Join the Volunteer Lawyers Program
April 30 in Honoring Volunteers

The Volunteer Lawyers Program, joined by the Maricopa County Bar Association and Community Legal Services, will host a reception April 30 to thank and honor the volunteers who help the VLP in providing access to civil justice to those with low incomes.

Featuring awards presented by Arizona Supreme Court Chief Justice Ruth McGregor, the event will take place at the Wyndham Hotel in downtown Phoenix from 5:30-7 p.m. Please call the VLP at (602) 258-3434 ext. 2840 to RSVP.

More than 320 people attended the MCBA's Barristers Ball last month at the Ritz Carlton, benefiting the Wills for Heros Foundation through a raffle and silent auction.

The total raised by the event was not available at press time, but YLD Barristers Ball Chair Matt Mansfield of Ballard Spahr Andrews & Ingersoll expects it to be significant.

Five major raffle prizes and a host of silent auction items were made available to guests on the pool terrace of the Ritz. Later, dinner and dancing in a downstairs ballroom completed the evening.

Guests were also shown a film about the Wills for Heros Foundation and its impact on the lives of thousands of first responder families. Without the foundation's assistance, many would end up without the added security that a will can provide.

See Barristers Ball page 19

Barristers Ball Puts on the Ritz, Benefiting First Responders and Their Families

CourtWatch
Daniel P. Schaack

Visitation Hours, Bigamy
Plague Court

By Daniel P. Schaack

Arpaio v. Baca

Although she had the authority to inquire into whether shortened jail-visitation hours violated criminal defendants’ rights to the assistance of an attorney, the presiding criminal judge of the Maricopa County Superior Court, Presiding Criminal Judge Anna Baca, overstepped her authority in making a blanket order that the sheriff extend the visiting hours for all in-custody defendants. So held Division One of the Arizona Court of Appeals in Arpaio v. Baca, No. 1 CA-SA 07-0267 (Ariz. App. Feb. 26, 2008).

Maricopa County Sheriff Joe Arpaio learned that his office had exceeded its overtime budget and that the county wouldn’t cover overages. He responded by reducing available privileged-visitation hours—opportunities to meet with lawyers, legal staff, probation officers, etc. He cut them down to between 6:30 a.m. and 2:30 p.m.

Attorneys from the Maricopa County Public Defender’s office representing several defendants objected that this schedule did not allow them sufficient time to meet with their in-custody clients, impinging on their ability to investigate cases, negotiate and explain plea deals, and prepare for evidentiary hearings and trials. They argued that this interfered with their clients’ Sixth Amendment rights to counsel and their constitutional right of access to the courts.

Presiding Criminal Judge Anna Baca conducted an eight-day evidentiary hearing, after which she issued a detailed order. She noted that defense attorneys were generally in court during most of the time that the sheriff now allowed privileged visits. The hours were reduced for budgetary, not safety reasons.

See CourtWatch page 3

New MCBA Website Now Online with New Member Benefits at Staples

MCBA has partnered with office supply leader Staples to make their products available to members at a significant discount. Staples is not just about office products; it’s also about office solutions. They’ll work closely with you to find the ideal program to suit your legal practice and make it easy for you to manage your account.

The program increases your control of costs through ongoing monitoring and detailed reporting. You’ll save on supplies and your staff will save time. Go to www.maricopabar.org and click on “Member Services” to find out more and get started.

MCBA is also pleased to introduce its new website. Though still under construction, you can now easily keep tabs on new CLE offerings and find registration information quickly. In addition, our new front page will keep you up-to-date on activities and events.

Please note that no log-in is required at this time and the members-only portion of the site is not yet available. Stay tuned as we continue to build the site and add what we hope will be useful and easy-to-find information.
‘Good News, Bad News’ Story of Access to Legal Services and Justice in Maricopa County

By Judge Glenn Davis

It’s one more “good news, bad news” story, except this time, we as lawyers have the opportunity to turn it into a “good news” story only. It’s the story of legal aid and access to justice in Maricopa County.

First, the good news

Through the Volunteer Lawyers Program, a joint program of the MCBA and Community Legal Services, more than 10,000 pro bono hours of legal services were provided to more than 9,000 low-income people in 2007. Attorneys volunteered their time to resolve critical civil legal problems that would, it is hoped, make a difference to homeowners, counsel families of the court or the trial court in which the VLP arranges

Homeowners project, a new statewide initiative designed to raise awareness and financial support of legal aid and pro bono, including the VLP Reception at the Wyndham Phoenix Hotel on April 30; and the Maricopa County Bar Foundation/VLP Pro Bono Golf Classic at the Legacy Golf Course on Nov. 8.

There are many ways each of us can help support legal aid in Maricopa County. By doing so, we can all make a difference. Support and encourage your colleagues to support the Volunteer Lawyers Program, the Arizona Equal Justice Foundation and other events that promote access to justice. We need to make legal assistance and access to justice our professional charity of choice!

Join me in making this a “good news, good news” story.

My thanks to Nancy S. Guadagno and Lillian Johnson of Community Legal Services and Pat Gehrich of the Volunteer Lawyers Program for helping me put together the information for this column, and for all the great work they do in advancing the cause of access to justice.

The need is critical for both pro bono and financial support of programs that extend legal services to the county. How can we help?

Sign up to be a volunteer attorney through the VLP.

Take on one more case annually if you’re already a volunteer attorney.

Call the VLP today to accept a case at (602) 254-4714.

Recruit a colleague to the VLP.

Volunteer with Lawyers Helping Homeowners by calling (602) 254-4714.

Support the Arizona Equal Justice Foundation, Arizona’s lawyer-run financial campaign supporting Arizona’s major civil legal aid programs, by calling (602) 258-3434, ext. 2150.

Support and/or participate in an event designed to raise awareness and financial support of legal aid and pro bono, including the VLP Reception at the Wyndham Phoenix Hotel on April 30; and the Maricopa County Bar Foundation/VLP Pro Bono Golf Classic at the Legacy Golf Course on Nov. 8.

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HOP ON BOARD THE YLD TRAIN! COME ON, EVERYONE!

My two-year-old son, Jack, has a toy train that an ill-intentioned grandparent gave to him last Christmas. It tows behind it two train cars that hold various plastic jungle animals. When the smokestack of the train is pressed, it plays, at a volume too extreme for a toddler's ears let alone mine, a little musical ditty that begins, "HOP ON BOARD THE ANIMAL TRAIN! COME ON, EVERYONE!" The ditty plays repeatedly in my home.

I have designs for this instrument of auditory irritation to find its way under the rear tire of my Honda, but I have been thwarted so far by my lovely wife. It's time I take up my train, if you want to advance your career, sometimes it will come, mark my words.

On April 29, the KAET-TV Channel 8 studios at Arizona State University will host the Phone-A-Lawyer event, where volunteers field calls from the public and provide legal advice on a broad area of subjects.

Additionally, volunteers are needed to attend a YLD board meeting on the second Tuesday of every month at noon at the MCBA office. If you want to find out more about us, attend a YLD board meeting on the second Tuesday of every month at noon at the MCBA office. I encourage you to "hop on board" the YLD train. Come on, everyone!

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Baca concluded that "[t]he reduced visitation hours have impinged and obstructed the right to counsel and access to the courts" of all in-custody criminal defendants. "The MCSO changes in privileged visit hours, taken to resolve its budget issues," she ruled, "are not an allowable basis for the result which impairs in-custody defendants' constitutional right to counsel and access to the courts."

Baca ordered the sheriff to temporarily extend the hours for privileged visits until 9 p.m., and ordered the sheriff into mediation to establish a permanent schedule. Arpaio turned to the court of appeals, filing a special action.

He first argued that even as presiding criminal judge, Baca lacked jurisdiction to conduct a system-wide inquiry into cases not assigned to her. Judge Philip L. Hall, writing for the court, rejected that contention. He noted that Baca had not inquired into the merits of any one criminal defendant's case, but had acted in an oversight capacity, utilizing inherent powers granted to the courts.

He nevertheless held that Arpaio is not a good idea for the parties to resort to media- tion.  He nevertheless held that Arpaio is not a good idea for the parties to resort to mediation because the sheriff—an officer designated by the state constitution—has a statutory power and duty to manage the county jails, including the authority to determine visitation hours.

Michael L. Keith
Construction Investigation
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The Paralegal Division held another successful Paralegal Career Day on March 8. Students from paralegal studies programs across the state participated, and $1,000 scholarships were presented to four very deserving students from Everest College, Lamson College, Phoenix College and Yavapai College.

Tremendous support for the students and the scholarships comes from the paralegal program directors. Following are some of the comments we received after the scholarship recipients were announced:

"On behalf of Everest College’s paralegal program and students: THANK YOU SO VERY MUCH," said Kimee D. Steinmetz, Everest College program director. "These scholarships provide so much more than just financial assistance, and our program is very grateful for the MCBA Paralegal Division’s commitment to students in the community."

"Just wanted to let you know that our Yavapai student who received one of the scholarships is simply over the moon," said M. Ruth Harrison, J.D., Yavapai College Paralegal Program director. "It is a terrific boost to her self-esteem and it will enable her to finish the program a bit earlier than expected because she will be able to complete more classes at a time. What a wonderful thing the MCBA Paralegal Division has done for Yavapai College and our students. You should all be commended. I know how hard you work on the activities you promote."

"PC’s recipient, Diane, I think is in shock," said Scott Hauert, Phoenix College program director. "This scholarship is a true godsend for her. Thanks from the entire faculty at PC."

Paralegals also have an opportunity to give back by mentoring paralegal students or recent graduates who are just getting out into the workplace. Our Mentor Program matches experienced paralegal mentors with paralegal students and/or new paralegals who are division members to provide guidance related to current information on the paralegal profession, career objectives, educational goals, résumé reviews and interviewing tips, practice area related paralegal duties, tips for obtaining a paralegal position, and the benefits of being a student member of a paralegal organization.

If you are interested in becoming a mentor or if you are looking for a mentor, please visit our website at www.maricopaparalegals.org or e-mail mentors@maricopaparalegals.org for more information.
Forms and Cover Sheets Required and an eFiling Reminder

Sensitive data form required in family court

Maricopa County Superior Court Administrative Order 2008-21 requires filing a confidential sensitive data form in new family court cases. The administrative order explains the pilot program this way: “Family Court cases require capturing particularly sensitive information about parties in order to process support for families, and the courts have an inherent interest in protecting sensitive data from the public record . . . To improve the accuracy of information provided by litigants and counsel, improve support collections, protect sensitive data and to promote the electronic order of assignment process in Maricopa County, the court will require parties in family court cases to file a sensitive data form at the petition and response stages of family court cases.”

Administrative Order 2008-21 details the pilot requirement, including the Sensitive Data Sheet form that must accompany family court filings. The order and form are available online at www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/docs/ao2008-021.pdf.

The required form will be available in self-service center packets and is now on the clerk’s website. The clerk’s office provides the new form at its file counters and parties, attorneys, process servers and messenger companies are being reminded of the change.

On Monday, April 28, the clerk’s office anticipates requiring the form prior to accepting filings in family court, per the administrative order. A recent survey by the clerk’s office indicates over 20% of family court cases have sensitive information contained in public documents, including social security numbers and bank account information. Implementing the mandatory sensitive data form in family court cases in Maricopa County will better serve court customers while improving case management.

Civil cover sheet reminder

Pursuant to Maricopa County local rule 3.1(a), plaintiffs are required to file a civil cover sheet with the clerk when filing a civil action. The civil cover sheet changes periodically and the most recent form is available on the clerk’s website and at all civil filing counters. Using the most recent form enhances case management for the court and improves the speed of service at the Clerk’s filing counters.

For more information on forms available at the Clerk’s Office, visit www.clerkofcourt.maricopa.gov/faxonde mand/CATALOG.htm.

The clerk’s office will return new civil case filings that do not include the new civil cover sheet to the filer and refer them to court administration. After review, court administration will further instruct the filer and, if necessary, provide specific instructions for the clerk on whether to accept the filing. This is necessary to allow the court to most effectively manage its civil cases. Processing will be easiest when civil filings include the newest version of the civil cover sheet.

eFiling guidelines reminder

Guidelines for successful electronic eFiling in the Superior Court are available on the clerk’s website. Presiding Judge Barbara Rodriguez-Mundell ordered a dynamic, web-based guideline for eFiling that allows updates to be made to the document as technology improves and as case management requires.

The web-based guidelines track changes to the process that are easily identified at the top of the document entitled, “Revision History.” You may print the guidelines and update your copy as they change, or bookmark the guidelines in your internet browser to ensure you always have the most recent version. As new case types are added to eFiling, case type-specific requirements will appear on the document. The guidelines are available on the clerk’s website at efling.clerkofcourt.maricopa.gov/efilingguidelines.

As a reminder, not all cases may be electronically filed. Complex civil litigation cases are designated for electronic filing by court order after motion. General civil cases may only file electronically after the parties have received a minute entry from the court placing the individual case into the eFiling pilot. eFiling is permissible in criminal and family court cases, meaning you can choose to eFile if your case is assigned to one of the judicial officers who appear on the clerk’s website as a participating eFiling division in the criminal or family court case types.

As a final reminder, be sure to file on the “live” eFiling website, not the training site. This information and more is available under the “Filing” category on the clerk’s website, www.clerkofcourt.maricopa.gov.

## Litigating is hard work. Preparing for it doesn’t have to be. At Xact Data Discovery, we streamline the communication processes between people, projects and data so law firms can spend more time making their case - rather than making a scene. From e-Discovery to Paper Reprographics and beyond, Xact Data Discovery takes the emotion out of case preparation and turns it into positive energy for the courtroom. Open communication. Closed case.

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"Let's leave the arguments for the courtroom."
Legal Briefs
By Joan Dalton

Ninth & Fifth Circuits to design pro se filings database
With money from a 2008 Local Initiatives grant, the Ninth and Fifth circuit courts of appeal will partner to create a tracking system for all pro se prisoner-filed cases dismissed for being frivolous or malicious, or for failure to state a claim for relief. Under current law, prisoners who have three or more such case dismissals may be denied pro se funding for future filings. The “three-strikes” database will assist pro se clerks in determining who may have accumulated three or more “strikes” in one or more federal court districts anywhere in the country.

Federal judiciary receives increase in funding for FY 2008
The 2008 Consolidated Appropriations Act provided the federal judiciary with $6.246 billion in funding for FY 2008, a 4.5 percent increase over FY 2007. Administrative Office Director James C. Duff said he believes the bill “provides sufficient resources to finance continuing operations in the courts and to address the growth in workload, especially that associated with immigration enforcement.” The act provides that a $25 million emergency appropriation be made available to address increased workloads resulting from the rise in immigration enforcement.

Federal Court Security Improvement Act enacted
The Court Security Improvement Act of 2007 became Public Law 110-177 on Jan. 7, 2008. The new law requires the director of the U.S. Marshals Service to consult with the Judicial Conference concerning court security on a continuing basis. The act also extends until 2011, the Judicial Conference’s authority to redact sensitive information related to judges from financial disclosure reports, allows judges to use their courthouse address instead of their home address when applying for state-issued documentation, and creates sanctions for those recording fictitious liens against judges.

Searchable database executed for AG Opinions and Governor Executive Orders
The Arizona State Library, Archives and Public Records has created a searchable database of historical Arizona documents that includes AG opinions and Arizona Governor Executive Orders. The documents are available at the Arizona Memory Project website at azmemory.lib.az.us.

New process for purchasing district court proceeding transcripts
Transcripts of proceedings before the U.S. District Judges and Magistrate Judges in the District of Arizona are now being filed with the court in electronic format. Electronic transcripts will be e-filed and available for viewing at the clerk’s office, but may not be copied for a period of 90 days. If there are no redactions to be made after the 90 day restricted period, the transcript will then be available to view, download or print on PACE at $0.06 cents per page. A copy of the transcript also will be available at the clerk’s office for $10 per page. Those wishing to purchase a copy of a transcript during the initial 90-day period must do so through the court reporter.

Avoiding the ‘Slubby Mass’

If you are looking for an underlying theme to the legal writing columns I write, I suggest “avoid the slubby mass.”

The Ninth Circuit originally coined the term “slubby mass” in N/S Corp. v. Liberty Mut. Ins. Co., 127 F.3d 1145, 1146 (9th Cir. 1997) and has quoted the term twice since then, most recently in Sekiya v. Gates, 508 F.3d 1198, 1200 (9th Cir. 2007). The key sentence reads as follows:

“In order to give fair consideration to those who call upon us for justice, we must insist that parties not clog the system by presenting us with a slubby mass of words rather than a true brief.”

According to the Ninth Circuit, there are many ways to produce a slubby mass, including:

- Failure to provide a standard of review.
- Failure to make a clear legal argument.
- Failure to provide citations to authority.
- Failure to provide accurate, specific citations to the record.
- Failure to include a table of contents and a table of authorities.
- Failure to characterize the underlying case accurately.
- Failure to follow the required word limit and spacing rules.
- Citation of cases that have been depublished.

In the Ninth Circuit, a slubby mass of words results in the court striking the brief and dismissing the appeal.

I think the court is on to something: a judicially-imposed slubby mass rule. A quick search of Westlaw shows no other state or federal court has applied a slubby mass rule. Those other courts should join the Ninth Circuit and take such a creative and effective stand against material breaches of good writing in all types of written documents.

If you would like to see an example of a slubby mass, you can read Sekiya’s brief on Westlaw at 2006 WL 2701330.
Beginning with the inaugural Maricopa County Spring Training meeting of teams from what would become the Cactus League, the New York Giants were pitted against the Cleveland Indians. The talented Cleveland team was training at Randolph Field in Tucson thanks to the efforts of Hiram S. Corbett and Bill Veeck.

Veeck was the new owner of the Indians and owner of ranch land around Tucson. Corbett, a ninth generation Tucsonan, was a tireless promoter of his hometown and baseball. He owned a building products business, was a former state senator, and was president of the Tucson Baseball Commission for 24 years. Randolph Field was renamed Hi Corbett Field in his honor and is currently the spring training home of the Colorado Rockies.

Horace Stoneham, owner of the Giants, enticed by the sunny weather and recently renovated Municipal Stadium, had reached an agreement with Veeck that if the Indians moved from their Clearwater, Fla. training site to Tucson, the New Yorkers would leave Miami and set up in Phoenix. The Cleveland team remained in Tucson for spring training for fifty years, and the Giants (now of San Francisco) are still a major attraction in Scottsdale.

Why Arizona?

With no major league team west of St. Louis until the late 1950’s, the Grapefruit league in Florida had been home to most of baseball’s pre-season workouts since the early 30’s. A handful of teams had set up camps in California, and a few other southern cities, and some teams, as early as 1929 had barnstormed through Arizona during the pre-season exhibitions. The first major league training game in Phoenix was on March 26, 1929, between the Pittsburgh Pirates and Detroit Tigers.

Despite obvious fan support, spectacular weather and a recently upgraded venue, Spring Training would likely never have taken root in these dusty desert Arizona ball fields, but for the oppressive Jim Crow statutes and legal segregation tradition that prevailed in post World War II Florida.

When Jackie Robinson finally made it to his post-war patriotic duty to support the American National Pastime. The New York Giants would become the first African-American ballplayer to cross baseball’s color line. Robinson was prohibited under Florida law from sharing railroad cars and waiting rooms with his white teammates, from staying in the same hotels and eating in the same restaurants. In many Florida cities, it was illegal to hold athletic contests involving mixed race teams.

In the spring of 1947, around the same time the Giants opened their camp in Phoenix, the Brooklyn Dodgers and Jackie Robinson were training in Havana, Cuba to avoid trouble with Florida authorities. Veeck and Stoneham both recognized the role black players would have in post-war baseball, and in Arizona, sought a more socially open environment for their clubs.

Although Arizona laws were tolerant of racism—they prohibited interracial marriages and permitted discrimination on the basis of race in education—the state had far fewer legal obstacles to integration of sports teams. Only a few months after the first Cactus League season kicked off in 1947, Jackie Robinson was en route to becoming the National League Rookie of the Year, and Veeck’s Cleveland team had signed the first African American player in the American League.

Breaking barriers

Larry Doby was signed by the Indians in July 1947 and within 15 months, he and his legendary teammate, Satchel Page, became the first black players to play on a world championship team. Doby was the first player from what would become the Cactus League. When he became the manager of the Chicago White Sox in 1978, he was only the second black manager of a major league team.

In spite of Veeck’s optimism about racial openness in Tucson, when Doby reported to Spring Training in 1948, the bleachers were integrated, but the hotels and restaurants used by the teams were not. It would be some years before Doby and Arizona’s first African American attorney, Hayzel B. Daniels could expect to be welcomed at all of Arizona’s restaurants and resorts.

Welcome to Maricopa County

In contrast, the New York Giants of 1947, and their manager, Mel Ott, swept into a Phoenix that welcomed the all-white team with open arms.

Although a contingent arrived a week earlier for massages and therapy at the Buckhorn Baths east of Mesa, the main group of more than 30 players, arrived in mid-February by train, plane and car, and checked into the
A Sole Practitioner’s View of Lawyer Discipline – Part II

By Jack Levine

Editor’s Note: In the February 2008 issue, the first part of this opinion piece was published. The following is the second and concluding part.

Unlike sole practitioners, why is it that so few big-firm lawyers have been the subjects of disciplinary proceedings? In addition to the possibility that big-firm lawyers may not be reporting unethical conduct among their own, one might also conclude that the ethical standards of big-firm lawyers may be higher than that of sole practitioners or small-firm lawyers.

However, a deeper exploration of this issue suggests that unethical conduct in the big firms may be of such a profound magnitude that for political, economic or other reasons, it has been totally ignored by the state bar.

The role of large firm lawyer-lobbyists, raising substantial sums of money for members of the state legislature on behalf of clients intent on influencing a particular legislative agenda, should be a matter of some ethical concern to the profession. We are also frequently treated to the spectacle of large law firms carrying on legislative lobbying activities concurrently treated to the spectacle of large law firms, while their partners are, at the same time, serving as legal counsel. To the extent that a law firm controls a public utility’s governing board, this can result in the creation of a captive client, powerless to object to the size of the law firm’s legal bills or to make independent decisions concerning the need for legal services.

Ironically, for a number a years, the managing partner of one such law firm served as chairman of the state bar’s ethics committee. Also of concern are the large law firms who have profited in real estate transactions from information supplied to them by firm members serving on committees entrusted by the public to select sites for municipal or county development projects. There then was the savings & loan scandal of the 1980’s where members of several large Phoenix law firms acted as intermediate “purchasers and sellers” of their clients’ real estate in order to fraudulently boost the value of the land so their developer clients could obtain larger sales prices and loans based on the artificially inflated values.

One would think that the intentional involvement in such egregious conflicts of interest would result in severe condemnation or drastic sanctions, but the bar has been strangely silent on such issues. It has been suggested that the reason the state bar consistently turns its otherwise stern gaze away from the activities of big firm lawyers, while going to extreme lengths in ferreting out insignificant indiscretions of the sole practitioner, is because of the significant financial stake the large firms have in perpetuating these practices and the substantial resources that a large law firm could be expected to muster in defending them.

Tackling one of the big firms over such issues would require an enormous expenditure of time, money and effort by the state bar in pursuing such a task. Such an undertaking could quickly exhaust the bar’s resources. It is much easier to pursue other lawyers who do not have the financial ability to defend themselves.

With legal bills often running as high as $50,000-$100,000, very few sole practitioners or small-firm lawyers can afford legal representation in disciplinary matters, not to mention the emotional strain of undergoing a disciplinary proceeding without an extensive support system.

It is generally agreed that the core function of our disciplinary system is to protect the public against unethical lawyers and to instill a sense of confidence in our profession. In this regard, there is a brooding concern that if we do not demonstrate that we are being sufficiently “tough” on lawyers, the legislature will step in and remove the disciplinary function from the Supreme Court and set up their own disciplinary agency. It may be for this reason that the disciplinary system often functions much like the black holes in outer space—once you enter its orbit, “nothing escapes, not even light.”

One of the common misperceptions that fuel many of the attitudes and beliefs held by those involved in our disciplinary system is that the public’s image of our profession has fallen to its present low because of unethical lawyers.

Public polling conducted by the ABA suggests that although individual acts of unethical conduct clearly hurt us as a profession, this does not even approach the collective damage done to our image by even a single billboard on a public highway or TV ad soliciting accident victims with personal injury claims. If we are to improve the image of our profession, restrictions on personal injury advertising might be a far more productive place to put our efforts rather than to continually beef up the state bar’s disciplinary program.

In order to promote fairness in our disciplinary system, we must be sure that those who administer our system are fair-minded individuals. One of the principal flaws in our present disciplinary system is the jaundiced view that is frequently acquired on the part of those who serve, year after year, as hearing officers, members of hearing committees, or as members of the disciplinary commission. Many who fill these positions are actually recruited by the state bar’s disciplinary staff.

Also, many of those who respond do so because of a desire to rid the bar of unethical lawyers, which desire may be unfairly projected on all lawyers coming before them, thereby creating a pre-conceived bias. Those who are accepted for appointment then go through an orientation program conducted by the state bar’s disciplinary staff and then serve year after year on hearing committees and on the disciplinary commission, working closely with the disciplinary staff in deciding the fate of lawyers in disciplinary cases.

If the county attorney or the attorney general solicited applications from those who were willing to serve as jurors in criminal cases so that criminals could be eliminated from society, who were then trained by the prosecutor for their duties and then who were permitted to serve as jurors, on case after case, for up to six years, there would surely be a thunderous outcry that such a system was grossly unfair and an outrageous denial of “due process.”

Yet, this is precisely how our disciplinary system has functioned for as long as anyone can remember. In the view of many lawyers, it is much like a Frankenstein monster, running amok among the membership, too often striking down the innocent as well as the guilty.

See Lawyer Discipline page 12

NEW MCBA MEMBERS

MCBA welcomed 13 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.

Ms. Shab Amiri
Amiri Law Office
Phoenix

Ms. Margaret Theresa McCarthy
Renaud Cook Drury Mesaros, PA
Phoenix

Ms. Travis D. Harvey
Poli & Ball, PLLC
Phoenix

Ms. Adam D. Martinez
Skiba Law Group, PLLC
Mesa

Ms. Mary T. Hone
Law Office of Mary T. Hone
Scottsdale

Mr. Steven Charles Vondran
Francis J. Slavin, PC.
Phoenix

Mr. Todd E. Weaver
Jorden, Bischoff, & Hiser, PLC
Sun City

Ms. Travis D. Harvey
Skiba Law Group, PLLC
Mesa

Ms. Anne Hutchinson
O’Connor & Campbell, PC
Phoenix

Ms. Mary T. Hone
Law Office of Mary T. Hone
Scottsdale

Mr. John C. Dearing
Zwillinger Georgelos & Greek P.C.
Phoenix

Ms. Pele Peacock
Alvarez & Gilbert, PLLC
Scottsdale

Ms. Shana D. Higa
Law Office of Mark A. Winstor, PLC
Mesa

Mr. Flynn Patrick Carey
Gallagher & Kennedy, PA
Phoenix

Mr. John C. Dearing
Zwillinger Georgelos & Greek P.C.
Phoenix

Mr. Francis J. Slavin
Francis J. Slavin, PC.
Phoenix

See Lawyer Discipline page 12
MY LITTLE ARIZONA RULES BOOK

Just published by the MCBA, this handy compendium has been produced by MCBA’s Criminal Law Section executive board. Its 72 pages in a 5 x 7-inch format include: Arizona Rules of Evidence with Annotations; selected Arizona Rules of Criminal Procedure; Proposition 200 (13A.R.S., Sec. 901.01); a Collateral Consequences Chart; frequently used telephone numbers; and the current Arizona Supreme Court’s Sentencing Table. Also included are relevant portions of U.S. constitutional amendments and the Arizona Constitution.

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Court Celebrates Six Newly Appointed Commissioners

By J.W. Brown

Presiding Superior Court Judge Barbara Rodriguez Mundell administered the oath of office to six new court commissioners during a ceremonial event in the Board of Supervisors Auditorium in downtown Phoenix.

Superior Court Judge Glenn Davis presented each new commissioner with a gavel in his capacity as Maricopa County Bar Association president during the March 20 investiture ceremony.

The six commissioners, appointed by Judge Mundell, are Richard Albrecht, Patricia Arnold, Jerry Bernstein, Keelan S. Bodow, Jacki L. Ireland and Jeffrey Rueter.

Commissioners Albrecht, Arnold, Bernstein and Ireland are assigned to Initial Appearance Court, while Commissioner Bodow is assigned to Family Court and Commissioner Rueter is assigned to a Juvenile Court calendar.

Commissioner Albrecht came to the court in September from a 22-year career as an assistant Arizona attorney general, defending the state, its agencies, licensing boards and employees in all levels of the state and federal judicial systems. He grew up in Phoenix and attended Arizona State University, receiving both his bachelor’s degree in history and law degree.

A Kansas native, Commissioner Arnold started her legal career as a deputy clerk of the district court in a rural region of the state. Later she continued court work as a bailiff, a law clerk and court reporter. She worked nine years as a court reporter before starting college, which culminated in her graduation from the University of Denver Law School with her juris doctorate degree.

She moved to Arizona after completing law school and worked for the Ak-Chin Indian Community as a prosecutor before joining the Arizona Attorney General’s Office. She was unit chief counsel in the Protective Services Section. For the past nine years her work focused on protecting abused and neglected children. She was in private practice in New York state before moving to Arizona in 1996. She then practiced in commercial litigation with a private firm in Phoenix. Commissioner Bodow received her law degree from the State University of New York at Buffalo School of Law and her undergraduate degree in psychology from Brown University.

Born in South Dakota and raised in Prescott, Commissioner Ireland earned her law degree cum laude from the University of Arizona. She also graduated cum laude with an undergraduate degree in criminal justice from Northern Arizona University. She became a deputy county attorney in 1999 and left in 2003 to join the U.S. Attorney’s Office in Phoenix. There she specialized in prosecuting immigration crimes and large-scale drug trafficking cases. Her appointment as a commissioner was effective in late November.

Commissioner Rueter spent the 10 years immediately prior to his Superior Court appointment as a prosecutor for the Arizona Attorney General’s Office. During that time he has been defending the state, its agencies, licensing boards and employees in all levels of the state and federal judicial systems. He grew up in Phoenix and attended Arizona State University, receiving both his bachelor’s degree in history and law degree.

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See Court Celebrates page 17
Court Seeks Return to Jury Summons Method That Makes Most Sense

By J.W. Brown

Superior Court is seeking to reinstitute the way it summons jurors for trial service that will be efficient, but also convenient, for Maricopa County residents who qualify to serve. The main purpose is to deliver fair justice to all, and jurors are a critical component to achieve that goal.

Called “proximity weighted summoning,” the method allows courts to use a juror’s zip code as a way of helping to assure the juror may serve at the court facility closest to his or her residence. While most jurors will be summoned using their zip code as a tool to have them report close to home, some jurors will also be called from throughout the county to assure juries fairly represent a cross-section of the community.

This is the method that was implemented in 2004, as additional regional court facilities were built around Maricopa County for residents’ convenience.

“The decentralization of courts without adjusting for jurors who live in the outlying areas can cause difficulty in traveling to the courthouses furthest from their residence,” said Court Administrator and Jury Commissioner Marcus Reinkensmeyer.

In fact, Maricopa County now has four Superior Court regional locations. The court serves a population that outnumbers several states, with the county covering 9,226 square miles, stretching 132 miles east to west and 105 miles north to south. That’s larger than seven states. And it means that jurors could be traveling long distances to serve the court.

“The tremendous distance from outlying areas often burdens citizens called for jury duty, increases costs for juror mileage reimbursement and adds to air pollution and waste of fuel,” Reinkensmeyer said. “At the current travel reimbursement rate for jurors, Maricopa County anticipates that juror travel costs for the county could be reduced by an estimated $388,000 to $485,000, depending on the number of jurors reporting for service.”

“The savings would be realized by utilizing the summoning system that allows residents to be assigned to the courthouse nearest their homes.”

Court officials have sought and continue to seek the assistance of national experts to ensure compliance with the U.S. and Arizona constitutions, statutes and case law, guaranteeing a fair trial and equal justice for everyone.

Despite efforts to make jury service convenient and cutting costs for juror mileage reimbursement, the proximity weighted summoning system was suspended in August 2006.

A legal challenge filed in Superior Court halted the customized jury summons plan. The lawsuit claimed the “regionalized” jury pool did not fully represent the county’s demographics, somehow denying litigants the right to have a jury of their “peers.”

Hearings and legal arguments failed to prove the assertion and the challenge failed at the trial court level; a plaintiff-filed appeal is pending.

During its 2007 session, the state legislature amended provisions in the statute that establishes jury selection processes to allow superior courts to use the proximity weighted summoning system of calling residents for jury service.

Superior Court is prepared to re-implement the method of summoning jurors that prioritizes citizen convenience. Public input was critical to achieve that goal.

See Court Seeks page 15
Rights of Victims Have Key Role in Design of Downtown Criminal Justice Tower

By Presiding Judge Barbara Rodríguez Mundell

National Victims’ Rights Section
Week, April 13-19, provides Superior Court in Maricopa County an opportunity to reaffirm its commitment to provide timely, fair and impartial administration of justice and assure that all of our court visitors’ rights are protected.

Countless hours have been spent in meetings and discussions with a wide variety of court customers to assure their unique needs are addressed during the planning and design phases of a new criminal justice tower in the heart of the Superior Court campus in downtown Phoenix. Our goal, in resolving the court’s critical need for more court rooms, is to provide a state-of-the-art justice center for all court users. Completing this project is the court’s top priority.

Victims’ rights play a significant role in the planning of a courthouse. During pre-design, we researched how to build the justice tower to comply with our victims’ rights. The design should reflect their thoughts and will provide excellent service and a safe environment to everyone who enters.

The design recommendations range from general suggestions to specific detailed proposals, including:

- A central entrance that conveys a sense of calm organization and welcome.
- Centrally located information desk and self-service kiosks to provide directions to courtrooms, offices, services and other helpful information.
- Highly visible signs, in English and Spanish, to provide direction and information throughout the courthouse.
- Notification system for cases and signage outside courtrooms indicating which cases are under way.
- Clearly marked seating areas for the victim and defendant families and supporters.
- A “crying room” for victims during especially stressful times to be able to participate in court proceedings without being seen by others or intimidated.
- Cafeteria inside the courthouse to avoid having to leave and re-enter security at the busiest times.
- A victims’ lounge with telephone; internet access; comfortable chairs; work table; refrigerator and microwave for lunches; and child play area.
- Private rest area for police and fire officers who need to appear in court.

I am excited about this opportunity to build a courthouse that is focused on the needs of all of our customers. It will be a wonderful facility. It will be an outstanding addition to the other courthouses downtown and will provide excellent service and a safe environment to everyone who enters.

Superior Courts Rotation of Judges and Commissioners Planned for June

By J.W. Brown

Presiding Judge Barbara Rodríguez Mundell has announced Superior Court’s upcoming annual judicial rotation plan, of which all but two will occur during the statewide judicial conference on June 16, 17 and 18.

The new assignments affect 23 of the court’s 95 judges and seven of 58 court commissioners; additional changes could also be made. None of the appointments of departmental presiding judges are changing.

With the recent appointment of Judge Edward Basset, an earlier rotation will occur in mid-April when he takes over Judge Alfred Fenzel’s family court calendar at the Southeast Court Facility. In turn, Judge Fenzel moves to a family court assignment at the Northeast Regional Court. He is assuming the calendar of retired Judge Gregory Martin.

Judges with rotations taking place in June and their new assignments include:

- Judge Christopher Whitten, who is currently handling a civil calendar at the Southeast Court Facility in Mesa, moves to the downtown Phoenix complex to assume the criminal calendar currently being handled by Judge Michael Gordon.
- Judge Whitten’s civil calendar goes to Judge Louis Araneta.
- Judge Araneta’s Southeast Juvenile Court calendar moves to Judge Robert Houser.
- Judge Houser’s civil calendar at the Northeast Regional Court Center in northeast Phoenix is assumed by Judge Robert Budoff.
- Judge Budoff’s downtown family court calendar is reassigned to Judge Robert Miles.
- Judge Miles’ downtown civil calendar is reassigned to Judge Joseph Heilman.
- Additional judges’ rotations include:
  - Judge Linda Akers, currently assigned to a criminal calendar in downtown Phoenix, moves to the Southeast Juvenile Court calendar currently handled by Judge Robert Oberbillig.
  - Judge Akers’ criminal calendar is assumed by Judge Janet Barton.
  - Judge Barton’s complex civil case calendar is reassigned to Judge Oberbillig.

Three judges are rotating assignments among themselves. They are:

- Judge Pendleton Gaines assumes the downtown criminal calendar currently assigned to Judge Andrew Klein.

See Superior Court page 16
Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for accepting these 30 cases during the past month. VLP supports pro bono service of attorneys by offering screening for financial need and legal merit, primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBA for a CLE discount.

ADOPITION:
- Kim H. Belleredic
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- Matthew Allen Bailey, Snell & Wilmer
- Timothy H. Barnes
- Brier Irish Hubbard & Erhardt
- David E. Funksbouer II, Quales & Brady
- Kelly Kewersinski, Snell & Wilmer

COURT-APPOINTED ADVISOR/AGAL FOR CHILDREN IN FAMILY COURT:
- Jason B. Castle
- Matsiel Weeks McIntyre & Friedlander
- Robert G. Fisher
- Scottsdale Insurance Company
- Sara Gardner, Sole Practitioner
- Lisa A. Maggiore-Conner, Sole Practitioner
- Jacky D. Malka, Gallagher & Kennedy
- Judith A. Morse, Sole Practitioner
- Josh L. Walmam, Fennemore Craig
- Gregg R. Woodnick, Lan S. Taubman
- Claudia D. Work
- Matsiel Weeks McIntyre & Friedlander

FAMILY LAW/DOMESTIC VIOLENCE:
- Harry P. Friedlander, Sole Practitioner
- Lisa M. Sirad, Sole Practitioner

GUARDIANSHIP OF INCAPACITATED ADULTS:
- Charles L., (Chick) Arnold
- Fraser Ryan Goldberg & Arnold

GUARDIANSHIPS OF MINOR CHILDREN:
- Hector J. Diaz – 2 cases, Quales & Brady
- Matthew P. Fischer II, Snell & Wilmer
- Adrienne Wray Wiltce
- Ballard Spahr Andrews & Ingersoll

HOME OWNERSHIP/HOUSING ISSUES:
- Zachary LaVade
- Warner Angle Hallam Jackson & Forman
- Michael R. Palumbo
- Jennings Strouse & Salmon
- Victoria Tandy, Quales & Brady

TENANTS’ RIGHTS:
- David J. Armstrong
- Ballard Spahr Andrews & Ingersoll
- David W. Engelman, Engelman Berger
- Thomas J. Whelan, Whelan Law Group

VLP ATTORNEY OF THE MONTH

Osterfeld passes on the beach for those who need help

By Peggi Cornelius

When not engaged as Santa Claus for a bar-related community service project to benefit children, attorney David M. Osterfeld could be said to double as a guardian angel for those seeking pro bono assistance through the Volunteer Lawyers Program. For his compassionate manner with clients, his frequent volunteer endeavors, and his effective advocacy, Osterfeld has been named the VLP’s Attorney of the Month.

In August 2007, when California beaches beckoned, Osterfeld had a break in his work schedule. Instead of heading for the ocean, he contacted the VLP and offered to regularly contribute whole days to assist in whatever way would be beneficial to those needing help. He began by conducting fact gathering interviews and case assessments to determine if there was merit to warrant representation by a volunteer attorney.

Osterfeld assisted in evaluation of matters involving consumer rights issues, debts stemming from lease agreements, and homeownership problems. In situations where there was clearly no viable defense or legal remedy, he listened with concern, advised whenever possible, and graciously explained to the applicant why the VLP would be unable to provide a resolution.

Where he believed intervention would clarify, resolve or mitigate the problem, Osterfeld provided advocacy services beyond the initial interview. In some instances his communications with opposing parties brought about offers of settlement without litigation. In others, exploration of the issues and recommendation for referred lead the VLP to seek an attorney to provide direct representation.

One such referral was a case Osterfeld vividly recalls.

“The man and his wife had migrated to the U.S. from Africa,” Osterfeld says. “In four years, he had learned to drive an 18-wheeler and invested in a truck. He and his wife were expecting their first child and had used their savings to put a down payment on a modest home in the desert west of Phoenix. An unscrupulous mortgage broker had cheated them.

“When I met the husband at the VLP, all was lost. His wife had reluctantly returned to Africa because they could not afford for her to give birth in the U.S. He was faced with selling his truck or losing it without compensation. I was moved by more than the outrageous loss of his home and livelihood; I understood the magnitude of the loss he and his wife were experiencing in terms of their marriage and their dreams.”

Born in Mesa, Ariz., Osterfeld grew up as the son of a highway patrol officer. During his high school years, his father suggested he spend a summer working for a family friend who owned a business delivering ice on Indian reservations in the Four Corners area.

“That experience gave me an interest in Indian law. After graduation from law school at the University of Oklahoma, I worked on the White Mountain Apache Reservation and later in the Salt River Legal Aid Office. It was rewarding to help individuals, but also to defend the sovereign interests of tribes.”

After several months of volunteer work at the VLP, Osterfeld began the next chapter in his legal career, serving as a member of the litigation support and appeals team in the Protective Services Division of the Arizona Attorney Generals Office. Working in a government position poses potential conflicts for Attorney General’s Office. Working in a government position poses potential conflicts for volunteer attorneys, so Osterfeld was pleased to learn the Attorney General’s Office has a pro bono policy which allows him to continue to help the VLP with intake interviews and tenants’ rights advice clinics.

Osterfeld believes being an attorney is a privilege that carries with it a responsibility to give back. He says in his experience, “giving creates the desire to give more.”

If you would like information about pro bono opportunities through the Volunteer Lawyers Program, contact director Patricia Gerrich at (602) 258-3434, ext. 2630.

LAWYER DISCIPLINE

continued from page 8

One of the clearest indications that fairness and due process are frequently lacking in our disciplinary system is the curious practice of imposing increased sanctions against lawyers “for” reason that their “opponent might have testified in such a manner which violated the court’s instruction.”

Although the bar from bar to time has adopted proposals for reforms, including an intake procedure designed to prevent frivolous complaints from entering the system and an “ethics school” for those accused of minor violations, the lack of essential fairness in many parts of the disciplinary system has yet to be addressed. There is no amount of additional money that will remedy these shortcomings. If our efforts at self-discipline are to be honored and respected by either the public or our members, we must resolve the basic inequities in the present system and restructure its foundations consistent with essential notions of fairness and “due process.”

If we cannot provide a disciplinary system where justice prevails for ourselves, how can we, as lawyers, seek it for others?

Jack Levine is a solo practitioner and former chairman of the Sole Practitioner’s Study Committee on Lawyer Discipline.
Moves and New Hires

Lewis and Roca LLP is proud to announce that Phoenix partner John Rawicz has been named to the Board of Trustees for the Arizona Theatre Company. Rawicz focuses his practice on all real estate-related matters. The Arizona Theatre Company is the state’s leading theatre, performing six productions a year in Tucson and Phoenix.

Jones, Skelton & Hochul, PLC, is pleased to announce that Donn Alexander, Sanford Gerber and Thomas Nolasco have been elected into the partnership. Alexander joined the firm in 2002 and concentrates his practice on civil litigation, including medical malpractice defense, drug and medical device litigation, defense of long term care facilities, and healthcare litigation. Gerber also joined the firm in 2002 and concentrates his practice on bad faith and extra-contractual liability, insurance coverage and fraud, construction litigation, and wrongful death and personal injury litigation. Nolasco joined the firm in 2000 and concentrates his practice on commercial litigation, including trademark/copyright infringement, contract disputes, non-compete covenants and franchise disputes.

Paul G. Cereghini, managing partner of the Bowman and Brooke LLP Phoenix office, has been elected to the firm’s newly formed Executive Committee, with added management responsibilities to the firm nationally. Jill S. Goldsmith was elected managing partner of the Phoenix office, while Thomas C. Howard, was elected co-managing partner.

Fennewor Craig attorney Leonardo Loo has been elected to the board of directors of The Victoria Foundation, a local community development organization focusing on the Latino community. The Victoria Foundation is the first community development foundation to focus on the Latino community, working to provide micro-grants to local organizations, improve Latinos’ status throughout Arizona, and develop a non-profit incubator and donor-advised funds targeting the Latino community.

Attorney Loren Molever, a shareholder of Hyymson Goldstein & Pantilite, PC, has been elected as president of the North Scottsdale Chamber of Commerce for the 2008 term.

Gurt Rosenfeld is proud to announce the election of Lindsay E. Jones and Brandon J. Kavanaugh into the membership of the firm. Jones focuses her practice on public law, including education, elections and employment matters, while Kavanaugh concentrates his practice on commercial real estate.

Lindsay E. Jones
Brandon J. Kavanaugh

Jaburg & Wilk, PC, is pleased to announce Scott Ashby has become an attorney in the firm.

Jim Belanger, Jamie Eisenfeld and Scott Bennett have joined Cheifetz Iannitelli Marcolini, PC, expanding the firm’s capabilities in the areas of white collar criminal defense, government investigations and real estate transactions. Belanger joined the firm as “of counsel” in the areas of white collar criminal defense and government investigations; Eisenfeld, as senior associate, practicing primarily in real estate and business transactions; and Bennett as an associate with focus on criminal defense, government investigations and administrative proceedings.

Jim Belanger
Jamie Eisenfeld
Scott Bennett

Shughart Thomson & Kilroy, PC, is pleased to announce the addition of Bob Dyer as a shareholder and Wayne Ducharme, Esq., as “of counsel” to lead the construction practice for the Phoenix office.

Bashas’ Family of Stores recently hired Gregg Tucek as vice president of legal affairs for human resources. With a background in labor, employment and human resources training, Tucek serves as in-house legal counsel for the company with practice in traditional labor and employment. He will work closely with the company’s labor relations team at Steptoe & Johnson.

Stepste & Johnson LLP Partner Bennett Evan Cooper has been named chair-elect of the American Bar Association’s Council of Appellate Lawyers. The council is part of the Appellate Judges Conference of the ABA’s Judicial Division. A member of the firm’s Appellate Group, Cooper’s practice covers a wide range of substantive fields, including insurance coverage and bad faith defense, state and local taxation, intellectual property and e-commerce, employment law, and complex civil litigation.

Stephen A. Gerst, a retired Maricopa County Superior Court judge and associate professor at Phoenix School of Law, Noel Fidel, a retired Arizona Court of Appeals judge and associate dean of Sandra Day O’Conner College of Law, and Professor Barbara Atwood, of the James E. Rogers College of Law, will join other legal professionals on a task force chaired by Vice Chief Justice Rebecca Berch of the Arizona Supreme Court on whether attorneys from other states should be allowed to practice law in Arizona without first taking the Arizona bar exam. The task force will review reports, compare the proposed changes with the American Bar Association model rule, and assess the impact of implementing any changes. A final report is due to the Supreme Court by May 1.

Phoenix School of Law Mediation Winners

Teams from the Phoenix School of Law took second and fourth places in the American Bar Association regional “Representation in Mediation” competition held recently at the school. Third-year Phoenix School of Law students Lori Landau and Bo Nerlin came in second place, while Gina Zarling and Greg Uren, the other Phoenix School of Law team, came in fourth.

Bryan Cave LLP expanded its presence in California with the opening of a San Francisco location on March 10. Serving the Bay Area and Northern California, the San Francisco office is the firm’s third in the state after Los Angeles and Irvine.

With a practice area in civil litigation, labor and employment, and white collar criminal defense, Lynn S. McCreary will lead the San Francisco office in representing clients on a wide range of issues, including business transactions, commercial and class action litigation, product liability and real estate matters.

Joining McCreary in San Francisco are Kansas City Partner Herb Kohn, Counsel Patricia Wyrod, and associates Stephanie Blazewicz, David de Ruig and Tarun Mehta. Kohn practices corporate, business and banking law, concentrating in the areas of acquisitions, financial transactions, banking and public finance. Wyrod specializes in technology transactions and commercial law, with focus on IP protection and commercial transactions. Blazewicz practices commercial litigation; de Ruig focuses on the areas of environmental law and commercial litigation; and Mehta concentrates on a broad range of commercial litigation and employment matters.

Combs Law Group, PC, celebrated the 20th anniversary of the Arizona Association of Realtors Hotline program, which allows brokers throughout the state to call for legal guidance in areas such as contracts, landlord/tenant issues and title issues. Since its inception, the AAR Hotline has received more than 40,000 calls from brokers, and served as the model for programs in other states, including Minnesota and Colorado.

Penny L. Willrich, associate professor of law and director of Lawyering Process at Phoenix School of Law, will speak at the State Bar of Arizona Convention in June, serving as a panelist on the subject “Mentoring a New Generation in a Diverse World.” Willrich has been busy in recent months, speaking on a variety of panels, including “SOUL Purpose,” with representatives of Merril-Lynch Financial Services on the topic of estate planning for alternative families; and the Society of American Law Teachers Conference at UC Berkeley Law School, on the topic of “Teaching Students Resistant to the Experience of Others.”

Awards

Larry Hammond, past president of the American Judicature Society and a member of the Osborn Maleden, PA. law firm in Phoenix, has been chosen as the 2008 recipient of the American Judicature Society’s Justice Award, the highest honor given by AJS. It is given annually to an individual or group that has made significant contributions to improving the administration of justice in the United States. The award ceremony and dinner program will be held at Scottsdale Stadium on April 24, 2008.
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COURT SEEKS continued from page 10

has been solicited from a variety of stakeholders, including bar association executives, lawyers, national associations and others. Comments were accepted through Feb. 18, as required by Arizona Supreme Court procedures, before submitting the proposal to the chief justice for approval.

It is anticipated that the proximity weighted summoning of juries can be re-implemented seamlessly, returning to a method that Superior Court officials support because of its benefits to the community, beyond convenience to the public.

“We’re also insuring that every potential juror has the opportunity to serve as a juror,” Reinkensmeyer said. “And we’re demonstrating and promoting mutual respect between the court and members of the community, as well as being accountable by seeking ways to improve all aspects of the judicial system.”

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MATERIALS LIST for CLE PROGRAM:

• Arizona Bar CLE Registration form
• Arizona Bar CLE certificate
• Arizona Bar CLE guide

GENERAL INFORMATION

Advance registration: Full payment must be received in advance of the program before you are considered registered.

Late registration: All registrations not paid in full and in advance of the day of the program will be assessed a $15 fee. You may register at the door if space is available; the late fee will apply. If you do not register at least two business days in advance of a program, MCBA cannot guarantee space or availability of materials.

Cancellations: Refunds, less a $10 fee, will be issued only if the CLE department receives your cancellation in writing, at least two business days prior to the program.

No Shows: Assessment of a $10 fee, or the cost of the program, whichever is greater, will be assessed to a no-show attendee. If you do not cancel your registration at least two business days in advance of the program, the prior CLE refund policy will apply.

Special Accommodations: If you have a disability, please call ahead so we can accommodate your needs.
Superior Court Commissioners getting new assignments are: Commissioner Stephen Kupiszewski, who is at the Northeast Regional Court handling a family court calendar, relocates to the Northwest Regional Court and assumes Commissioner Casey Newcomb’s caseload that includes family and civil matters. Commissioner Kupiszewski’s family court calendar is reassigned to Commissioner Mina Mendez.

Superior Court continued from page 11

Judge’s Hoffman’s downtown civil calendar is assumed by Judge Kenneth Mangum. Judge Mangum’s downtown family court calendar is acquired by Judge Gordon.

The final rotations include:

Judge Michael Jones, who currently is assigned to a civil calendar at the Northeast Regional Court Center, moves downtown, taking the criminal calendar that is now being handled by Judge Heilman.

Judge Jones’ calendar is reassigned to Judge Eddward Ballinger. Judge Ballinger retains his responsibilities as Superior Court Northeast Regional Court Presiding Judge.

Judge Ballinger’s family case calendar at Northeast Regional Court is reassigned to Judge Carey Hyatt.

Judge Hyatt’s downtown civil calendar is assumed by Judge Garcia.

Judge Paul Katz and Judge Brian Hauser, both assigned to the Northeast Regional Court Center are swapping calendars, with Judge Katz assuming Judge Hauser’s calendar of family cases and Judge Hauser taking Judge Katz’ civil case assignment.

Superior Court Commissioners getting new assignments are:

Commissioner Stephen Kupiszewski, who is at the Northeast Regional Court handling a family court calendar, relocates to the Northwest Regional Court and assumes Commissioner Casey Newcomb’s caseload that includes family and civil matters.

Commissioner Kupiszewski’s family court calendar is reassigned to Commissioner Mina Mendez.

See Superior Court page 17

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Lawyer Referral Service Instituting ‘Percentage Fee Program’

Taking a direction, the Lawyer Referral Service will join other lawyer referral programs

instituting a “percentage fee program” to provide for the future and fulfill the mission of
the service.

Beginning April 1, all matters referred to

lawyers from which net fees, less all unreimbursed expenses, exceed $500, 10 percent will
be paid back to the LRS. Personal injury and workers’ compensation cases will be exempt
from the percentage fee, while percentage fees from panel attorneys who are referred clients
will be raised to 60 percent.

A variety of changes has led the LRS to
institute the program. Calls from the public
will be raised to 60 percent.

Members of the MCBA Board of Directors
and panel members are confident that this new program will help panel members to
better compete.

Restrictions set by the LRS and

the MCBA Board of Directors will designate

75 percent of the fee-generated income to be spent on the LRS, with focus on increased
marketing efforts, and 25 percent to be given to the Volunteer Lawyers Program, a joint venture
of the MCBA and Community Legal Services.

In addition, technological enhancements are

being made to simplify the process for public
and panel members, while the American Bar
Association will be granting the LRS with cer-
tification and a “seal of approval.”

Members of the MCBA Board of Directors
and the LRS Committee are confident that
this new program will help panel members to
better compete in the local marketplace, as well as provide more and better referrals.

If you are not yet a member of LRS, don’t
miss out on this opportunity to provide a
needed public service, as well as grow your
practice. For information regarding panel membership, please contact Linda Peña at
(602) 257-4200 ext. 117 or lpena@maricopa-bar.org.

Supreme Court Expands Causes of Action for Breaches of Fiduciary Duties

By Brian M. Pinheiro, David S. Fryman, Thomas D. Rethage, and Samantha E. Massie
Ballard Spahr Andrews & Ingersoll, LLP

A United States Supreme Court ruling on
Wednesday has opened the door for individ-
uals to sue 401(k) and 403(b) plan fiduci-
aries over individual losses in their accounts
when their investment instructions are
ignored or the accounts are otherwise mis-
handled.

The facts in LaRue v. DeWolff, Boberg &
Associates, Inc., No. 06-856 (2008) are not
uncommon. In LaRue, a plan participant
directed the plan administrator to make
investment changes in his account, but the
plan administrator failed to carry out the
direction.

The Court’s finding modifies prior inter-
pretations of the Employee Retirement
Income Security Act (“ERISA”). Based on a
lower court’s decision that the failure consti-
tuted a breach of fiduciary duty, the

Supreme Court ruled that the individual participant was permitted under ERISA to recover from the plan administrator the lost investment earnings attributable to the fail-
ure.

Before this decision, the Supreme Court
had ruled that only a fiduciary breach affect-
ing the entire plan could serve as the basis
for a lawsuit seeking relief from ERISA fidu-
ciaries. Now, LaRue potentially broadens the
scope of relief available for breaches of
ERISA fiduciary duty.

The Supreme Court’s decision comes at a
time when many individuals are suffering
investment losses in their 401(k) and 403(b)
plans. Employers who sponsor these plans
and plan fiduciaries should take precaution-
ary steps to review, evaluate and update their
plan documentation, communication materi-
als, operational procedures and vendor per-
formance to ensure that they have good
records and a strong position to defend
claims.

‘Mockingbird’ Brings Law and Theatre Together on Stage

By Jodi Weisberg

Phoenix School of Law is partnering with
the Arizona Theatre Company to present a
unique opportunity to examine “To Kill a
Mockingbird” via a staged mock trial on
Monday, April 7 at 7 p.m.

Free and open to the public, the mock trial
will be presented on ATC’s set at the Herberger
Theatre Center in downtown Phoenix, under
the direction of “To Kill a Mockingbird”
Director Samantha K. Wyer.

Local actors will perform the trial scene
from the Harper Lee book as lawyers and law
students from Phoenix School of Law illustrate
how the legal system worked—and didn’t
work—for a black man in 1955. The legal pro-
essionals will also compare the events in the
book to today’s judicial system, using examples
the audience can connect with.

“Combining a well-known story like ‘To
Kill a Mockingbird’ with a mock trial is a great
way to show how legal nuances and cultural
differences affect the outcome of a case,”

Phoenix Law School Dean Dennis J. Shields
said. “I think this play and this mock trial will
have wide appeal since all the issues are still rele-
ant today. We are very excited to be partici-
пating in this joint educational endeavor with
Arizona Theatre Company.”

Joining Dean Shields on stage will be
Phoenix School of Law students Richard
Okorie and Leslie Ross, Associate Dean Ann
Woodley, retired judge and law professor
Penny Willrich and professor Michael O’Connor.

O’Connor, a Yale Law grad, appealed the
case of a black man accused of murdering a
white woman in the same rural Alabama court-
room featured in the book. The client was
released from prison after spending seven years
on death row.

“To Kill a Mockingbird” is the first pro-
duction in “America Play: Celebrating Great
American Stories,” a new five-year program-
ning initiative for ATC that includes com-
unity engagement activities for audience
members.

DON’T VOTE FOR ME

IF YOU LIKE THE WAY THINGS ARE

DON’T VOTE FOR ME
FOR STATE BAR BOARD
OF GOVERNORS

Jack Levine

Phoenix Law School faculty and students participating in the mock trial are (left to right) student Richard Okorie, professor Michael O’Connor, student Leslie Ross, retired judge and professor Penny Willrich, Associate Dean Ann Woodley and Dean Dennis J. Shields.

By B_{alla}
BARRISTERS BALL
continued from page 1

TABLE HOSTS
Special thanks to the following for hosting tables:

Multiple Tables
Bryan Cave, LLP
Gallagher & Kennedy, PA
Gust Rosenfeld
Maricopa County Superior Court Officers

Single Tables
Arizona Public Service Company
(sponsoring the beneficiary’s table)
The Cavanagh Law Firm, PA
Frazer Ryan Goldberg & Arnold, LLP
Perkins Coie Brown & Bain, PA
Phoenix School of Law
Ryley Carlock & Applewhite
ASU Sandra Day O’Connor School of Law
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Patrick Sigle of the Attorney General’s Office and his guest Melanie McBride bid on an item at the Barristers Ball silent auction. More than three dozen items were donated for the event.

Law Week
Just Around the Corner

With the 2007 MCBA Law Week just around the corner, a variety of events are in the works and volunteers are needed to ensure Law Week is the best it can be.

Kicking off Law Week, Ask-a-Lawyer will be held Saturday, April 26 at Lamson College in Tempe. A free service to the public, Ask-a-Lawyer allows attendees to privately consult with attorneys and receive legal advice at no charge. Volunteers are needed to fill shifts available from 9 a.m.–12 p.m. and 12–3 p.m.

Phone-a-Lawyer will be held Tuesday, April 29 at the KAET-TV Channel 8 studios at the Arizona State University Tempe campus. Attorneys will take calls from 6–9 p.m. during the telethon from callers seeking free legal advice.

Generally, advice is sought in family law, criminal law and landlord/tenant issues, but volunteers are needed regardless of practice. Resources will be available to ensure volunteers are not only helpful, but successful as well.

In addition to Ask-a-Lawyer and Phone-a-Lawyer, Bob Van Wyck from the State Bar of Arizona will present the “Avoiding or Responding to Bar Complaints” CLE on Thursday, May 1 at 4 p.m., offering tips and advice on addressing issues associated with bar complaints. A social will follow the CLE at McCormick & Schmick’s Seafood Restaurant at 2575 E. Camelback Road, Phoenix. An essay contest and awards ceremony is also in the works.

For more information or to volunteer, please e-mail MCBA Law Week Chair Andrea Mouser at andrea@donisonlaw.com.

Firefighter gear was displayed at the registration table. Assisting guests with check-in, is Jeff Jacobson, beneficiary representative.

Patrick Sigle of the Attorney General’s Office and his guest Melanie McBride bid on an item at the Barristers Ball silent auction. More than three dozen items were donated for the event.

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RE-ELECT DICK COFFINGER
BOARD OF GOVERNORS
STATE BAR OF ARIZONA
75TH ANNIVERSARY (1933-2008)

HE WILL CONTINUE HIS SUPPORT OF:
• BOG discipline oversight to ensure fairness & prompt dismissal of meritless charges
• Providing all attorneys free access to an online legal research service through SBA
• Maintaining existing exemptions for seniors from paying SBA dues & MCLE
• Simplifying express security clearance for all attorneys when entering courthouses

HE WILL CONTINUE HIS OPPOSITION TO:
• Any unnecessary increase in SBA membership dues, staff & regulations
• Random audits by SBA of attorneys’ trust accounts, without probable cause
• Admission of out-of-state attorneys “on-motion” without passing Arizona bar exam
• Ban on citing Arizona Court of Appeals’ memorandum decisions as persuasive

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