Election for MCBA Board Deadline is September 15

This fall the MCBA will be holding elections to fill five positions on its Board of Directors. Each position is for a two-year term ending December 31, 2009. Each member of the Board is expected to attend meetings of the Board held monthly, to serve as liaison to one or more MCBA sections, divisions, or committees, and to support the work of the Association. Candidates must be Active Members of the MCBA and must submit a letter of candidacy to Allen Kimbrough, executive director of the Association, prior to September 15, 2007. Ballots will be mailed on or about November 1 and must be returned by November 25, with the results to be released in early December.

Any questions regarding the election process may be directed to the executive director at akimbrough@mcbar.org.

Students in Tuition Suit Win One, Lose in Arizona Supreme Court

Last year, the Arizona Court of Appeals held that students could resort to the courts to determine that the Arizona Board of Regents had violated their constitutional right to a university education that is “as nearly free as possible.” The Arizona Supreme Court has reversed that holding, ruling that the Board’s tuition-setting mission is a non-justiciable political question. Kromko v. Ariz. Bd. of Regents, No. CV-07-0018-PR (Ariz. Aug. 9, 2007).

In 2003, the Board of Regents raised university tuition by nearly 40%. At the same time, the legislature did not increase the level of higher-education funding. Four students sued, claiming that the legislature and the board had acted unconstitutionally. They sought a declaratory judgment and a refund of tuition payments by students at the three state universities.

The students alleged that the legislature’s failure to allocate more funds violated constitutional provisions requiring it to adequately fund the maintenance, development, and improvement of the university system. They alleged that the tuition hike violated the constitutional provision that education at state universities education that is “as nearly free as possible.”

The superior court dismissed the claims against both the board and the legislature. The court of appeals unanimously affirmed the legislature’s dismissal, but split on whether courts may review the board’s tuition-setting decisions. The majority rejected the board’s argument that there was no judicial standard to apply. They relied on Board of Regents v. Sullivan, 45 Ariz. 245, 42 P.2d 619 (1935), “which suggests that the constitutional provision could be violated if it is determined that the tuition, ‘[i]s excessive or other than reasonable.’” Kromko v. Ariz. Bd. of Regents, 213 Ariz. 607, 146 P.3d 1016 (App. 2006).

Because “this case involves issues of obvious statewide importance,” the Supreme Court granted review. In an opinion by Justice O’Connor, former U.S. Supreme Court Justice Sandra Day O’Connor speaks to incoming first-year law students in the Great Hall at Sandra Day O’Connor College of Law at ASU. O’Connor said her first year of law school was “like a light bulb going off in my head. I began to learn how much of what we do in life is governed by law and legal principles – school, work, in every way,” she said. “I had no idea. I didn’t understand how those principles were developed.”

With a Full Complement of Staff, MCBA Focuses on Members, Services

As the valley’s legal community gets past summer vacations and downtime, so does the MCBA. Except MCBA is also recovering from a fire that made its Palm Lane headquarters uninhabitable and from the resulting administrative disruptions.

In December of 2006 a new executive director was hired, two department heads were added in April and June, and now three additional staffers are on board as of last month.

A “Now that we are back in our own building and are fully-staffed with dedicated employees, the MCBA has enhanced its ability to fulfill its mission of service to our members, the profession, and the public,” said Allen Kimbrough, MCBA executive director.

Brought on board most recently were Patrick Giannetti, Kimberly Balogh, and Laurie Williams.

As communications and advertising coordinator, Giannetti is responsible for editorial work and advertising sales and administration associated with Maricopa Lawyer and the weekly E-News. Giannetti was formerly employed by Concord Servicing Co. in capacities including public relations and marketing. He plans to complete his communications/public relations degree at ASU in December.

Balogh, new CLE assistant, is the “point of entry” for CLE calls, handles program registration, maintains records and materials, and fulfills orders for self-study materials. She has worked for various law firms as a temp in Phoenix and full time for the U.S. District Court for the district of Colorado.

Williams, a Phoenix native, is MCBA’s new volunteer and foundation coordinator. As such she is the staff liaison to all sections and divisions, certain committees and provides staff support to the Maricopa County Bar Foundation. She has experience as the Rosson House/Heritage Square Foundation & Guild executive director and at other not-for-profit and commercial enterprises.

See CourtWatch page 6
Lessons Observed and Learned

I

In my 17 years as a judicial officer and in my previous years of law practice, I have learned as much about professionalism for lawyers and judges from observation than reading ethical rules and judicial code rules. This is not to say that reading these rules and reminding myself of them is not important. However, in a very unscientific way, I have recalled and compared our oaths and rules against some selective observations.

Arizona attorneys take the oath of admission to the Bar and swear among other things, to abstain from offensive conduct to maintain respect for courts of justice and judicial officers. The Lawyer’s Creed of Professionalism of the State Bar of Arizona, adopted by the State Bar Board of Governors in 1989, also summarizes the letter and spirit of the disciplinary standards. Similarly, newly appointed judges swear to faithfully and impartially carry out the duties of judge to the best of their abilities.

As long as we lawyers and judges continue to strive to meet our special responsibilities and duties, our legal profession and judiciary will continue to serve clients, society and our community.

By Jack Levine

EXPLAINER

Whatever Happened to Rule 11?

In 1984 when the Arizona Supreme Court amended Rule 11, adopting the identical rule from the Federal Rules of Civil Procedure, there were many, both inside and outside of the legal profession, who predicted that the number of lawsuits and the volume of subsequent pleadings would be substantially reduced as a result.

Although initially, the adoption of the amendments to Rule 11 may have had some slight effect on reducing the number of cases and pleadings filed, the benefits of the amendment were far outweighed by the huge volume of Rule 11 hearings, motions for reconsideration, motions for new trials and by an exponentially huge increase in appeals (mostly by lawyers) from Rule 11 sanctions by trial judges.

The original Rule 11, which had been in existence since 1956, merely required a good faith belief in the factual and legal basis for a lawsuit or pleading in order to avoid sanctions. The 1984 amendment took away the “good faith” defense and imposed the requirement that the pleading, motion or other paper was a frivolous appeal and ordered that the pleading, motion or other paper was substantially, and the County Attorney’s Office has made significant changes in our prosecutor turnover rate has been reduced substantially, and the County Attorney’s Office has made significant changes.

Over the past two years, the County Attorney’s Office has made significant changes. Over the past two years, the County Attorney’s Office has made significant changes. Over the past two years, the County Attorney’s Office has made significant changes.

By Jack Levine

By Andrew Thomas, Maricopa County Attorney

One issue that is often overlooked during political campaigns is the workplace quality at the government agency the candidates seek to lead. When I ran for county attorney in 2004, I had worked as a prosecutor in the office and concluded a number of progressive changes that were overdue.

However, topics such as internal workplace policies are not very exciting to most voters. As a result, they received little attention during the campaign.

Since taking office in 2005, I have sought to follow through on implementing these improvements. Over the past two years, the County Attorney’s Office has made significant changes to benefit the quality of the workplace for both attorneys and staff. Due to this aggressive effort, our prosecutor turnover rate has been reduced substantially, and the County Attorney’s Office is now able to recruit nationally in seeking the best prosecutors in the nation.

Prosecutor pay

In 2005, experienced prosecutors were leaving the County Attorney’s Office for higher-paying jobs in the private sector or, even more troubling, other prosecutor’s offices. Many left to work in Pinal County or for city attorneys prosecuting misdemeanors for greater compensation.

This left our office with too many relatively inexperienced prosecutors facing off against seasoned defense attorneys in felony cases.

Considering our office handles almost two-thirds of all felony cases in Arizona, including homicide, rape, identity theft and burglary, this was very disturbing.

A cartoon poking fun at the deplorable salaries even appeared in a local newspaper. I was concerned that “Let Justice Be Done,” the new office motto wasn’t being carried out on behalf of the victims of crime.

Changing this state of affairs was a top priority. The prosecutor pay initiative, approved by the county board of supervisors in 2005, raised attorney salaries to compete with compensation offered by competing prosecutor’s offices.

Starting pay for new prosecutors is now at $56,900. Now, the County Attorney’s Office is now able to compete in terms of salary for felony prosecutors.

In 2006, the board of supervisors approved a student loan repayment plan. This program reimburses attorneys who have been with the office at least two years with up to $600 per month for their student loans. This plan is one of the most progressive loan repayment plans for government lawyers in the country.

By Andi Levine

To my knowledge, our office is the only prosecutor’s office in the county offering loan repayment assistance. District attorneys from across the county have asked our office about this program with the hope of emulating it.

National recruitment

With a vibrant community, outstanding climate, and many other advantages, Arizona is the fastest-growing state in the nation for good reasons. These qualities, combined with a strengthened salary package, have enabled the County Attorney’s Office to start recruiting law students nationally.

No longer wanting to be the “training center for Valley law firms,” our office now focuses on identifying law students with a proven interest in making prosecution their career. Visiting law schools around the country, we have enjoyed great success in finding and attracting such candidates to our office.

In our search for the “best and the brightest” budding prosecutors across the country, we have recruited law school students from schools located in, among other places, Nebraska.
Honest John—the Ugliest Man in Arizona

Hard times, hard work

With his wife Minnie, and children in tow, John Calhoun Phillips arrived in Phoenix in 1898. Only a year earlier, at the age of 27, Phillips had been admitted to the Illinois bar. During that year, he had tried to earn a living as a lawyer in his small home town of Vermont, Illinois. Unfortunately, young Mr. Phillips’ practice did not thrive. The U.S. economy in general had been severely depressed since 1893 and was just beginning to turn around when Phillips arrived in Phoenix with $112 in his pocket.

Although the national economy began to recover in 1898, Maricopa County was not so lucky. 1898 saw the beginning of several years of devastating drought. A traveling piano salesman returning from a trip to the eastern part of the state that winter reported there was not a sign of snow in the mountains that made up the watershed for the valley rivers. Without water, the agricultural economy could not prosper. Phoenix and the surrounding community’s over 5,000 residents already had almost 50 lawyers when Phillips arrived and he was not successful in finding legal work.

Without the resources to set up a new law firm and build his practice, and unable to find work with another lawyer, Phillips provided for his family by peddling fruit on the streets of Phoenix, and by carrying hod for the masons working on the construction of the new territorial capitol building. Future Governor Sidney P. Osborne remembered his mother buying apricots from Phillips when Osborne was a young teenager.

Within about a year, through “rigid economy and hard work,” Phillips parlayed his $1.75 per day construction worker wages into a grub-stake for his new legal practice, which he set up out of his home on West Monroe, just north of the capitol.

It seems unlikely that even the optimistic young Mr. Phillips could foresee that in 30 years he would have progressed from a sidewalk apricot vendor to chief executive of the capitol that he had helped construct.

Faithful service

Governor Phillips was elected on the coat tails of a Herbert Hoover landslide, and served from January 1929 through January 1931. He defeated the legendary George W. P. Hunt, Arizona’s first, third, fifth and seventh governor, by a margin of 47,829 to 44,553, and was the state’s second Republican occupant of the state house.

Reflecting his early years in Phoenix, Phillips’ campaign was based on “efficiency and economy in office.” Although his administration was noted for its harmony and progressive public works programs, the state’s economy once again negatively impacted Gov. Phillips’ employability. Not long after his election, the stock markets crashed and the Great Depression was officially under way.

As a result, in spite of successful and graft-free construction programs, implementation of a free county library system, establishment of the Colorado River Commission, and passage of conservation laws that established the Game and Fish Department, he was voted out of office and replaced by the resilient Governor Hunt.

Phillips himself was most proud of his conservation efforts. He was an avid and effective hunter and fisherman, and was a strong advocate for preservation and enhancement of game and fish habitats and populations. Arizona’s Game and Fish Department was established with the stroke of Phillips’ pen in April 1929.

Although the office of State Game Warden had been created by the legislature in 1913, it suffered from under-funding and lack of political support. G.M. Willard, the Warden in December 1914, gave a cautious and none to optimistic report to the legislature that winter. He bemoaned his budget, consisting of a small salary for himself and an office deputy, $1,000 for travel and $500 for the remainder of his operating expenses. He warned of the impending extermination, due to over-hunting by “game hogs,” of Arizona’s populations of wild turkeys, deer, antelope and mountain sheep.

He reported a statewide population of 15 to 20 thousand hunters, and recommended doubling the hunting license fee from 50 cents to a dollar, and closing all hunting seasons for the foreseeable future until the game populations could be increased and stabilized.

In one bit of good news, Willard reported that although Arizona’s native elk herds had been totally wiped out, the Ellis Lodges of Arizona had raised $2,125 to buy and relocate a 100-head herd of government-owned elk from Yellowstone to Clear Creek in the north central part of the state. By the time of the report, the immigrant herd had become well established and began to grow.

Spinning gold from straw

Phillips began his political career in 1902 with the purest of motives—the need for a stable job. The Arizona Republican, in its endorsement of his candidacy for probate court judge, noted his reputation (after only a few years in practice) for “honesty, capability and back-

John C. Phillips – Maricopa County’s first superior court judge and notable fisherman. (Photo Courtesy Arizona State Library, Archives and Public Records, Archives Division, Phoenix, 497-7922.)
Back to School for Attorneys –Five Suggestions for Better Writing

It’s September. When we were students, September meant the end of summer and time to go back to school. Now that we’re practicing attorneys, September is the time that many of us return to the office trenches. Before heading back to the same routines and that many of us return to the office trenches.

1. Think before you write. Whether you are a litigator, transactional attorney or someone in between, you should always begin by thinking about the context of your document. Even the most formulaic contracts are part of a bigger story. So before you write anything, figure out where you are in the story and how the document fits into the master plan.

2. Give your document a logical structure. It sounds almost too basic, but sometimes we get caught up in the substance of what we want to convey and forget the importance of logical presentation. Just like a good bed time story, a good legal document should have a beginning, a middle, and an end. The document should flow with a common sense order so that the issues and arguments build upon each other and don’t confuse the reader.

3. Use headings as a roadmap. Part of creating a logical flow to a document is using headings. Not only does it focus the reader on the point you are addressing, it provides future ease of reference. Don’t make the reader look through the entire document for your jurisdictional argument or attorney’s fees provision; make it easy to find with a big bold title.

4. Make each sentence count. Say what you need to say in simple, non-flowery language. Keep sentences short (20 words or less) and avoid repetition.

5. Proofread. Last, we all must remember the importance of avoiding spelling and grammatical errors. If time permits, a second pair of eyes is the best bet (ask your secretary, colleague, or family member—I’ve even called upon my mother for help). One of the worst fates for legal writing is that the content gets lost among unfortunate typos. Don’t let it happen to you!

ARE YOU LEGAL? New Law Affects You!

Rule 37(f) of the Federal Rules of Civil Procedure, effective December 1, 2006, can pose serious compliance issues regarding your computer and data.

- Compliance / Data Backup
- Storage and Retrieval
- Remotely Access Your Files
- Security
- Network / Computer Trouble Shooting
- Software / Hardware Updates & Installation
- Custom Computers / Servers

“Keeping your computer network operating smoothly, securely and in compliance with the law”

Tel: 480-946-0704
www.dataconcierge.biz

DATA Concierge, LLC

RAYMOND S. DIETRICH, LIMITED
Qualified Domestic Relations Orders
REDUCE YOUR MALPRACTICE LIABILITY by Referring your Clients Directly to us
Contact
RAYMOND S. DIETRICH, ESQUIRE
602.252.7227
Assignment of Military Retired Pay
www.qdrotrack.net
1440 East Washington Street, Phoenix, AZ 85034

LAWGRRRL PRIVATE INVESTIGATION PROCESS SERVICE
Licensed & Bonded
(602) 317-2175
www.LAWGRRRL.vpweb.com

Jack Levine is a sole practitioner and practices in the areas of personal injury, criminal law, employment law and family law. He is a past chairman of the State Bar’s Trial Practice Section, a past President of the Arizona Trial Lawyers Association and has served as an advisor to the Ninth Circuit’s Committee on the Rules of Civil Procedure.
Colorado, Utah, Ohio and Florida. We also have attended regional legal career fairs in Washington, D.C., New York, Chicago, Boston, Atlanta, and San Francisco.

As a result, this year the County Attorney’s Office boasts 34 incoming attorneys, hailing from law schools across the country. These include Arizona State University, University of Arizona, George Washington University, Boston University, Washington University, UCLA, Michigan State University, Creighton University, University of Nebraska, University of Toledo, University of Denver, Ave Maria School, Drake University, University of Miami, Gonzaga University, Chapman University and Syracuse University.

We are committed to seeking and bringing aboard a highly diverse group of new attorneys, and there has been great success in doing so. Consistent with my goal of seeking the best new prosecutors in the country, I have maintained a meritocracy in the County Attorney’s Office.

Workplace improvements

The County Attorney’s Office has implemented other employee-friendly policies. One of the first changes made in 2005 was instituting voice mail. Our office was apparently the last major law office in America to lack this feature. I joke that I wish all of the decisions I’ve made since taking office were so universally acclaimed.

We have also instituted progressive reforms such as flex-time work schedules, part-time positions, and telecommuting. These were important changes for employees who often find it difficult to work a standard five-day workweek. The necessity of these changes became apparent back in 2003, when I began working at MCAO as a prosecutor in the Pretrial and Juvenile Divisions, and saw firsthand what our prosecutors needed. These changes have allowed our office to retain attorneys we otherwise would have lost because of competition from more flexible law offices and the personal, child-care, and family situations of these attorneys.

I think our office is a great place for attorneys who seek both a fulfilling, and a challenging legal career with diverse opportunities, as well as time for their families and outside interests. The County Attorney’s Office employs close to 350 attorneys, including over 300 prosecutors and 28 civil attorneys. There are ample opportunities to work on exciting, high-profile cases, and appear in court, even for brand-new attorneys. We work together as a team in seeking justice for the community and the victims of crime.
Paralegal Conference and Paralegal Survey

Dont miss the Divisions 8th Annual Arizona Paralegal Conference, Friday, September 28, 2007, at the Heard Museum. We will have educational and timely legal presentations (6.0 hours CLE), vendor exhibits, prizes, awards, and free tours of the Heard Museum. Also, members that join the Division when registering for the conference receive the member discount and membership for the remainder of 2007, and 2008. To register, visit www.maricopaparalegals.org.

The Division, in conjunction with the Phoenix College Paralegal Studies Program, recently conducted a comprehensive paralegal utilization and salary survey. More than 200 responses were received from paralegals, attorneys, and law office administrators.

The results offer valuable insight into the Arizona paralegal profession that is useful for students, paralegals, educators, managers, attorneys, law office administrators, recruiters, and anyone interested in the paralegal profession.

The survey reflects that 36% of the paralegals have a two-year college degree, 35% have a four-year college degree, and 37% also graduated from an ABA-approved paralegal program. Some employers require a four-year college degree for their paralegals, and many require graduation from an ABA-approved paralegal program.

Litigation was the largest area of law represented; the next largest was general business, closely followed by real estate. Not surprisingly, the results of our survey reveal that paralegals need to be proficient in a wide range of technological skills, including office management and trial presentation software.

The results on paralegal utilization offer a glimpse into the increasing duties and responsibilities, and the legal profession's reliance on paralegals. Paralegals frequently prepare exhibits, trial notebooks, pleadings, and discovery documents. Additionally, paralegals perform legal, investigative, and historical research, interview witnesses, draft correspondence, assist attorneys at trial, and a multitude of other duties that assist attorneys in the delivery of legal services.

As with attorneys, particularly in the private sector, many paralegals have billable hour requirements. The most common billable hour requirements were in the range of 1,501 – 1,600 hours per year. Some paralegals have billable hour requirements of 1,901 hours or more per year.

The survey also includes education, work experience, compensation, and other information. For complete results, visit: www.maricopaparalegals.org/Survey07.htm.

COURTWATCH

continued from page 1

challenge. They did not question the constitutionality of the board's regulation requiring it to set tuition in "the top of the lower one-third of rates set by all other states." Nor did they assert that the board had failed to abide by that regulation. Finally, they did not challenge the procedure by which the board reached its decision. They claimed only that the tuition set for 2003 was excessive, violating the as-nearly-as-possible clause of Article XI, Section 6 of the Arizona Constitution.

Hurwitz next addressed the standard for determining whether the political-question doctrine applies. This happens when "there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it," he wrote, quoting the United States Supreme Court.

Hurwitz explained that the doctrine "flows from the basic principle of separation of powers and recognizes that some decisions are entrusted only to branches of government other than the judiciary." He noted that the Arizona Constitution "provides that the departments of our state government shall be separate and distinct, and no one of such departments shall depend on those decisions, combined with the quality of facilities and infrastructure, the pay of faculty and staff, and so on." Tuition rates thus depend on those decisions, combined with the amount funds available from other sources.

There is some play in those variables, Hurwitz intimated: "For example, if the Board decided to reduce faculty salaries or increase class size or construct classes in buildings that are less suitably maintained, assuming that general fund appropriations and revenue from other sources remained unchanged, the amount of tuition required would be lower than if the Board opted for better faculty salaries, smaller classes, and more modern facilities.

But how to make such choices? Hurwitz asked: "There's no North Star to guide a court in making such a determination: at best, we would be substituting our subjective judgment of what is reasonable under all the circumstances for that of the Board and Legislature, the very branches of government to which our Constitution entrusts this decision.

The claims, Hurwitz held, presented a non-justiciable political question. The judiciary is particularly ill-suited to make such decisions, as courts are fundamentally unequipped to formulate national policies or develop standards for matters not legal in nature," he explained, quoting the United States Supreme Court.

Joined by Chief Justice Ruth V. McGregor, Vice Chief Justice Rebecca White Berch, Justice Michael D. Ryan, and Judge Joseph W. Howard of the Court of Appeals, Division Two, Hurwitz vacated the court of appeals' decision and affirmed the superior court's ruling dismissing the students' suit.

Notice of Claim Receipt Must be Assured

An Arizona statute—A.R.S. § 12-821.01—requires persons who plan to sue a public entity to file a notice of claim before filing suit. Division One of the Court of Appeals has recently held that the statute places the claimants the burden of ensuring that their notice of claim is actually received by that entity. Lee v. State, 161 P.3d 583 (Ariz. App. 2007).

A simple act such as mailing a properly mailed document has been delivered or ensuring the actual delivery of the notice of claim to the appropriate person within the statutory period. Westberg dismissed the plaintiffs argument that there was an issue of fact that should have precluded summary judgment. They had argued that the common-law presumption that a properly mailed document has been delivered should have been applied to the secretary's affidavit that she actually mailed the notice.

But Westberg rejected the notion, holding the presumption inapplicable in when the statute requires actual filing. He noted that the testimony that the document never arrived at the Attorney General's Office was uncontroversial. Requiring actual delivery, Weisberg conclud-

Editor's note: Daniel P. Schaeck, an assistant Arizona attorney general, was one of the lawyers representing the Board of Regents in Kronko v. Arizona Board of Regents, and the State of Arizona in Lee v. State. ProConsult, Inc. 5th Avenue East 12,000 Medical & Technical Experts Right Expert Right Away! • Nationwide Service • Free Resume Binder • Rigorous Standards • Fast Inspections • Customized Searches • Our Service is A Cut Above We are listed and recommended by the AM Best Co. 1 (888) 9-EXPERT (602) 279-2422 Fax (602) 664-9444 1714 E. Bethany Home Road Phoenix, Arizona 85016 Email: experts@expertinfo.com www.ExpertInfo.com
One Smart Move: Writing Better Analogies and Distinctions

Every legal writer is taught to use analogies (“like”) and distinctions (“unlike”) to precedent cases when analyzing a current legal problem. These analogies and distinctions show how the current legal problem compares to past legal problems (and their solutions), and they form the cornerstone of stare decisis. If the writer does not use analogies and distinctions well, however, the reader will not make the writer’s intended connection between the current legal problem and a past legal problem (and its solution). This means the reader may not read the precedent case well. This is a critical mistake that many writers make in drafting analogies and distinctions. Following is a better analogy, using both factual specifics of the precedent case and the current legal problem:

Like the decision to find fraud in Gannett, the decision in the case at hand should also find fraud because it is similar.

Instead, show the reader with facts and reasoning how the cases compare. Be careful to be specific in the analogies because the reader may not read the precedent case.

2. Do not leave out the factual specifics.

Following is an analogy that intends to compare facts, but it leaves out the critical facts of the precedent case Gannett:

Like Gannett, Meyer relied on Brock’s representation that the pipes had been replaced.

This analogy is not helpful to the reader because the reader does not know what part of the Gannett case compares to the current legal problem. This analogy assumes the reader already knows (and remembers) the Gannett case well. This is a critical mistake that many writers make in drafting analogies and distinctions. Following is a better analogy, using both factual specifics of the precedent case and the current legal problem:

Like the seller in Gannett who told Drew “I personally replaced the pipes last year,” Brock told Meyer “The pipes are new.” This shows Meyer had reason to believe the pipes had been replaced.

This analogy makes the point of comparison clear to the reader, and the reader does not have to do any guesswork in figuring out what the writer intended to compare. Good legal writing should always make the reader feel smart!

Diversity of Cases, Grateful Clients Motivate Young Attorney to Volunteer

Kelly K. Johnson

Once introduced to the Volunteer Lawyers Program in 2006, attorney Kelly K. Johnson rapidly became a very active and effective advocate for low-income clients needing advice or representation. As the most recent recipient of the VLP “Attorney of the Month” award, Johnson says pro bono work is important because “it gives everyone a voice, and a way to protect their legal rights.”

Although relatively new to the profession she joined upon graduation from the John Marshall School of Law in 2002, Johnson knew her calling when she was seven years old. As a law student, she was equally confident she wanted to be a litigator. She is currently a member of the litigation department at Ryley Carlock & Applewhite, practicing in the areas of corporate and contract law, as well as labor and employment law.

Her pro bono cases have presented a range of problems, involving real property, consumers’ rights, and breach of tenancy issues. Johnson likes the diversity. Asked what inspires her to regularly accept multiple VLP cases, she said, “Pro bono clients are humble and appreciative of my assistance, and seem excited to learn about legal procedures.”

Besides, I wouldn’t give up hearing what I recently heard in the voice of a single mother and student, when I told her a law suit, for a debt she could not and should not have had to pay, had been dismissed.

Johnson credits two of her colleagues at the firm, Jeffrey Simmons and Scott Jenkins, Jr., with encouraging her to become as involved as they have been in helping VLP clients. “In fact,” she said, “Ryley Carlock & Applewhite has made an exceptional commitment to community service by encouraging and supporting the pro bono work of its attorneys; and it’s a legacy that will not end.”

For more information about the Volunteer Lawyers Program, contact VLP Director, Pat Gerrich, at 602-258-3434, ext. 2630.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Labor Day</td>
<td>MCBA Office closed</td>
</tr>
<tr>
<td>4</td>
<td>Maricopa Lawyer Editorial Board</td>
<td>5:15 p.m.</td>
</tr>
<tr>
<td>5</td>
<td>Family Law Section Board</td>
<td>5:00 p.m.</td>
</tr>
<tr>
<td>6</td>
<td>Estate Planning, Probate &amp; Trust Section Board</td>
<td>7:30 a.m.</td>
</tr>
<tr>
<td></td>
<td>Construction Law Section Board</td>
<td>12 noon</td>
</tr>
<tr>
<td>10</td>
<td>YLD Board</td>
<td>12 noon</td>
</tr>
<tr>
<td></td>
<td>Paralegal Division Board</td>
<td>5:30 p.m.</td>
</tr>
<tr>
<td>11</td>
<td>Public Lawyers Division Board</td>
<td>12 noon</td>
</tr>
<tr>
<td>12</td>
<td>MCBA Executive Committee</td>
<td>7:30 a.m.</td>
</tr>
<tr>
<td></td>
<td>Environmental &amp; Natural Resources Section Board</td>
<td>12 noon</td>
</tr>
<tr>
<td>13</td>
<td>Personal Injury Section Board</td>
<td>12 noon</td>
</tr>
<tr>
<td>16</td>
<td>YLD Race Judicata</td>
<td>Kiwanis Community Park, Tempe 6:00 a.m.</td>
</tr>
</tbody>
</table>

*Please watch your MCBA E-News for updated information about meetings and events.*
The Court Record: Paper or Electronic?

Doing business in the Superior Court in Maricopa County looked the same for almost 100 years. An attorney would print the information they wanted presented to the court onto a piece of paper and file it with the clerk. Over the years, the paper process changed from handwritten ink to carbon paper and typewriters, and then to word processors and computers.

The shift to an electronic court record arguably took place when drafting pleadings made the leap from typewriters to word processors. Typewriters imprinted ink onto paper, creating the paper original, similar to decades of prior practice. Copy machines generated duplicates of the paper original. Word processors were capable of making corrections and saving the pleading in an electronic format, where the machine could print multiple copies of the pleading to paper from its memory, where the “original” resided.

Today’s computers are more advanced than first-generation word processors and a draft pleading can see numerous changes as a result of back-and-forth e-mail attachments without a hint of correction fluid or strikeouts before the final version becomes the original that is filed with the clerk.

To view documents at the Clerk’s Office in Maricopa County today, there are at least four mediums one might encounter, depending on the case type and case year. A fifth option, remote viewing of scanned images from a law office, will be available by the end of this summer.

All records mentioned in this article refer to filings in adult case types. Juvenile records have specific confidentiality requirements and public access is limited by court rule and statute. Clerk’s staff can provide more information on accessing juvenile records.

To view documents in cases filed between 2002 and 2006 (1997-2006 in Probate cases), the Clerk’s Office maintains a dual system of paper case files and scanned images. For cases initiated on and after January 1, 2002, the Clerk’s Office scanned the filed papers, resulting in images of public documents (not sealed or confidential), which are now available at Public Access Terminals (PATs) located at Clerk’s Offices throughout the Valley. PATs are computer terminals which allow customers to enter a case number or party’s name and view the public documents electronically on individual cases without having to fill out a request form for the physical case file. Additionally, the scanned images of papers filed with the clerk on and after January 1, 2005 are available regardless of the year the case was initiated.

For example, a civil case that began in 2001 will have paper records for documents filed between 2001 and 2004. Documents filed in that case in 2005 and after are available in both paper and scanned images.

Documents filed in cases that were initiated on and after January 1, 2007 are available electronically at the PATs. Whether filed initially with the clerk in paper or electronically, the electronic image is the official court record in Maricopa County. Papers filed in cases initiated on and after January 1, 2007 are scanned, and after a series of rigorous audits, the papers are destroyed in accordance with the records retention policies of court rule and as authorized by the Arizona Supreme Court.

The Court page 12

Alternative Dispute Resolution

Rebecca Albrecht
Judge of the Superior Court, Retired
Certified AAA Arbitrator
Mediator

As a trial judge, I came to believe in the importance and effectiveness of alternative dispute resolution. I would be honored to assist you and your clients in finding solutions to your matters.

2901 N. Central Avenue, Suite 1600 • Phoenix, AZ 85012
602.643.2459 • 602.248.0947 fax
rebecca.albrecht@bowmanandbrooke.com

ACCEPTING APPLICATIONS TO
SERVE AS A LAWYER
REPRESENTATIVE TO THE 9TH CIRCUIT
JUDICIAL CONFERENCE

Each year the Judges of the United States District Court in Arizona select lawyers with experience in the Federal courts to serve as Lawyer Representatives to the 9th Circuit Judicial Conference.

Arizona’s Lawyer Representatives are expected to attend the annual Circuit Conference and to meet periodically with Arizona’s District Court Judges, Bankruptcy Court Judges and Magistrate Judges to discuss potential improvements to court operations and procedures. In addition, the Lawyer Representatives play a leading role in an annual Arizona District Conference for Federal Judges and practitioners. Lawyer Representatives serve a three-year term.

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

Homero Torralba, Chair
Arizona’s Lawyer Representatives to the 9th Circuit
Homero Torralba, PC
110 S. Church, Suite 4296
Tucson, AZ 85701-7634

The Deadline for Applications is October 19, 2007
If you have any questions, feel free to call Homero Torralba at (520) 884-4529

ESCROW DEPOSIT SERVICES

Alliance Bank offers:
- Competitive interest rates, fees and terms for escrow deposit accounts
- All necessary reporting: 1099’s, statement mailings, preparation of other interim statements
- Customized or standard escrow deposit documents available

Recent Alliance Bank Escrow Deposit Service transactions.

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merger &amp; Acquisition</td>
<td>$3.8 million</td>
</tr>
<tr>
<td>Indemnification Escrow</td>
<td>Subscription Deposit $1.2 million</td>
</tr>
<tr>
<td>Deposit Escrow</td>
<td>Acquisition Earnout $4 million</td>
</tr>
<tr>
<td>Adjustment Escrow</td>
<td>Construction Retention $8.9 million</td>
</tr>
<tr>
<td>Environmental Remediation</td>
<td>Private Placement $4 million</td>
</tr>
</tbody>
</table>

PHOENIX

Biltmore Park Office • 2701 E. Camelback Road • 602.952.5400
Midtown Office • 2101 N. Central Avenue • 602.629.3700
Scottsdale Office • 7373 N. Scottsdale Road • 480.938.5500
Gateway Office • 4650 E. Van Buren Street • 602.593.3400
Phoenix Downtown Office • One Renaissance Square • Two North Central Avenue • 602.389.3500

alliancebankofarizona.com

M member FDIC
Moves & New Hires...

Ja Nelle Jenkins, an associate with Slouen, Gulbransen & Patience, has been selected to serve as adjunct faculty at Mesa Community College teaching Business Law.

Ballard Spahr Andrews & Ingersoll, LLP is pleased to announce that Kim H. Bullerdick has joined the firm’s Phoenix office as an associate in the Business & Finance Department and as a member of the firm’s Mergers & Acquisitions, Securities, Transactional Finance and Environmental Groups. Prior to joining the firm, Bullerdick was senior vice president of Giant Industries, Inc., a large public corporation, where he provided legal assistance and managed an in-house staff of attorneys as well as outside counsel. He also directed the corporation’s governmental affairs and internal audit departments.

Phoenix School of Law is adding several new faculty members and adjuncts to its roster for the academic year 2007-2008.

David Cole, retired Maricopa County Superior Court judge, will teach Evidence and Criminal Law. He will be an assistant professor of law.

Michael O’Connor, a former Associate Professor at the University of St. Thomas School of Law in Minneapolis, will teach two sections of Evidence. He joins as an associate professor.

Douglas McFurland, a Visiting Professor, will teach Civil Procedure and Torts. He is a professor at Hamline University in St. Paul, Minnesota and brings over 30 years of teaching experience to Phoenix Law.

Nicholas Rine, a visiting professor from the University of Michigan, will teach International Law. He will also work with the school’s clinical program.

Jalee Ulrich, Director of the Michigan State University Rental Housing Clinic, will teach Remedies and Real Estate Transactions. He joins the faculty as an assistant professor.

Sharmila Roy, a lawyer with the Maricopa County Public Defender’s Office, will teach Criminal Law and Elder Law as an associate professor.

Retired Maricopa Superior Court judges, Robert Myers and Jonathan Schwartz join the faculty as adjunct professors. Myers will teach Pre-Trial Practice, and Schwartz will teach Administrative Law.

Damon Boyd, a partner at Snell & Wilmer, will also be an adjunct professor teaching Intellectual Property.

Perkins Coie announced the appointment of its first Director of Electronic Discovery Services, Christopher M. Schultz, due to the increasing importance of electronic discovery issues in litigation. Schultz, who has been with Perkins Coie since 1999, is a member of the firm’s national Commercial Litigation practice group. He regularly consults with firm clients on the legal and technical issues surrounding electronic discovery.

The Law Firm of Rai & Barone, P.C. is pleased to announce that attorney Brian L. Henry has been named a Partner in the Firm. Brian received both his B.A. and J.D. from Indiana University and primarily practices in the area of construction litigation.

Cantelme & Brown, P.L.C., announces the selection of Aaron Brown to serve as the firm’s managing member. Mr. Brown is a graduate of Baylor Law School and Brigham Young University. He will continue his practice in employment and construction law and commercial litigation.

Honors & Awards...

Donald Warne, a clinical professor at the Sandra Day O’Connor College of Law, is a finalist for a 2007 Health Care Heroes Award, which recognizes excellence in health care, research advancements, and community improvements through health promotion and disease prevention efforts. Warne developed the “Model Tribal Health and Safety Code” for the Inter Tribal Council of Arizona, Inc., and has testified before Congress about urban Indian health needs. He often lectures and leads seminars about diabetes and other health policy issues at conferences around the world. He is a resource expert for the Indian Health Service and the Association of Indian Physicians.

Madeleine C. Wanslee and Brandon J. Kavanagh attained leadership positions in the State Bar of Arizona. Wanslee, having served as chair-elect of the State Bar of Arizona for 2007-2008, was elected chair-elect of the State Bar of Arizona Business Law Section for 2007-2008. Kavanagh was elected chair-elect of the State Bar of Arizona Business Law Section for 2007-2008. As chair-elect, he will serve as senior co-chair and work on programming for the section.

Looking for more exposure for your business? Have space to lease or need to fill a position at your firm? To place a display or classified ad, call the MCBA 602-257-4200
CLASSIFIEDS

Arizona agent for 31 years specializing in Attorney Malpractice Insurance for 17 years. Offering you:
- Non-erosing limits and defense outside limit.
- Employment practices liability defense.
- No deductible for defense costs.
- Free tail coverage.
- Readily available prior acts coverage.
- Per year deductible (not per claim deductible).
- Disciplinary proceeding coverage.
- Your own personal insurance specialist.

We'll do the shopping for you and find the best policy at the lowest price.
You deserve a better deal.*

* Features listed may not be available with all companies. Please refer to policy for applicable coverages.

VideoDep, Inc. (480) 496-0808
Legal Video Productions
(Established 1995)
- Production, Editing, Duplication, Conversion
- Synchronization Services & More...
- Strict Adherence to CLVS Standards & Rules
- Full Service - Short Notice Scheduling
- Multiple Delivery & Synchronization Formats
- Professional Appearance & demeanor
- State-Of-The-Art Equipment

For More Visit Us At: www.videodep.com

HONEST JOHN continued from page 3
out of the job, the answer to his question was he would have likely been hunting or fishing. He rarely missed his longer annual sporting outings. Judge Phillips suffered a mild heart attack out of a job, the answer to his question was he would have likely been hunting or fishing. He rarely missed his longer annual sporting outings. Judge Phillips suffered a mild heart attack

Malpractice Insurance Specialists

The judge/governor had served two terms as superior court judge. He then went into private practice in Phoenix and continued his political career. He served multiple terms in the Arizona House of Representatives and Senate before successfully running for governor in 1928.

After his first political loss in 1930, he retired from politics and finished his legal career in private practice with this son, Ralph, and their partner, I.J. Holzworth, in their offices on the third floor of the Phoenix National Bank Building at 16 North First Avenue.

Phillips remains a role model for today's attorneys. With a balanced, realistic view of himself and his legal career, a sense of humor and a few good fishing rods, he was a Maricopa lawyer worth imitating.
Claims Expenses Outside Limits (CEOL) Coverage: Consider the Benefits

In any “off the shelf” malpractice insurance policy, money spent by outside counsel defending a claim reduces the coverage limit. This is typically referred to as an “eroding limits” or “burning limits” policy. For example, you turn in a claim with a $100,000 per claim limit and the insurance company hires outside counsel to defend. If outside counsel bills $25,000, you have $75,000 left to pay the claim. For this purpose, we will ignore the deductible. Insurance company internal costs (such as claims adjuster salary) are not counted as expenses.

The Claims Expenses Outside the Limit endorsement changes this. Typically, the CEOL limit is the same as the per claim limit. In our example, with the CEOL added to your policy, you have a separate coverage amount of $100,000 to pay defense expenses plus the $100,000 to pay the claimant.

In our example, the insurance company would pay the $25,000 defense bill. You would have $75,000 of defense expense only coverage remaining for this claim and the full $100,000 of coverage to pay the plaintiff if the claim is successful. If your defense expenses exceed $100,000, the policy reverts to the “eroding limits” form and additional defense expenses begin reducing the amount available to pay damages.

With most companies, the minimum coverage limit for damages someone can buy with most companies is $100,000 per claim. Coverage up to $5,000,000 and more is available. It makes sense that the lower the per claim limit, the more important the CEOL feature becomes. Obviously, the likelihood of defense expenses would exceeding a $100,000 policy limit is highly improbable.

There is an additional, and often overlooked, advantage to including CEOL on your policy. Let’s use the $100,000 per claim example again, excluding the CEOL feature. Suppose you have a defensible claim and a good likelihood of winning, but defending will be expensive. Along with the insurance company, you want to defend, but there is a risk of using up most of your entire coverage. The company, concerned about a potential bad faith claim, may pressure a settlement. The CEOL feature reduces the likelihood of this situation occurring.

Also entering the equation are the “consent to settle” and the “hammer” clause included in most policies. The insurance company must obtain your consent prior to settling a claim, this is a good feature. However, if the company obtains a valid settlement offer and wants to settle, the company’s liability is capped at the offer amount, and additional defense expenses are not covered if you refuse.

Most, but not all, insurance companies willingly offer CEOL. With most policies, the CEOL limit matches the per claim limit. With CEOL, if someone has a $2,000,000 per claim limit, they also have an additional $2,000,000 for defense coverage. Some companies place a separate lower limit on the defense coverage. With this type of policy, you might have a $2,000,000 limit to pay the claim with a separate $1,000,000 limit on defense expenses.

The added cost for CEOL varies by company, but is typically in the 10-15% range. CEOL is a good feature, and is certainly worth discussing with your insurance agent.

Doug Reed Insurance Services is the MCBA Preferred Provider for malpractice insurance. Contact Doug Reed or Ben Brock at 480-998-1068.

PAPER VS. ELECTRONIC continued from page 9

From the electronic original, the Clerk’s Office can print paper copies and certify their authenticity as the official record in the Superior Court for Maricopa County.

In general, the Clerk’s Office maintains paper files at the Customer Service Center in downtown Phoenix for documents filed before 2001. Customers may request that a paper file be transported for viewing from the downtown Phoenix facility to the regional court center most convenient for the customer.

The court record for numerous older and inactive cases are maintained on microfilm. Records on microfilm are also available at the Clerk’s Customer Service Center. A Clerk’s employee will retrieve the appropriate film and direct the customer to a machine designed to display the images on the film. Clerk’s staff can inform the customer if the requested court record is available in paper, film, electronically, or in a combination of formats.

A last consideration is that paper records may still exist in all case types, including electronically filed cases. There are several exceptions where documents must be processed and maintained in paper. For example, documents filed under seal and sentencing minute entries that contain a thumbprint are both processed in paper, as well as original wills lodged with the Clerk upon order of the court.

For specific questions on the most efficient way to obtain information from the Superior Court record in Maricopa County, contact the Clerk’s Office at 602-506-3360, or visit the Clerk’s Web site at www.clerkofcourt.maricopa.gov.
JOIN US FOR THE THIRD ANNUAL RACE JUDICATA

YOUNG LAWYERS DIVISION

Come walk, run, or stroll your way through our 5K/1 Mile race to benefit the Maricopa County Bar Association Young Lawyers Division. After an exciting and successful race last year, we are excited to stage Race Judicata 5K/1 Mile race and Kids’ Dash for the third time for our legal community, families, and friends.

RACE INFORMATION

WHEN
Sunday, September 16, 2007
Time: Registration begins at 6:00 a.m.
5K race begins at 7:00 a.m.
1 Mile race begins at 7:05 a.m.

Kids’ Dash begins and awards ceremony following the 5K race.

WHERE
Kiwanis Community Park, 5500 S. Mill Ave., Tempe, AZ 85283.

ENTRY FEES
MCBA members and immediate family members: $20.00
Non-members: $25.00
Teams of 10 or more: $20.00 per participant (Team registration closes September 3)
Kids (under 15): $10.00 (after September 10, 2007): $15.00
Late registration (after September 10, 2007): $30.00

Every paid entrant receives a goodie bag, a Race Judicata t-shirt, and free food and drink after the race.

FOOD AND ENTERTAINMENT
There will be bagels, fruit, water, sports drinks, and other breakfast foods for participants after the race. In addition to the Kids’ Dash, there will be a bouncy play area, music, and balloons.

AWARDS CEREMONY
Award medals will be given for the following categories:
Three fastest females and three fastest males in each 5 year age group in 5K
(under 14, 15-19, 20-24, 25-29, 30-34, 35-39, 40-44, 45-49, 50-54, 55-59, 60-64, 65-69, 70+);
and in each 10 year age group in 1 mile
(under 19, 20-29, 30-39, 40-49, 50-59, 60-69, 70+)
Fastest Team (average time for fastest five members) and
Biggest Team (registering the most members on one team)
Golden Gavel Certificates will be given for the following categories:
Fastest Judge
Fastest Criminal Practitioner
Fastest Paralegal
Fastest Legal Secretary/Assistant
Fastest Civil Practitioner (Partner)
Fastest Civil Practitioner (Associate)
Fastest Law Student or Law Professor

SPONSORSHIP
Get your name on the official race t-shirt.
Get your name printed on the Race t-shirt by purchasing a $100.00 sponsorship as a Friend of MCBA. Please mail your check made payable to “MCBA - Race Judicata” and provide the name you want printed on the t-shirt to 303 E. Palm Lane, Phoenix, AZ 85004.

Diamond Sponsors

REGISTRATION

THERE ARE TWO WAYS TO REGISTER
1. Register and pay online at www.active.com
2. Register by mail - Fill out this form or download the registration form at www.arizonarunningeventsco.com. Mail it, along with your check payable to Maricopa County Bar Association (MCBA) to:
MCBA c/o Arizona Running Events 1963 E. Kentucky Ln. Tempe, AZ 85284

YOUR INFORMATION

NAME ____________________________
E-MAIL ____________________________
MAILING ADDRESS _______________________________________________________
PHONE __________________ MCBA MEMBER? ____ AGE AT RACE ______ GENDER ______

EMERGENCY CONTACT NAME AND PHONE NUMBER ____________________________

WHICH RACE?
CHECK ONE: 5K  1 MILE  KIDS’ DASH
If you are a member of the legal community, please check the applicable category:
Judge/Commissioner  Law Student or Law Professor
Civil Partner  Paralegal
Civil Associate  Legal Assistant/Secretary
Criminal Attorney

T-SHIRT SIZE (KIDS’ M OR L; ADULTS M-XL)

IMPORTANT FOR TEAM MEMBERS
Please select a team leader or team name. Every team member must fill out a separate form, and each team must have a minimum of ten members. For the Fastest Team prize, only the five fastest times will count toward the average.

TEAMS ONLY: TEAM LEADER OR TEAM NAME ___________________________

WAIVER
In consideration of accepting this entry, I the undersigned intend ing to be legally bound hereby, for myself or my heirs, executors, and administrators waive and release any and all rights and claims for damages I have against Arizona Running Events Co., USAT&F, City of Phoenix, Maricopa County Bar Association and anyone associated with this event, their representatives, successors and assigns for any and all injuries suffered by me in said event. I will additionally permit the free use of my name and pictures in broadcasts, telecasts, newspapers, etc.

Signature and date (parent or guardian if under 18) ____________________________


MCBA is geared up and ready to present a full line-up of CLE programs beginning this month. To register, use the registration form on this page, go to www.maricopabar.org, or call Kimberly Balogh at 602-257-4200. Unless otherwise specified, all CLE programs will be held at the MCBA Headquarters, 303 East Palm Lane Phoenix, AZ 85004.

**September 2007**

**Tuesday September 18 • 1:00-4:00 P.M.**

**Current Trends in Legal Malpractice**

3 credit hours

This basic to intermediate seminar will cover all aspects of legal malpractice. You’ll learn how the Rules of Professional Responsibility relate to legal malpractice law, how to avoid a legal malpractice suit, and about effective defenses to a legal malpractice suit.

**Presenter:** Lance Entrekin, Law Office of Lance Entrekin, Phoenix, one of the most experienced legal and accounting malpractice attorneys in the state.

**Cost:**

- $90 MCBA members
- $150 non-members

**Wednesday September 19 • 7:30-8:30 A.M.**

**(with continental breakfast)**

**Proposed Arizona Trust Code Legislation: Changes from Old Arizona Uniform Trust Code**

1 ethics credit hour

This advanced ethics seminar will discuss the material differences between the repealed legislation and the proposed legislation of the Arizona Trust Code. The Arizona Uniform Trust Code was scheduled to be effective on and after December 31, 2003. However, the legislature delayed the effective date and then, before its effectiveness, it was unanimously repealed by the House and Senate and the repeal was signed by the governor. The MCBA Estate Planning, Probate and Trust Section Executive Council has approved the proposed new legislation, the Arizona Trust Code, and sent it to section members for comment. This legislation would make significant changes in probate and trust law, and would enact a comprehensive trust code.

**Sponsored by:** MCBA Estate Planning, Probate & Trust Section

**Presenter:** Les Raatz, Esq., Murisal, Weeks, McIntyre, Friedlander, Phoenix

**Cost:**

- $25 section members
- $30 MCBA members
- $50 non-members

**Thursday October 18 • 7:30-9:30 A.M.**

**(with continental breakfast)**

**Basic Estate Planning**

Credit hours: TBA

**Sponsored by:** MCBA Estate Planning, Probate & Trust Section

**Presenter:** Roberta Berger, Wells Fargo Bank, Phoenix

**Cost:**

- $60 MCBA members
- $100 non-members

**Wednesday October 26 • 12:00-1:00 P.M.**

**(with lunch)**

**Impact of the 2005 BAPCPA Bankruptcy Amendments on Corporate Counsel**

1 credit hour

**Sponsored by:** MCBA Corporate Counsel Section

**Presenter:** Adam Nach, Esq., Lane & Nach, Phoenix

**Location:** University Club, 39 E. Monte Vista, Phoenix

**Cost:**

- $25 section members
- $30 MCBA members
- $50 non-members

**October 2007**

**Law and Disorder!**

Not in court, but on the ice, with CLE on the side. MCBA will mix CLE (1 hour credit) and hockey at the Jobbing.com Arena as the Phoenix Coyotes take on Dallas. Stay tuned for details.

**November 2007**

**Tuesday November 8**

**Law and Disorder!**

Not in court, but on the ice, with CLE on the side. MCBA will mix CLE (1 hour credit) and hockey at the Jobbing.com Arena as the Phoenix Coyotes take on Dallas. Stay tuned for details.

**Thurday November 15 • 7:30-10:30 A.M.**

**(with continental breakfast)**

**Nuts and Bolts of Estate Administration**

3 credit hours

**Sponsored by:** MCBA Estate Planning Probate & Trust Section

**Presenter:** Jay Pollk, Esq., Baron & Pollk, Phoenix

**Cost:**

- $75 section members
- $90 MCBA members
- $150 non-members

**Details Coming Soon:**

**Don’t Miss this One! New Immigration Rules for Arizona Employers**

This major CLE program will address the impact of Legal Arizona Workers Act (House Bill 2779), signed into law by Governor Napolitano on July 2. Learn how you can help your clients—regardless of the size of their business—operate within the rules of this law, which governs the hiring and employment of undocumented workers.

**Alternative Dispute Resolution**

**Presenter:** Mark Zukowski, Jones, Skelton & Hochuli, Phoenix

**Arizona Paralegal Conference 2007**

Presented by the MCBA Paralegal Division

**Friday, September 28 • 8:00 A.M.-5:00 P.M.**

**Heard Museum**

2301 N. Central Ave. Phoenix

Attention paralegals, legal assistants, paralegal administrators, paralegal educators, court personnel and all legal professionals: Attend the 2007 Arizona Paralegal Conference to network with your peers and get updated on your profession.

**See Details on Page 5**
ASK THE EXPERT
Guide to Locating an Elusive Witness or Defendant
By Paul Dank

Tracking down or “skip tracing” an elusive subject can be done quickly and at little or no charge if you look in the right places. The internet has made the process significantly easier, but it has some limitations. The telephone can be a big help also.

Q: Where do I start?
A: Try to determine if the defendant or witness is avoiding you or is someone else. Sometimes, they are unaware that you are interested in them. Nonetheless, they may appear to have gone underground.

The reality is that many people are avoiding someone: a bill collector, an ex-spouse, or the IRS. They may be happy to cooperate with you and make themselves available. You just need to get word to them.

If this is the case, have your process server talk to neighbors (or former neighbors), and ask them to get in touch with the subject. This is one of the cheapest and easiest ways to approach a willing but missing subject. But if you know they will not be so willing to hear from you, we recommend that you avoid this approach.

Q: What information can I use to locate the witness or defendant?
A: In our society, the social security number is king. If you have the correct one, your journey will be short. Next is the date of birth. Most vital records track us by date of birth and will also reduce your search time drastically. Although, if a middle initial or suffix is missing this can make your search harder. An initial of suffix can help to differentiate between father and son. Lastly, check the maiden name. Many women continue to use their maiden names or go back to them after a divorce.

Q: Can I search using the internet?
A: Free internet directories are great for locating your subject, locating relatives, or former neighbors. Keep in mind that many of these sources are derived from old public records and can be outdated. They are often helpful and the price is right. I recommend you start with the better telephone directories like: www.anywho.com, www.switchboard.com and www.superpages.com. Each derives their information from different sources, so try them all.

Next, look for sources that make sense for your subject. Search Systems has a great site that offers a multitude of free public record site links. Arizona links are located at: http://www.searchsystems.net/list.php?nid=15

Q: What about Google?
A: If your subject has a unique name or address, try a Google search. Google allows you to use modifiers and conjunctions to search using a combination of pieces of information to help you narrow in on news, e-mail accounts and Web sites that have traces of your subject on them.

Q: Is there anything I should stay away from on the Web?
A: Beware of the “Instant Super Locator” Search Sites. 90% of these sites profiteer sites that automatically search through FREE public record databases or buy old outdated information and resell it to you at 20 times the cost. This is particularly true for the “Instant Check” companies. The results they give you are fast but meaningless data or data that is comprised of information you likely already knew. The companies that sell this information are almost never licensed private investigators and cannot give you accuracy. Save the $19.95 and look up the information yourself.

Q: What if I have the defendant’s or witness’s address?
A: If you are not closing on a tight deadline, we always recommend that you send out a postal verification. If you are unfamiliar with this procedure, visit the post office or ask your carrier to supply you with official USPS “Request for COA or Boxholder Information” form. Fill it out and mail it to a self addressed and stamped envelope to the local postmaster. They will send back the forwarding address, verification that mail is received for your subject at this address, or verification that they don’t get mail here.

Q: Can I get professional help?
A: When all else fails or time is limited, you may want to consider the help of a professional. Many private investigators specialize in this work and can access resources that only a private eye would. Firms like www.WitnessTrackers.com focus on providing skip tracing services to attorneys. ■

About the Author
Paul Dank (pokane@agriinvestigations.com) of Advanced Surveillance Group is a private detective agency headquartered in Michigan and Licensed in multiple states. A.S.G. specializes in surveillance and information gathering for attorneys. Contact Dank directly at 888-677-9700.
Some is not. Over 95% of information stored on a computer is never printed out. The electronic discovery revolution is here. Changes to FRCP make electronic discovery mandatory effective December of 2006.¹

- Computer Forensics
- Forensic Accounting
- Fraud Investigations
- Expert Witness Testimony
- Business Valuation
- Damage Analysis

We are prepared to assist you in this growing transition to electronic discovery in all areas of your practice. Our financial experts have extensive experience in all stages of the litigation process including case strategy, obtaining discovery, data analysis and testifying.

Economic Insights, Inc.
8889 E. Bell Rd. Ste 202
Scottsdale, Arizona 85260
(480) 443-9064
www.economicinsights.com

¹ A petition to amend State of Arizona Rules of Civil Procedure has been filed to incorporate the Federal changes.

---

FINDING HIGHLY SKILLED PROJECT ATTORNEYS COMES AT A PRICE.

(like saving $2 million)

Learn more about how our project attorneys and paralegals can do the same for you.

roberthalflegal.com/2million

Phoenix • 602.977.0505
2375 E. Camelback Road
phoenix@roberthalflegal.com

Robert Half® Legal
Project Placement | Legal Search | Legal Support