MCBA Held Its Annual Meeting In February

E verthing has a history. This history, whether it is family history or the history of the United States, forms a foundation that can be built upon in future years. The beginnings of the foundation of the Maricopa County Bar Association were laid in the early years of the Twentieth Century by leaders of the bar. As the years passed, every President has added to that foundation, brick by brick, year by year. This year’s Annual Meeting was held in part to honor those living individuals who have dedicated parts of their lives, time, and effort to build the MCBA into what it is today.

The Annual Meeting and Reception was held Wednesday, February 21, 2007 at the Sandra Day O’Connor Federal Courthouse. Enshrouded in the glass foyer, Federal and state court judges mingled with past presidents, board members, and other attorneys who attended this event. Discussions were lively, food was delicious and drinks were offered. Past presidents, recognizable from the white carnation boutonnieres pinned to the lapels of their jackets, represented decades of the MCBA’s rich history—a history that became more tangible as the number of past presidents in attendance increased. Older past presidents shook hands, talked, and smiled at the more recent presidents who have walked in the path laid before them by their predecessors.

As the event moved from the foyer to the jury assembly room, the ambiance of the evening changed from one of networking to one of recognition. It was almost impossible to avoid feeling pride in the Association as past presidents were asked to stand and receive recognition from the current president, the Hon. Louis A. Araneta. In addition to remarks given by Chief Justice Ruth McGregor and MCBA President Araneta, several awards were presented. Past Board members were recognized for their outstanding service to the MCBA. Among those were Amy S. Davis, Lori Higuera, Faith Klepper, Julie LaFave, LaNelle Owens, and Andrew B. Turk, each of whom completed Board service in 2006. JoAna Saint-George, Immediate Past President, made remarks honoring her predecessors.

The MCBA’s Annual meeting was a great networking opportunity for all who attended.

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MCBA Young Lawyers Division’s Law Week is Coming Up

L aw Day is celebrated on May 1. Each year the Maricopa County Bar Association’s Young Lawyers’ Division celebrates Law Day with a week-long series of events known as Law Week. The theme for 2007 is “Liberty Under Law: Empowering Youth, Assuring Democracy.”

In an effort to reach a broad spectrum of the Maricopa County legal community, Law Week includes a number of events, including, Ask-a-Lawyer Fair, Phone-a-Lawyer Fair, essay contest for seventh and eighth grade students and a continuing legal education seminar and happy hour for attorneys.

To kick off Law Week, volunteer attorneys will participate in the Ask-a-Lawyer Fair at Lamson College in Tempe, Arizona on Saturday, April 28, 2007. The event will be promoted to members of the community to attend and ask free legal questions. Lamson College students in the paralegal study program volunteer their time and conduct pre-screening interviews to ensure the attorney volunteer is able to respond to the question. Volunteers are needed for two shifts. The first shift begins at 9 a.m. and ends at 12:00. The second shift begins at 12:00 p.m. and ends at 3:00 p.m.

The Phone-a-Lawyer Fair will be held on Tuesday, May 1, 2007 at Arizona See Law Week page 7.
But For Volunteerism and Professionalism

My column this month is a hodgepodge of information about the MCBA. After the fire to its building last year, MCBA continues to rebuild literally and figuratively. This summer of 2007 will see the MCBA staff return to remodeled interior offices and meeting rooms at 303 East Palm Lane in Phoenix. Our enlarged 100 person meeting room will allow many Divisions and Sections to host their CLE seminars on site.

In February, MCBA sent a brief e-mail survey to members asking for your input on how MCBA can better serve you. The questions included: why did you join and why do you belong and what services can MCBA provide. If you have not yet answered the survey, I encourage you to do so. Also, please feel free to call Executive Director Allen Kimbrough (602) 257-4200 or me at (602) 506-1179 with your ideas or suggestions.

With the help of Allen Kimbrough, the Board of Directors, Division and Section officers and staff, MCBA is seeking to increase its CLE programs, membership, and the Lawyer Referral Service (LRS). With over 12,000 attorneys in Maricopa County it may be easy to feel disconnected with the local legal community. The MCBA has fifteen Sections and Divisions with monthly meetings for members to connect with other practitioners, to plan future CLE’s and to address current practice issues.

MCBA Mission goals of service to the public and judiciary

The Mission statement of the MCBA is to be a vehicle of service for the benefit of: (1) its members, (2) the legal profession, (3) the judicial system, and (4) the public. Besides providing service to members, it is my desire to give opportunities to attorneys and judges to provide public service to others. As a judicial officer, I will encourage my colleagues to continue to offer their time and effort to inform the public about the third branch of government and its vital role to our democracy. Many judicial officers already give their time and effort to inform the public about the judicial system. They are CLE presenters or panel members. They speak to groups of students in the courthouses and in their classrooms. They also talk to lawyers about what judges do and why they do it. Presiding Judge Barbara Mundell has presented numerous community outreach forums throughout the county. It is my hope that the MCBA can help increase public understanding of the judicial system in Arizona, is another measurement that will need to achieve one or more of these to remain competitive.

In Arizona, another measurement for the legal community to ascertain a paralegal’s competency. It reflects a paralegal’s dedication to the profession and continuing education (due to minimum CLE requirements).

There are several reasons that paralegals want to be certified or registered: (1) several states have paralegal certification programs including California, Delaware, Florida, Louisiana, Ohio, and Texas, with some states contemplating regulation; (2) certification or registration may result in higher salaries and specialization. It is likely that paralegals will need to achieve one or more of these to want to be certified or registered. Her reasons were valid: (1) several law firms charge higher fees for work performed by certified or registered paralegals, increasing revenue, and (4) certification or registration can increase a paralegal’s marketability.

Paralegals become Certified Legal Assistants (CLA) or Certified Paralegals (CP) by passing the Certified Legal Assistant exam from NALA, or Registered Paralegals (RP) by passing the Paralegal Advanced Competency Exam (PACE) from the National Federation of Paralegal Associations (NFPA). Each program has educational and work experience requirements for exam eligibility.

The Paralegal Division offers review classes to assist paralegals preparing for the CLA exam, and seeks interested paralegals for the PACE review course. Please contact Nancy Youngerman at cla@maricopaparalegals.org or pace@maricopaparalegals.org for more information.

Please remember that the Division has two upcoming events, and we invite you to join us: the Division’s Annual Charity Softball Tournament on Saturday, March 10, 2007, in Mesa, and the Quarterly Division Meeting (includes CLE credit) on Tuesday, March 20, at 5:30 p.m. at Gust Rosenfield in Phoenix. Information about these, and other Division events, is available at www.maricopaparalegals.org.

Early in our legal careers, we have a unique opportunity to develop good habits and avoid having to break bad ones in the future. One practice worthy of such cultivation is professionalism toward everyone—not just lawyers and judges—EVERYONE.

The importance of professional behavior seems obvious. We’ve all heard the saying, “You catch more flies with honey than vinegar.” When you are trying to get a “rush” transcript, your chance of success increases by acknowledging the reporter’s busy schedule and using a little sweet talk rather than issuing demands and references to how much more valuable your time is than his. Also, though Maricopa County is growing rapidly, it’s still a relatively small legal community and bad reputations travel fast. Finally, and I think most importantly, uncivil behavior has a detrimental impact on the entire profession. It is not unusual to hear non-lawyers remark that someone seems “too nice” to be a lawyer—as if the two are mutually exclusive.

So, given all the benefits derived from professionalism, the question becomes why is it not universally practiced. I think the answer is that sometimes being rude and donning a superior “lawyer” attitude gets results. Support staff occasionally respond more diligently to angry, condescending demands than to courteous requests. This is unfortunate because it reinforces the bad behavior. And, even worse, it encourages us to actually believe that we are better and more important than the non-lawyers who work with us.

As lawyers we all get busy and stressed, and perhaps there is some truth to our perception that our lives are busier and more stressful than others. I know that I have indulged in this excuse for bad behavior before. But as I write this column, I am reminded of the importance of treating everyone, especially those who don’t have letters behind their names, with courtesy and respect. Hopefully we can all take this opportunity, while we are still young enough to learn new tricks, to begin practicing our profession with true professionalism.

Paralegal Certification – Is It Right for You?

A colleague once told me she was insulted when it was suggested that she become certified or registered. Her reasons were valid: her education, experience, work product, and work ethic should be enough to determine her qualifications. The reality is a trend toward paralegal certification, registration, regulation, and specialization. It is likely that paralegals will need to achieve one or more of these to want to be certified or registered.

Certification or registration, although not required in Arizona, is another measurement for the legal community to ascertain a paralegal’s competency. It reflects a paralegal’s dedication to the profession and continuing education (due to minimum CLE requirements).

There are several reasons that paralegals want to be certified or registered: (1) several states have paralegal certification programs including California, Delaware, Florida, Louisiana, Ohio, and Texas, with some states contemplating regulation; (2) certification or registration may result in higher salaries and increased utilization of a paralegal’s skills, according to a 2004 salary survey by the National Association of Legal Assistants (NALA) (www.nala.org/Survey_Tahb.htm); (3) some law firms charge higher fees for work performed by certified or registered paralegals, increasing revenue, and (4) certification or registration can increase a paralegal’s marketability.

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New Members Join MCBA Board Of Directors

The MCBA Board of Directors is pleased to welcome its newest members as of January 1, 2007.

Brian M. Bergin of the Rose Law Group, Keelan S. Bodow of the Arizona Attorney General’s Office, LaShawn Jenkins of Quarles & Brady, and Jenny Pelton of Ryley, Carlock & Applewhite were elected by the popular vote of the membership in the fall elections and will serve two-year terms expiring at the end of 2008. The Hon. Brian Rees was re-elected to a two year term.

David Funkhouser III of Quarles & Brady and William Kastin of Snell & Wilmer were appointed by the Board to fill unexpired terms ending in December 2007.

Also joining the Board for the first time as voting members were Monica Rappa of Gust Rosenfeld, President of the Paralegal Division, and T. J. Ryan of Faegre Ryan Goldberg Arnold & Gittler, Designate of the Young Lawyers Division.

Joining the Executive Committee for the first time is Jennifer Green of the Maricopa County Attorney’s Office, who was elected to serve as Secretary of the Association in 2007. Other officers for 2007 are: The Hon. Louis A. Araneta, President; The Hon. Glenn M. Davis, President-Elect; Kevin Quigley of Quarles & Brady, Treasurer; and Joana Saint-George of Kutak Rock, Immediate Past President.

MCBA ANNOUNCEMENTS

Deadline for Renewal

Letters and invoices have been mailed to all 2006 MCBA members who have not yet renewed their membership for 2007. In order not to lose out on the many benefits of being an MCBA member (including receipt of The Maricopa Lawyer and reduced-price CLE), please respond by March 31, 2007. If you have misplaced your invoice, feel free to call the Membership Department at 602-257-4200.

MCBA looking for CLE and LRS Committee Members

The Maricopa County Bar Association is looking for members for both their CLE and LRS committees.

For more information on joining either committee contact Allen Kimbrough at 602-257-4200 or akimbrough@mcbabar.org

Join the MCBA Corporate Counsel Division for their Monthly luncheon

The Maricopa County Bar Association Corporate Counsel Division holds a monthly luncheon at the university Club on the last Friday of every month. Each luncheon includes one hour of CLE credit. For more information on upcoming luncheon topics, log on to the Corporate Counsel Division’s page on the MCBA website, www.maricopabar.org.

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the administration of justice by working together with the Arizona Supreme Court, State Bar of Arizona and the Arizona Foundation for Legal Services and Education.

Similarly, it is my hope that MCBA will collaborate more closely with sister bar organizations in Maricopa County to give you our members more opportunities for public service. The sister bars are: Arizona Women Lawyers Association, Maricopa Chapter; Arizona Asian American Bar Association; Hayzel B. Daniels African American Bar Association; Los Abogados Hispanic Bar Association; East Valley Bar Association; West Maricopa County Bar Association and the Scottsdale Bar Association.

Of course, Community Legal Services and the Volunteer Lawyers Project continue to provide many opportunities for pro bono service. The rebuilding continues and I look forward to continue working with you on the many challenges and opportunities throughout the year.

The MCBA’s annual reception and informal meeting was held on February 21, 2007 at the Sandra Day O’Connor United States Courthouse. A good time was had by all. Chief Justice Ruth McGregor, past MCBA Presidents were recognized and Justice Michael Ryan and Court of Appeals Judge Ann Timmer were also recognized for their work on the Diversity Task force.
Upon joining the bench, Donofrio will now have 55 court commissioners. Management in late January. Superior Court isated by the Maricopa County of Budget and commissioner. Instead he fills a position created by the Maricopa County Attorney’s Office has 55 court commissioners.

Donofrio is not replacing a departing deputy county attorney. On March 5, shortly after his retirement as a judge, he will be working in Initial Appearance (IA) Court, starting his new career as court commissioner. Donofrio will be working in Initial Appearance (IA) Court, a 24-hour court inside the Jackson Street Jail in downtown Phoenix. Individuals arrested on suspicion of committing felonies must appear before a judicial officer within 24 hours of being taken into custody to be advised of the reason for their arrest. IA Commissioners assure there is sufficient probable cause to justify the arrest, set bail and set the next court date. Following training, Donofrio will assume the calendar of Commissioner James Morrow, who moves to an Early Disposition Court calendar.

Donofrio received his Bachelor of Science degree in 1973 at Arizona State University and his juris doctorate in 1976 from Pepperdine University College of Law. Prior to joining the Maricopa County Attorney’s Office, he worked as a law clerk for two years for the Arizona Court of Appeals. In 1980, Donofrio joined the Maricopa County Attorney’s Office, where he worked as a law clerk for two years for the Arizona Court of Appeals. He joined the bench in 1982 and served as a judge until his retirement in 2007.

Donofrio believes that the new position will allow him to continue to serve the community in a different way. He looks forward to working with the other court commissioners and contributing to the success of the Maricopa County Superior Court.

The three top students from each grade will be recognized at an awards ceremony at the Arizona Supreme Court. On May 2, 2007, Lynda Shely, from The Shely Firm will be speaking at the continuing legal education seminar. The CLE topic is Ten Things Never to Do as a Lawyer or a Judge. This event will be held at a local restaurant with a happy hour to follow. For a small fee, participants will be able to attend and receive one hour of ethics continuing legal education credit and will be able to meet fellow attorneys and judges in Maricopa County.

Volunteer lawyers are needed for the Ask-a-Lawyer and Phone-a-Lawyer events. In addition, volunteer lawyers are needed to grade student essays. If you are interested or have any questions, please contact Carrie A. Kercmar at Kercmar & Mitchell, PLLC, cak@k-mlaw.com or (480) 421-1001.

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The Phone-a-Lawyer Fair will be held on Tuesday, May 1, 2007 at Arizona State University. The event will be broadcast on KAET Channel 8 from 6:00 p.m. to 9:00 p.m. The event will be promoted to members of the community to ask free legal questions.

In addition, an essay contest will be sent to Maricopa County schools that have seventh and eighth grade students. The students are invited to participate in the essay contest that depicts the theme “Liberty Under Law: Empowering Youth, Assuring Democracy.”

Donofrio received his Bachelor of Science degree in 1973 at Arizona State University and his juris doctorate in 1976 from Pepperdine University College of Law. Prior to joining the Maricopa County Attorney’s Office, he worked as a law clerk for two years for the Arizona Court of Appeals. In 1980, he joined the bench in 1982 and served as a judge until his retirement in 2007.
Rotations — moving judges and commissioners to new assignments — occur throughout the year, but over the past few years, June has become the “season” for the majority of assignment changes that occur in Superior Court.

Presiding Judge Barbara Rodriguez Mundell began formulating this year’s rotation plan last summer, and in January announced the changes, impacting 30 of the court’s 94 judges and 16 of its 55 commissioners. A handful of reassignments have already begun, because of judicial retirements that require adjustments before June.

Changes that have already occurred include the reassignment of Judge Bethany Hicks from a criminal to civil calendar, which became effective on Jan. 22. Her new assignment is with the civil calendar vacated by Colleen F. Campbell’s retirement. Pro Tem Judge Robert Gottfried is temporarily handling Hicks’ criminal calendar until a new judge is appointed by the governor. Once that happens, Judge George Foster will assume Hicks’ criminal calendar, while the newly appointed judge will take Foster’s juvenile calendar. Pro Tem Judge Gottfried will return to his special assignment criminal calendar.

Judge Edward Burke moved from criminal to civil on Feb. 1, to assume the calendar of newly retired Judge Barry Schneider. Pro Tem Judge Bernard Dougherty is handling Burke’s criminal calendar until the second new judge is appointed to fill Schneider’s vacancy. Judge Larry Grant will assume the criminal calendar being handled by Dougherty and the new judge will take Grant’s family court assignment.

The March 22 retirement of Judge Pamela Franks, creates an additional wave of new assignments. Judge Cathy Holt moves from her criminal assignment to take Franks’ juvenile court calendar. Judge Jeanne Garcia assumes Holt’s criminal calendar. When the governor appoints a new judge for the Franks’ vacancy, he or she will be assigned to Garcia’s family court calendar.

A few additional changes occur before June. Newly appointed commissioner, Charles Donofrio, starts on Monday, March 5, assigned to Initial Appearance (IA) Court. After completing training, he assumes the IA calendar of Commissioner James Morrow. That triggers a new assignment for Morrow, who takes the Early Disposition Court assignment of Commissioner Shelle Smith. That change moves Smith to the therapeutic court assignment of Judge Carey Hyatt (Drug Court, Domestic Violence Court). After a period of training Smith, Hyatt moves to a newly created civil calendar. That change is expected to take place on Monday, April 23.

The remaining planned rotations will occur between June 20 and 22, while the judges and commissioners are attending the annual judicial conference.

Judge Mundell is changing four departmental presiding judges. The new assignments include: Civil Presiding Judge Mark Aceto; Criminal Presiding Judge Anna Baca;

Superior Court Assignments Change

continued from page 1

dent, was presented a commemorative plaque which was accepted by her husband Steve. 2005 President, Jay A. Zweig, was honored for his invaluable contributions to the MCBA during 2006, particularly as co-chair of the Executive Director Search Committee. Judge Ann Scott Timmer and Justice Michael D. Ryan were recognized for their service as co-chairs of the Task Force on the Recruitment and Retention of Minority and Women Lawyers.

The evening ended with gratitude expressed to those present for continuing to work toward the goals set in motion so long ago by the MCBA’s first leader. ■
CourtWatch
continued from page 1

Johnson’s lawyers filed a counterclaim, alleging that the press announcement had made numerous false and defamatory statements. While maintaining the truth of his statements, the Attorney General moved to dismiss the counterclaim, asserting that he was protected by absolute immunity. When the trial court denied the motion, he filed a petition for special action with the Arizona Court of Appeals.

Judge Patricia A. Orozco wrote the majority opinion, siding with Johnson and the trial court. “Absolute immunity absolves an individual from legal liability from ‘all acts, no matter how malicious,’ whereas qualified immunity shields ‘only those acts done in good faith,’” she wrote, quoting Chamberlain v. Mathis, 151 Ariz. 551, 729 P.2d 905 (1986). Chamberlain had compared the interests favoring one over the other. Favoring absolute immunity is the notion that government executives should be able to perform their official duties without having to justify their past actions in court. This is countered by “[t]he legitimate complaints of those injured by [a] government official’s’ malicious comments.”

Orozco alluded to the supreme court’s recognition that “qualified immunity [alone] may offer executive public officials insufficient protection if plaintiffs, by merely alleging malice can force public officials to engage in intensive discovery and cumbersome, time-consuming” litigation. “The supreme court had therefore provided additional protection in the form of a higher standard of proof: plaintiffs must show objective, rather than subjective, malice on the public official’s part. The official is protected if he or she could have reasonably believed that the defamatory statement was true and that publishing it was appropriate in the circumstances.

This additional protection led Orozco to reject “the Attorney General’s argument that being forced to defend against the defamation counterclaim will impair his ability to effectively represent the client agencies in the main suit against… Johnson...” She relied primarily on the trial judge’s plan to conduct a separate trial for the counterclaim, but she also alluded to his open invitation to the Attorney General to test Johnson’s case with a motion for summary judgment. She “conclude[d] that the Attorney General’s ability to prosecute the underlying case against the Johnson Defendants will not be sufficiently impaired to require granting him absolute immunity.”

Orozco rejected the Attorney General’s floodgates argument—that not granting absolute immunity would allow defendants to use defamation claims as an easy defense to civil enforcement actions, leading the Attorney General and assistant attorneys general to hesitate before filing and prosecuting them. She decided that there was no showing that qualified immunity was insufficient protection against the problem. “Adding an objective malice standard to qualified immunity provides additional protection because it ‘would tend to allow significant judicial control of the jury through directed verdicts and to permit many cases to be disposed of on summary judgment,’” she wrote, quoting a law review article.

Orozco next turned the Attorney General’s argument that public policy demanded absolute immunity because he had to make public reports on his official actions, including lawsuits that he pursued. “Although the Attorney General is required to provide an annual report of his office’s activities to the Governor and the Legislature…, none of the statutes delineating his duties… require him to issue press releases, communicate with the public regarding pending cases or provide information relating to defendants outside of court proceedings.”

Orozco declined to align the court with the United States Supreme Court, other states, and the Restatement, which hold that “the heads of executive departments are entitled to a greater degree of protection from defamation claims than lesser governmental officials because ‘the higher the post, the broader the range of responsibilities, and the wider the scope of discretion.’” The Arizona Supreme Court, Orozco wrote, had rejected this proposition in Chamberlain.

Holding in favor of the Attorney General, Orozco noted, would allow the other state officials to avoid liability for their defamatory statements simply by having the Attorney General make public reports. She wrote that the opinion did not address the situation when “the Attorney General possesses statutory authority to sue without the involvement of a state agency or officer, including criminal prosecutions and consumer protection.” “In such situations,” she wrote, “the Attorney General is not simply acting for state officials who, under Chamberlain, are entitled to only qualified immunity.”

Joining Orozco in denying special-action relief was Judge Patrick Irvine.

Judge Philip Hall dissented. He took issue with the majority’s treatment of Chamberlain, stating the supreme court there only rejected absolute immunity for the Director of the Department of Health Services; it “did not foreclose the possibility that absolute immunity might be appropriate for other high-level executive officers.”

Hall noted that “it appears that every other state that recognizes the concept of high-level executive officer immunity extends such a defense to its attorney general.” He opined that “if the doctrine of absolute immunity for high-level executive officers is to have any real application in Arizona, a constitutional executive officer such as the attorney general must be absolutely privileged to make defamatory statements when acting pursuant to the authority of his office.” He accused the majority of construing “the Chamberlain exception [to liability for state actions] so narrowly as to render it, as a practical matter, non-existent.” Hall accused the majority of misunderstanding the difference between governmental, or sovereign, immunity and immunity for high-level government executives, and thus misconstruing Chamberlain’s import.

Hall stated that the majority had erred in focusing on absolute immunity simply as personal protection for the official involved. Referring to the Restatement, he opined that “absolute immunity is intended to protect the public’s interest in the effective operation of government.” “The public interest in encouraging public officials to speak with complete candor without fear of civil liability reaches its zenith when the public official is a high-level executive official such as the attorney general,” he believed.

“The attorney general is Arizona’s chief legal officer,” Hall wrote, “and is one of only five constitutional officers comprising the executive department, all of whom are elected.” “As such,” he continued, “he is the people’s lawyer and it is paramount that he be able to communicate fully and effectively with the public—his ‘client’—regarding the activities of his office. The harm to the public would be substantial if an attorney general hesitated in explaining the activities of his office for fear of otherwise incurring tort liability.”

He noted that in addition to the Restatement, “every state court that recognizes some form of high-level executive officer immunity that has addressed the issue has concluded that its attorney general is absolutely immune from common-law liability for such communications, including press releases or similar statements concerning litigation.” Contrary to the majority’s conclusion, Hall opined, Chamberlain had not rejected the Restatement position. Instead, he wrote, the Arizona Supreme Court had there only rejected the United States Supreme Court’s holding that all executive and administrative officials are absolutely protected. In so doing, the Arizona high court had left open the question whether to grant absolute immunity to the state’s highest officials.

“[N]otwithstanding the majority’s contrary suggestion,” wrote, “Chamberlain did not establish a rigid rule precluding absolute immunity for all state executive officials.” “Instead,” he continued, “the supreme court left the door open for some high-level executive officers to assert absolute immunity in a manner consistent with [the] Restatement…. By its decision today, the majority closes that door.”

It did not matter to Hall that no statute requires the Attorney General to issue media advisories when he files suits. “[N]otwithstanding the lack of specific statutory authorization, the public nonetheless has a right to be informed by the attorney general of actions taken by him in his official capacity.”

Editor’s note: At press time, the Attorney General’s Office was considering filing a petition for review with the Arizona Supreme Court. In his position as an assistant attorney general, Daniel P. Schaack, may be involved in the preparation and presentation of any petition for review.

Supreme Court authority establishes that prison officials must allow prisoners to file court papers challenging their convictions and their conditions of confinement. The Ninth Circuit recently held that an Oregon prison librarian violated this right when she refused to bind an inmate use a comb binder on his petition for certiorari to the United States Supreme Court. Frustrated, the inmate filed a petition late, and it was rejected. The Ninth Circuit upheld summary judgment for the inmate even though the Supreme Court does not require prisoners to bind their petitions. Phillips v. Hust, No. 04-36021 (9th Cir. Feb. 13, 2007) (James R. Browning, J., joined by Dorothy W. Nelson, J.) Judge Diarmuid F. O’ScaIain dissented.

Have something newsworthy to share?

Have you changed employment? Has your law firm named new partners? Send information for our Legal Moves column to: Maricopa Lawyer, MCBA, 3003 N. Central Ave., Suite 1850 Phoenix, AZ 85012; fax to 602-257-0522; or e-mail to: jdeckert@mcbabar.org
Family Night Court Is Open for Business

By J.W. Brown
Maricopa Lawyer

Superior Court officials weren’t the only ones celebrating the successful start of night and Saturday court at the Northeast Regional Court Center a few weeks ago.

Litigants arrived in a steady stream on opening night. Several of them left smiling, and one even danced in the hallway with her mom outside of the courtroom where Judge Norman Davis had just finalized her divorce.

She joyfully terminated a short-term marriage that counseling failed to restore.

It wasn’t as festive inside the courtroom as cases were called for each “decree on demand” hearing. But it was certainly effective, as each of the pending divorce cases heard was finalized.

Each litigant was provided ample opportunity to explain the reason for seeking the divorce, to detail any settlement agreement that had been reached and describe parenting time decisions. And each got what they wanted – a divorce.

A 27-year marriage ended with the testimony of a wife who detailed a once happy family that had disintegrated into two estranged spouses with two adult children and a 12-year-old. She presented a parenting plan giving her sole custody. She laid out what financial agreements were made, including child support. Then, without showing any emotion, she silently left the courtroom moments after the court agreed to her decision and granted the divorce.

A most unusual ending of a marriage came after both parties acknowledged they would continue to live together as a couple and continue to parent their daughter together. The divorce was a financial necessity, they admitted. All of which greatly troubled Judge Davis.

Upon further questioning they met the legal requirements and got their divorce. They were headed back home, together, as they walked out of the courtroom.

There was no doubt in the case of a man seeking divorce from his wife of 26 years - from whom he was separated for nearly 20 years. He said there was nothing he could do to patch up the relationship. And he testified that there was “no reasonable prospect of reconciliation.” Judge Davis granted the legal finale of the marriage.

Each of these newly-divorced individuals of the opening session of night court gratefully thanked Judge Davis, as he pronounced the dissolution of the their marriage.

He wished each of them “good luck.”

There was at least one litigant who brought evidence to the courthouse that she had undeniably moved on with her life. After walking out of the courtroom, she met a young man who had been waiting in the hallway, near the exit. They embraced, and walked into the parking lot with arms around each other.

Good luck.

The Family and Juvenile Courts offer night and Saturday hours as part of a pilot program to provide court customers the opportunity of alternative schedules for court proceedings. The extended hours are 5 to 9 p.m., Tuesday through Friday and alternative Saturdays from 8 a.m. to 5 p.m. The innovative plan will be evaluated for possible expansion to other court sites around the Valley.

State University. The event will be broadcast on KAET Channel 8 from 6:00 p.m. to 9:00 p.m. The event will be promoted to members of the community to ask free legal questions.

In addition, an essay contest will be sent to Maricopa County schools that have seventh and eighth grade students. The students are invited to participate in the essay contest that depicts the theme “Liberty Under Law: Empowering Youth, Assuring Democracy.” The three top students from each grade will be recognized at an awards ceremony at the Arizona Supreme Court.

On May 2, 2007, Lynda Shely, from The Shely Firm will be speaking at the continuing legal education seminar. The CLE topic is Ten Things Never to Do as a Lawyer or a Judge. This event will be held at a local restaurant with a happy hour to follow. For a small fee, participants will be able to attend and receive one hour of ethics continuing legal education credit and will be able to meet fellow attorneys and judges in Maricopa County.

Volunteer lawyers are needed for the Ask-a-Lawyer and Phone-a-Lawyer events. In addition, volunteers are needed to grade student essays. If you are interested or have any questions, please contact Carrie A. Kerscmar at Kerscmar & Mitchell, PLLC, calk@k-mlaw.com or (480) 421-1001.

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(like saving $2 million)
This calendar includes CLE seminars presented by MCBA as well as MCBA meetings, luncheons and events and those of other voluntary bar associations and law-related organizations. The divisions, sections and committees listed here are those of the MCBA, unless noted otherwise. Everything takes place at the MCBA office, 3003 N. Central Ave. Suite 1850, Phoenix 85012, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix; Arizona State University Downtown (ASUD), 502 E. Monroe; Phoenix; and the Arizona Club, 38th floor, Chase building, 201 N. Central Ave., Phoenix. For more information about MCBA events or to register for any of the MCBA seminars, contact the MCBA at 602-257-4200 or visit www.maricopabar.org.

MARCH 2007

1  Construction Law Meeting (A), 12:00pm
2  Estate Planning Meeting, 7:30am, Lauren’s Office @ Jaburg & Wilk, P.C.
7  Family Law Meeting (Fresh Start), 5:30pm
8  Personal Injury/Negligence Meeting (A), 12:00pm
12 YLD Meeting (B), 12:00pm
13 Corporate Counsel Division Luncheon (University Club), 11:45am
14 EC Meeting (A), 7:30am
15 Building and Defending a Third Party Premises Liability Claim: Lessons From Criminology (ASU Downtown), 1:00pm
16 Employment Law Meeting (A), 12:00pm
20 Paralegal Division Quarterly Meeting (Offices of Gust Rosenfeld, P.L.C.) 5:30pm
21 Computer Forensics: How to Leverage it In Your Practice and Cases (ASU Downtown), 1:00pm
22 Criminal Law Section Meeting (Old Courthouse), 12:00pm
23 Litigation Ethics: In and Out of the Courtroom (ASU Downtown), 9:00am
27 Asset Protection: An Overview Of Offshore Planning Strategies & U.S. Tax Compliance (ASU Downtown), 1:00pm
28 VLP (B), 12:00pm

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Within the next few months, Superior Court will be in the midst of its "rotation season" when several judges and commissioners will move to new assignments. The rotation process is one of the most difficult and important duties of the presiding judge.

Planning started several months ago as judges began advising me about the assignments they would like. This is how the process of rotations begins. It takes months of review and research before the details are completed, and even then it can take several adjustments before the changes are finalized.

Lawyers, court customers, and court staff—particularly those working directly in one of the 94 divisions of the court—may find the business of rotating judges every couple of years inconvenient, perhaps even disruptive. What drives rotations is our commitment to improving the court and its judges by assuring each judicial officer is trained and competent in the practice of civil, criminal, family, and juvenile law. New assignments keep judges fresh, and they are crucial in maintaining a bench of full-service judges.

Different opinions have been expressed about rotations. Some think it is more efficient to indefinitely keep a judge on an assignment in which he or she has attained a high level of effectiveness and expertise. But our "Judicial Assignment and Rotation Guidelines," written in 2000, foster a judicial philosophy of "service above self." The challenge for judicial officers is to place service to the public above self-interest. The guidelines also point out that "all assignments are considered to be vitally important to the public interest."

June is the traditional time for rotations. But reassignments can occur throughout the year to meet special needs, such as filling calendars vacated by judges who retire or resign, shifting assignments when new judges are appointed to the bench, and realigning the number of judges who comprise a department (family, criminal, etc.) because of increased caseloads, new programs, and the like.

Recently, night and Saturday calendars were implemented for Family Court at the Northeast Court Facility and in Juvenile Court at the Durango Court Center. Shifting work schedules of judges and court staff was necessary to assure success of these alternative docket schedules that were created in an effort to provide optimal service and access to litigants. Each individual working alternative shifts volunteered for the assignment.

It is in that same spirit that judges are asked in the months prior to a planned rotation where they would like to serve. Many judges prefer to preside in over cases where they feel most competent and prefer to stay on the same assignment where they are most comfortable. Sometimes, when judges submit their requests, it provides information where they don't want to go, instead of where they do want to go. Each judge has an assignment history which is reviewed to help make good decisions when placing judges in areas where they haven't yet served.

Family Court is what drives rotation. This is where stress and burn-out of judicial officers and their staffs drive the need for change after serving the presumptive two-year assignment.

Nearly three years ago, the Arizona Supreme Court, which has the authority and responsibility to maximize effective and efficient use of judges, criticized this court for failing to use its most experienced judges in Family Court, Juvenile Court and other assignments. That criticism led to an ambitious reorganization of Family Court, which included the inclusion of senior members of the bench on Family Court calendars. It is this flexibility and willingness to change that has earned our court a national reputation for excellence and innovation. We constantly look for ways to do things better.

When we launched our night and Saturday calendars (family, criminal, etc.) because of increased number of judges who comprise a department, and realigned the court, Juvenile Court and other assignments.

In the midst of its "rotation season," Superior Court will be working hard to improve the court and its judges for the benefit of the public. It is this commitment to improving the court that has earned our court a national reputation for excellence and innovation. We constantly look for ways to do things better.
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THE LAPAZ COUNTY PUBLIC DEFENDER’S office is seeking an experienced criminal law attorney. Salary is $69,000.00 and up, depending on qualifications. The Public Defender’s office is located in Parker, Arizona, which is a community located on the Colorado River. We are 35 pleasant driving miles from Lake Havasu City, Arizona and approximately three hours; drive from Phoenix. Applicants may contact this office at the address or fax below: Ella G. Johnson, LaPaz County Public Defender, 1400 Kofa Avenue, Parker, AZ 85344. 928-669-9828. Fax: 928-669-2015.

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POSITIONS

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LITIGATION ATTORNEY, Small commercial and construction litigation firm, seeking associate with two plus years litigation experience. Should be responsible, team player with superior writing ability, capable of handling files under supervision, arbitrations and court appearances. Please submit resume and writing sample in confidence to: PARKER LAW FIRM, P.O. BOX 63098- PHOENIX, AZ 85228-ATTN: CYNTHIA.

TRANSACTION ATTORNEYS Gammage & Bumham, P.L.C., a mid-size, full service business law firm, seeks talented transactional associates to join our growing corporate and real estate practices. Experience in both corporate and real estate law preferred but not required, plus 2 to 5 years transactional experience at a firm. AV rated firm and excellent academic credentials. Located in downtown Phoenix, we offer great compensation & benefits, and an outstanding work environment. Please submit resume, 2 examples of work product and transcript in confidence to Marsha Kendall, H.R. Director, Gammage & Bumham PLC, Two North Central Avenue, 18th Floor, Phoenix, AZ 85004 or email mkendall@gblaw.com.

GENERAL COUNSEL – DIOCESE OF PHOENIX The Office of General (Legal) Counsel deals with numerous people, clergy and lay alike, who live, work and worship within these institutions. Includes the Catholic parishes, schools, cemeteries and other institutions that the Diocese of Phoenix. The Diocese of Phoenix includes the Catholic parishes, schools, high schools, cemeteries and other institutions that fall under the corporation sole as well as the numerous people, clergy and lay who, work within and worship these institutions. Candidate must have a JD Degree and five years professional experience; attorney in good standing licensed to practice law in the U.S.A.; and active practicing Roman Catholic in full communion with the Church. Hiring salary range $77,234 - $94,404 DOE. Please send cover letter and resume to: Human Resources, Diocese of Phoenix, 400 E. Monroe Street, Phoenix, AZ 85004 or fax to (602) 354-2428; e-mail applicants@diocesequaphoenix.org.

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Changes continued from page 5

• Criminal - Randy Ellexon leaves Mental Health Court and assumes Kathleen Mead’s assignment on Initial Appearance Court; Kathleen Mead takes Lisa Roberts’ assignment in the Regional Court Calendar in Glendale; Dean Fink moves from probate to the downtown Phoenix Regional Court Center calendar that was assigned to Steven Lynch; Lynch moves to Richard Northwehr’s DUI Court calendar; Carolyn Passamonte assumes Aimee Anderson’s DUI Court calendar.

• Family – Aimee Anderson takes the calendar of Hugh Hegyi; Stephen Kupiszewski takes Susan Brnovich’s calendar; Lisa Roberts assumes Carolyn Passamonte’s calendar.

• Mental Health – Benjamin Vatz assumes Randy Ellexon’s calendar at Desert Vista Hospital, Mesa.

• Probate – Hugh Hegyi assumes the calendar of Benjamin Vatz; Richard Northwehr takes the calendar of Dean Fink; Jerry Porter takes the calendar of Stephen Kupiszewski.

• Special Assignment – Susan Brnovich assumes the special assignment criminal calendar formerly assigned to Jerry Porter.

During Judge Mundell’s review of judicial assignments, an evaluation was also made of department administrators’ assignments. The review resulted in a number of rotations and new assignments.

Administrative changes, effective last month, include the reassignment of Peter Kiefer, formerly the Criminal Court Administrator, who has assumed new responsibilities at Southeast Regional Court Administrator. The new Criminal Court Administrator is Bob James, who was reassigned from jury/customer service.

Mitch Michkowski, Civil Court Administrator, who is responsible for civil case management, department operations and special projects, now also has oversight of jury management. Brian Karth, who oversees a number of court functions, is expanding his role in managing some of the functions of jury management. Ernie Heitmuller remains in his role of deputy jury manager.

Carol Westwood has moved from procurement/finance responsibilities to criminal court administration. Deborah Primack was reassigned from criminal court administration to family court/collateral at the Northeast Court facility. David Jacobs, who was a consolidation supervisor at the Southeast Court facility, has moved to the downtown Phoenix court complex to assist with civil court administrative duties.
Emily J. Auckland, Jennifer N. MacLennan, Christopher A. Schmaltz, Abbie S. Shindler and Valerie Todorovich were elected into membership of Gust Rosenfeld P.L.C. Auckland (J.D., 1993, University of Michigan) practices in the area of real estate law.

MacLennan (J.D., 1992, ASU) focuses her practice on the representation of school districts in all legal matters.

Schmaltz (J.D., 1996, American University Washington College of Law) concentrates his practice on government law, representing municipalities and school districts around the state in a variety of matters.

Shindler (J.D., 1999, California Western School of Law) practices in the areas of estate planning, probate, trusts, corporations and business organizations, business law, and title transfers.

Todorovich (J.D., 1997, Whittier College School of Law) practices in the area of real estate law.

J. James Christian, of Tiffany & Bosco P.A., has joined the board of Trustees of the Melonhead Foundation.

The Melonhead Foundation is a non-profit organization whose mission is to provide support for children with cancer and their families who are seeking alternative healing methods through the use of natural medicines and treatments.

Christian (J.D., 2004, Southwestern University School of Law), a litigation associate, concentrates in securities-fraud litigation and various other commercial-litigation matters.

Jodi Knobel Feuerhelm, a partner at Perkins Coie Brown & Bain P.A., has been named president of the board of directors for Raising Special Kids.

Raising Special Kids is a nonprofit organization that serves Arizona families of children with disabilities and special health needs.

Feuerhelm (J.D., 1985, University of Utah), part of Perkins Coie's national litigation practice, focuses on construction litigation, product liability, contract disputes and commercial litigation.

Have something newsworthy to share? Have you changed employment? Has your law firm named new partners? Send information for our Legal Moves column to:

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