the first place.

And this coming from someone who has only been practicing for a year!

Peer review

Benedetto credits the Maricopa County Bar Association for providing peer support.

“This isn’t an easy business that we’re in, and the atmosphere in which we interact with each other makes a huge difference.”

Benedetto thinks what MCBA does—from CLE programs to social events to community outreach programs—not only educates lawyers and serves the public, but hopefully helps foster a respectful, professional environment that we are proud to practice in.

Secret dreams

Benedetto shares that he is an aspiring writer who’s never written anything for publication. At least once a week, he writes something: short stories, non-fictional political commentary and humorous essays.

“Whether I’ll try to publish any of it I’m not sure, since it’s more of a release than anything else. I have far too much to say and far too few ears willing to listen to me ramble, and I have to get it all out somehow.”

In addition to writing, Benedetto plays a little guitar and piano. He also admits to spending $100-plus per week on an Amazon.com habit.

“It’s embarrassing.”

Parent trap

And the secret to Benedetto’s success?

His parents, an answer shared by many.

“When my natural laziness starts to take over, the values instilled by my parents—hard work, persistence, and an almost militant intellectual curiosity—jump up and force me on track.”

He also considers his clerkship for Berch an experience conducive to his success, learning legal writing and analysis by fire.

“I think you’d be hard-pressed to find a sharper and more astute legal mind anywhere in the United States, and can’t imagine any better mentor for a young lawyer.”

Back to the future

When asked this time where he sees himself in 10 years, Benedetto does not predict a premature death.

“Truth be told, I expect that 10 years from now I will be still be practicing law, ideally still here at Fennemore Craig.”

Much better than his college essay response.
Britain’s Highest Court Rules Torture Evidence Inadmissible
By Joan Dalton
Marcopla Lawyer

A panel of seven House of Lords judges hearing an appeal by eight detainees held without charge and suspected of being involved in terrorism unanimously overturned a Court of Appeal ruling which held that evidence obtained under torture by agents of another country was usable in U.K. courts, and the U.K. government had no obligation to inquire about its origins. Britain’s Special Immigration Appeals Commission must now evaluate whether evidence against the detainees was obtained by torture.

U.K. Home Secretary Charles Clarke accepted the Law Lords’ judgment but said it “will have no bearing on the government’s efforts to fight terrorism. We have always made clear that we do not intend to rely on or present evidence … which we know or believe to have been obtained by torture.” But Philippe Naughton, staff writer at the Times of London, reports that “[i]n the past, SIAC has relied on information provided … from the interrogation of suspects at the American detention camp in Guantanamo Bay, Cuba, despite evidence that conditions and methods at that camp do not comply with international standards.”

Human rights organizations criticized the U.K. government for fighting the detainees’ claims. A spokesperson for Amnesty International reacted to the ruling, saying: “[i]t is deplorable that the U.K. government had to be taken to court over this. Over the past two years the authorities have shamefully sought to defend the indefensible.”

Lord Bingham of Cornhill, who wrote the lead opinion, noted his surprise and dismay at the lower court’s ruling, and stated that “[t]he principles of the common law, standing alone … compel the exclusion of third party torture evidence as unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with the principles which should animate a tribunal seeking to administer justice.” Another House of Lords judge, Lord Hoffman, added that “many people in the United States, heirs to that common-law tradition, have felt their country dishonored by its use of torture outside the jurisdiction, and its practice of extra-legal ‘rendition’ of suspects to countries where they would be tortured.”

Lord Marks, another member of the panel, remarked that allowing torture evidence to be used in U.K. courts would “involve the state in moral defilement.” Shami Chakrabarti, the director of Liberty, a U.K. human rights organization, said that the Law Lords’ ruling sends “a signal across the democratic world that there is to legitimate evidence obtained by torture by using it in our justice system.”

New Proposed Rules for Judicial Retention
By Jack Levine
Marcopla Lawyer

Nine members of the Commission on Judicial Performance Review have petitioned the Supreme Court for changes in the Commission’s rules to add a new category for rating judges for judicial retention elections.

Presently, the 33-member Commission, consisting of six judges, six lawyers and 21 lay persons, evaluates the scores received by all state appellate judges and the Superior Court judges in Pima and Maricopa Counties. These judicial evaluation polls are conducted of lawyers, court staff, witnesses and jurors in the months preceding the judicial retention elections. Numerical scores are assigned to the various qualities, skills and abilities of the individual judges.

When the present rules were formulated in 1992, it was felt that the public needed assistance in making decisions in voting for or against judges based on the numerical scores achieved from those polled. To fulfill this purpose, the Commission on Judicial Performance Review was established to help the public evaluate judicial performance by “recommending” or “not recommending” judges based on a “meets standards” or “does not meet standards” criterion. In the thirteen years since the present rules were adopted, no judge has ever failed to meet standards and no judge has ever failed to be retained by the voters.

Now, the nine petitioning commission members, Hon. Daniel A. Barker, Barbara S. Glenn, Michael T. Hellan, Marc R. Lieberman, Hon. John A. Pelander III, Raymond L. Sachs, Carl A. Piccarreta, Ron Ober, and Ronald R. Watson, are seeking to have a third category—“exceeds standards”—so that worthy judges can be recognized for their superior abilities and so that lesser functioning judges can have something to aspire to.

Although the Commission members proposing the new rule changes should be commended for recognizing that our judicial retention procedures are not perfect, the proposed rule changes do nothing to address the basic shortcomings of the judicial performance review and retention side of the merit selection process.

The proposed rule changes do not deal with the practice of giving a “free ride” to marginal and non-performing judges. Creating a new rating of “exceeds standards” will have no impact whatsoever on the customary practice of assigning a “meets standards” rating to judges who achieve scores as low as 65-75 in the evaluation polls in the categories of knowledge of the law and knowledge of the rules of evidence and procedure. Ideally, the public is entitled to have judges who score 90-100 in these fundamentally important categories.

One of the major shortcomings of the commission is that the scores received in categories such as integrity, impartiality, judicial temperament, administrative skill, punctuality and communication skills are given the same weight and are averaged in with “knowledge of the law” and “knowledge of the rules” categories, which normally brings all judges up to at least a 70-75 range and secures them a “meets standards” rating. In the commission’s vote leading up to the 2004 Retention Election two Superior Court judges received more than ten “does not meet standards” votes, yet were recommended for retention.

Because of the make-up of the commission, there is a legitimate concern that the fear of retaliation from the presence of judicial members may be silencing criticism of judges by the lawyer members and discouraging lawyer members from casting “no” votes against non-performing judges. Evidence that the presence of judges can be an intimidating factor under these circumstances can be
Foundation Grants Enhance Arizona’s Justice System

Each year, the Maricopa County Bar Foundation provides grants to organizations and projects that focus 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.

Advocates for the Disabled, Inc., one of 11 organizations to receive a grant in 2005, clearly demonstrates how the distribution of grant money enhances the rule of law and the system of justice in Arizona.

The organization establishes the eligibility of individuals seeking benefits; manages benefits (Social Security, veterans and private funds); educates the public how to obtain and use benefits; and advocates for the right to receive benefits. Since the 1980s, it has been serving Arizona residents who have active claims for disability benefits, including appeals on denials or termination of benefits as well as people who are homeless. Residents from birth through retirement age are eligible, and priority is given to low-income individuals.

One such Advocates for the Disabled case proves the importance usage of the foundation's gifted funds.

Legal representation at the federal level for one such individual became necessary to assist her in reestablishing her disability benefits with the Social Security Administration. In this case, her disability benefits were questionable, even with a psychiatrist diagnosing her as disabled. The administrative law judge rejected the professional findings, refused to schedule any further evaluations, illegally accepted the opinions of a non-examining doctor (contrary to controlling case law), and upheld the cessation of benefits. Legal representation was necessary, as cessation claimants cannot get contingency fee representation from private attorneys.

The Maricopa County Bar Foundation chooses to support organizations such as Advocates for the Disabled, to make sure that Arizona’s justice system continues to work as efficiently as possible.

Phoenix Municipal Court Swears in First Female Asian American Judge

Judge Roxanne K. Song Ong was sworn in as Phoenix Municipal Court's presiding judge, making her the court's first female presiding judge as well as its first female Asian American judge.

Song Ong, sworn in by Councilman Dave Siebert to replace B. Robert Dorfman, has served as a judge for the Phoenix Municipal Court since 1991 and was appointed assistant presiding judge in 2000. Before joining the city of Phoenix, she served as a judge for the Scottsdale City Court from 1986-1991, and prior to that, she practiced law in the areas of criminal prosecution, defense and immigration law.

Dorfman retired after 33 years of city service, including nearly 15 years as the chief presiding judge of the Phoenix Municipal Court. Dorfman began his career with the city of Phoenix in 1972 as an assistant city attorney. In 1982, he was promoted chief city prosecutor, in 1988 to chief assistant city attorney and then appointed as chief presiding judge of the Phoenix Municipal Court in 1993.

Dorfman was responsible for several advances at the city's courthouse, including overseeing building plans for a state-of-the-art courthouse which opened in 1999, implementation of the Revenue Collection Enhancement Program and implementation of the automated Court Management System.

Phoenix Municipal Court's judicial appointments are four-year terms. The chief presiding judge is appointed and reviewed on an annual basis.
Court Watch
continued from page 1
also was abusing alcohol, marijuana, and other drugs.
Hamm met two students who wanted to buy twenty pounds of marijuana; Hamm agreed. But when he couldn’t obtain that amount, his plan evolved into a plot to rob them of the purchase money.

With two accomplices, Hamm drove with the men into the desert. Before demanding the money, however, Hamm shot Willard Morley in the back of the head. One of Hamm’s accomplices, Garland Wells, then shot Zane Staples. Hamm shot Staples, who was fleeing into the desert, in the back. Both Hamm and Wells then shot Morley again. Wells then pursued Staples and killed him. Wells and Hamm divvied up the victims’ money; $1,400 that they found in the glove compartment.

Hamm was charged with two counts each of first-degree murder and armed robbery. He pleaded guilty to one count of first-degree murder and was sentenced to prison for 25 years to life.

Model prisoner
In prison, Hamm began to turn his life around, becoming a model prisoner. He availed himself of every educational opportunity, studying yoga, meditation, and Jungian psychology. He even earned a bachelor’s degree in applied sociology, summa cum laude, from Northern Arizona University.

Hamm helped other inmates learn to read and write. He also joined several prison committees, helping to develop a new prison grievance procedure. He also wrote grant proposals seeking funds for prison libraries, handicapped inmates, and inmate legal assistance.

In prison he met Donna Leone and later married her. Together, they founded Middle Ground Prison Reform, an inmate advocacy group. He currently serves as its director of advocacy services.

In 1989, Governor Rose Mofford commuted Hamm’s sentence. In 1992, after serving almost 17 years, he was released on parole. He performed thousands of hours of community service and appeared in an anti-crime public-service video. He also was admitted to Arizona State University’s College of Law, from which he graduated in 1996. In December 2001, he was granted absolute discharge from prison.

Hamm passed the bar exam in 1999. In 2004, he applied for admission to the State Bar of Arizona. The Bar’s Committee on Character and Fitness recommended that the Supreme Court deny his application.

High expectations
In her opinion for the court, Chief Justice Ruth V. McGregor refused to impose an absolute rule that would bar murderers from any chance at becoming members of the bar. Instead, she held, each case must be reviewed on its individual merits, as the question is the applicant’s current moral character. Nonetheless, McGregor wrote, “this Court must determine what past bad acts reveal about an applicant’s current character.” “The added burden” of establishing good moral character, she continued, “becomes greater as past unlawful conduct becomes more serious.”

McGregor and the court set an extremely high bar. “When an applicant has committed first-degree murder, a crime that demonstrates an extreme lack of good moral character,” she wrote, “that applicant must make an extraordinary showing of present good moral character to establish that he or she is qualified to be admitted to the practice of law.” Noting that in no known case had a murderer ever been admitted to the bar, she agreed with the New Jersey Supreme Court that “in the case of extremely damning past conduct, a showing of rehabilitation may be virtually impossible to make.”

After setting the bar high, McGregor and the court conducted an exacting scrutiny of Hamm, his past conduct, and his current application.

She turned first to rehabilitation, asking whether Hamm had demonstrated that he had fully accepted responsibility for his crime. He came up wanting. McGregor acknowledged that Hamm had stated “repeatedly and strongly” that he accepted responsibility. But she found some bothersome inconsistencies, particularly his failure to acknowledge his role in Hamm’s death. Hamm “consistently assigns that responsibility to his accomplice,” McGregor noted, and “[h]is testimony revealed almost no attention to the commission or aftermath of Staples’ murder.

The chief justice also took Hamm to task for his statements about his motive. “Hamm has insisted in his filing … that he did not intend to kill, but only to rob, his victims,” McGregor wrote. But the undisputed facts demonstrated otherwise, she held, concluding that they “lead directly to the inference that Hamm intended to kill.” She noted that “he shot Morley without ever attempting a robbery and shot him a second time to make certain he was dead.” She also noted that he shot Staples to keep him from escaping. She concluded that “[h]is failure to confront the fact that these murders were intentional undermines his statements that he fully accepts responsibility for his actions.”

McGregor expressed approval of Hamm’s efforts at rehabilitation. But rehabilitation alone was not enough, and Hamm had failed to show the present-day good moral character necessary to be admitted.

Lack of support
The drug-related murders were not the only skeleton in Hamm’s closet that concerned the Supreme Court. McGregor also pointed to his failure to pay child support after being divorced from his first wife. “Not until he prepared his application for admission to the Bar in 2004 did Hamm make any effort to meet his responsibility to provide support for his son,” she wrote. She rejected his proffered excuses.

McGregor was not persuaded by Hamm’s claim that he never received a copy of the final divorce decree, noting that a few months after he and his wife separated, he was arrested for failing to pay support. She noted that he did not try to learn the extent of his financial obligation to his son from 1974 until 2004. “During those nearly thirty years,” she wrote, “he gained sophistication and attended law school. He must have known, and certainly should have known, that he had long avoided a basic parental obligation.”

Hamm had excused his failure in part because, he testified, he had been told that his ex-wife’s new husband had adopted the boy. He had only learned otherwise when he began assembling his bar application. He then contacted his son and began making payments on the $11,000 arrears, even though he believed that the actual obligation was unenforceable under the statute of limitations.

As further proof of the high standard that the court had imposed on Hamm, the opinion closely scrutinized even this seemingly charitable effort and again found Hamm wanting. Hamm had told the committee that he was paying his son only the principal because his son had “adamantly refused” to accept interest. The son’s testimony was less than adamant, however: “I didn’t push the issue or anything, say, well, you know, you’re going to pay me interest for this or what, or is there any interest. It wasn’t really an issue or important to me.” McGregor therefore concluded that Hamm had failed been to show honesty and candor.

Undisclosed details
Another incident in Hamm’s past played a role in the opinion because Hamm failed to mention it on his bar application. In 1996, Hamm and Donna Leone had a physical altercation outside a convenience store in which Donna had yelled “kidnap” out the window of the car that Hamm was driving. Hamm stopped the car, the couple tussled, and Donna tore his shirt. The police were called but made no arrests.

One part of the application required Hamm to disclose any incident in which he had been arrested, indicted, charged, or questioned about a felony or misdemeanor. In his explanation for not listing the spat was that he had missed the word “questioned.”

McGregor found that “Hamm’s explanation strains credibility.” She noted that he was knowledgeable in the law and had made efforts to document a defense to the incident shortly after it happened. She therefore inferred that he understood its importance and must have known that the committee would be interested in it. “His failure to include it in his initial application,” she concluded, “further affects his ability to make the needed extraordinary showing of good moral character.”

Hamm hurt his own cause by the way he pursued his case before the Supreme Court. In his petition to the court, he had included a paragraph that was lifted, with minor variations, from the United States Supreme Court’s opinion in Konegger v. State Bar, 353 U.S. 252 (1957). Called to account, Hamm dismissed the incident as insignificant. McGregor disagreed. Hamm apparently either does not regard his actions as improper or simply refuses to take responsibility. In either case, his actions here do not assist him in making the requisite showing of good moral character.

Joining the opinion were Justices Michael D. Ryan, Andrew D. Hurwitz, and W. Scott Bales, and Court of Appeals Judge Jefferson L. Lankford, who sat for Vice Chief Justice Rebecca White Berch.
ASSOCIATE POSITION: Hoopes & Adams, PLC seeks associate with 1-2 years experience for its growing Chandler commercial practice. For more information regarding firm visit firm website at halaw.com. Position will initially involve work in business transactional and estate planning practice, as well as some commercial litigation. Excellent research, writing, analytical, and personal skills required. Send resume/inquiries to radams@halaw.com.


EMPLOYMENT LAW ASSOCIATE: Gallagher & Kennedy, an established, progressive Phoenix general practice law firm, has an immediate opportunity for an attorney with a minimum of 4 years of focused experience in representing businesses in labor and employment law matters in Maricopa County. Demonstrated skill in federal and state court litigation and in representing clients before administrative agencies is a must. Substantial experience in assisting employers in developing policies and procedures; avoiding employment discrimination charges; and investigating claims is also necessary. Candidates must be members of the State Bar of Arizona, have an outstanding academic and employment record, and demonstrate superior communication and writing skills. Qualified candidates are encouraged to forward their resume and a list of references to Amanda Powell, Attorney Recruitment Coordinator, Gallagher & Kennedy, P.A., 2575 East Camelback Road, Phoenix, Arizona 85016.

PAKRER, ARIZONA ON COLORADO RIVER. La Paz Co. Public Defender now hiring entry level and experienced Deputy Public Defenders. Competitive salary, DOE. Send resume to Public Defender, 1400 Kofa Avenue, Parker, AZ 85344 or fax 928-669-2015.

POLI & BALL, PLC IS LOOKING FOR A LAWYER with at least 3 years experience in the areas of real estate law, secured lending and transactional real estate finance. 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. Compensation 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: steckler@poliball.com.

MANAGING ATTORNEY, ARIZONA CENTER FOR DISABILITY LAW, PHOENIX. Opportunity for experienced attorney licensed in Arizona (or willing to take the bar exam within 18 months of becoming employed) to provide management and supervision to Center legal staff working in the area of employment and housing in Arizona. Seven+ years legal experience required with an emphasis on civil litigation, public interest and disability rights. Previous supervisory and management experience and familiarity with the ADA, Fair Housing Act, and vocational rehabilitation services a plus. Resume and letter of interest to E.D., ACCL, 3839 N. 3rd St., #209, Phoenix, AZ 85012, EOE.


ATTORNEY OFFICE FOR RENT: Tempe/Mesa area one block east of 101 and Guadalupe Road. Convenient access to courts and other parts of the Valley. Spacious attorney office available with adjoining secretarial area. Access to system, high speed internet service, and other amenities included. Building designed with an attorney’s needs in mind. Professional camaraderie – perfect for the sole practitioner. Call 480-820-1421.

CENTRAL CORRIDOR OFFICE SPACE AVAILABLE FOR SUBLlease. Ideal setup for one or two attorneys; adjoining secretarial stations available. Parking, phone system, copy/fax, conference room. Call Carol @ (602) 277-7473.

HOURLY OFFICE SPACE, $10.00 per hour for beautiful furnished office and Conference room at the Mirage Executive Suites. Water features and soothing Tuscan décor. Business identity packages available starting at $ 50.00 per month. See us at 10575 N. 114th Street, Suite 114. Scottsdale AZ 85259 (480)-344-7700 or at www.miragesuites.com.

IMMEDIATE OCCUPANCY: Sublease from AV attorney in beautiful Tempe suite: 2nd floor window offices in charming courtyard building; adjoining secretarial stations available. Brand new paint and carpet. Ideal setup for solos includes covered reserved parking, signage, conference room, digital copier, fax, telephones, voice mail, kitchenette, Westlaw, supplies. Referrals available. Baseline & McClintock; easy access from nearby US60 and Loop 101. Contact Jeff at 480-820-4505 or jeff@jschoenlaw.com.

SCOTTSDALE ATTORNEY OFFICES FOR RENT. Offices within existing litigation firm just moving into newly purchased and “built out” office at 64th Street and Thomas. Nice finishes with granite and hardwoods. Three offices available with one secretary area. Access to conference rooms, telephone system, high speed internet (T1 line), reception area, copy machines, and kitchen. Ideal for sole practitioner. Call Tim at 480-251-1440.

SHARED OFFICE SPACE...POTENTIAL “OF COUNSEL” RELATIONSHIP with international law firm. Beautiful law suite. Small firm practicing primarily in the areas of international transactions throughout the globe, with an emphasis upon international real estate investments, resort properties and time-sharing condominiums. Offices in Mexico and other countries for 29 years and Bali, Indonesia office opened in 1996. Seeking “Of Counsel” in various areas of support to our international law practice. Also separate suite sublease for 2 attorneys. Call (602) 263-9111.

ATTORNEY OFFICE FOR RENT: 1400 Kofa Avenue, Parker AZ 85344 or fax 928-669-2015.

WESTERN ALLIANCE BANCORP: Western Alliance Bancorporation is currently seeking a highly skilled attorney with at least five years experience in Corporate and SEC work. Applicant must also have experience in Banking, Merger and Acquisitions and Regulatory work.

As one of the fastest growing Western Regional Bank Holding Company’s, we’re looking to hire a Chief Legal Counsel to help support the needs of our growing company.

As Chief Legal Counsel you will be responsible for legal guidance, ensuring the Company adheres to regulatory procedures and directives including banking, SEC, mergers & acquisitions and marketing.

WAL has $2.7 billion in assets and does business in AZ, CA, and NV. For more information about our company please visit us online: www.westernalliancebancorp.com

If you are considering this opportunity, please forward your cover letter and resume in confidence to Mr. Merrill Wall at: mwall@torreyepinesbank.com. Please include salary and location preferences.

QDRO DRAFTING and SUPPORT: Reduce your Malpractice Liability. Ensure all appropriate benefits are addressed in the Final Judgment. Contact Raymond S. Dietrich, Esq., of QDRO SOLUTIONS LLC, 1440 East Washington St., Phoenix, AZ 85034. 602.252.7227. For more information visit our web site: www.qdro-track.net.

Maricopa Lawyer Classifieds are now online. Visit www.marcopabar.org/classifieds

WAL has $2.7 billion in assets and does business in AZ, CA, and NV. For more information about our company please visit us online: www.westernalliancebancorp.com

If you are considering this opportunity, please forward your cover letter and resume in confidence to Mr. Merrill Wall at: mwall@torreyepinesbank.com. Please include salary and location preferences.
**U.S. Supreme Court to hear challenge to Arizona insanity defense law**

The United States Supreme Court has agreed to hear *Clark v. Arizona*, a case that challenges the constitutionality of aspects of Arizona criminal law relating to the insanity defense. Clark, who has been diagnosed with paranoid schizophrenia, was convicted of the fatal shooting of police officer Jeff Moritz during a traffic stop in Flagstaff on August 29, 2005. At issue in the appeal is whether the Due Process Clause of the United States Constitution requires states to allow an individual to claim an insanity defense and whether a state violates the Due Process Clause if it eliminates the right of a defendant to offer evidence of mental defect in order to rebut prosecution evidence on the element of mens rea.

**Fifth Circuit Court to return to New Orleans**

The United States Court of Appeals for the Fifth Circuit has announced that it will close its temporary Houston operating base at the close of business on Friday, December 16, 2005, and re-open in New Orleans beginning Monday, January 9, 2006. Emergency matters will continue to be accepted during the period of the court’s shutdown.

In order to ensure employee safety and security, and court continuity of operations, the court moved its headquarters from New Orleans to Houston immediately following the devastation of Hurricane Katrina on August 29, 2005. For more information on the court’s return to New Orleans visit the court’s website at www.ca5.uscourts.gov.

**Injured baseball fan’s negligence suit thrown out**

A Pennsylvania Superior Court, in a 2-1 decision, upheld a lower court’s ruling that an injured baseball fan assumed the risk of getting hit by a ball tossed into the stands when he attended a July 5, 2003 game between the Philadelphia Phillies and the Atlanta Braves. The fan, Jeremy Loughran, was hit in the face by a ball when the Phillies center fielder tossed the ball into the stands after catching the final out of the seventh inning.

The two judges forming the majority reasoned that the lower court was correct in rejecting the fan’s negligence case because “although not technically part of the game” the tossing of balls into the stands has “become inextricably intertwined with the fan’s experience, and must be considered a customary part of the game.” But writing in dissent, Judge John T. Bender said that the lower court should have ordered a trial because “the act of tossing a ball to fans as a souvenir is extraneous to the game and not necessary to playing the game.” The majority’s ruling, wrote Bender, would allow players and team representatives to injure fans without repercussions.

**Hatch, Leahy ready themselves for Alito’s confirmation hearing**

In individual opinion pieces submitted to the newspaper *The Hill*, Senators Orrin G. Hatch (R-Utah) and Patrick Leahy (D-Vt.) put forth their perspectives on how they believe the Senate Judiciary Committee’s confirmation proceedings for Judge Samuel Alito should be conducted. While Hatch emphasizes that the process involving the upcoming confirmation hearing scheduled for January “is a confirmation, not an election,” Leahy asserts that both the president and the Senate “have somber constitutional duties in filling judicial vacancies.” The Founding Fathers intended the Senate to “a full partner in the process,” writes Leahy, rather than “a rubber stamp to the president.”

“[T]oo often,” notes Hatch, “political trees have obscured the judicial forest.” Hatch believes that preserving self-government and the rule of law require remembering that just as the Senate and the president have different roles in the judicial confirmation process, the judicial and legislative branches have different roles. The Senate, says Hatch, should follow three basic rules during the confirmation process:

1) Consider each part of Judge Alito’s record in its own context, for what it actually is;
2) Consider Judge Alito’s entire record; and
3) Apply a judicial rather than a political standard to whatever information is aired about Judge Alito.

Leahy, on the other hand, considers the gravity that the Senate Judiciary Committee must place on the confirmation process because of the political agenda of “a vocal and virulent wing of the president’s political base”—a base that forced President Bush to abruptly withdraw his nomination of Harriet Miers before the Senate had an opportunity to hold hearings. “As we prepare for the January hearings on Judge Alito’s nomination we prepare to fulfill our constitutional duty as a vital check and balance in our system of government,” says Leahy. The roles of the Senate and the president in the judicial confirmation process are “more than just how our government works” writes Leahy, “it is why it works.”

**True Statement Haunts Alito**

Dear Editor:

In Judge Samuel Alito’s 1985 application to become an assistant deputy attorney general under President Reagan, he wrote: “I am particularly proud of my contributions in recent cases in which the government argued that racial and ethnic quotas should not be allowed and that the Constitution does not protect a right to an abortion.”

Despite the manifest truth of the latter part of that statement, that abortion is not protected by the Constitution, leading Democrats have begun to threaten a judicial filibuster based thereupon, implying that *Roe v. Wade* and its progeny is somehow now at greater risk of being overturned.

Senator Joseph Biden, a member of the Senate Judiciary Committee, predictably seized upon the opportunity to respond to Alito’s statement on behalf of his party when he recently told talking heads: “I think he’s got a lot of explaining to do, and depending on how he does, I think will determine whether or not he has a problem or not.”

With due respect to the Senator from Delaware, since his nomination, Judge Alito has already expressed that he would be “highly reluctant” to overturn *Roe v. Wade*, to which he attributed the status of well settled precedent that is deserving of “great respect.” What more does Alito need to say on the subject? It is absurd to expect or require that all judicial nominees will subjectively support the reasoning behind all binding precedents ever handed down. The whole purpose of a system based upon stare decisis, which is Latin for “the adherence to decided cases,” is to require judge’s like Alito to follow precedents despite any disagreement therewith. Further, how absurd it would be to require, as a litmus test, that all nominees agree with precedents, all of the time. Yet by objecting to Alito’s disagreement with the justification for *Roe v. Wade*, that is precisely what Democrats are insisting upon.

If Democrats filibuster based upon Alito’s conservative nature, they will be making a massive mistake. American voters have a keen nose for hypocrisy and they recall the Democrats’ overwhelming enthusiasm for the nomination of former ACLU General Counsel Ruth Bader Ginsburg despite her confirmed opposition to many conservative decisions. In a process where qualifications should be dispositive, nobody is more qualified than Samuel Alito. The Democrats should quit trying to play “gotcha” with Alito’s subjective beliefs. Ironically, if they continue to do so, they will be setting a very bad precedent to which Republicans will adhere.

Sincerely,

James D. Hart
The Davidson Law Firm, P.C.
Amendment Changes Procedures Concerning Masters

Rule 53(a)
Changes to Rule 53(a) explain that unless a statute provides otherwise, a court may appoint a master only to perform duties contented to by the parties or to address pretrial and post-trial matters that cannot be addressed effectively and timely by any available superior court judge. Rule 53(a) will now also explain that, if warranted by some exceptional condition or the need to perform an accounting or resolve a difficult computation of damages, a master may hold trial proceedings and make recommended findings of fact and conclusions of law on issues to be decided by the court without a jury. The amended rule will explain that a master shall not have a relationship to the parties, counsel, action, or court that would require disqualification by a judge, unless the parties consent with the court's approval to such an appointment after disclosure of any potential grounds for disqualification. The court's fairness in imposing the likely expenses on the parties must protect against unreasonable expense or delay.

Rule 53(b)
Amended Rule 53(b), regarding the order appointing a master, explains the court must give the parties notice and an opportunity to be heard before appointing a master. The order appointing a master must direct the master to proceed with reasonable diligence. It must state: the master's duties and any limits on the master's authority; the circumstances when a master may communicate ex parte with the court or a party; the nature of materials to be preserved and filed as a record of the master's activities; the time limits, method of filing the record, other procedures and standard for reviewing the master's orders, findings, and recommendations; and the basis, terms, and procedure for fixing a master's compensation.

Rules 53(c) and (d)
Amended Rule 53(c) explains that unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform the assigned duties fairly and efficiently. A master may impose upon a party any non-contempt sanction provided by Rules 37 or 45, and may recommend a contempt sanction against the party and sanctions (including contempt) against a non-party. The changes to Rule 53(d)(1) reflect that the appointing order sets the beginning time for certain actions to be made. New Rule 53(d)(2) explains that unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

Rule 53(e) and (f)
Amended Rule 53(e) explains a master making an order must file it and promptly serve a copy on each party, and explains that the clerk must enter the order on the docket. Rule 53(f) will now explain that a master may submit a draft of a report to the parties for the purpose of receiving comments before filing the report.

Rule 53(g)
Amended Rule 53(g) explains a master must report to the court as required by the order of appointment. Also, a master must file the report and promptly serve a copy of the report on each party, unless the court directs otherwise.

Rule 53(h)
Amended Rule 53(h) references action that may be taken on a master's order, report, or recommendation. A party may file objections to the same, or a motion to adopt or modify it, no later than ten days from the time the master's final order, report or recommendations are served, unless the court sets a different time. A court must decide objections to findings of fact made or recommended under the clearly erroneous standard, unless the parties stipulate with the court's consent that the master's findings will be reviewed de novo or will be final. The court must decide de novo all objections to conclusions of law. Unless the appointing order establishes a different standard of review, a court may set aside a master's ruling on procedural matters only for an abuse of discretion. The amended rule also explains that the court shall consider and rule upon any objections and motions filed by the parties and may adopt, affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions for any final order, report, or recommendations.

Rule 53(i)
Rule 53(i) explains the court shall fix the master's compensation before or after judgment on the basis and terms stated in the order of appointment. The court may set a new basis and terms after providing notice to the parties and an opportunity to be heard. Compensation of the master must be paid either by a party, the parties, or from a fund or subject matter of the action within the court's control. If a master is to be paid by a party or the parties, the court must allocate payment of compensation among the parties and may consider the nature and amount of the controversy, the means of the parties, the extent to which any parties are more responsible than other parties for the reference to or use of the master, and any other factor the court deems relevant. A court may amend an interim allocation after providing notice to the parties and an opportunity to be heard.

The comment to these amendments explains Rule 53 was extensively revised to incorporate most, but not all, of the December 2003 amendments to Rule 53, Federal Rules of Civil Procedure. Where the provisions of the amended rule are similar to those found in Federal Rule 53, a court may look to federal precedent and advisory committee notes for guidance. Although the subdivision (d) provisions for evidentiary hearings are reduced, this simplification was not intended to diminish the authority that may be delegated to a master. The comment also states that the requirement that a court give parties an opportunity to be heard can be satisfied by giving the parties an opportunity to make written submissions, and that courts are not required to hold a hearing before taking action.

Have something newsworthy to share?
Have you changed employment? Has your law firm named new partners? Send information for our Legal Moves column to: Maricopa Lawyer, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or e-mail to: kbrieske@mcobar.org
Phoenix International School of Law, Arizona’s newest law school and the only one to offer night classes, has recently added many faculty members as it continues its accreditation process.

Akiba Covitz has been hired as the new associate dean.

Covitz received a bachelor of arts degree in liberal arts from St. John’s College and a master of studies in law from Yale Law School. He received his doctorate in political science from the University of Pennsylvania.

For the past five years, Covitz has been an assistant professor in the political science department at the University of Richmond, where he taught classes on constitutional law, and an assistant professor in the political science department at the University of Richmond, where he taught classes on constitutional law, civil rights and liberties, and courts and the American legal system.

He also served as the University of Richmond’s pre-law advisor and sat on several committees including the Faculty Council, Admissions Committee and the CIGNA Scholar Committee for African-American student recruitment.

Dennis Shields, dean of Phoenix International School of Law, praised Covitz’s prior experience. “His teaching, research and administrative experiences are a perfect match for the job. His presence at Phoenix Law will benefit the students, faculty, staff, and the local and general communities in a very positive way.”

Staff growth
In addition to Covitz, the college also hired a new director of finance and a communications manager.

As finance director, Jim Lemire will be responsible for all accounting, budgeting, and variance analysis.

Lemire, who received a master of business administration from Rivier College in Nashua, New Hampshire, has worked as a chief financial officer or controller for more than 20 years. Most recently, he was the controller for Galtronics USA, which makes antennas for cell phones and mobile radios.

Jodi Weisberg will oversee all internal and external communications as the college’s new communications manager.

Weisberg received master of science and juris doctorate degrees from the University of Arizona. She worked as an attorney in the mental health field for 12 years before becoming the bureau chief of the Arizona Journal. She was also director of communications for the Arizona State University College of Law and legal program director for Fresh Start Women’s Foundation.

Professor expansion
Daniel Dye has gone from an adjunct professor to a full-time lawyering process instructor for the college. Dye, who received a juris doctorate from the University of Kansas, worked for Snell & Wilmer L.L.P. and Long Technical College prior to joining the college.

Finally, two judges will come on board as adjunct professors in the spring.

The college is planning a permanent move near downtown Phoenix in the summer. It also expects the American Bar Association to make a site visit next fall as a step towards accreditation, which is approximately a three-year long process.

Phoenix’s Newest Law School Expands Faculty

Kathleen Brieske
Maricopa Lawyer

Professor Shields, dean of Phoenix International School of Law, praised Covitz’s prior experience. “His teaching, research and administrative experiences are a perfect match for the job. His presence at Phoenix Law will benefit the students, faculty, staff, and the legal and general communities in a very positive way.”

Staff growth
In addition to Covitz, the college also hired a new director of finance and a communications manager.

As finance director, Jim Lemire will be responsible for all accounting, budgeting, and variance analysis.

Lemire, who received a master of business administration from Rivier College in Nashua, New Hampshire, has worked as a chief financial officer or controller for more than 20 years. Most recently, he was the controller for Galtronics USA, which makes antennas for cell phones and mobile radios.

Jodi Weisberg will oversee all internal and external communications as the college’s new communications manager.

Weisberg received master of science and juris doctorate degrees from the University of Arizona. She worked as an attorney in the mental health field for 12 years before becoming the bureau chief of the Arizona Journal. She was also director of communications for the Arizona State University College of Law and legal program director for Fresh Start Women’s Foundation.

Professor expansion
Daniel Dye has gone from an adjunct professor to a full-time lawyering process instructor for the college. Dye, who received a juris doctorate from the University of Kansas, worked for Snell & Wilmer L.L.P. and Long Technical College prior to joining the college.

Finally, two judges will come on board as adjunct professors in the spring.

The college is planning a permanent move near downtown Phoenix in the summer. It also expects the American Bar Association to make a site visit next fall as a step towards accreditation, which is approximately a three-year long process.

The Young Lawyers Division invites you to attend the 2006 Barristers Ball — Saturday, March 4, 2006 at The Phoenician

6000 East Camelback Road, Scottsdale
6 p.m. Cocktails and Silent Auction • 7:30 p.m. Dinner
Semi-formal Attire
Benefiting: Arizonans for Children, Inc.

$100 per seat, $1,000 per table
Advanced reservations required.
Reserve early—the 2005 Ball sold out!

(Please print clearly)
Name: ____________________________
Firm: ____________________________
Please Reserve Seats for _____ guests.
Table Host Name*: ____________________________
Address: ____________________________
City: __________________ ZIP: __________
State: ____________________________
Phone: __________________ E-mail: __________________

$100.00 per seat/$1,000 per table
*Table hosts are firms or individuals who sponsor a table of 10. Individuals need not list a table host name. Please provide a list of your guests along with your payment.

Mail registration form to:
MCBA
Jennifer Deckert
303 East Palm Lane
Phoenix, Arizona 85004

For information, contact Ball Co-chairs, Erin McGuinness at (480) 429-3026 or Jeff Kuykendal at (602) 530-8000.

Arizona for Children’s mission is to help abused, neglected and abandoned children and to support the work of Court Appointed Special Advocates (CASA). Arizonans for Children intends to use the proceeds from the Silent Auction to further programs at their Children’s Visitation Center. The Center provides a safe haven and visitation setting, where children can nurture relationships and enjoy family activities with their parents, relatives, siblings, potential adoptive parents or CASA volunteers in a non-threatening, comfortable, home-like environment.

Purchase a “Mystery Bag” by jeweler Moda Fina for a better than 1-in-3 chance to win: $200 gift certificates (40), sapphires (10), and the Grand Prize of a 1/2-carat diamond.

(Only 150 “Mystery Bags” will be sold)
Please reserve my _____ bags @ $50 per bag.
(Must be present to win).
Enclosed is my check for $___________
Make checks payable to: MCBA

Amount $__________________________
Card #__________________________ Exp.__________________________
Name of card ____________________________
Billing address ____________________________
Signature ____________________________