MCBA Returns to 303 East Palm Lane

The Maricopa County Bar Association will open for business in its newly-remodeled building on Tuesday, July 24, 2007.

THE MCBA WILL BE CLOSED ON FRIDAY & MONDAY, JULY 20 & 23

Telephone and fax numbers will remain the same, but e-mail addresses will change to __________@maricopabar.org.

A Grand Opening Celebration will be held in October!

Renovated Bar Headquarters Nears Completion

On July 20, the MCBA will begin its return to the Bar’s freshly-renovated offices at 303 East Palm Lane and will reopen for business at that location on Tuesday, July 24.

As reported earlier, following fire damage to the building in February 2006, the Board of Directors determined that it would prudent to not only repair the fire damage but also make extensive renovations and updates to the interior of the building.

For the first time, most of the continuing legal education events sponsored by the MCBA will be held on-site, thanks to the creation of a conference center (photo) which will seat 60 classroom-style and 88 theater-style (when utilizing both portions of the divisible space).

Additional conference rooms are also being created for use by the MCBA’s divisions, sections, committees, the Bar Foundation, and other groups. The new floor plan makes for more efficient use of space in the office core, where staff conducts the day-to-day affairs of your association.

Lack of mitigation evidence sways Ninth Circuit, but not Supreme Court

The Ninth Circuit recently held that a convicted murderer had stated a colorable claim of ineffective assistance of counsel when his attorney did not put on mitigating evidence, notwithstanding the fact that the defendant had refused to allow any mitigation evidence. Landrigan v. Schriro, 441 F.3d 638 (9th Cir. 2006). See CourtWatch in the April 2006 edition of the Maricopa Lawyer. The Supreme Court recently rejected the Ninth Circuit’s holding in Schriro v. Landrigan, No. 05-1575 (U.S. May 14, 2007).

A jury found Jeffrey Landrigan guilty of first-degree felony murder after he killed Chester Dean Dyer. Landrigan had earlier escaped from an Oklahoma prison, where he was serving time for battery, drug possession, and second-degree murder.

During the penalty phase, the attorney called Landrigan’s mother and ex-wife to testify. But Landrigan refused to allow it. When the attorney attempted to make an offer of proof about their testimony, Landrigan cut him off.

Asked by the trial judge if there were any mitigating circumstances, Landrigan responded, “Not as far as I’m concerned.” Landrigan told her: “I think if you want to give me the death penalty, just bring it right on. I’m ready for it.” She obliged, and our supreme court affirmed. State v. Landrigan, 176 Ariz. 1, 859 P.2d 111 (1993).

Landrigan later changed his mind. He
Robert Godfrey and Christopher R. Miller for causing the death of another juvenile Fred Ryan.

The two juveniles had kicked Fred Ryan for his alleged insult against a girlfriend. The victim died of a ruptured spleen a few hours later. In making his decision, Judge Tang rejected the option of transfer to adult court for adult felony prosecution and the option of immediate commitment to Fort Grant (juvenile prison).

Along with intensively critical newspaper coverage, members of the public were outraged. In the November 1970 judicial election, the majority voted for Judge Tang’s opponent. He had served eight years on the Superior Court bench, from 1962 to 1970. Dr. Tang reported that approximately eight years later, the two former juveniles were doing well. One became a teacher and a coach after finishing college. The other became a captain in a fire department.

Dr. Tang spoke more of her and her late husband’s work in the community, and so I listened. Their work–lives are models of professionalism.

Judge Tang was born in 1922 and died in 1995. He grew up in Phoenix, where his father owned and operated the Sun Mercantile business and building downtown. The business supplied grocers around the state. He fought in World War II, becoming an immunization program for children in county schools. Later, as chief of the Maricopa County Bureau of Maternal and Child Health, she created and led programs that helped lower the infant mortality rate by 67% between 1960 and 1984.

She fondly recalls that not long into her job she expressed to the county director the overwhelming need to test women for cervical cancer. She wrote and obtained a grant with the agreement that the county would build a pathology lab and share it for cervical cancer control. Due to her intervention, many women were diagnosed and properly treated.

Like her late husband, Dr. Tang emphasizes the unique responsibilities for one who serves in a profession. In a 2006 interview she stated, “In a profession, you provide service to others in the community. A business is strictly about making money.”

Dr. Tang, like her late husband, continues to advocate for the independence of the judiciary and the need for the legal system. She served on the State Bar’s Professionalism Task Force and the national moot court competition named for her husband and sponsored by the national Asian Pacific American Bar.

Judge Michael D. Hawkins followed Judge Tang on the Ninth Circuit after Judge Tang took senior status. In a 2003 interview, Judge Hawkins stated “If I were to carry myself with half the grace and dignity of a Tom Tang… I would be quite content.”

I would add Dr. Pearl Tang to Judge Hawkins statement. We are all a better community for the professionalism, grace and dignity of Judge Tang and Dr. Tang.
For the first time in more than 40 years, an Arizona law school has received provisional accreditation from the American Bar Association. The Phoenix School of Law, Arizona’s first private law school, received notification of the ABA provisional approval on June 11, 2007.

“Everyone at Phoenix Law has worked long and hard to earn this provisional approval from the ABA, and we look forward to our first group of students taking the bar exam,” said Dennis J. Shields, Dean of Phoenix Law. “We will continue to adhere to ABA standards and practices in hopes of gaining full accreditation in 2010.”

Law schools must receive approval from the ABA for their students to take the bar exam. An ABA panel reviewed factors including Phoenix Law’s curriculum, facilities, library, admissions, and faculty, and granted the school provisional accreditation.

After three years of maintaining these standards, a law school is eligible for full accreditation. While it is not uncommon for a new law school to have difficulty meeting the ABA standards, Phoenix Law, owned by Infilaw, received provisional accreditation on the first attempt.

“The American Bar Association has sent a message that Phoenix Law is a quality law school with a unique mission to make student-centered legal education accessible to minorities and non-traditional students,” said Dennis Archer, past president of the American Bar Association and chair of the Infilaw National Policy Board. “We are proud to be one of only three Arizona law schools to meet the stringent quality standards of the ABA.”

Phoenix School of Law is the first law school in the state to offer part-time and evening programs. It now can create clinical programs where students advocate on behalf of clients, receive federal student loan assistance, and take part in admissions recruiting events with other ABA-approved schools.

“The ABA’s provisional approval is a reflection of the enormity of the commitment of our founders, staff, faculty and board to the mission pillars of excellence in legal education, graduating practice-ready students, and serving the underserved in the Arizona community,” said Patrick J. McGroder, chair of the Phoenix Law Advisory Board.

Phoenix School of Law is located at 4041 North Central Avenue. More information about the school is available at www.phoenixlaw.org.

FAC T S H E E T
THE PHOENIX LAW SCHOOL

ADDRESS:
4041 North Central Avenue
Suite 100
Phoenix, Arizona 85012

YEAR FOUNDED:
2005

DATE OF PROVISIONAL ACCREDITATION:
June 11, 2007

STUDENTS:
128

FACULTY:
19

ADMINISTRATION/STAFF:
33

DEAN:
DENNIS J. SHIELDS
Dean and Professor of Law

NATIONAL POLICY BOARD:
DENNIS ARCHER
Chairman, and past president of the American Bar Association, two-time mayor of Detroit.

RUDY HASL
Former dean of Seattle University School of Law, St. John’s University School of Law, and St. Louis University of Law.

ARTHUR R. MILLER
Bruce Bromley Professor of Law at Harvard Law School

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2008
Staying in Touch With Your Clients Shouldn't Be That Hard for Lawyers

During the 2007 Law Week, I participated in the Ask-A-Lawyer Fair, which provided free legal advice to walk-in members of the public. To my surprise, a number of the advice seekers were already represented by attorneys. The reason they attended the Ask-A-Lawyer Fair was because their attorneys did not return their phone calls or respond to their e-mails. Upon hearing these complaints (and making sure that none of the walk-ins were clients of mine), I vowed to improve my client communication skills.

Fortunately, I attended another event during Law Week that paired nicely with my intent to communicate better with my clients. At this year’s CLE, Lynda Shely (The Shely Firm, PC) presented “Ten Things Ethical Lawyers Should Do!” Number 2 was Return Calls Promptly.

Highlighting the importance of good communication and confirming what I observed at the Ask-A-Lawyer Fair, Ms. Shely informed us that failure to communicate is still the most common reason for a bar complaint. Her advice for avoiding communication problems is to create a written communication policy pursuant to which your office would log in calls received and record when they are returned and by whom. The policy should provide a deadline for returning calls and e-mails (same day, 24 hours, or 48 hours), which in turn will create an understanding and expectation in clients as to when they should expect to hear back from you.

The policy should also remind clients that they will be billed for the time taken to communicate with them (which is something that clients don’t always grasp until they review their first bill). I vowed to improve my client communication skills.

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Fifty attorneys, including 14 who are members of the Maricopa County Bar Association (MCBA) were honored June 28 for increasing access to justice for Arizona’s low-income residents with civil legal problems.

Chief Justice Ruth McGregor presented the awards at an evening reception during the State Bar of Arizona convention in Scottsdale. The Top 50 awards are an annual recognition given by the Arizona Foundation for Legal Services and Education to acknowledge outstanding pro bono service through the state’s volunteer lawyer programs. In Maricopa County, this program is co-sponsored by the MCBA and Community Legal Services.

Recipients of the “Top 50” awards have made outstanding contributions representative of the spectrum of legal assistance offered by legal aid organizations throughout Arizona. Their services include advice and assistance to persons representing themselves, as well as direct representation and litigation in many instances.

The areas of greatest need are usually family law, tenants’ rights and consumer rights. However, in 2006, legal aid offices received increased requests for assistance in home ownership matters.

The recent dramatic rise in the value of residential real estate has produced a new area of fraud termed “equity skimming” or “equity theft.” Low-income home owners facing possible foreclosure are especially vulnerable to finance rescue scams in which the hope of remaining in their homes is rapidly replaced by homelessness and the loss of equity to which they are entitled.

In response to this trend, volunteer lawyers have stepped in to identify issues and remedies and take on the monumental task of holding perpetrators accountable under the law.

Of the 50, 22 are participants in the local Volunteer Lawyer Program. They are (MCBA members in bold):

- Redfield T. Baum, Jr.
- Alena Cantor
- Robert E. Cotin
- Jessica M. Cotter
- Richard N. Goldsmith
- Kyle Hirsch
- Hermilio Iniguez
- Danielle D. Janitch
- William Scott Jenkins, Jr.
- Thomas W. Jones
- Ruth Khalsa
- Stanford E. Lerch
- Katherine F. McLeod
- Vera E. Munoz
- Sharon Ottenberg
- Kevin J. Parker
- Robert W. Pickrell
- Jeffrey R. Simmons
- Nathan M. Smith
- Randall H. Warner
- Marie S. Zawocki

#### FINDING HIGHLY SKILLED PROJECT ATTORNEYS COMES AT A PRICE.

(like saving $2 million)
First PACE Testing Scholarship Available

The National Federation of Paralegal Associations (NFPA) recently announced its first ever PACE Scholarship. The scholarship will include the application fee, examination fee, study manual, and tuition for the online PACE review course.

Applicants must be a member of NFPA, must certify that they are PACE eligible, complete an application, and provide an essay of up to four pages on the importance of becoming a PACE Registered Paralegal (RP).

PACE was created in 1994 to test the competency level of experienced paralegals, and there are several eligibility categories. The exam has two tiers: Tier I addresses general legal issues and ethics; Tier II addresses specialty sections. The exam was developed by a professional testing firm, assisted by an independent task force including paralegals, lawyers, paralegal educators, and content specialists from the general public who are legal advocates.

According to NFPA, PACE provides a fair evaluation of the competencies of paralegals across practice areas and creates a professional level of expertise by which all paralegals can be evaluated.

Why take PACE? In the January/February 2007 issue of Legal Assistant Today, an article entitled “Back to the Books,” states that the reasons are as varied as the 500 plus RPs who have passed the exam. But they generally fall into the following categories:

- Career paralegals want to validate their expertise by taking a nationally-recognized certification exam;
- In the absence of regulation, or with regulation on the horizon, paralegals want to establish their own identifiable standards of professional excellence;
- National certification provides a sense of professional accomplishment;
- Certified paralegals can gain recognition and respect from peers;
- Some employers offer higher salary levels or bonuses for certification.

RPs must obtain 12 hours of continuing legal education (CLE), including at least two hours of ethics, every two years. The division offers CLE opportunities for RPs and other paralegals.

PACE Scholarship and NFPA information is available at http://www.paralegals.org/index.cfm.

The division plans to offer a review class for PACE. If interested, please contact Nancy Youngerman at pace@maricopaparalegals.org.

Don’t forget to register NOW for the Arizona Paralegal Conference scheduled Friday, September 28, 2007, at the Heard Museum, with 6.0 hours of CLE. Information and registration is available on the Paralegal Division’s Web site at www.maricopaparalegals.org.

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COURTWATCH continued from page 1

petitioned for post-conviction relief, asserting that his attorney should have explored other avenues of mitigation by interviewing other relatives. The trial court denied his petition, rejecting his contention that he would have allowed this evidence despite having refused the proffered testimony. The court noted that his “statements at sentencing belie his newfound sense of cooperation.”

He then sought habeas corpus. Unsuccessful in the district court and an appellate panel, Landrigan found sympathy from the en banc Ninth Circuit.

It held that his attorney had inadequately investigated other avenues of mitigation, rejecting the superior court’s finding that he would not have allowed this evidence. It called that an unreasonable determination of the facts. It surmised that had this other evidence been developed, Landrigan would not have refused it the way he refused the testimony from his wife and mother.

The Supreme Court shot the Ninth Circuit down, holding that Landrigan had not stated a colorable claim of ineffective assistance. Writing for the majority, Justice Clarence Thomas disagreed with the Ninth Circuit’s view of the facts and held that it had improperly applied the standard for granting habeas relief.

Thomas alluded to Landrigan’s statements to the trial judge that he had instructed his lawyer not to present mitigating evidence and that he did not believe that there was any relevant mitigating evidence.

“These statements,” Thomas wrote, “establish that the [superior] court’s determination of the facts was reasonable.” “[I]t is worth noting,” Thomas continued, “that the judge presiding on postconviction review was ideally situated to make this assessment because she is the same judge that sentenced Landrigan and discussed these issues with him.”

Disagreeing with the Ninth Circuit’s supposition that Landrigan might have allowed different mitigation evidence, Thomas pointed out that “Landrigan interrupted repeatedly when counsel tried to proffer anything that could have been considered mitigating. . . .” “This behavior confirms what is plain . . .; that Landrigan would have undermined the presentation of any mitigating evidence that his attorney might have uncovered.”

“In the constellation of refusals to have mitigating evidence presented,” Thomas wrote quoting the panel’s opinion, “this case is surely a bright star. No other case could illuminate the state of the client’s mind and the nature of counsel’s dilemma quite as brightly as this one. No flashes of insight could be more fulgurant that those which this record supplies.”

Thomas concluded that the superior and district court had properly rejected Landrigan’s claims. Joining him were Chief Justice Roberts and justices Scalia, Kennedy, and Alito.

Justice John Paul Stevens dissented. He opined that counsel’s failure to investigate...
For every grammar rule, one can usually find another grammar rule suggesting the opposite of the first rule. What is a writer to do?

Generally, most grammar experts advise writers to pick one set of rules (American versus British, for example) and follow those rules consistently. The problem is that not every legal writer agrees on which set of rules to follow. One need only look to the United States Supreme Court case of *Kansas v. Marsh*, 126 S. Ct. 2516 (2006), for an example. (In fact, even *Legal Times* published a humorous article about this case’s grammar in its October 17, 2006 edition.)

In this case, the constitutionality of a statute was in question. Justice Thomas, who wrote for the Court, consistently referred to the statute as “Kansas’ statute.” Justice Souter, who wrote the dissent, referred to the statute as “Kansas’s statute.”

So, which justice wrote the correct possessive form of a singular noun ending in s? Legal writing experts, such as Bryan Garner, overwhelmingly agree that Justice Souter was correct.

Although some grammar books allow writers to drop the ‘s at the end of a singular noun ending in s if the ‘s would make the word difficult to pronounce, this exception is not workable. An exception that allows discretion hardly ensures consistency.

Instead, Bryan Garner and other experts in American grammar recommend that all singular nouns ending in s must include an ‘s in order to indicate the possessive. There are only two limited, defined exceptions: (1) biblical names and (2) proper names that are formed from plural words.

Hopefully, if legal writers follow this rule, they will stay out of the news’s spotlight on inconsistent grammar!
mitigating facts had resulted in Landrigan only later learning of his serious psychological condition. A hearing was necessary he wrote; he called the majority’s conclusion that Landrigan would have rejected this evidence “pure guesswork.”

Joining him were justices Souter, Ginsburg, and Breyer.

Leaky dissolution agreement stymies husband

Think you can draft an airtight dissolution agreement, one that is absolutely clear? Maybe not.

Ivan (Budd) Cohen and Selma Carrillo Frey included a provision in their dissolution decree that seemed to conclusively allow Cohen to decide whether and how much to sell their house. But Division Two found the provision ambiguous enough to require a hearing. Cohen v. Frey, No. 2 CA-CV 2006-0155 (Ariz. App. May 9, 2007).

After the divorce, Cohen decided to sell the home to his sister for $100,000. Frey objected, but the trial court held that Cohen could sell the house for any price and on any terms. Frey appealed.

The pertinent provision of the decree looked pretty solid. It allowed Cohen “to continue to live therein.” Should Cohen sell, the proceeds would be split 50/50. And the provision appeared to give Cohen complete discretion to determine the amount and terms of any sale:

“If at any time a contract for the sale of the residence is entered into by Husband, then Husband shall notify Wife of the sale, provided, however, that consent or approval of Wife in respect of the sale is not required, and Husband shall have the right to sell for whatever price and on whatever terms he desires.”

The provision turned out not to be as airtight as it seemed.

On the appeal, Judge Philip G. Espinosa wrote, “there would be no need for Cohen to decide whether and how much to sell their house. But Division Two found the provision ambiguous enough to require a hearing. Cohen v. Frey, No. 2 CA-CV 2006-0155 (Ariz. App. May 9, 2007).”

After the divorce, Cohen decided to sell the home to his sister for $100,000. Frey objected, but the trial court held that Cohen could sell the house for any price and on any terms. Frey appealed.

The pertinent provision of the decree looked pretty solid. It allowed Cohen “to continue to live in the residence for so long as he pleases” or “to elect to sell the residence rather than to continue to live therein.”

Leonard Cohen sold, the proceeds would be split 50/50. And the provision appeared to give Leonard Cohen complete discretion to determine the amount and terms of any sale:

“If at any time a contract for the sale of the residence is entered into by Husband, then Husband shall notify Wife of the sale, provided, however, that consent or approval of Wife in respect of the sale is not required, and Husband shall have the right to sell for whatever price and on whatever terms he desires.”

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What’s It Like to “Try Out” for Judge? Tough!

By J.W. Brown

The Maricopa County Commission on Trial Court Appointments plays a significant role in deciding which judicial candidates are sent to the governor’s office for an interview and consideration for appointment to the bench.

The process isn’t a cakewalk.

Applicants must submit a voluminous document that details the minutiae of their education, careers, trial records, community service, personal history, and disciplinary actions, if any. The commissioners review the applications, select top candidates who will be interviewed, conduct public interviews, and select at least three nominees per vacancy to provide to the governor for consideration and appointment.

The public is invited to watch the process and individuals may speak on behalf of the candidates. But, in reality, the sessions may attract only a handful of spectators and supporters.

Before the interviews begin, commissioners spend time toward the beginning of the session discussing each candidate. Each applicant to be interviewed has been thoroughly evaluated during the time between the application deadline and interview sessions.

One of the commissioners is assigned to review an individual’s professional and personal background and verbally presents her or his findings to the rest of the commission. The reviewer can make phone calls to solicit information from lawyers, judges and others who are familiar with the candidate’s reputation and capabilities. The commissioner who conducts the due diligence review advises the other commissioners on the candidate’s qualifications.

During this phase of the selection process, applicants begin to arrive, and wait in a room nearby. When commission members are ready, the applicant is shown into the meeting room, consisting of a large conference table with members seated around, and rows of chairs for observers. The applicant is the center of attention as they are questioned and assessed.

Spectators are admonished to not discuss the questions posed during the interviews with any of the other applicants. Fairness is an important component of the process. And, each applicant is asked the same list of questions.

Interviews are spaced at 20-minute intervals which may seem inadequate for those individuals who have spent years—or a lifetime—hoping to get an appointment to the bench. Differences between the applicants begin to become evident during the questioning. Everyone is well prepared. Personality and experience shine through. Judicial demeanor is one of the factors to be considered, and it is during the questioning that patience, resourcefulness, intelligence, maturity, confidence, egotism and credibility come out.

Applicants must be at least 30 years old, admitted to practice law, a resident of Arizona for the past five years and a resident of Maricopa County for the past year.

It’s not uncommon for Superior Court commissioners to apply for a judicial appointment.

Although they have experience on the bench and familiarity with the court’s practices, procedures and processes, commissioners aren’t guaranteed an appointment. Some apply repeatedly before finally becoming a judge. Some, who watch private or public lawyers get appointed instead, abandon the quest.

After all of the candidates have been interviewed, commission members discuss the applicants’ interviews. This step of the process may be conducted in an executive session. After the discussion concludes, it is time for the vote.

All voting is conducted in public. Individuals who are selected as nominees will move up to the next step in the process, which is an interview by the governor. These sessions are not public. The Governor’s Office alerts the successful candidate, the others, the superior court presiding judge, and the public.

The newly appointed judge then makes the arrangements necessary to finalize pending matters in their current job and begin meeting with superior court officials to begin the transition to the bench.

The new judge will be paid $135,844 annually. Additional information about the commission, merit selection, or the application process is available at the Arizona Supreme Court’s Website www.supreme.state.az.us. •

Note: The writer based this article on the observation of the commission’s most recent public selection process for a new Superior Court judge. Nine applicants were interviewed and considered. The governor appointed Joseph Kreamer, a private attorney, to fill the vacancy created by the death of Judge John Gaylord, who was killed in a traffic accident in April.

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MOVES & NEW HIRES...

The law firm of Dodge, Anderson, Mableson, Steiner, Jones & Horowitz, Ltd. announces that Jeffrey Coughlin has joined the firm as a partner. Mr. Coughlin is admitted in the states of Pennsylvania, Connecticut, and Arizona and has been practicing law for 19 years. He will continue his general litigation practice involving insurance defense, construction defect, employment law, plaintiff’s personal injury, real estate and appellate work.

Mr. Coughlin will continue to represent contractors and homeowners in proceedings involving the Arizona Registrar of Contractors and the Office of Administrative Hearings. He will also continue to represent homeowners and homeowners’ associations in drafting, interpreting and litigating disputes concerning the implementation of their governing documents.

Barbara Rodriguez-Pashkowski has joined Gust Rosenfeld PLC as a member (partner) in its environmental practice group. Her practice focuses on environmental law and compliance, including due diligence, air quality permitting, asbestos, underground storage tanks, state Superfund, litigation, legislation and environmental rule writing.

Prior to joining Gust Rosenfeld, Rodriguez-Pashkowski was chief counsel of the Arizona Department of Environmental Quality (ADEQ).

HONORS & ACHIEVEMENTS...

Snell & Wilmer has announced that the Inaugural Great Women of Gaming Conference selected partner Heidi McNeil Staudenmaier as one of the Top 10 Great Women in Gaming for 2006. This honor was bestowed upon the Phoenix-based attorney during the first annual conference held in Las Vegas in February 2007.

The conference and awards were sponsored by Casino Enterprise Management magazine. A panel of judges selected the Top 10 Great Women from among numerous nominees. Staudenmaier was the only lawyer chosen for the honor.

Staudenmaier’s practice is concentrated in Indian law, gaming law and business litigation. She is admitted to the Supreme Court of Arizona, the U.S. District Court for the District of Arizona, the Ninth and Tenth Circuit Court of Appeals and is a frequent speaker and author on general litigation, Indian law and gaming issues.

Patricia Lee Refo, a partner with Snell & Wilmer, has been named one of the 50 Most Influential Women Lawyers in America by the National Law Journal. Refo was recognized for her extensive involvement with the American Bar Association, including serving as chair of the Section of Litigation in 2003 and 2004.

Refo also co-chairs fundraising efforts for the Sandra Day O’Connor College of Law at Arizona State University, where she just was honored with the school’s Distinguished Achievement Medal. She has also served on the Advisory Committee on the Federal Rules of Evidence, and sits in the ABA House of Delegates.

OTHER NEWS...

Bryan Cave LLP has announced the opening of an office in Hamburg, Germany. The office is expected to be open and operating by August 1. This follows the May 17 announcement that Bryan Cave is opening an office in Milan, Italy. The Hamburg office will be led by Dr. Michael Leue, currently a partner with the German firm Buse Heberer Fromm. It is anticipated that a group of four lawyers also will initially join Bryan Cave’s Hamburg office, with additional partners and associates joining in the near future. Lawyers in the Hamburg office will provide a broad range of legal services to the firm’s business clients, including an initial focus on commercial transactions, corporate, finance and mergers and acquisitions.

“Bryan Cave has a long history of practicing in the German market, as well as German-speaking partners in Italy, the UK and the US who have substantial experience with German clients,” said Fred Bartelsmeyer, Bryan Cave partner who will serve as liaison between Bryan Cave’s new Milan and Hamburg offices and the remainder of the firm. “Consistent with our one-firm philosophy, the Hamburg office will be supported by teams formed across practice groups and between offices.”

Election for MCBA Board of Directors
Deadline: 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.

At the start of its annual national conference, Ogletree, Deakins, Nash, Smoak & Stewart P.C. hosted a golf tournament for attendees, raising $10,000 to benefit Childhelp, a Scottsdale-based non-profit dedicated to prevention and treatment of child abuse. At this check presentation, Eric Dowell, managing shareholder at the Phoenix office, and Gray Geddie, managing shareholder, pose with representatives of Childhelp.

City of Phoenix
Accepting Applications for
MUNICIPAL COURT JUDGE

The Judicial Selection Advisory Board is accepting applications for the position of Judge of the Phoenix Municipal Court.

DUTIES

Applies relevant state statutes, city ordinances, Supreme Court Rules, and case law when presiding over a variety of court cases including: criminal misdemeanor complaints, traffic charges, jury and non-jury trials, pre-trial conferences, arraignments, motions, and other court proceedings. This position is filled by appointment of the City Council to a specified term.

REQUIREMENTS

Admission to the Arizona State Bar and a minimum of five years practice of law or equivalent legal experience is required, with preference to at least five years of law practice in Arizona.

Applications are available through the Judicial Selection Advisory Board, c/o Phoenix Municipal Court, 300 W. Washington Street, Phoenix, AZ 85003; (602) 262-1608 or through the Phoenix Municipal Court’s Web site at http://phoenix.gov/COURT/judapp.html.

Applications must be received no later than 5:00 p.m., July 20, 2007.

Successful applicants will be required to take and pass a drug test and employment will be contingent upon successful completion of any required drug test and consideration of background, references, and other job-related selection information. AAFEO/D Employee.
If we adopt the same rules of evidence that have worked so well in arbitration proceedings to the short trial, then affidavits of experts, medical records, medical bills, repair bills, and other documents can be received in evidence without requiring doctors and other experts to appear personally. Such a procedure will serve to provide litigants with a high quality, inexpensive means to resolve their disputes.

Because jury trials require someone with judicial skills to preside over the trial, judges pro tem can be trained and utilized for this task, and should receive adequate compensation for their efforts. There should be no difficulty in recruiting lawyers to serve as judges pro tem because with the trial lasting only one day, the disruption to a lawyer’s practice will be kept to a minimum.

Because our Constitution gives either party the right to appeal a judgment of the Superior Court, appeals cannot be eliminated without amending the Constitution. However, to discourage frivolous appeals there can be provisions requiring that the party that appeals a short trial judgment must pay the other party’s attorney’s fees unless the appeal results in a reversal.

The Arizona Supreme Court should not permit our judicial system to remain mired in procedures that are obsolete. The present court-annexed compulsory arbitration program has not served its intended purpose for many years.

It is being used to exhaust the resources of the economically disadvantaged by requiring them to pay attorney’s fees. These hearings are always appealed by the insurance companies with a view to forcing inadequate settlements on injured people and prolonging the resolution of cases that could otherwise be resolved with far more effective methods.

Jack Levine is a sole practitioner. He is a past chair of the Trial Practice Section of the State Bar of Arizona and a past president of the Arizona Trial Lawyers Association.
The featured expert this month is Philip W. Hotchkiss, CFP®, vice president and wealth strategist at Northern Trust’s Sun Lakes office. With more than 20 years experience, he is responsible for new business development and advising clients on acquiring, growing and preserving their wealth.

Hotchkiss addresses the importance of choosing the right team when deciding to sell a business. With a strong group in place, a business owner can count on an efficient sale with potentially high returns. No matter how large or small, the sale of a business is a complex event and assembling the right team of advisors can help the sellers achieve maximum value within their timeframe.

Q. What is involved in assembling the advisory team?

A. Successful business owners build their companies with guidance from their core team, including attorneys, key managers, accountants and family members. In a sale, external advisors such as investment bankers and transaction counsel also play critical roles. There are several criteria to evaluate external advisors.

Advisors’ experience should match the transaction’s complexity and equal the sophistication of the buyer’s team. For example, if the company could be sold to a private equity firm, it’s critical that the owner assembles a top-tier advisory team to mirror the expertise of the private equity representatives.

If it is more likely that the company will be sold to another small business, owners may choose a high-quality, smaller firm where they can get personalized attention for the specific services they require without overpaying. Prospective advisors should also have experience with comparable transactions.

Q. How do you best determine the seller’s objectives?

A. Together with the business owner, the team of advisors can identify potential long-term objectives from the transaction, for example:

• **Full sale for maximum liquidity.** Owner sells the entire business and leaves to pursue new endeavors.
• **Partial liquidity with retention of some assets or ownership.** Owner negotiates with a private equity fund buyer to ensure a second liquidity event in 7 to 10 years.
• **Restructure of company.** Some large privately owned companies decide to restructure as several subsidiaries under one holding company. One subsidiary can go public, be sold, or engage in a joint venture with another company.
• **Employee Stock Ownership Plan strategies.** Provides liquidity to the owner with a deferred tax on the capital gain. Owners may also want to reward employees with stock participation or reduce the outstanding shares so that acquisition of non-ESOP shares is more affordable.

After clarifying objectives, the team can identify additional external advisors as needed.

Q. What goes into determining the value of the business?

A. A professional, independent valuation is essential for a successful sale. When a transaction lends itself to an auction process, the prospective investment bankers will provide valuations as part of their services. In cases where there are only a small number of potential buyers, an independent valuation firm can provide useful information. The firm can estimate the company’s fair market value, analyze the industry’s value drivers and, if available, provide a range of premium prices that strategic buyers might be willing to pay.

Philip Hotchkiss can be reached at (480) 480-883-6807 or via email at pwh1@ntrs.com. For more information on Northern Trust, please visit their website at www.northerntrust.com.

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The leadership and staff of the MCBA look forward to showing off this new gem to the legal community. Plans are underway for a grand opening event to be held in October of this year, which will feature tours of the facility and a celebration of a new milestone in the history of the MCBA. We will look forward to your attendance at that time.

This new conference room can hold up to 80 people and can be divided into two smaller spaces. MCBA expects to conduct most of its CLE programs in the renovated headquarters.

With moving-in day only a month away, these Belfor painters still have a lot of work to do.

Allen Kimbrough, MCBA executive director, and the Belfor construction superintendent compare color samples with a painted wall.

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