Maricopa County Bar Foundation Distributes $37,250 in Grant Monies

The Maricopa County Bar Foundation (MBCF), the charitable arm of the Maricopa County Bar Association, has announced the recipients of its 2008 grants. Benefiting the advancement and access to the legal system and legal education, six grant recipients were chosen this year. A total of $37,250 was distributed among the organizations for projects including:

- **Advocates for the Disabled, Inc.** ($5,000): Disability Advocacy Project, client-related expenses
- **ASU College of Law** ($2,500): Civil Justice Clinic for client-related expenses
- **Maricopa County Bar Association Young Lawyer’s Division** ($4,750): Domestic Violence Committee (brochure and postage) and Law Week (awards, marketing to the public, and related expenses)
- **Partners for Paine Neighborhood Center** ($2,500): Scottsdale Bar Association for free legal service, client-related expenses
- **Volunteer Lawyers Program** ($17,500): Children’s Law Center, HIV Law Project (HALP) and tenants’ rights project
- **YMCA Community Initiatives** ($5,000): Teen Court

“The Community is excited to fund such innovative programs that will advance our legal system and encourage continued legal education within our community,” Patricia Nolan, foundation grants coordinator, said.

Winners were honored last month during an awards ceremony at the University Club in Phoenix. Recipients discussed how the money will be used within their organization. Over the past 20 years, the MCBF has awarded $515,000 in grants.

Beyond funding, MCBF has also worked with other community organizations and contributes sponsorship dollars to their fundraising efforts.

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**Fifty Percent Off MCBA Membership**

It’s the middle of the year—and another hot summer—and MCBA is offering a cool and refreshing half-priced membership to eligible attorneys who have not been a member since 2006, or who have never been a member.

If you know someone who would like to try membership, this is a great time to take the plunge and find out what the MCBA has to offer, at a great price.

The 50 percent off membership extends from August through December 2008. A special 50 percent off membership form is available at www.maricopabar.org.

Or a potential member may call Cynthia at (602) 257-4200 ext. 114 and enroll using their MasterCard or Visa.

IF YOU KNOW SOMEONE WHO WOULD LIKE TO TRY MEMBERSHIP, THIS IS A GREAT TIME TO TAKE THE PLUNGE AND FIND OUT WHAT THE MCBA HAS TO OFFER, AT A GREAT PRICE.

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**Court Administrator Becomes President of National Association for Court Management**

By J.W. Brown

Marcus Reinkensmeyer, court administrator for the Judicial Branch of Arizona in Maricopa County, is being honored during investiture ceremonies at the annual conference of the National Association for Court Management (NACM) on July 17 in Anaheim, Calif. His one-year term as the organization’s president begins at the close of the three-day conference.

Maricopa County Presiding Judge Barbara Rodriguez Mundell is a special guest and will participate in Reinkensmeyer’s swearing-in ceremony during NACM’s noon business meeting. Approximately 500 to 600 court administrators, clerks of courts and judges from nearly every state and some foreign countries are attending the conference. Reinkensmeyer’s family members are also attending the ceremony.

NACM is a professional organization committed to developing “proficient court managers with leadership skills and a commitment to excellence.”

During Reinkensmeyer’s career in court administration, he previously served as Superior Court administrator, chief deputy court administrator and director of Judicial Information Systems (JIS) with Superior Court in Maricopa County. Prior to moving to Arizona in 1991, he served as assistant director of the Administrative Office of the Courts (Court Services), court administrator (17th Judicial Circuit), assistant superintendent of Juvenile Detention and probation officer in the State of Illinois.

Reinkensmeyer holds a bachelor’s degree from Michigan State University Honors College, a master’s degree in public administration from Northern Illinois University, and is a Graduate Fellow of the Institute for Court Management of the National Center for State Courts. He is the recipient of the Institute for Court Management’s 1989 Award of Merit and Supreme Court of Arizona’s 2003 Distinguished Service Award. He has also served as editor for The Court Manager and is on the editorial board for the new International Journal for Court Administration.

Cure for the Summertime Blues: The Wit of Mo Udall

He was a statesman with a strong bipartisan spirit. Barry Goldwater, icon of Republican conservatism, was one of Mo's closest long-time friends. Mo was admired by people on both sides of the aisle in large part because of his gentle wisdom and wit, which is sorely missed these days in our political discourse.

One of the aspects of Mo that was most loved and admired was his sense of humor. He had a hilarious story, quote or quip for every occasion. He obviously did not take himself very seriously and he used his often self-deprecating humor to make points, to diffuse tense situations, to lighten things up and to ingratiate himself to friends and foes alike.

So I will share a few of my favorite Mo Udall stories with you. These come from his book, Too Funny to Be President, which he wrote after his failed presidential run (my signed copy is one of my prized possessions). Of course, politicians and lawyers were among Mo's favorite targets as these examples illustrate:

"A candidate was visiting the Indian reservation, seeking votes, and was given permission to speak before the tribe."

"If elected," he cried, "I'll get schools and hospitals for the Indians."

"Goomwah!" shouted the crowd.

"You'll get heat in every teepee."

"Again the crowd shouted, 'Goomwah!'"

"After the speech, the chief said to him, 'You are a good friend of the Indians. Please come into the corral so we can present you with a fine pony. But, be careful and don't step in the goomwah.'"

"During a trial in Tucson, one of the attorneys repeatedly requested the testimony of a witness from the Arizona Corporation Commission. Unbeknownst to the attorney, however, the sought-after witness was dead."

"Attorney Tom Chandler could stand it no longer. 'Your Honor, if they are going to call that particular witness, we are going to need a recess and a shoveling.'"

"Seeking a handsome settlement for injuries he had sustained when his wagon was run off the road by a big-city driver, a farmer took his case to court. An attorney for the defense grumbled."

"Didn't you tell the defendant immediately after the accident that you were not hurt?"

"'Well,' said the farmer, 'sort of.'"

"Please answer the question," repeated the attorney. 'Did you say you were not hurt and, if so, why?'

"'Let me explain,' said the farmer. 'You see, when your client hit my wagon, it knocked me off the road, into a ditch and broke my horse's leg. And my dog was pinned under the wagon. Your client took one look at the yelping dog and the whirring horse, went back to his car and got a gun. Next, he walked over and shot my horse. Finally, with his pistol still smoking, he came to where I lay bleeding in the ditch and asked, 'How about you? Are you hurt?'

"A law firm sent a junior associate to plead a case in another town. Soon he sent the office a telegram: 'Justice has triumphed.' They wired back: 'Appeal at once.'"

"Then there was the young lawyer who showed at a revival meeting and was asked to offer the opening prayer. Unprepared, he gave a prayer straight from his heart. 'Oh lord, stir up strife amongst these, thy people, in order that this, thy servant, shall not perish.'"

I got a chance to see Mo's wit in action back in the early 1980s, when I was a member of the state House of Representatives in my first term. Mo met with the Democratic caucuses of both chambers in a joint closed-door session. The reason for the meeting was that the word was out that several Democratic state legislators were going to defect and vote with the Republicans to approve a redistricting of legislative and congressional districts that was unfavorable to Democrats in general, and to Mo Udall in particular. Mo was pretty ticked off about the situation and asked for the joint caucus meeting to make his case.

The mood in the caucus room was tense. Just after the doors closed Mo thanked everyone for attending and said, "You know the difference between a caucus and a caucus, don't you?" He paused and looked around the room, and then answered his own question: "On a caucus the pricks are on the outside."

Everyone in the room cracked up, and there ensued a reasonably civil discussion. Mo had made it clear that he was unhappy, but his willingness to put a humorous point on it broke the chill and lightened the mood a bit and got people talking.

The discussion did not change the minds of the defectors however, who later voted to approve the Republican map. The unfavorable outcome of the redistricting for Mo Udall was that his formerly Tucson-only district was gerrymandered to include parts of Phoenix. He opened a congressional office on Roosevelt Street in Phoenix, and for his last 10 years in office, at least part of the time, Mo could be considered a Maricopa County lawyer.

Too Funny to Be President, published by Henry Holt and Co, Inc. 1988.}

Right Analogy Key to Marketing Anything

By Trey Ryder

If prospects have a hard time grasping your subject, think up a good analogy they can relate to and understand. A lawyer friend and I laughed recently because we asserted you can market anything if you have the right analogy. The reason this is funny is because it's true.

For years, I've watched estate planning lawyers try to explain the concept of a living trust. It's not sufficient to say the trust is a bank account.

"For maximum persuasion, always use your best analogy or example—the one that most closely parallels your prospect's situation and the one that your prospect is most likely to understand.

If you think you need two analogies or examples to make your point, then neither is good enough. Use your best single analogy—and nothing more."

When you pile analogy on top of analogy, your prospect concludes that you are working awfully hard to make your point. And while you may think two analogies add power to your argument, they also add confusion.

When I talk about creating a competent marketing message, many lawyers don't know how to go about it because designing marketing messages it beyond their experience. So, I explain that building a marketing message is really no different from preparing a case for trial. You find all the evidence that supports your case, present it in the most logical order, and then ask the jury to weigh the evidence and decide in your client's favor.

That's precisely how I build a marketing message. The only difference is the target audience. At trial, it's your jury. In your marketing message, it's your prospective clients.

Prospects won't buy what they don't understand. Make your subject easy to digest and you'll win a new client.

You can market anything—if you take time to come up with a good, simple analogy. ■

Trey Ryder specializes in education-based marketing for lawyers. For more information, contact Trey at trey@treyryder.com.
Plaintiff’s Lawyer Offers Advice in Deposing and Examining Employment Witnesses

By Larry J. Rosenfeld

You’re a fourth-year, defense-side associate and, at long last, here it is: your first opportunity to depose the plaintiff in an emotionally-charged sexual harassment case.

You’ve got some strong defenses and some potentially compelling evidence that the plaintiff’s relationship with the “harassing” co-worker was, in fact, consensual. Ask the questions just the right way, set the plaintiff up with just the right predicate inquiries, and who knows—maybe an early favorable settlement or even, dare you contemplate it, your three favorite words: “Summary judgment granted.”

So you turn for sage, insightful advice to… a plaintiff’s lawyer?

Indeed you do, if that plaintiff’s lawyer is Tod Schleier, an elder statesman of the State Bar of Arizona who, much to the benefit of counsel on both sides of the divide, has written Deposing and Examining Employment Witnesses, a comprehensive guide through the evidentiary thicket.

In eight readable, neatly-organized chapters, this volume covers everything from the meat-and-potatoes of every employment case (deposing the plaintiff, the supervisor and the co-worker), to the rarified air of the ever-expanding array of specialists (vocational experts, labor market analysts, statisticians, and the like).

For example, if you’re looking for a tutorial—or a refresher—on how to take or defend the deposition of the supervisor (or to prepare her for trial), Deposing and Examining Employment Witnesses starts you off with a handy checklist of de rigueur subject areas to be covered, from the obvious (plaintiff’s job performance) to the less apparent (treatment of the plaintiff, the supervisor and the co-worker), to the ratified air of the ever-expanding array of specialists (vocational experts, labor market analysts, statisticians, and the like).

As you would expect, Schleier’s got these bases covered as well.

Preparing to depose or defend the human resources director in a discrimination lawsuit arising out of a reduction in force? Check. The alleged perpetrator in a sexual harassment case? Covered.

How developing or blunting this testimony differs, as between deposition and trial? That’s here as well, with numerous examples of effective direct and cross-examination, many of which Schleier draws from his extensive litigation experience.

Certainly, if trying or defending an employment case was cookbook-simple, application of these checklists and outlines to your case would turn even the dabbler into an instant expert. Of course, it’s just not that easy. There is, clichés be damned, no substitute for experience.

But if you don’t yet have the experience, you can, through this volume, gain the experience of a veteran of the employment litigation wars. This is the value-added offered by this volume, and it would truly be a mistake for a practitioner to focus his attention on the sound-bite checklists (which is not to diminish their usefulness) and ignore the sage advice.

Indeed, it is not just the mid-level associate, but as well the seasoned pro, who can draw helpful insights from the author’s observations. Sprinkled generously through these materials are practice pointers, cautionary notes, and technique tips, nicely integrated into the discussion so as not to break the flow of the point under discussion.

A great example: Say you’re considering challenging the admissibility of an opinion testimony. Do you file a motion in limine, request a hearing under Federal Rule of Evidence 104, or wait until trial? Perhaps, suggests Schleier, in this particular case, the pre-trial preemptive strike, which might otherwise be your first inclination, is the wrong move to make here. If you proceed precipitously, do you risk revealing too much of your trial strategy? Maybe. Schleier advises, holding your fire until trial might, in some instances, be the better play.
In between summer vacations and trying to stay cool in the Valley of the Sun, many paralegals are thinking about recognition of their professional expertise. The National Federation of Paralegal Associations (NFPA) and the American Institute for Paralegal Studies (AIPS) have joined forces and now offer an online review course for the Paralegal Advanced Competency Exam (PACE).

PACE provides an opportunity for professional advancement as a paralegal, with the benefits of fair evaluation of the competencies of paralegals across practice areas, and creation of a professional level of expertise by which all paralegals may be evaluated. Paralegals who successfully complete the exam are entitled to use the “RP” designation for Registered Paralegal. There are currently 16 Registered Paralegals in the state of Arizona, including several members of the Paralegal Division.

The online review course runs for seven weeks, with the addition of a brief pre-course orientation to familiarize participants with the software used by AIPS that is focused on computer-mediated distance learning. Students are encouraged to communicate with instructors or classmates around the clock via e-mail.

The course covers the five domains, which include administration of client legal matters; development of client legal matters; factual and legal research; factual and legal writing; and office administration. Each domain also includes ethics questions pertaining to that subject.

Eligibility requirements for a paralegal to take the PACE include both work experience and education, and Registered Paralegals are required to obtain 12 hours of continuing legal education every two years, including at least one hour in ethics. Detailed information regarding PACE requirements is available on the NFPA website at www.paralegals.org; click on “PACE/RP.”

The Paralegal Division offers regular certification review courses for paralegals planning to take the Certified Legal Assistant (CLA)/Certified Paralegal (CP) exam, which is offered through NALA, the National Association of Legal Assistants (www.nala.org/cert.htm). Our spring review course has just concluded and will be offered again in the fall. Information is available on our website at www.maricopabar.org; click on “For Paralegals.”

Remember to register for the 2008 Arizona Paralegal Conference, set for Friday, Sept. 26. Details are available on our website. See you there!

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**INVITATION FOR PUBLIC COMMENT**

**JUDICIAL REAPPOINTMENT**

The Glendale Judicial Selection Advisory Board (JSAB) is considering the reappointment of Judge John D. Burkholder to a four-year term as City Judge in the Glendale City Court.

All interested parties are invited to offer comments to the JSAB regarding Judge Burkholder’s judicial performance to serve another term as City Judge at the following hearing:

- **3 p.m., Friday, Aug. 22, 2008**
  - Glendale City Hall, 5850 W. Glendale Avenue, Glendale, AZ, Room B-3

Signed, written comments received by Thursday, Aug. 21 will also be considered by the JSAB.

Send comments to:

Kyle Mickel
Glendale City Court, 5711 W. Glendale Avenue, Glendale, AZ 85301

The Judicial Selection Advisory Board will consider public comments and other relevant factors in making a recommendation to the Glendale City Council regarding the reappointment application of Judge Burkholder.

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**Arizona’s Premier Paralegal Conference: It’s the Heart of Legal Profession Coming Together Downtown**

By Cindy Bennett

Paralegals, by the time you’re back from your summer vacation, it will be time to start thinking about gathering your CLE hours before the year’s end. Here’s an idea: Attend our six-hour CLE, MCBA Arizona Paralegal Conference. This grand event will take place on Friday, Sept. 26, at the Phoenix Convention Center. This year we will be featuring the Hon. Scott Bales, justice, Arizona Supreme Court. He’ll present “Arizona’s Supreme Court Connections: 100 Years of Cases and Characters.”

In addition, Heidi Kimzey Short, director of Fennemore Craig, PC, and Donna Horowitz, paralegal at Fennemore Craig, PC, will speak about “Land Use, Zoning and Current Trends in Urban Planning,” and Joshua Woodward, partner at Snell & Wilmer, LLP, will speak about “Ethical Challenges of Managing Business, Paralegal Duties, and the Law.”

Finally, Timothy A. Piganelli, a legal technology consultant, will educate us about “The Evidentiary and Strategic Challenges of Cutting-Edge Courtroom Technology: Best Practices and Avoiding Common Litigation Mistakes.”

We encourage all of our legal community to participate in this year’s Paralegal Conference. Our diverse topics and speakers will assure an interesting experience and provide you with an opportunity to get to know Justice Bales. You’ll also be supporting the paralegal community of which you are a part.

Don’t miss the opportunity to attend our all-day conference. Your registration fee includes:

- Comprehensive educational materials
- Six hours of continuing legal education (CLE), including 1½ hours of ethics, approved by NALA and NFPA
- Full breakfast, buffet lunch and refreshments
- Interaction with vendors who serve the legal community and door prizes

Registration is due Sept. 12. You may register by fax or online at the MCBA website at www.maricopabar.org; click on “For Paralegals” in the left navigation bar.

For further details on topics or to participate as a vendor, please contact Kelly Gray at conference@maricopabar.org. ■

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Peter Kiefer, a Maricopa County Superior Court administrator, traveled across the globe to help the nation of Liberia build an efficient, modern and professional court system.

Presently, he is in the middle of a 100-day assignment that will last through mid-September. He candidly shares his experiences via e-mail to his friends, including many Superior Court co-workers.

His missives spin interesting tales about his work in an undeveloped country where the unexpected becomes the norm.

Kiefer’s interest in the journey began in February when he was contacted by the International Division of the National Center for State Courts. Initially, the project was planned to last over a year, which he said was too long to consider. The timeframe was then shortened to a more acceptable 10-week stint, and he accepted after Superior Court Presiding Judge Barbara Rodriguez Mundell and court administrators Marcus Reinkensmeyer and Phil Knox “were gracious enough to let me take an unpaid leave of absence.”

It is his responsibility to serve as case flow management expert. He is observing and evaluating the Liberian criminal case system and will develop a streamlined case management system.

“I am hoping to make a small improvement to the court system in the Republic of Liberia, which has been ravaged by 20 years of civil war. Even the most basic vestiges of justice are a challenge,” Kiefer said. “Given the years of devastation caused by the war, the key to developing a workable plan is to chart out small practical steps that can be easily implemented.”

Shortly after arriving in Liberia, he met with Chief Justice Johnnie Lewis and learned that his supervisor is Marti Troy, who used to work for the Maricopa County Attorney’s Office. They are coordinating their work with the U.S. Embassy and the United Nations mission in the country. Their initial project was to inaugurate Judicial College for the Liberian judiciary; the target date was June 17.

From arrival, Kiefer quickly learned about an intriguing case involving witchcraft.

A Republic of Liberia senator “stands accused of beating a young woman,” Kiefer reported. “His defense is to blame Satan. ‘The gossip is the senator believes the young woman turned herself into a cat and harassed the senator, so he beat her. I don’t think this is so unusual. In Kenya this week, an 80-year-old woman was beaten to death by a mob after accusing her of being a witch.’

Kiefer visited a courtroom so he could

See Court Official page 10
Why Lawyers Explain, Elucidate, and Clarify Certain Words

Any legal writer who has attended a writing seminar has most likely heard the following advice: avoid using coupled or tripled synonyms. Yet, some are reluctant to take this advice.

First, legal writers have used these synonyms for years, and some legal writers consider these synonyms tradition or terms of art. Second, some legal writers argue that synonyms make the document more precise.

In the modern legal age, however, synonyms are unnecessary “legalese.”

According to Richard Wydick in Plain English for Lawyers, synonym use has ancient roots. In the past, English lawyers had more than one language to consider when drafting a legal document. For example, lawyers first chose between the language of the Celts and Anglo-Saxons, then between English and Latin, and also between English and French. Lawyers often chose a word from each language to stand for one meaning. In fact, this redundant usage was part of the literary fashion at times. Thus, coupled and tripled synonyms became legal tradition and remains so, even though synonyms are no longer needed.

Plain English proponents suggest ridding documents of word-wasting synonyms and replacing them with one common word. Modern readers agree: ■

<table>
<thead>
<tr>
<th>Common Synonyms</th>
<th>Use Instead</th>
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<tr>
<td>Alter or Change</td>
<td>Change</td>
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<tr>
<td>Authorize and Empower</td>
<td>Authorize</td>
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<td>Bequeath, Devise, and Give</td>
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<td>Covenant and Agree</td>
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<td>For and During the Period Of</td>
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<td>Good and Sufficient</td>
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<td>Last Will and Testament</td>
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<td>Lot, Tract, or Parcel of Land</td>
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<td>Made and Entered Into</td>
<td>Made</td>
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<td>Null, Void, and of no Effect</td>
<td>Void</td>
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<tr>
<td>Rest, Residue, and Remainder</td>
<td>Remainder</td>
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<tr>
<td>Save and Except</td>
<td>Except</td>
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<tr>
<td>Terms and Conditions</td>
<td>Terms</td>
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<tr>
<td>True and Correct</td>
<td>True</td>
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<tr>
<td>Undertake and Agree</td>
<td>Agree</td>
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Legal Briefs
By Joan Dalton
Judge Barry Silverman receives Arizona State Law Journal award
Barry Silverman, United States Court of Appeals Judge for the Ninth Circuit Court of Appeals, was given the John S. Lancy Award by the Sandra Day O’Connor College of Law at its annual Arizona State Law Journal Awards Banquet. The award is named for the Arizona State Law Journal’s editor-in-chief.

Silverman was a member of the College of Law’s Class of 1976 and has served the legal community as an assistant city prosecutor, a deputy county attorney, a Maricopa County Superior Court commissioner, a Maricopa County Superior Court judge, a U.S. magistrate judge for the District of Arizona, and a circuit court Judge for the Ninth Circuit Court of Appeals.

U.S. Chief Justice forecasts increase in cases
United States Supreme Court Justice John Roberts told attendees at the D.C. Circuit’s Judicial Conference in June that the number of cases being argued before the United States Supreme Court will increase next year and that the court plans to hear three cases per day in the fall.

Justice O’Connor helps design computer game
Justice Sandra Day O’Connor is helping to design a digital computer game as part of the “Our Courts” project, a civics education program that Justice O’Connor started in conjunction with Arizona State University and the Georgetown Law School. Designed for the purpose of educating seventh-, eighth- and ninth-grade students in government, the first episode of the game tackles the First Amendment, and involves students wearing a t-shirt with a logo on it. O’Connor says she got involved in developing the “Our Courts” project because she wants to counter partisan criticism that judges are “godless” activists.

Bankruptcy filings increase by 30 percent
The United States Administrative Office of the Courts announced that the number of bankruptcy filings in the 12-month period ending March 31, 2008, increased by 30 percent over last year’s filings. The majority of bankruptcy filings involved consumer debt, but filings involving business debts also rose substantially.

Bankruptcy filings decreased after the implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, but have risen gradually since. Filings were up 38 percent in 2007.

Supreme Court denies appeal by professional ball players
On June 3, 2008, the United States Supreme Court let stand a ruling of the United States Court of Appeals in St. Louis that gives fantasy ball leagues the right to use the names of real players without paying a licensing fee. Currently, the largest fantasy baseball leagues are licensed by Major League Baseball and pay the fee for the use of the players’ names. The Supreme Court justices turned down the Major League Baseball v. C.B.C. Distribution appeal without comment. ■
Not So ‘Untouchable’ When Bribery Fails

In the early 1930's, Heed was fingered as an important player in a gambling, prostitution, money laundering and bunco ring operating in Reno. His partners in that operation included Reno's politically powerful leading citizens, William J. Graham and James C. McKay. In addition, his associates during that time frame included notables such as Baby Face Nelson, John Dillinger and Pretty Boy Floyd.

The "Reno Ring" was finally broken up when its principals, including Graham, McKay and Heed, were indicted under federal mail fraud statutes. Because the gang had received securities by mail from New York investors in exchange for bogus alternative investments, the U.S. District Attorney of New York, in search of a favorable forum, filed charges in Manhattan.

Heed slipped out of the federal net and remained a fugitive until he was arrested in Phoenix. Graham and McKay were set for trial in July 1934. When the prosecution's star witness, the cashier of the Reno bank that had handled the fraudulent transactions, disappeared shortly before the trial, the case ended in a hung jury. The cashier was never seen again. A second trial also ended without a conviction. A third trial of the gang was set to begin Wednesday, Jan. 19, 1938.

Judge Bondy

When federal postal inspectors learned of Heed's arrest in Phoenix in December 1937, U.S. District Judge William Bondy issued a writ for Heed to be delivered to his Manhattan courtroom in order to attend the scheduled mid-January trial. Judge Bondy was known to Arizona readers of Time magazine for the unusual defendants who had come before his bench.

Time reported in 1936 that Bondy had presided over the case of a confessed swindler who had used 19 aliases to obtain government insured home loans on 19 parcels of real estate that he did not own. The defendant admitted returning twice to two banks where he was interviewed by the same employee he had spoken with previously under a different name. He was successful in getting loans all four times.

His scheme involved signing under his assumed name with his right hand and for his non-existent wife with his left hand. After submitting the properly executed application and being interviewed by a bank official, he rushed home to be available to answer calls from the bank to confirm his nonexistent employment and salary. A few weeks later, his loan check would arrive. Judge Bondy marveled at the gullibility of the banks but sentenced the defendant to 18 months.

In 1938, Bondy was back in Time magazine for another colorful case. Albert Chaperau had been indicted, along with the wife of a sitting New York Supreme Court justice and comedians George Burns and Jack Benny, for conspiring to smuggle Paris fashions and expensive diamond jewelry into the country. The "blond, buttery" Chaperau blamed his and his co-conspirator's misfortunes on Adolph Hitler.

The justice's house maid became upset during a dinner party in which the guests, including Chaperau, engaged in anti-Nazi rhetoric. The maid declared that she was a "true German" and that if the group did not stop criticizing Hitler, she would not serve dinner. The maid was immediately fired, and in retaliation, she went to customs authorities about the justice's wife's new clothes that had recently been delivered from Paris by Chaperau.

In court, the well-connected "importer" claimed he liked to bring gifts for his friends and joked that "I smuggled in a dwarf for Snow White, a wig for Shirley Temple, shoes for Garbo, size 9, a necklace for Charlie McCarthy, a ratle for Mickey Mouse and a corncob pipe for Popeye."

Judge Bondy was not amused. Chaperau received a five year sentence, the justice was forced to resign and his wife spent three months in jail. Burns and Benny received one year suspended sentences and substantial fines.

My wit's bigger than yours

When Heed learned of Judge Bondy's writ, he considered his options and countered with a habeas corpus writ of his own, seeking the Maricopa County court to keep him in Phoenix, safely away from the Manhattan courtroom where he might be compelled to say things that his former Reno bosses and their gangland enforcers might not appreciate.

Despite the willingness of County Attorney Corbin and special prosecutor Wilmer to cooperate with the federal writ, on Saturday, Jan. 15, 1938, Superior Court Judge G. I. Rodgers granted Heed's writ, ordering him to remain a guest of the county. In an assistant U.S. Attorney from New York was dispatched to Phoenix, and, along with Corbin and Wilmer, a plan was hatched to assure that Heed would be in the New York City courtroom for the beginning of trial on the following Wednesday. First thing Monday morning, Wilmer appeared before Superior Court Judge E. G. Frazier and moved for dismissal of the charges against Heed. Judge Frazier immediately granted the motion, effectively nullifying Judge Rodgers' habeas writ.

Court in a car

Despite his strenuous protestations, and his concern that he might be walking into the hands of his former gangster pals, Heed stepped into the overcast, cool January morning of a free man. Unfortunately for Heed, his freedom was short-lived.

As he left the jail, he was detained by federal "G-men" and ushered to a car waiting in a nearby alley. In the car, Heed was dispatched to Phoenix, and, along with Corbin and Wilmer, a plan was hatched to assure that Heed would be in the New York City courtroom for the beginning of trial on the following Wednesday. First thing Monday morning, Wilmer appeared before Superior Court Judge E. G. Frazier and moved for dismissal of the charges against Heed. Judge Frazier immediately granted the motion, effectively nullifying Judge Rodgers' habeas writ.

After five years "on the lam," Boies Heed, master con man and racketeer, made a serious mistake in judgment. His indiscretion, in the late summer of 1937, opened the door for him to make the acquaintance of nearly every judge on the Maricopa County Bench, several federal judges and a former U.S. Supreme Court justice.

Heed had attempted to bribe the newly appointed Maricopa County Attorney, John W. Corbin. Unfortunately for Heed, Corbin, unlike many other county officials, had no inclination during the first days of his term to accept Heed's offer of $12,000 to overlook Heed's gambling operations and efforts to fleece winter visitors to the Valley. Allegedly, his activities had been proceeding successfully, either overlooked by or under the protective watch of former sheriff J. R. McFadden for more than two years.

Heed, under the alias of B.P. Boyce, was arrested the second week of December by Undersheriff Fred W. Norton, just after finishing a round of golf at the municipal links. Heed immediately found himself before Superior Court Judge M. T. Phelan for arraignment and soon was sharing accommodations in the county jail, located on the 6th and 7th floors of the courthouse, with an assortment of local businessmen and county officials swept up in Corbin's aggressive gambling and corruption dragnet. Among the more than 20 alleged perpetrators of vice also arrested were Heed's alleged accomplice, former sheriff McFadden; the current sheriff, Roy Merrill; one of his deputies; Justice of the Peace Harry Westfall and Constable Harry Gaskin, Jr.

Corbin, soon after his appointment to replace his ailing boss, Jack Murphy, made the career shortening decision to take on the rampant corruption that swirled around widespread operation of slot machines, gambling houses and confidence games in Maricopa County in the mid-1930's. Corbin's sting operations involved recruiting a cool-headed Los Angeles investigator, high-tech listening devices and a live court reporter recording meetings with suspects.

During the winter and spring of 1938, the county courts were clogged with pre-trial and trial proceedings related to these cases. Special prosecutors, including Mark Wilmer (of Snell & Wilmer fame), were recruited to help with the heavy case load and the cases were assigned to Judge Speckman for trial.

Convictions were hard to come by (only two defendants were convicted), and after several acquittals, by mid-June 1938, most of the graft cases were dismissed and Corbin was re-elected.

The ‘Reno Ring’

Heed's career in crime did not begin, or end, in Maricopa County.

The next judge that Boies Heed encountered was the Hon. Willis Van Devanter. After being whisked off to El Paso to catch an afternoon flight to New York, Heed arrived late that Monday, in plenty of time for his scheduled Wednesday trial. Justice Van Devanter sitting by special designation as a trial judge in Manhattan District Court, had only six months earlier been the most conservative justice sitting on the U.S. Supreme Court.

Justice Van Devanter, one of the "Four Horsemen" responsible for striking down nearly every piece of President Roosevelt's New Deal legislation in the mid-1930s, consistently argued for limited government powers. He opposed expansion of Congressional powers under the Commerce and Spending Clauses of the Constitution and saw the Due Process Clause as a barrier to state laws that would have outlawed child labor or set minimum wages.

When Roosevelt proposed increasing the number justices of the court in order to permit him to appoint a majority that would support his policies—his famous attempt to "pack the court"—, the sitting justices protested, but eventually began to modify their conservative rulings to allow implementation of New Deal policies. In 1936, Congress approved a pension for retiring justices who were over 70, equal to their $70,000 salary. Van Devanter opted to take the retirement and found himself back on the trial bench in New York that January.

At the conclusion of the case, on Feb. 13, 1938, the headlines read "Reno Crime 'Bosses' Found Guilty." Heed was sentenced to five years in federal prison and was never tried for his ill-fated attempt to bribe the Maricopa County attorney.
New Superior Court Judge is Expert in Bankruptcy Law

By J.W. Brown

The newest Superior Court judge in Maricopa County, Benjamin Norris, has a few more weeks to prepare for his departure from Quarles & Brady, LLP, where he has been a partner since 1997.

His latest career move was initiated in June when Gov. Janet Napolitano appointed him to the bench. The process of transitioning into the new phase of his legal career continues through the month of July into August. He plans to officially don his judicial robes on Monday, Aug. 18.

Norris, an expert in bankruptcy and creditor’s rights laws, is delighted with the appointment.

“It is a great honor to be appointed as a judge on the Maricopa County Superior Court, and I am looking forward to the many challenges I know the position will present,” he said. “While no trial judge can expect to satisfy all of the litigants in every case, my goal will be to make sure that even if a party is unhappy with the result of a particular case, that party at least understands that he or she has had a fair opportunity to be heard, and that the court has done its best to render justice in accordance with the law.”

During his legal career, Norris represented clients in state and federal courts. He was proficient in handling both bench and jury trials involving prosecution and defense of bankruptcy avoidance actions. Norris is also an expert in general commercial litigation; he has handled cases involving contracts, lease disputes, disagreements over corporate control, lender matters and the liquidation of companies.

Norris was admitted to the State Bar of Arizona in 1987 and in the same year was admitted to appear in the Ninth Circuit of the U.S. Court of Appeals and the U.S. District in Arizona. He is a member of the Maricopa County Bar Association and has been a member of the Litigation Section of the American Bar Association. Also, he served as chair of the State Bar of Arizona’s Bankruptcy Section from 2005 to 2006.

In 1983, Norris earned his Bachelor of Arts degree from Yale University. He then attended Northwestern University, receiving his Juris Doctorate degree in 1986. From 1989 until 1993, he was a trial attorney with the U.S. Department of Justice in Washington, D.C.

Norris is also a prolific author of articles for numerous publications, sharing his expertise in bankruptcy law. He is active in the Volunteer Lawyers Program, served as a board member and president of the Arizona Collegiate Rowing Foundation, and is a member of the Nature Conservancy Conservation and Public Policy Committee.
Two Emerging Fields of Legal Study: Law and Entrepreneurship and the Collaborative Law Movement

By Robert L. Gottsfield

Sometimes it pays to read a law review article.


The first article discusses law and entrepreneurship as an emerging field of study, and the second concerns the ethics of representing clients in a new and novel dispute resolution process called collaborative law and the collaborative law movement.

Law and entrepreneurship

I confess I knew of entrepreneurship courses in college business programs but did not know it was presented in law school, and only had slight knowledge of collaborative law. Interestingly, there is an emerging view that we need to educate entrepreneurial lawyers through law and business school collaborations.

A practical and possible example of both law and entrepreneurship and collaborative law shows how far firms will go in real life to solve disputes.

An agreement Boeing used for one of its planes provided that in the case of any disputes between the company and the supplier, the department heads of each company would meet to resolve the issue. Failing this, their respective managers would then confer. If that was unsuccessful, the CEOs of the two companies had to meet. If the dispute was unresolved, only then would the parties arbitrate under the contract. Using this model, not one dispute went to arbitration.

In the article about law and entrepreneurship, the authors posit that “a new field of legal study is justified when a discrete factual setting generates the need for distinctive legal solutions. This distinctiveness may manifest itself in the creation of a unique set of legal rules or legal practices, in the unique expression or interaction of more generally applicable legal roles, or in unique insights about law.”

In their view, law and entrepreneurship meets this standard and justifies it being a separate field of study such as the newer fields of transnational law, health law, information law and cyberlaw.

To put it another way, the authors answer the question why it is better to study law and entrepreneurship as a separate set of courses rather than taking property, torts, commercial transactions and similar individual subjects, which is the normal method of learning an area of the law at law school.

Some would hold that the best way to learn the law applicable to specialized endeavors is to study general rules. Admittedly, entrepreneurship is an interesting factor in any discussion of legal issues, but why is it also a legally relevant one?

Some of the arguments offered by the authors are the:

1. World-wide importance of entrepreneurship “at the dot.com market’s peak, entrepreneurial start-up companies backed by venture capital accounted for approximately $1.1 trillion in sales or roughly 11 percent of our gross national product”; in this era of strong competition from foreign firms, “entrepreneurship provides the competitive advantage for the United States moving forward.”

2. Numerous scholars working in other fields which have recognized the importance of entrepreneurship and have explored it through their own lenses.

3. Psychology, sociology and economics all have a part in explaining the new field (“in economics the literature on vertical integration and the boundaries of the firm, informs the means by which...”).

See Two Emerging page 15
**eFiling Changes in Complex Civil Litigation**

The first eFiling pilot project in the Superior Court in Maricopa County started in complex civil litigation cases. As the Clerk’s Office was developing an in-house filing system, vendor LexisNexis began accepting electronic filing in complex civil litigation cases in 2003.

The vendor contract for eFiling in complex civil cases expires in September and all participating parties and attorneys will need to transition to an alternative system.

Through a request for proposals, the Clerk’s Office qualified three vendors to accept electronic filings in the Superior Court in Maricopa County: Wiznet.com is the only vendor currently accepting eFilings under this qualification process. The Clerk’s eFiling Online website will also be available for complex civil litigation cases.

Parties and attorneys will notice differences between the existing platform for eFiling in complex civil cases and the style and services of either Wiznet or the Clerk’s eFiling Online system. The Clerk’s Office supports using third-party vendors for their ability to provide add-on services and features that are not available on the Clerk’s eFiling Online website.

In an effort to fully inform participants of their eFiling options, the Clerk of the Superior Court provides the name of each law firm registered on the Clerk’s eFiling system to eFiling vendors whose participation in the pilot is qualified under a request for proposals process. The Clerk’s Office does not sell or provide your information to entities unaffiliated with the eFiling pilot project.

**Electronic Orders of Assignment**

The electronic Order of Assignment (OA) project is under way in the Superior Court in Maricopa County. Attorneys and parties in family court cases will no longer need to file a paper proposed form of Order of Assignment with the Clerk’s Office.

Certain Clerk’s Office staff will be appointed by the court as special commissioners for the purpose of electronically preparing and filing the OAs. When hearings are held, staff will use the most current information provided by the parties at the time of hearing to prepare and electronically file the OA based on the court’s signed Order for Support. Orders of Assignment for consent decrees and default decrees where no hearing is held will be created by Clerk’s Office staff in the Family Court Services division who are appointed by the court as special commissioners.

The Superior Court recently authorized a pilot in Family Court requiring Maricopa County-specific sensitive data forms to be filed in new family court cases. The information provided on these forms allows the clerk to process orders for assignment using the most recent information provided by the parties.

Attorneys and parties will continue filing motions to modify or stop an Order of Assignment, but the order itself will be prepared and filed electronically by the Clerk’s Office. Attorneys, document preparation companies and pro se litigants who may have older forms should remove the OA from the paperwork they file.

The form packets available from the court’s Self-Service Center have been updated by removing the OA form. The electronic Order of Assignment process improves the accuracy of information and expedites the delivery of orders to employers, which in turn improves the speed at which families receive their support.

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VLP ATTORNEY OF THE MONTH

Christini Geremia

By Peggi Cornelius

In less than a year from her introduction to the Volunteer Lawyers Program, attorney Christini Geremia has accepted six case referrals in a variety of matters affecting the lives of her pro bono clients. As the VLP’s Attorney of the Month, she is recognized for both her professional commitment to community service, and for her capacity to give to her clients humbly what may not be available to them legally.

During 2007, VLP staff members were invited to visit the law firm of Jones, Skelton and Hochuli.

“As I listened to the presentation about pro bono opportunities through the VLP, the need for representation of people seeking guardianships of minor children stood out for me,” Geremia said. “In private practice, I am involved in insurance defense. I often see bewildered adults in probate court, wondering how to best ensure funds they have received on behalf of an injured minor will be protected for the child’s future.”

Not surprisingly, Geremia’s first VLP case was a minor guardianship matter. Her second case involved a consumer fraud situation in which the client’s elderly father had provided his savings for her to purchase a car. The vehicle was useless and the money was gone.

Geremia accepted the case, and won a substantial judgment for her client. Although the decision has been appealed, she is confident her client will prevail.

Geremia’s third VLP case, however, involved clients facing imminent eviction, after believing a foreclosure rescue transaction had given them a reprieve during a time of hardship. The facts of the case revealed probable equity theft.

On reflection, Geremia commented, “The situation was urgent, so I took the case to buy them time to examine options. I knew VLP had other attorneys who could advise them about the merits of their mortgage case, and any remedies they might have for their financial difficulties. I hoped to keep them from being evicted.”

As she put it, that case was “a big lesson in limitations.” Although the commissioner told the clients they were entitled to pursue a complaint for punitive damages, Geremia couldn’t prevent them from leaving their home. “My clients were in disbelief and not concerned with the person who had defrauded them, or collecting money that might be owed them. “Their desire was as it had been at the outset of their problems, to stay in their home,” she says. “I was not able to accomplish their goal, but they were given more time to transition, and I think I was ultimately able to help them understand why and how their home had been taken from them.”

Geremia attributes her strong sense of social responsibility to her overall upbringing and her mother’s political activism. As an undergraduate at Arizona State University, she knew she wanted to be an attorney, and while studying law at McGeorge School of Law in Sacramento, she worked in a public defender’s office.

“In my early years of practice, I accepted a position as a prosecutor. Ironically, in criminal matters involving minors, I could advocate for the best interests of juveniles as well or better as a prosecutor than as a defender,” she said.

The adoption case Geremia recently accepted through the VLP is another advocacy experience she is eager to have, with a little mentoring from a VLP attorney who can provide pointers as needed.

With enthusiasm for the pro bono endeavors she’s undertaken to date, she remarked, “I’ve spoken with colleagues who are surprised to learn of the VLP and their opportunities to participate. I think lawyers are often too busy to think about it, until it comes to their attention.”

RACE JUDICATA

By Shauna Yoder

SAVE THE DATE

FOR THE FOURTH ANNUAL RACE JUDICATA!

This year’s race will take place on Sept. 21 at Kiwanis Park in Tempe. Bring the whole family to participate in a 5K, 1-mile race, or Kids’ Dash! As always, there will be music, awards, refreshments, and a play area for kids. You may register individually or in teams. Online registration is available now at arizonarunningeventson.com. Proceeds will benefit the MCBA Young Lawyers Division’s many projects, including domestic violence activities and Law Week.

Please contact Shauna Yoder, event chair, with any questions or comments, at syoder@bprlaw.com.

Join us and help make Race Judicata 2008 the biggest and best yet!
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The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos welcome. Send your news via e-mail to maricopalawyer@maricopabar.org

Moves and New Hires

Mark Nickel has joined the Phoenix office of Quarles & Brady LLP to practice commercial litigation. Nickel will focus on general commercial litigation and complex business disputes.

The national law firm of Lewis and Roca LLP is pleased to announce the addition of Stanton E. Johnson to the firm’s national Real Estate practice. Johnson is pleased to announce that Debbie Hill has joined the firm’s Phoenix office. Hill is a registered nurse who focuses her legal practice primarily on personal injury litigation.

Ballard Spahr Andrews & Ingersoll, LLP, announces that water rights lawyer Lee A. Storrey has joined the firm as a partner in its Phoenix office. Storrey will lead the newly formed water rights practice in Ballard’s Litigation Department and Environmental Group.

Kristine Reich, a 2008 alumnus of the College of Law, has replaced K Royal as Director of Pro Bono and Community Outreach at the Sandra Day O’Connor College of Law. Royal recently resigned and moved to Texas, where her husband took a new job.

Stefan Palys, an associate in the firm’s Phoenix office, has joined the firm’s National Real Estate practice. Palys’ former registered nurse and focuses her legal practice primarily on all aspects of personal injury litigation.

Events and News

Gallagher & Kennedy, PA, one of the top business law firms in Arizona, marked its 30th anniversary in June. Founded in Phoenix by Michael L. Gallagher and Michael K. Kennedy, the firm has grown from two lawyers to nearly 100, with branch offices in Prescott, Arizona and Santa Fe, New Mexico.

Professor David Kader of the Sandra Day O’Connor College of Law at Arizona State University visited Bosnia and Herzegovina and Croatia in June as part of a two-week seminar on the role of religion in freedom of religion.

Honors and Awards

Debbie Hill, a partner in the Phoenix law firm of Osborn Maledon, PA, received the William E. Morris Pro Bono Service Award from the Arizona State Bar Foundation. The award is given “to recognize extraordinary contributions by an Arizona attorney in making legal services available to persons who otherwise could not afford them.”

The Phoenix office of Steptoe & Johnson LLP, a leading international law firm, today announced the 2008 winners of its Law School Aptitude Test (LSAT) prep course and admissions counseling competition: Martha Larios Pienunuri of Phoenix; Ralph Anthony Robles, Jr., of Mesa; and Tonya Smith of Tempe. They were honored at a luncheon at Steptoe’s Phoenix office on May 28.

Barbara McConnell Barrett was sworn in as Ambassador of the United States to Iceland. Barrett was nominated in March by President George W. Bush, unanimously confirmed by the U.S. Senate and sworn in by retired U.S. Supreme Court Justice Sandra Day O’Connor in April.

We’ll help you find it.
Just call us and we’ll renew you for 2008 in less than five minutes.

Call Cynthia or Karla at (602) 257-4200.
Appellate Lawyers in Trial Practice: New Roles and Opportunities That Can Enhance Litigation Success

By Paul G. Ulrich

This article describes new roles and opportunities for appellate counsel in becoming “appellate counsel in residence” in trial court litigation. It’s based on my experiences in such roles in numerous cases during the past few years.

Increasingly, insurance claims managers and corporate counsel are becoming aware that the quality of their representation can improve significantly, both at trial and on appeal, if appellate counsel are involved in the trial court process.

However, those calls are often made shortly before or during trial, after pretrial discovery and motion practice has been completed, and the case is largely locked in to previously determined issues. There’s also often no clear understanding as to exactly what appellate counsel are supposed to do, and how they are to operate in relation to a previously established litigation team.

For greatest benefit, such involvement should come as early as possible, as soon as a case’s potential for appeal has been identified. There needs to be a clear, cooperative understanding as to how roles and responsibilities are to be shared or divided among appellate and trial counsel.

The appellate lawyer’s role is distinct from trial counsel’s [role]. It also must be proactive, creative and inquiring, so all relevant factual and legal issues are presented or argued thoroughly. Doing so involves contingency preparation for an appeal, thus should be developed before a complaint or answer is ever filed. That plan then can be modified as the litigation develops.

The litigation’s obvious primary objective is to resolve a dispute successful at the trial court level. However, should the litigation not be concluded at that state, a record must be made as the case progresses that best presents the factual, procedural and legal issues involved, either to sustain or overturn the trial court result. The primary goal is to prevail on those issues in the trial court on valid grounds, not simply to raise and preserve possible issues for appeal.

Thoughtfully managed trial preparation and presentation materially increase the likelihood of success at the trial level, of being the appellee in the event of a later appeal, and of ultimately prevailing on the merits by benefiting from favorable standards of appellate review. Only a small percentage of trial court decisions are reversed on appeal. For example, in 2005, the Ninth Circuit reversed in only 7.4 percent of all appeals filed there. This small percentage confirms the desirability of investing significantly greater “appellate” effort to prevail at the trial level.

Simply becoming the appellee dramatically increases the percentage likelihood of success on appeal. The case also may settle without an appeal ever being filed, as the result of favorable trial court rulings on key issues. In that event, success on appeal is 100 percent.

Appellate counsel’s responsibilities

Appellate counsel’s involvement in the litigation process need not begin simply by filing a notice of appeal or cross-appeal, or receiving the boxes containing the trial court record. Instead, appellate counsel can participate actively throughout the litigation as “appellate counsel in residence.” This is a proactive role, not simply sitting in the courtroom.

Appellate counsel’s responsibilities can include preparing the initial pleadings; and preparing or responding to motions to dismiss, motions for summary judgment, motions in limine, jury instructions, trial memoranda on key legal issues, motions for judgment as a matter of law, and post-trial motions.

Appellate counsel also can assist in developing the case’s initial and ongoing general strategy from legal and procedural, as well as factual, perspectives; in deciding what discovery to pursue or defend to develop or negate possible legal issues; in preparing any required disclosure and pretrial statements; and ensuring that all necessary testimony and other evidence has been properly presented or objected to throughout the trial.

Appellate counsel also can be primarily responsible for arguing key legal issues and motions throughout the trial. Doing so is particularly helpful when such specific issues are part of the case’s more general “big picture” theme of recurring key legal issues. This is particularly true where an appeal might occur regardless of the trial court result.

Performing in this role throughout the trial process creates a distinct new area of practice opportunity for appellate counsel.

However, the trial process is more dynamic, “real time” and open-ended than appeals. It thus requires a more strategic, proactive, management-oriented mindset.

Trial practice from an appellate perspective requires working knowledge of rules of evidence and civil procedure, the substantive law and the facts involved in the particular case, as well as applicable standards of appellate review.

Such “appellate” trial practice presents creative opportunities to make the record necessary to develop, defend and prevail on key issues, not simply to argue about them later on appeal based on the then-existing trial court record, if any.

The goal of “appellate” trial practice is not simply to preserve issues for appeal by assuming a trial court loss (or to look at the case solely from an appellant’s perspective. Instead, the goals are to prevail on as many key issues as possible in the trial court, to become the appellee if an appeal follows, and to position the case generally through litigation or settlement so the opponent doesn’t appeal at all.

This approach can be applied successfully to litigation of any kind or size.

The legal research and writing required for this suggested approach can be performed by qualified lawyers specifically assigned to such responsibilities under lead appellate counsel’s general supervision, as part of a general “team” approach to litigation. Doing so permits those responsibilities to be performed continuously as required, particularly during trial, while other team members are involved in discovery or trial activities.

Other applications

Not all litigated cases go to trial or appeal. By far the largest number are settled, mediated or arbitrated to conclusion without incurring that effort, expense and uncertainty.

For example, fewer than two percent of all cases filed in Maricopa County Superior Court are now being tried. That percentage has steadily decreased in recent years. As the result, the rate of increase in number of civil appeals may be declining as well.

An appellate lawyer who waits for the phone to ring until after a contested judgment is entered may miss many opportunities to apply his or her appellate skills earlier in the trial court process. Examples of such situations not resulting in an appeal include:

1. Preparing and arguing motions for partial dismissal or summary judgment to knock out punitive damages or several claims on the merits. As the result, the plaintiff’s case is seriously weakened and the case settles favorably for the defendant. An appellate lawyer for plaintiff also might obtain partial summary judgment in his or her favor on key issues, increasing the strength of plaintiff’s case for settlement purposes.
NEW MCBA MEMBERS

MCBA welcomed 15 new members to the Association. New members are those who have never been, or have not been for at least one year, a member of the MCBA.

Randall Craig
Scottdale

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Phoenix

Laura Pilar Balza
Dessaules Harper, PLC
Phoenix

Jennifer R. Franklin
R.J. Peters & Associates, PC
Phoenix

Rachel Strachan
AZ Corporation Commission
Phoenix

Gary F. Howard
Gary F Howard PC
Phoenix

Eric McGlothlin
Gust Rosenfeld PLC
Phoenix

John K. Nowiejski
Scottdale

Steven G. Kochen
Isagenix International, LLC
Chandler

Jeff Rose
Isagenix International, LLC
Chandler

Penny L. Higginbottom
Law Office of Penny L. Higginbottom
Tempe

Frank G. Pankow
Pankow & Company, P.C.
Phoenix

Ronald M. Meintz
Phoenix

Matthew Thomas Anderson
Scottdale

Lloyd A. Thomas
Tempe

APPELLATE LAWYERS

continued from page 14

Assisting in identifying and presenting meritorious factual and legal claims and defenses through initial pleadings, discovery, disclosure statements and mediation memoranda. As the result, the client’s case appears stronger and the case is mediated to a more successful conclusion.

Consciously positioning the case for mediation from the beginning, by concentrating pretrial strategy, discovery and motion practice to emphasize the strengths or weaknesses of the case, including any possible appellate issues, as early as possible. Appellate lawyers are beginning to market their capabilities in that regard.

Simply having an appellate lawyer visibly involved in the settlement or mediation process and present during the mediation signals that the client is prepared to complete the trial process and to appeal if necessary. Such an appearance creates additional incentives for the case to settle for a reduced amount to avoid the expense, delay and uncertainty of a possible trial and appeal.

Becoming “appellate counsel in residence” in trial court litigation presents new roles, opportunities and challenges for appellate lawyers. Such involvement can substantially improve the client’s likelihood of success in settlement, trial or on appeal. Appellate lawyers’ analytical and advocacy skills can be employed to great advantage in such situations.

TWO EMERGING

continued from page 9

which entrepreneurs choose to exploit opportunities for profit—whether through start-ups, established firms, or market transactions”; and “the notion of entrepreneurs as risk takers draws from the psychology literature and peers into ‘the entrepreneurial mind’”.

4. The need for lawyers with expertise in counseling clients about entrepreneurial activities (when can entrepreneurial employees leave ‘without violating a non-compete agreement, a confidentiality agreement, trade secret law, and the corporate opportunity doctrine’; how do start-ups raise funds from angel investors and venture capitalists without violating securities law; the need to counsel on investment contract terms and design).

5. The numerous examples of legal scholars finding that the laws of a jurisdiction matter when discussing entrepreneurship (such as Ronald Gilson’s explanation for Silicon Valley’s comparative success over Boston’s Route 128, i.e., “California refused to enforce non-competition agreements, but Massachusetts did not”).

I don’t know about you but I am sold: Entrepreneurship is and should be a separate field of legal study. Transactions with respect to entrepreneurial opportunities do indeed seem to require something more than the routine application of general principles of contract, tort or property law.

The collaborative law movement

The collaborative law approach began chiefly in domestic relations and family court matters. It differs from the typical mediation process and the traditional adversarial divorce proceeding.

Each attorney makes a commitment to his or her client and to the other spouse to limit representation to the collaborative process and to not continue representation if litigation proves necessary. This has resulted in numerous ethics opinions which have been favorable to the process.

Collaborative law thus is a dispute resolution process which relies on negotiation and negates the prospect of litigation. It involves a “four-way” agreement between divorcing spouses and their lawyers which is entered into at the inception of the process.

Each commits to collaborate in good faith to reach a dissolution agreement without resorting to litigation. There is a “disqualification” provision whereby each lawyer agrees with his or her client, and also promises the other spouse that the lawyer’s services will end if negotiation fails and litigation becomes necessary. In that instance, both spouses agree to retain new counsel or litigate pro se. Neither collaborative lawyer may aid any new litigating counsel or earn any additional fee once the collaborative law process ends in failure.

Critics of collaborative law believe there are ethical issues presented by the lawyer disqualification agreement and because each spouse has the power to end the other spouse’s lawyer-client relationship by merely calling a halt to the collaborative law process. Ethics opinions to date, however, uphold collaborative law practice as ethical.

According to the article under discussion, this shows that the mainstream bar’s response to collaborative law is to balance “the values of client autonomy and client protection and gives contractual adjustments greater sway in the governance of lawyer-client relationships.”

It also reflects that while the ABA’s Model Rules remain the prevailing legal ethic rules, there has been a proliferation of practice guidelines for specialty fields because of the growth in lawyer specialization, such as collaborative law, and lawyers in these fields find as much or more guidance in these guidelines as the prevailing ethics rules and the opinions interpreting them.

There is no section or committee of the State Bar of Arizona dealing with either field at the moment. The University of Arizona has a law and entrepreneurship course and ASU has some entrepreneur programs, but not in the law school. There are a number of Arizona attorneys who hold themselves out as willing to participate in a collaborative law process.

After reading these articles, it occurs to me law schools and bar associations alike will take notice of these movements and capture the momentum of those students and practitioners interested in moving the practice of law in this direction.
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