Incumbents Dominate 2008 MCBA Board of Directors Election

Four current members of the Board of Directors won re-election to a second two-year term on the MCBA Board of Directors.

They are David H. Benton, Fennermore Craig, PC; David E. Funkhouser, III, Quarles & Brady; Dan Lowrance, Maricopa County Public Defender’s Office; and Jennifer A. Ratcliff, Gallagher & Kennedy, PA, all of Phoenix.

One new member, Commissioner Benjamin E. Vatz of the Maricopa County Superior Court, was also elected.

All began serving their terms on Jan. 1, 2008.

Eleven candidates ran for election. Marked ballots returned by members went directly to the League of Women Voters, who tallied the results and certified the election. A total of 630 ballots were returned.

Maricopa County Superior Court Judge Glenn Davis, who has moved up through the officer ranks, is the MCBA’s new president. (Find an interview with Judge Davis on page 4 and his first column on page 2.)

“New” MCBA Diversity Committee is Ready to Share its Network and Expertise

The MCBA Task Force on Recruitment and Retention of women and Minority Lawyers has become an official committee of the Association. It has also taken on a short-term name: the Diversity Committee. And it is ready to assist other sections and divisions within MCBA with diversity programming and speakers.

Chaired by May Mowzoon, the group has been a part of MCBA for almost 10 years promoting common goals.

The Diversity Committee offers its assistance to MCBA entities in three ways:

- Assisting in finding a speaker of color to present in your area of law to your constituents or for CLE purposes.
- Co-sponsoring an event when the event promotes common goals.
- Giving a presentation to bar constituents regarding the impact of diversity on client development.

See Diversity page 16

CourtWatch

Scheehle Loses Challenge to Mandatory Arbitration Service

Mark Scheehle’s long fight against the Arizona judiciary appears to have ended in defeat.

The Ninth Circuit recently ruled that court rules requiring attorneys to act as arbitrators in certain civil cases do not amount to a regulatory taking in violation of Scheehle’s Fifth and Fourteenth amendment rights. Scheehle v. Justices of the Supreme Court, No. 05-17063 (9th Cir. November 15, 2007).

An Arizona statute, A.R.S. § 12-133, requires the superior courts to enact rules providing for arbitration of civil cases where the amount in controversy is $65,000 or less— with attorneys serving as arbitrators.

Attorney arbitrators are paid a flat fee of $75 for each day in which an actual arbitration hearing is conducted. In Maricopa County, once they have served for two or more days, they are excused from arbitrating any more cases for the year.

Scheehle is an experienced attorney, certified as a tax specialist. He was appointed to arbitrate a motor-vehicle personal-injury case in October 1996. The following July, he was appointed to arbitrate a similar matter. While that still case was still active, he was appointed to arbitrate yet another personal-injury action. This time, he declined the appointment.

Scheehle wrote to the presiding judge that he would not accept any further appointments, arguing that the arbitration system violated Arizona law and was unconstitutional.

After a hearing, the presiding judge rejected his challenge and imposed a $5000 fine. Several months later, Scheehle was called to arbitrate yet another case but was excused from this case because of the ongoing challenge.

Scheehle filed a special action in the Arizona Supreme Court, but the court declined to hear the case, so he sued the justices in federal court. In addition to state-law claims, he alleged that the appointment violated the Fifth and Fourteenth amendments, violated the separation of powers, and placed people of diversity networking social, and making presentations on interview skills and holding mock interviews at the Sandra Day O’Connor College of Law at ASU and the Phoenix School of Law.

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See CourtWatch page 10

See Diversity page 16
A Prosperous and Happy New Year Begins with MCBA

By Jill Goldsmith

Care of the elderly generates widespread anxiety, a sense of helplessness, and an urge to recriminate. Sometimes guilt over the inability to care for the elderly causes family members to lash out at those who provide care. A substantial percentage of people who read newspapers—including the people to comprise jury pools—have elderly family or friends requiring long term care.

Whenever nursing home practices and conditions are subject to inquiry or criticism in courts of law and in the media, a fever of sorts spreads through the community. More than most professions, the long term care industry suffers when any single facility is accused of substandard practices.

Such emotional dynamics can encourage elected officials, regulators, and jurors who are not knowledgeable about the aging process to misunderstand how care should be delivered. These same dynamics create unreasonable additional expectations about applying fault or blame.

Consider the data related to claims against institutions and the economic losses incurred as a result. (Source: Aon, Long Term Care 2006 General Liability and Professional Liability, January 24, 2007.) “Loss costs”—that is, the overall cost per bed as a result of exposure to claims related to conditions in long term facilities—rose in Arizona from $910 in 1996 to $4,300 in 2006. This dramatic increase stems back to 1997 when there was a threefold spike in loss costs. The numbers flatten after that, but begin to go up again in 2005.

Compared to other states (Wisconsin, Tennessee, California, Texas, Mississippi, West Virginia, Alabama, and Arkansas), Arizona’s overall general and professional liability loss costs were fourth highest among the nine states in both 1996 and 2006. In 1996, claims per 1,000 beds in Arizona nursing homes were six. A decade later, in 2006, that number had doubled to 12. This increase mirrors national trends. Nationally, claims per 1,000 beds rose from 5.6 in 1996 to 11.1 in 2006.

Severity of individual claims has doubled, from approximately $175,000 in 1996 to $350,000 in 2006. There is no corollary evidence that conditions in our long term facilities have in any way declined in proportion to the increase in claims and losses over the past decade. Quite to the contrary, the overall numbers, as well as current concerns reflected in a frenzy of recent newspaper articles, derive from and further encourage unfair assumptions that care to all residents, on all shifts, by all caregivers, is substandard.

Thus, in such a situation, the care delivered by many capable and compassionate caregivers is ignored or not believed to have been provided. How does one evaluate the standard of care? To comply with the applicable standard of care, a nursing home care provider must exercise the degree of care, skill, and learning that would be expected under similar circumstances by other reasonably prudent nursing home providers within the state.

Care providers are dealing with a high-risk group that regularly suffers infections, sores, and bruises, regardless of the care provided. Falls are common too, even with reasonable care and supervision. No one can prevent all illness, falls, or loss of function and no one can prevent death.

Consider the fact that “Superman” Christopher Reeve died of an infected pressure sore, yet he presumably had unlimited financial and medical resources for the highest quality of care.

As defense lawyers, we must partner with the long term care profession and educate the public on the inevitable aging and dying process.

The good news for all the predictable anxiety that surrounds elder care, is that the public is receptive to this message and jurors can be fair. Earlier this year, we successfully defended a nursing home in a case alleging abuse and neglect in the death of an 82-year-old woman. The family had alleged that the decedent had “fallen” a half dozen times because she was not monitored and because the nursing home was understaffed—a common plaintiff’s theme.

The plaintiffs also alleged failure to provide adequate nutrition and hydration and failure to employ and document corrective measures.

To ensure that residents never fall requires the nursing homes literally imprison them in bed and forcefully prohibit them from ever trying to walk on their own.

For most residents, such total restraint actually constitutes a violation of the standard of care as applied to nursing homes. Nursing homes thus face a unique challenge because they are required to maintain a fine balance between protecting residents and allowing them to live with dignity and the highest
Make “Getting Involved” Your New Year’s Resolution

Happy New Year! 2008 is here and assuming you don’t have a New Year’s resolution, let me suggest one. You (yes, you holding the Maricopa Lawyer) should get involved with the Maricopa County Bar Association’s Young Lawyers Division in 2008.

Maybe you are already involved in a committee, and in that case let me express my deepest thanks. If you are not, however, you are missing an opportunity to give back to your community, network with your colleagues, and embark on a journey that could lead you to a bar leadership position.

The MCBA Young Lawyers Division, as the name implies, consists of lawyers in their first five years of practice or under the age of 36. They volunteer their time to meet on a monthly basis and foster and continue projects benefiting the legal community and the community at large.

For example, our Domestic Violence Committee conducts a “Necessities Drive” where we gather items of daily necessity, sort them into baskets for individual women in need, and distribute them to shelters. Through the work of our volunteers, each year hundreds of women are benefited. Our annual Law Week event gives us the opportunity to use our legal skills to give back to the community through Ask-A-Lawyer, Phone-A-Lawyer, and the junior high essay contest events. The Law Week committee coordinates the events and ensures that the community has an opportunity to meet and talk to a lawyer to understand, and hopefully resolve, their legal questions.

The essay contest tests middle school children’s knowledge of legal issues and invites them to hone their writing by submitting their essay to a county-wide contest. And of course you have (hopefully) attended our annual Barristers Ball, our charity dinner and silent auction, and Race Judicata, our annual 5k run. Barristers Ball is March 1 (just around the corner) and tickets are now on sale.

Of course, ALL of these events are always in need of interested and motivated volunteers. Make getting involved in the YLD your New Year’s resolution. For more information, e-mail me at tjryan@frgalaw.com or call me at 602-277-2010.

Maricopa County Bar Foundation Grant Assists Family Court’s Self Help Workshops

By Patricia E. Nolan, MCBF Board of Trustees

Confusing instructions, court jargon, complicated forms—these are things lawyers deal with every day.

But to ordinary people representing themselves in the justice system, these things can be overwhelming and can lead to rejected documents, missed deadlines and defaults.

Along with the court itself, the Maricopa County Bar Foundation, as the charitable arm of the MCBA, has recently helped make the process more user-friendly by awarding to the Family Court Self Help Workshops a $5,000 grant to purchase a power point projector.

The Maricopa County Superior Court created the Family Court Self Help Workshops to assist and educate self-represented litigants and has been in operation since January 2007.

“We aim to demystify the court process and to increase the public’s knowledge of Family Court,” says Robin Hoskins of the Family Court.

Hoskins goes on to explain that approximately 70% of the cases in Maricopa County Family Court include self-represented litigants.

The Self Help Workshops help answer frequently asked questions, explain frequently used forms, and define various legal phrases and other terms that might be unfamiliar to those representing themselves.

The topics for the workshops are chosen based on litigant inquiries and court documentation rejection trends.

The Maricopa County Bar Foundation’s grant award for the power point projector will help make the program more effective.

Tracey Bardorf, president of the MCBF, says: “This equipment will allow the workshops to be more interactive and interesting, and will help address the varied learning styles of the adult learners attending the workshops.

“The grant furthers the Foundation’s goal of increasing meaningful access to the courts and their services for those who might otherwise not know of the services available to them.”

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A Chat with 2008 MCBA President Glenn Davis

On January 1, the Honorable Glenn Davis assumed the title and responsibilities of Maricopa County Bar Association president. He has been a Superior Court judge since January 2006. Immediately prior to that, he served two years as a Superior Court commissioner. He is currently assigned to the Civil Department. Judge Davis answered questions posed by Maricopa Lawyer Editorial Board member J.W. Brown to provide information about his background and his decision to become MCBA president.

Q. You have had an interesting, varied background in law, having been a law part-

ner, sole practitioner, general counsel for the Arizona Senate minority, a Superior Court commissioner and currently a Superior Court judge. You also served four years as a state legislator. What about each of these positions has been the most rewarding—and the most challenging?

DAVIS: I have found the role of judicial officer to be the most personally and professionally rewarding of the various positions I have held. That is not surprising to me since I know what I was getting into when I applied for the bench. I served as a pro tem for years and truly enjoyed the role. Every day I have served on the bench has been rewarding and interesting, and it is the best career move I ever made.

My legislative gigs, both as a legislator and as counsel at the Senate, were very challenging and interesting as well. I have worked with and known some great political leaders in that time who were also very fine attorneys, people like Mo Udall, Bruce Babbitt, Sam and Terry Goddard and Governor Napolitano.

I had many interesting political adventures, like the time I had to write the power sharing agreement and help referee the state Senate when it was tied 15-15, with an equal number of Democrats and Republicans. Normally, the party that has the majority controls, so dealing with a tie was uncharted territory and it was interesting to be right in the middle of sorting it out.

For 20 years I had a front row seat for much of Arizona’s recent political history, from the Babbitt governorship, through Ev Mecham’s impeachment and Symington’s indictment. I got to sit in on key meetings and negotiations during Janet Napolitano’s first term and came away extremely impressed with her. She is one of the most intelligent and skillful political leaders I have encountered.

But my experience as a practicing lawyer over the years has been a key to my success in these other avenues. That experience informed my perspective in the legislative arena.

For example, one area that I practiced in extensively was juvenile law. The nuts and bolts and practical knowledge I gained from practicing in that area was extremely helpful to me when I was lead staff for an ad hoc committee in the Senate that made significant reforms and improvements to child welfare law.

My experience as a lawyer, particularly from a solo and small firm background, is useful to me every day I am on the bench, particularly in allowing me to stand in the shoes of lawyers who appear before me.

Q. You and your wife, Debbie McCune Davis, a senator, must have interesting discussions over dinner about your careers. Do you consider yourselves a “power couple”?

DAVIS: How do you characterize yourselves?

DAVIS: We are not exactly Bill and Hillary. I am very proud of my wife’s accomplishments. With 21 years in the Arizona legislature she is one of the longest tenured legislators currently serving in Arizona. She is very effective behind the scenes and is the embodiment of the saying that “nothing is impossible if you are willing to give the credit for it to others.”

We met as members of the Arizona House of Representatives. At that time we worked together as colleagues. For two years we represented the same district, sharing common issues and interests. Our relationship is built on a strong friendship. Although much of our time is focused on caring for our family, we both strongly believe in the importance of public service. Each of us is interested in the other’s professional work and we value each other’s opinions.

Q. A review of your many honors and awards suggests you dedicate a significant amount of time to volunteering your time, energy and intelligence in ways that will benefit others. Would you share the basis for your altruistic spirit?

DAVIS: Like many others I started out in life in circumstances that were difficult. My dad died when I was young and my mom struggled to make ends meet for our family. In part because of that, I have always identified with people who face challenges in life. My pro bono work and interest in community service is a reflection of that.

But one of the things I truly love about this profession is that so many lawyers feel the same way and give so much of themselves to the profession, to meeting the needs of those who cannot afford legal services, to protecting our rights, and to ensuring a fair system of justice. Altruism is a very common virtue in attorneys, in my experience.

Q. At what point in your life did you realize you wanted to be an attorney? A judge? Is the reality of your career choices what you expected? Better? Worse?

DAVIS: I think I wanted to be a lawyer shortly after watching my first Perry Mason show. Only do I wish the action in my courtroom was half as entertaining. I always saw the law as a noble calling and feel privileged to be part of this profession. For me it has been a great career choice, one that has taken me down a number of different roads, in politics, in practice and in public service.

One of the greatest things about being a lawyer is the variety of professional opportunities we have. I have a daughter who is now considering pursuing a legal education and I have encouraged her. I think there is still plenty of opportunity in this profession.

I always had tremendous respect and admiration for members of the judiciary, and believe that serving as a judge is the greatest contribution a lawyer can make to the profession and the community. That is something that goes back to the earliest days of law school. Throughout my legal career, I have considered going to the bench and I am very happy that I was finally able to do it.

Q. What made you decide to become president of the Maricopa County Bar Association?

DAVIS: I have always been fairly active in the county bar and found my participation to be very personally rewarding. I ran for the board because I thought it needed more representation from members who had longer-term experience and who had small firm/sole practitioner perspective.

One day someone talked me into serving as secretary of the board. Once you take on that role there is a rotation each year to the next office culminating in serving as the president.

Q. What is the most important thing you’ve resolved to accomplish in 2008?

DAVIS: I would like to see the MCBA change the Lawyer Referral Service to a fee-sharing program, as many Bars across the country have done. That system provides for a share of fees generated by referrals to be plowed back into the LRS program and into other programs that provide access to justice, such as the Volunteer Lawyer’s Association and Community Legal Services.

The funds can be used to greatly increase the visibility of the Lawyer Referral Service in this county. Similar programs in other states have generated many thousands of dollars targeted to assist people in obtaining legal services and justice.
I am proud and excited to serve the Paralegal Division as president for 2008. We had a busy and successful year in 2007, thanks to the tireless dedication and hard work of President Monica Rapps, the Board of Directors and member volunteers, and also the continuing mentoring and support of the six past presidents who have served before me.

The 2008 Paralegal Division Board of Directors include the following: 

**Officers:** President-Elect Maureen L. Zachow, CLA; Secretary Sarah Neily; Treasurer Stacy Velasquez Palmer; Immediate Past President Monica Rapps, CP

**Directors:** Lorianne Elizalde; Kelly Gray, CP; Marjorie Haberman; Scott A. Hauert, Esq.; Jo Onorz, CP; and Felice Wortman

The Mission of the MCBA Paralegal Division is to: Promote the advancement of the paralegal profession; provide access to information and education for and about paralegals; and provide a forum for interested paralegals, attorneys, educators, students, and business and government professionals to become more involved in, and aware of, the paralegal profession.

A Division goal in 2008 is to encourage more involvement of paralegals and paralegal students with the focus on our Mission Statement.

We are already planning some great activities for 2008 so be sure to mark your calendars. Already scheduled is Paralegal Career Day on Saturday, March 8, 2008 at Phoenix College, open to all paralegal students from any paralegal program and anyone who maybe considering a career as a paralegal.

Our annual Arizona Paralegal Conference will be Friday, September 26, 2008 at the...
Three forums are scheduled in January at the Maricopa County Bar Association to discuss electronic filing in the Superior Court for Maricopa County. The Clerk's Office presents numerous CLEs on eFiling, demonstrates the eFiling system at the Clerk's Offices in downtown Phoenix on a regular basis, and directly trains firms participating in the early stages of eFiling. Over 1,000 attorneys, support staff, judicial staff and government staff have participated in eFiling demonstrations.

This month, please plan on attending one of the three scheduled eFiling forums to give your views and ask questions at the MCBA, 303 E. Palm Lane, Phoenix, on:

- Monday, Jan. 18, 12 noon – Light lunch
- Wednesday, Jan. 30, 8:00 a.m. – Light breakfast
- Thursday, Jan. 31, 5:30 p.m. – Snacks

The following frequently asked questions will guide your understanding of the electronic filing pilot in the Superior Court for Maricopa County.

**Q: What is eFiling?**

A: eFiling is a way to file pleadings with the court. Instead of filing paper at the filing counter, electronic documents are filed over the Internet. The process is similar to eFiling in the federal courts and is comparable to purchasing airline tickets or banking online. eFiling uses the same skills as sending an e-mail with an attachment.

**Q: Can I eFile in any case?**

A: Not yet. The eFiling pilot in Maricopa County is available for complex civil litigation and for general civil cases in designated divisions by court-ordered participation. In adult criminal and family court cases, eFiling is voluntary in participating divisions.

**Q: Do I have to eFile?**

A: If ordered to eFile in a case, you must eFile. A change of judge on an eFiled case will be assigned to another division that accepts eFilings. Some case types and judicial divisions offer permissive (voluntary) eFiling. In those cases you can choose to file electronically or traditionally.

**Q: What if I don't have the technology to eFile?**

A: The court has received requests to exempt individual attorneys from eFiling due to lack of computers, scanners, or other technology and the court has not yet granted an exception.

**Q: Do I have to register to eFile?**

A: Yes, the user name and password you create is required by Administrative Order.

**Q: Why the push for eFiling?**

A: Paper is expensive to purchase, store and maintain. The Clerk's Office files-in about 40,000 pieces of paper every business day, translating to millions of pages each year that must be stored. Electronic records are easier to file and store and are more secure from tampering, fire/flood or loss.

With continued growth in the Valley and the rapid expansion of technology in all sectors of society, continuing paper processes will seriously jeopardize the court's ability to manage its caseload over time. Rather than forcing a mandatory eFiling system immediately, the Arizona Supreme Court and the Superior Court in Maricopa County are carefully expanding eFiling, using feedback from its users.

**Q: What if I miss a deadline/Someone files something I didn't authorize/A document appears altered?**

A: Questions of fact or unforeseen circumstances in eFiling cases follow the same procedures to resolve as traditional filings.

**Q: Can I view documents online?**

A: Yes, in adult case types where you or an attorney from your firm are counsel of record. You must register with the Clerk's Office with your attorneys' names, bar numbers, and contact information. After an authentication process, authorized attorneys will have remote access to the Electronic Court Record Online (ECR Online) to view the images of public documents on their cases. Public records in other adult case types can be viewed by visiting the public access terminals at the Clerk's regional facilities.

**Q: How do I learn more?**

A: Attend one of the forums sponsored by the Maricopa County Bar Association during the last week of January, attend an eFiling CLE, or visit the Clerk's website. The website offers online training tools, materials, and contact information to register for one of the monthly demonstrations of the eFiling system: www.clerkofcourt.maricopa.gov.

**Q: How will the court know what I think?**

A: Attend one of the forums (see beginning of this article) to provide input and/or complete the eFiling survey at http://www.surveymonkey.com/s.aspx?sm=O6uTakBiUSEfodZhzuGujg_3d_3d.

See Clerk's Corner page 16
Crime victims to be notified of appellate decisions issued in their case

In order to implement the requirements of A.R.S. § 13-4411 (E), which requires Arizona’s appellate courts to provide a copy of a memorandum decision or opinion to a victim at the same time the parties receive them, the Arizona Supreme Judicial Branch has posted request forms for each of the appellate courts at its respective clerk of court website. The URL addresses for forms posted at each clerk of court website follows. Arizona Supreme Court: www.supreme.state.az.us/clerk/victimnotify.htm

Court of Appeals, Division One: www.cofa1.state.az.us/
Court of Appeals, Division Two: www.apf1wo.ct.state.az.us/ODSPplus/victimRequest.cfm

New E-Government Rules in effect

Amendments to the federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure went into effect on December 1, 2007. The amendments implement the E-Government Act of 2002 and require that personal identification, such as an individual’s social security and taxpayer ID numbers, names of minor children, financial account numbers, dates of birth, and in criminal cases, home addresses, be redacted from documents filed with the court.

Schroeder passes Ninth Circuit gavel to Kosinski

Alex Kosinski assumed the position of chief judge for the U.S. Ninth Circuit Court of Appeals on November 30, 2007, as Chief Judge Mary M. Schroeder completed her seven-year term as chief judge for the circuit. Kosinski, 57, is the tenth chief judge for the circuit since its creation in 1948. Known for his personal eccentricities and sense of humor, Kosinski raises chickens at his Southern California home and has been a magician, bungee jumper, scuba diver, snowboarder, and even once was a winning contestant on “The Dating Game.”

Although Kosinski assumes the job because of his seniority, the press release states that Kosinski “also believes that looks count, though he can provide no support for that proposition.”

As chief judge, Kosinski bears responsibility for the overall functioning of the circuit and is the only Ninth Circuit judge who sits on every en banc panel that is convened. Additionally, Kosinski must chair the Circuit Judicial Panel, and serve as the Ninth Circuit representative for the Judicial Conference and in any dealings the circuit has with Congress.

Studies find tuition, debt rising for law school graduates

While the salary gap between public interest and law firm salaries enlarges, so too does the amount of debt carried by recent law school graduates. The American Bar Association reports that students attending private law schools borrowed, on average, $83,200 in 2005-06. Students attending public law schools left with an average debt of $54,500.

The amount of debt a law grad is carrying often influences whether they take a position in a much higher paying large law firm or opt for a more altruistic post in a public interest law organization.

The median starting salary for lawyers at non-governmental or public interest organizations is $40,000. Entry level government positions pay a little higher, at a median salary of $48,000, while private practice entrants make a median salary of $95,000, says the National Association of Legal Placement (NALP).

According to NALP, about 56% of recent laws school graduates enter private practice, 22% enter the government workforce, 14% go into business, and only 5% work for a public interest organization or advocacy practice.

Council of Europe provides global links to courts worldwide

The Council of Europe website offers links to courts nationwide. Many of the courts provide information in English and provide recent decisions, as well as an explanation of the country’s court structure. The Council of Europe’s website URL address is: www.venice.coe.int/site/dynamics/V_court_links_ef.asp?L=E

BOOK REVIEW

A Legal History of Maricopa County

By Mark A. Winso, Esq.

I have always enjoyed Stan Watts’ column, “History and Hearsay,” published regularly in Maricopa Lawyer. It is no wonder that I was excited to receive one of the first copies of Stan’s new book, A Legal History of Maricopa County, published by Arcadia Publishing in partnership with the Arizona Historical Foundation.

Stan masterfully weaves the legal community into the fabric of Maricopa County’s early history. The book’s pictorial journey through time is a refreshing change from the otherwise arduous material we, as attorneys, are generally immersed in.

I was pleasantly surprised that the photographs were not merely a collection of attorney portraits and court buildings, but also depicted everyday life in early Maricopa County as the legal community would have experienced it.

Not only did I experience through Stan’s choice of pictures and his creative commentary the influence the legal community had in our county, but also how attorneys fit in as day-to-day citizens.

It was fun to visualize their commute to work or court over dusty streets by horse or carriage. The book drew my imagination into sporting events, restaurants and social activities, leaving me to wonder what it really would have been like as an attorney during the nineteenth or early twentieth century in the Valley of the Sun.

I was, as Stan hoped, “inspired by the variety of diverse lawyers and judges who led and worked through many years and many cases to impact their community for the better.” I will feel a greater sense of appreciation and gratitude as I brush past the remaining remnants of those harsher early years.

Thank you, Stan, for your wonderful book. Not only did it provide a pleasant, relaxing evening as I lost myself in history, but it will undoubtedly be enjoyed many times by multitudes of people in the future.

A Legal history of Maricopa County by Stan Watts, is available for $19.95 (UPS ground shipping is free) from Arcadia Publishing, 420 Wando Park Blvd., Mt. Pleasant, SC 29466. You may also order the book on their website at www.arcadiapublishing.com or by calling toll free, 1-888-313-2665.

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**Phoenix School of Law Graduates First Student**

By Jodi Weisbe

Shari Miller is an entrepreneur, a risk-taker, and the first person to graduate from the Phoenix School of Law.

At age 48, she enrolled as a member of the school's 2005 charter class of 25 part-time evening students. Working all day as a paralegal for Caremark, a pharmaceutical benefits management company, she attended classes with other working professionals, balancing work, school, and family.

"People have to be realistic," said Miller about the arduous of law school. "It's hard and more physically demanding than I thought it would be. You have to sit for so long—my body and eyes hurt—and I'd get sore."

Miller moved to Arizona in 2001 from Nebraska to be near her parents, who wintered here, and to attend law school. Rejected twice by the law school at ASU, she saw articles about the Phoenix School of Law, and finally decided to call. Her bosses were also supportive and "egged" her on to apply.

"I've always wanted to be a lawyer," she said. "In 1979, I was accepted at the William Mitchell College of Law, but ended up going to the University of Minnesota and getting my M.A. in Industrial Relations."

Married to Tim for 23 years, who is retired, Miller enlisted him to do the necessary "due diligence." He investigated the school, attended informational sessions, and met with the faculty and staff, while she worked her day job.

Since the Phoenix School of Law was new and not yet accredited by the American Bar Association, students took a risk in attending. If the school failed to gain accreditation by the time they graduated, they would be unable to sit for the bar exam.

"I had no qualms about the program and never thought the school would not get accredited," said Miller. "I'm an entrepreneur and have started a number of businesses. It's fun and exciting but I realize there will be bumps in the transition between issues."

Miller never planned to be the first graduate; others in the charter class will be graduating in May. But she attended summer school for two years and accumulated enough credits to graduate in December.

"It was a huge sacrifice on a personal level," she said. "The first summer was a significant challenge because of taking contracts and lawyering process classes in such a compressed time frame.

Penny Willrich, associate professor of law & director of the Lawyer Processing Program, describes Miller as a "stellar" student.

"Shari was a diligent and conscientious student and I know she will be a diligent and conscientious lawyer," said Willrich. "I am proud to have been able to contribute to her legal education and to have her as a friend and colleague."

Professor Stephen Gerst, who along with Willrich, were charter faculty members, had Miller in his Criminal Law and General Practice Skills courses.

"It has been a pleasure watching Shari balance her life," he said. "Her enthusiasm, work ethic, and her willingness to participate actively; it's all been a pure pleasure. She's a wonderful representative for our school."

Despite working full time, Miller never missed a day of school, giving her a perfect attendance record. She also was active in student organizations, starting the Alternative Dispute Resolution (ADR) Club, serving on the development committee for the Law Review and volunteering as a Student Bar Association legislator.

She also took time to form a lasting friendship with Michelle Schneider, another charter class member, who had worked as a paralegal.

"Shari is one of those people a person is glad to call a friend…she is my law school rock," said Schneider. "We sat next to each other in most of our classes and got through a lot of tough classes and exams together." While Schneider is not surprised Miller is graduating a semester early, she is sorry to see her go.

"I really don't know what I'm going to do without her through the rest of my law school career. Law school was simply more fun with her. But I am very proud of her achievement, knowing how hard she worked to make it happen."

Miller will sit for the Arizona bar exam in February and has accepted a position as an associate with The Phoenix Law Group of Feldman, Brown, Wala, Hala & Agena, PLC, where she has worked as a law clerk for the past two years.

The school received provisional accreditation from the ABA in June, 2007, so students may sit for the bar in any of the 50 states.

"Shell make a great attorney because she has a great personality, is hard working and super smart," said Cami Agena, one of her bosses.

"Our firm worked around her school schedule, because one of our missions is flexibility, and we knew we'd have to make accommodations. It's worked out great."

The school hosted a reception for Miller in late November at the end of classes. More than 75 students, faculty and staff attended the event. Dean Dennis Shields, wearing a tuxedo, presented her with a bound Black's Law Dictionary embossed with her name.

"Shari represents a very special group for the school," said Shields. "These charter students invested on faith a tremendous amount of time, energy and money. It was an extraordinary risk and investment to make and this is a momentous semester for us, thanks to Shari."

Miller enjoyed her law school career, and said it went by quickly.

"Right now I'm counting the days till the bar exam and have been for the last 364," she joked. "It takes a village to graduate law school but it's been a wonderful and worthwhile opportunity. Live your dreams—it doesn't matter how old you are!"

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**Back to Basics: Features of a Good Office Memorandum**

One of the first documents that a legal writer learns to write is an office memorandum. As a legal writer’s career progresses, however, there are generally not as many opportunities to draft office memoranda as the writer has graduated to a wider variety and complexity of documents. The following list is intended to remind legal writers of the basic rules of writing an office memorandum.

1. **Know the audience.** The level of detail in a memorandum for a legally trained reader will differ from that used for a client or non-legally trained reader. A client may need terms of art and procedural details, such as summary judgment, defined and explained in more detail. The audience will also dictate the tone or level of formality needed for the document.

2. **Keep it objective.** The purpose of an office memorandum is to predict an outcome, even if that outcome is not what the client wishes. Both favorable and unfavorable facts need to be presented and analyzed. In addition, both favorable and unfavorable law and policy must be considered.

3. **Present the analysis in an organized manner.** This means using IRAC or some variation of it for every issue addressed in the memorandum. A clear analysis begins by presenting the issue (I) and the controlling rule (R). If the rule contains enacted law (ex. statutes), then quote the relevant language. If the rule uses case law, then it is best to state the rule in your own words; only use quotations of case law when the language is important or well-purposed.

Part of presenting the controlling law may also involve explaining the relevant case law by giving its facts, reasoning, and holding. This explanation can be done parenthetically or in separate paragraphs. The next step is to apply the controlling law to the client’s facts using analogies and distinctions, as appropriate (A). If there is relevant counter-analysis, it is presented last, followed by the conclusion (C).

Remember to use headings or other signposts (ex. outline numbering) to indicate the transition between issues.

4. **Provide recommendations and solutions, if possible.** As mentioned above, sometimes the analysis is not what the reader wishes. Soften the blow of an unfavorable analysis by focusing on recommendations and solutions. For instance, if the answer is “no” to a question of whether a client can perform some action, suggest other possible actions. These recommendations and solutions are generally presented at the end of the memorandum.
In Landmark Ruling, Appellate Court Upholds Right to Speak Anonymously on the Internet

In a landmark ruling issued last month in the case of Mobilisa v. Doe, the Arizona Court of Appeals in Phoenix upheld the First Amendment right of online anonymity when it has not been abused.

The court held that would-be plaintiffs suing an anonymous Internet user must both present evidence to support their claim and show that their interest in identifying the speaker outweighs the speaker’s interest in remaining anonymous.

Following the recommendation of Public Citizen and the Electronic Frontier Foundation (EFF) in a brief filed as amicus curiae, the majority opinion by Judge Ann Scott Timmer embraced the approach of New Jersey’s Superior Court, Appellate Division.

That court, in its pioneering 2001 decision in Dendrite v. Doe, required an explicit balancing of rights even after the plaintiff has shown that it has enough evidence to survive summary judgment. The court followed the Dendrite analysis instead of the summary judgment standard used by the Delaware Supreme Court in its 2005 decision in Doe v. Cabill.

The case arose from an anonymous message sent to the management team of Mobilisa, a Seattle provider of wireless and mobile communication systems, chiding the company’s CEO for an e-mail to his mistress, a copy of which was forwarded along with the reproving message. Mobilisa sued the anonymous speaker, claiming that the underlying e-mail must have been obtained by hacking into Mobilisa’s computer system. Mobilisa then subpoenaed The Suggestion Box, an Arizona company that provided anonymous e-mailing services, to obtain the identity of the anonymous message sender.

The trial court following the Cabill approach and required the plaintiff to present evidence sufficient to show that its suit for trespass to its computer system under state law and for violation of federal statutes protecting the privacy of electronic communications could survive a request that the case be dismissed for lack of merit.

It then held that the evidence presented in response to that ruling was sufficient. The Court of Appeals agreed that the Cabill standard had been met but faulted the trial court for failing to take the necessary step of balancing the rights of the Mobilisa and Doe before ordering that the defendant’s identity be revealed.

“The ability to speak or criticize anonymously online is an important tool for whistleblowers to expose misconduct or corruption by powerful companies or public figures,” said Paul Alan Levy, the Public Citizen attorney who was the principal author of the amicus brief and presented oral argument on behalf of amici curiae.

“Speakers often have a good reason to remain anonymous when the targets of their criticism have the power to harm them. This decision strikes the right balance to protect online anonymity when it has not been abused and prevent the threat of lawsuits from having a chilling effect on this important type of speech.” Judge Timmer explained that an explicit balancing approach better accommodates the variety of claims that may be brought against anonymous defendants; the possibility that, in some cases, significant harm may be suffered by the anonymous poster who is identified; and the danger that identification will have a chilling effect on highly protected political speech.

Because the trial judge did not reach the balancing stage, the appellate court sent the case back to the trial court to allow the trial judge to apply that part of the required test. The court of appeals did not indicate any view on the outcome of the balancing part of the test.

In a dissenting opinion, Judge Daniel Barker argued that once a plaintiff has presented enough evidence to survive a request to dismiss the case for lack of merit, there is
him in involuntary servitude in violation of the Thirteenth Amendment.

The district court entered summary judgment for the justices on the federal claims, ruling that arbitration service “is too minimal to constitute a compensable taking of property.”

Ninth Circuit remands

The Ninth Circuit at first affirmed, but later vacated that decision, remanding to the district court. The Arizona Supreme Court was then asked to answer two certified questions; it upheld the system under state law and held that it had the power “to promulgate a court rule authorizing the superior courts in each county of this state to require active members of the state bar to provide limited service as arbitrators.” Scheehle v. Justices of the Supreme Court, 211 Ariz. 282, 285, 120 P.3d 1092, 1095 (2005).

The district court then reaffirmed its previous judgment. The case once again went to the Ninth Circuit, and once again Scheehle met defeat.

Writing for the court, Judge Consuelo M. Callahan acknowledged that “there is no question that the [service requirement] deprived Scheehle of something.” But the deprivation was not necessarily compensable: “[T]he Fifth Amendment does not prohibit the taking of private property, but rather places a condition on the exercise of that power,” Callahan wrote, quoting Justice Sandra Day O’Connor. Applying the regulatory-takings test factors, Callahan concluded “that there has been no constitutional taking.”

First, she held, “the economic impact of the imposition on Scheehle is negligible” because he is only required to devote two days a year to hearing arbitrations and he had not shown any interference with his existing legal work. Nor did the system interfere with any investment-backed expectations.

Scheehle is “officer of the court”

“ ‘To the contrary,’ Callahan wrote, “in accepting admission to the Arizona Bar, and in practicing before the Maricopa County Superior Court, Scheehle voluntarily became an officer of the court with the concomitant obligation to render service to the court when requested.” Scheehle’s two-day requirement to serve as an arbitrator, Callahan wrote, does not “remotely outweigh[] the benefits conferred by admission to the practice of law.” Joining Callahan in affirming the summary judgment were Ninth Circuit Judges Sidney R. Thomas and Jane R. Roth, senior judge for the Third Circuit.

Unfit Parent Retains Immunization Rights

When the State temporarily takes a child from an unfit parent, that parent retains certain residual rights, including the right to prevent Child Protective Services from having the child immunized against childhood diseases when that goes against the parent’s religious beliefs.


The facts

CPS took temporary physical custody of Cheyenne, Diana’s daughter, and placed her in foster care after her doctor had complained that she was malnourished and did not properly immunize. CPS petitioned to have Cheyenne declared dependent because Diana seemed unable to protect her from her father, who had earlier been arrested for domestic violence. There was also an allegation that Diana was abusing alcohol. Diana did not contest the dependency petition, which the judge granted, awarding custody of Cheyenne to CPS and affirming its case plan of reunification with Diana.

Before the adjudication, Diana had objectied on religious grounds to having Cheyenne immunized. CPS asked the court to grant it the authority to consent to her inoculation. It did not contest the sincerity of Diana’s religious beliefs but noted that Cheyenne’s child-care center required immunization certificates of all its clients.

Cheyenne’s pediatrician testified that immunization was in her best interest to avoid significant risks to her health and even her life. The superior court granted CPS’s request, and Diana challenged its ruling by a special action.

Appeals court disagrees

A divided court of appeals reversed. Writing for himself and Judge Garye L. King, J.

See CourtWatch page 18

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**MCBA CALENDAR**

All events are held at the MCBA headquarters at 303 East Palm Lane, Phoenix, unless otherwise noted. Also check www.marcopabar.org or call 602-257-4200.

**JANUARY 2008**

**1** New Years Day
MCBA office closed

**2** Family Law Section Bd.
5:00 p.m.

**3** Construction Law Section Bd.
12 noon

**4** Estate Planning, Probate & Trust Section Bd.
7:30 a.m.

**8** Public Lawyers Division Bd.
12 noon

**Volunteer Lawyers Program**
12 noon

**4:30 p.m.**

**Moorpark College**
12 noon

**9** Environmental Law Section
12 noon

**Real Estate Section Bd.**
5:00 p.m.

**12** CLA Review (Paralegals)
9:00 a.m.

**14** Young Lawyers Division Bd.
12 noon

**Paralegal Division Board**
5:30 p.m.

**15** Bankruptcy Section Bd.
5:00 p.m.

**16** CLE: Technical Look at Computer Forensics
12 noon-3:00 p.m.

**Employment Law Section Bd.**
12 noon

**MCBA Board of Directors**
4:30 p.m.

**18** Maricopa County Bar Foundation
7:30 a.m.

**CLE: Tour of CAP Headquarters and Waddell Dam**
MCBA office closes

**19** YLD Board Retreat
Location: MCBA
8:30 a.m.-12:30 p.m.

**21** Martin Luther King, Jr.
Day
MCBA office closed

**24** CLE: Estate Planning: Effective Techniques for Your Business Clients
7:30-9:00 a.m.

**26** CLA Review (Paralegals)

**28** Diversity Committee
12 noon

**e-Filing Forum**
12 noon

**Corporate Counsel Division Bd.**
4:30 p.m.

**30** e-Filing Forum
8:00 a.m.

**31** e-Filing Forum
5:30 p.m.
Firm Founder and Sports Fan Mike Kennedy Helps Bring Superbowl LXII to Valley

As the Super Bowl XLII spotlight shines on Arizona, there’s a former president of the MCBA and a major law firm founder serving as chairman of the Arizona Super Bowl Host Committee.

Mike Kennedy, described as the last person to seek recognition for his role, is a trial attorney and a founder of Gallagher and Kennedy in Phoenix. Kennedy has poured thousands of voluntary hours into the Phoenix community while exposing his Midwestern Ohio roots with his “aw-shucks” disposition.

Endlessly, albeit not tirelessly, Kennedy demonstrates his love of Arizona, sports, and most of all, his family; the best way he knows how—through community service.

October 31, 2003 was an historic day for Arizona. With the promise of a new state-of-the-art stadium, Arizona was awarded the bid to host Super Bowl XLII.

One year later, Kennedy took on the role as chairman of the Host Committee with the support and encouragement of his law firm to help the community and prove that Arizona could successfully manage and host an event of this magnitude.

Three years and three total knee replacements later, Kennedy’s main areas of focus have been overseeing the five-member Executive Board and 25-member Board of Directors, organizing the 15-member Host Committee staff, and raising nearly $18 million.

“My passion is for my family, the community and sports,” said Kennedy.

“Getting involved with any of my passions takes work, but somehow my efforts seem to come back to me as a blessing and reward. Most evenings I take refuge in the backyard throwing batting practice to our 16-year-old, Kevin.”

Friends and colleagues who know Kennedy well are not surprised by his response when asked what he will be doing the day of the big game.

Beau Lane, of the E.B. Lane P.R. firm said, “Mike is not interested in fanfare or praise for his years of selfless giving to Arizona. He’ll want to spend the day saying thanks to all the folks who have been a part of this extraordinary event.”
Lawyer Whose Family Lost Home Now Tries to Help Others Keep Theirs

By Peggi Cornelius, Programs Coordinator

A recent convert to Arizona consumer advocacy after years of big-firm defense practice on the east coast, attorney Garrett W. Wotkyns has helped the Volunteer Lawyers Program evaluate seven complex residential real estate matters in less than a year.

We asked him how he came to be an advocate for consumers and why he volunteers his time to assist low-income homeowners needing legal counsel. His response reflected why he has been recognized as Attorney of the Month by the Volunteer Lawyers Program.

Having grown up in rural Texas in a family that lost its home in what he called the “1980’s oil crash,” Wotkyns said his commitment to representing disadvantaged consumers in mortgage-related legal work comes from his past. As he put it, “I walked down the foreclosure road as a kid, and I want to help those who are going through that now.”

After taking his degrees at Rice University and the University of Chicago Law School, and clerking for a federal appellate judge, Wotkyns went to Washington D.C. He practiced there at a defense firm for five years before moving to Phoenix with his wife, who is also a lawyer there.

He credits the judge for whom he clerked and the leader of his practice group at his former firm in Washington with mentoring him as a lawyer. In addition to litigating class action cases while in Washington, he also authored civil-liberties-related briefs for public interest groups. One brief was for the NAACP that helped convince the Ohio Supreme Court to stop commercial real estate developers from seizing minorities’ homes in the name of “blight prevention.”

As an attorney at Bonnert Fairbourn Friedman & Balint, P.C., Wotkyns’ practice focuses on consumer class action litigation, primarily in matters involving banking and insurance issues. Brining his experience from both sides of the consumer credit litigation bar to bear, Wotkyns joined the VLP.

He committed to assisting in the evaluation of matters where issues of predatory lending, home “foreclosure rescue” scams, and equity theft appear. Unfortunately, the need for this type of case assessment is on the rise.

“In the Valley these days, the homes of hundreds go into foreclosure every week,” Wotkyns said. “And the complexity of the relevant law and regulations often complicates the plight of those in foreclosure.”

Sadly, when I am doing VLP case evaluations, I sometimes feel like an emergency room doctor—just trying to save the patient on the table. It’s heartbreaking, but at some point you can’t stop all the bleeding. I only hope what I am doing with VLP will prevent injury to more homeowners down the road,” he added.

For further information about pro bono opportunities through the Volunteer Lawyers Program, contact Director Patricia Gerrich at 602-258-3434, ext. 2630.

Volunteer Lawyers Program

Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms who accepted these cases during the past month to assist 33 families with low incomes. Each attorney receives a certificate from the Maricopa County Bar Association for a CLE discount.

ADOPTION:
Sandra Ortland Erickson, Bryan Cave
Janet S. Story, Sole Practitioner

ADVISOR/GAL FOR CHILDREN IN FAMILY COURT:
Irene Boland, Aris J. Gallois & Associates
Ronda R. Fisk, Osborn Maleden
Kelly A. Hammer, Sole Practitioner
Debra L. Runbeck, Jerome, Gibson, Stewart, Friedman, Stevenson, Engle & Runbeck

BANKRUPTCY:
Jeffrey A. Katz, Sole Practitioner
Robert Ray Teague — 2 cases, Phillips & Associates

CONSUMER:
Daniel P. Beeks, Mohr Hackett Pederson
Blakely Randolph & Haga
John J. Bouma, Snell & Wilmer
Wade M. Burgess, Engelman Berger
Frank W. Moskwitz, Berk & Moskwitz
Denise M. Quinterri, Dodge Anderson
John M. Randolph, Mohr Hackett Pederson
Blakely Randolph & Haga
Nicole France Stanton, Quarles & Brady
Eric Spencer, Snell & Wilmer

FAMILY LAW/DOMESTIC VIOLENCE:
Nicole Laster, Laster & Sominsky
James L. Leather, Sole Practitioner
William T. Luzader, III, Bryan Cave
Christopher W. Rike, Sole Practitioner
Ronse F. Steiner, Sole Practitioner

GUARDIANSHIPS OF MINOR CHILDREN:
John E. DeWolf, Roshka DeWolf & Patten
Michael D. Latham, Bryan Cave

GUARDIANSHIP OF INCAPACITATED ADULT:
Emily B. Kile, Sole Practitioner
Stacy L. Lukedich — 2 cases, Lewis and Roca

HEALTH CARE ACCESS:
Monika Sud-Devaraj, Sole Practitioner

HOME OWNERSHIP/HOUSING ISSUES:
Teresa K. Anderson, Snell & Wilmer
John M. Randolph — 2 cases, Mohr Hackett Pederson
Blakely Randolph & Haga

TENANTS’ RIGHTS:
David A. Braun, Sole Practitioner

NEW MCBA MEMBERS

MCBA welcomed 34 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.

Jay R. Allieaman
Jones, Shelnor & Hochuli, P.L.C., Phoenix
Jamal F. Allen
Allen & Associates, PLLC, Chandler
Nicole Armstrong
Snell & Wilmer L.L.P., Phoenix
Martha Atanacio
Snell & Wilmer L.L.P., Phoenix
Anne W. Bishop
Snell & Wilmer L.L.P., Phoenix
Joseph W. Charles
Joseph W. Charles, P.C., Glendale
Sharae Crousdale
Snell & Wilmer L.L.P., Phoenix
David P. De Costa
Lane & Associates, PLC, Tempe
Fran Del Fosse
Snell & Wilmer L.L.P., Phoenix
Julie A. Edick
Snell & Wilmer L.L.P., Phoenix
Corey R. Foley
Jennings, Haug & Cummings, LLP, Phoenix
Maria L. Garske
Snell & Wilmer L.L.P., Phoenix
Laura Gillis
Goldberg & Osborne, West Camelback, Phoenix
Michele Leigh Goens
Ronan & Firestone, P.L.C., Scottsdale
Trevi Grant Harris
Jolyn Grant, P.C., Scottsdale
Vannasa L. Henderson
Arizona Legal Specialists, LLC, Scottsdale
Ashley Kasarjian
Snell & Wilmer L.L.P., Phoenix
Shannon Kennedy
Snell & Wilmer L.L.P., Phoenix
Kelly Kszwinski
Snell & Wilmer L.L.P., Phoenix
Lori Landau
Lon S. Taubman, P.C., Phoenix
Amanda Lengel
Snell & Wilmer L.L.P., Phoenix
Lory MacArthur
Bomh & Jones, P.C., Phoenix
Brendan N. Mahoney
Bonn Willis Campbell & Mahoney, Chaiertred, Phoenix
Roseline M. Maloney
Snell & Wilmer L.L.P., Phoenix
Robert S. Martinez
Mesa
R. Stefan M. Palsy
Lewis and Roca L.L.P., Phoenix
Paul N. Papas, II
Paul N. Papas II and Associates, Phoenix
Jessica Perske
Snell & Wilmer L.L.P., Phoenix
Calvin John Platten
Stoops, Denious, Wilson & Murray, P.L.C., Phoenix
Aubrey Srednicki
Gilbert
Niki Swank
Phoenix School of Law, Phoenix
Emily Taylor
DeConcini McDonald Yerwin & Lacy, P.C., Phoenix
Thomas R. Tuohy, Jr.
Thomas R. Tuohy Jr. P.C., Phoenix

MARISCAL, WEEKS, McIntyre & Friedlander, P.A.

IS PLEASED TO ANNOUNCE

NOEL FIDEL

HAS BECOME OF COUNSEL TO THE FIRM

Mr. Fidel was formerly Chief Judge of the Arizona Court of Appeals, Division One, and Presiding Civil Judge of the Superior Court in Maricopa County. He currently serves as an Associate Dean at the Sandra Day O’Connor College of Law at Arizona State University.

Mr. Fidel will concentrate his practice in appellate consulting and private dispute resolution, including mediation, arbitration and neutral case evaluation.

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KOEHLER, NEBER CARLSON & HALUCK, seeks: Attorney, minimum 3 years solid experience in business and real estate litigation. CA bar license required. Email resume to susan.montalvo@knchlaw.com or fax: 602-256-2488.

LEGAL ASSISTANT NEEDED. Arizona & California lit. exp. required. Heavy transcription, 85 wpm a must. Attention to detail, NS Word proficient. If you possess these qualifications, email or fax resume to susan.montalvo@knchlaw.com or fax: 602-256-2488.


EXCELLENT BUSINESS OPPORTUNITY for an experienced Arizona Personal Injury Lawyer. The successful candidate will have to 20 + years of experience in personal injury practice, preferably emphasizing Plaintiff’s work, though defense experience is acceptable. Board certified/board eligible preferred. This is a great opportunity for the most qualified lawyer to participate in an exciting program with an excellent compensation package. We have the work, we just need the worker. Fax resume to 602-288-1672.

ATTORNEY NEEDED for Collection Practice. Nylon licensee preferred. Will pay for an individual to take the Nevada Bar. Must be willing to relocate to Nevada for continued expansion of a Regional Law Firm. (headquartered in Tucson) Fax resume to 520-325-2480.


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ATTORNEY OFFICE FOR RENT – West Mesa Near 101 and Guadalupe Road. Attorney office and adjacent secretarial area (with built-in desk and work space) available for rent in newly remodeled office building. Telephone system, covered parking, and hi-speed internet all included. Tenants also enjoy access to a law library, two conference rooms (one with large granite table and large wall mounted computer), and other amenities, all in a professional and collegial environment. This arrangement is perfect for the sole practitioner. Limited reception services included and client referrals are possible. Please call (480) 820-1421 to discuss further and to arrange a visit.


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New Career Fair Features “Speed-Networking” to Connect Small Firms with Students

By Judy Nichols

It was the first of its kind and its success means Maricopa County’s small firm lawyers should be sure to calendar this event for fall 2008.

Held recently at the ASU’s Sandra Day O’Connor College of Law and presented by its Career Services Office, Small Firm Week drew upwards of 100 law students and attorneys from more than 40 firms.

“Many small firms don’t have the time or resources to spend at large on-campus interview sessions,” said Samantha Williams, assistant director of Career Services. “Small Firm week gives them the opportunity to meet students in a low-pressure setting, meaning no hiring expectations by the students.”

“It also gave them a chance to recruit top-tier students, simply because those students will be more likely to apply to a firm with hiring expectations by the students.”

The event included sessions on relationship building and how to get a job with a small firm. There was a speed-networking event, similar to speed-dating, and a career fair that included lawyers representing 30 different practice areas, from administrative law to white-collar crime.

Attorney Guy Testini of Wilmer, Messer & Testini in Phoenix, who handles workers’ compensation cases, said the speed-networking event challenged students to quickly make a good impression, and the career fair gave them time to ask more in-depth questions.

“There’s nothing that allows you to meet this many students so quickly,” Testini said. “The truth is most of them will work for small- to medium-sized firms. Large firms will hire the top 10 percent. That leaves 90%.”

Recent employment statistics from the National Association of Law Placement show that most law school graduates will go to work in small firms. 56% of the 36,465 employed law school graduates from the Class of 2006 entered private practice and 48% of those joined small- to mid-sized firms with 50 or fewer attorneys.

ASU’s statistics are similar, though 10% more of its students joined smaller firms in 2006. Specifically, 57% of graduates from the law school entered private practice and 58% of those were with small to mid-sized firms.

For many law students eager to have a job before graduation, the small-firm job search can be frustrating, said Williams, of the Career Services Office. Large firms do on-campus interviews and hire up to a year or more in advance, but small firms usually can’t predict when they will need someone and hire when the need arises.

They may interview graduates in the spring or after they pass the bar. They rarely advertise and don’t have a formal recruitment schedule. And they mostly rely on word-of-mouth to find applicants.

Williams said the College of Law is always looking for ways to work with small firms, have them visit the campus and meet students or offer a brown-bag session on their area of law. For more information, contact Williams at (480) 727-7092 or samantha.williams@asu.edu.

New Associate Presiding Judge Named for 2008

By J.W. Brown

Presiding Judge Barbara Rodriguez Mundell announced the appointment of Judge Norman Davis as the associate presiding judge, which became effective January 1. In this role, Judge Davis will remain in his Juvenile Court assignment, handling a full docket of cases. He will assist Judge Mundell in representing her and the court at a variety of judicial, community, and inter-governmental meetings and perform tasks she assigns to him.

Historically, the associate presiding judge works closely with the presiding judge in developing new court policies and administrative orders.

Judge Davis has been on the Superior Court bench since 1995. During the intervening 12 years, he has presided over criminal, civil, family and juvenile cases. He served two years as presiding judge at the Northwest Regional Court Center in Surprise.

For three years, starting in 2004, he presided over the large Family Court. During his tenure, he developed numerous changes to help court customers, including streamlining case processing, reducing delays in resolving cases, and extending hours into the evening and on weekends.

His innovations in Family Court earned him county, state and national awards and he became an invited speaker at national forums on family law.

“Judge Davis’s foresight, innovative spirit and sharp intelligence is an asset to the court, and will serve the bench well in his role as associate presiding judge,” said Judge Mundell. “He is respected locally and nationally and has a knack for getting people to work well together.”

Judge Davis replaces Judge Margaret Downie, who served as Associate Presiding Judge since July 1, 2005, which is when Judge Mundell’s five-year term as Presiding Judge began. The Arizona Supreme Court announced the appointment of Judge Mundell as Presiding Judge in December 2004, which provided her with a six-month transition period with her predecessor Judge Colin F. Campbell.

Several Superior Court presiding judges who preceded Judge Mundell in her assignment appointed new associates in the middle of their five-year terms, and she said she is following their philosophy.

“It is done in an effort to expose more judges to positions of leadership,” she explained.

“Judge Downie is an outstanding jurist and has been an exemplary Associate Presiding Judge,” said Judge Mundell. “I deeply appreciate her service to our court and its administration, particularly in chairing the Commissioner Nominating Committee and Judges Pro Tem Committee. And I thank her for the meaningful contributions she made to our court.”

Judge Downie handles all lower court appeals and specially assigned cases. She also represented the Superior Court on the state Supreme Court’s Committee on Superior Court. She was honored as 2006 Judge of the Year, by the American Board of Trial Advocates.
**Moves & New Hires**

**Gover Bids Farewell to Law School: “This is what I'm supposed to do”**

Kevin Gover, a professor of the Sandra Day O'Connor College of Law and co-executive director of the American Indian Policy Institute at ASU, begins an appointment as director of the Smithsonian's National Museum of the American Indian in Washington D.C., effective Dec. 2.

Gover, who will remain a professor at the law school on leave for the duration of his time at the museum, will be welcomed back with open arms whenever he chooses, said Patricia White, dean of the College of Law.

“Gover’s presence here has been a wonderful thing for all of us. He has contributed to this school in innumerable ways, as a fabulous teacher and a wonderful mentor to lots and lots of students, and he has been particularly important to the students in the Indian Legal Program.”

Gover, who practiced law in Washington, D.C., and Albuquerque before serving as assistant secretary of the Interior for Indian Affairs, joined the College of Law in 2003.

“We didn’t come here with any thought that this was a way station, or that we were just passing through, but rather with the expectation and hope that this would be a place where we would do something completely different, something that seemed worthwhile, important and noteworthy,” said Gover, who also is an affiliate professor in the American Indian Studies Program at ASU.

“My hopes and my expectations were not only fulfilled, they were exceeded.”

Gover said his desire to continue helping Native people tell their stories led, in part, to his decision to accept the appointment to the Smithsonian.

“This museum is a place where we can really reshape Americans’ understanding of who Indians are, of who they were and who they are going to be,” said Gover, who grew up in Oklahoma and is a member of the Pawnee Tribe. “And that’s heady stuff, that’s a big deal to me because there’s so much misunderstanding.”

**Bryan Cave, LLP announced the election of two new partners in Phoenix: George Chen and Christopher Lause.**

Chen is a registered patent attorney. His practice includes litigation, licensing, counseling and prosecution of patent, trademark, copyright, trade secret, unfair competition, Internet, cybersquatting and other intellectual property matters.

Lause has more than 25 years of experience in corporate, securities law and business counseling to boards of directors, audit committees and other board committees, and management of public and private companies.

**Greenberg Traurig, LLP announced that Brigitte Finley Green has joined its Phoenix office as of counsel in the Public Finance practice. Green has served as bond counsel, special tax counsel, underwriter’s counsel and trustee’s counsel in a variety of tax-exempt and taxable municipal bond and lease-purchase transactions for state and local governments.**

For two years, as an attorney advisor with the Internal Revenue Services Office of Chief Counsel in Washington, D.C., Green practiced exclusively in the tax-exempt bond area and her duties included preparing treasury regulations and IRS rulings.

**Lewis and Roca is pleased to announce that Linda M. Mitchell, a partner in the firm’s Phoenix office, has been selected to serve on the board of directors for Homeward Bound. Mitchell is a member of the firm’s Real Estate practice group. She is also very active in the community. Homeward Bound is a transitional housing program for homeless and domestic violence families with children in metropolitan Phoenix.**

**José A. Cárdenas, partner and chair of Lewis and Roca’s Phoenix office, has been selected to serve as one of three incorporating directors for the Arizona Economic Resource Organization (AERO). AERO was created to provide policy direction and guidance to state agencies and other entities with the goal of ensuring that economic development efforts statewide are coordinated and not competing.**

**Brigitte Finley Green**

**Emily Nyea Chang**

**Fall Moot Court Competition**

Five outstanding students at Phoenix School of Law have earned membership in the Order of the Barristers. In the law school’s Fall Moot Court Competition, Becky Cholewka was named first place barrister and Jeff Hall placed second. Each received a cash prize. Other outstanding performers named to the Order of the Barristers are Bruce Gardner, Ben Erlick, and Scott Utibe.
Criminal Justice in Indian Country Focus of College of Law Speakers

Three top experts on criminal justice in Indian Country will speak at an event this month sponsored by the Indian Legal Program at the Sandra Day O’Connor College of Law at Arizona State University. Kevin K. Washburn, the college’s William C. Canby Distinguished Scholar in Residence, will deliver the lecture, “American Indians, Crime, and the Law: Five Years of Scholarship on Criminal Justice in Indian Country,” on Thursday, Jan. 24.

The program will begin at 4:30 p.m. in the Great Hall in Armstrong Hall at the College of Law, with an introduction of Washburn by Judge William C. Canby, Sr. of the 9th U.S. Circuit Court of Appeals.

Washburn, who is on leave from the University of Minnesota Law School where he is an associate professor, is the Oneida Nation Visiting Associate Professor at Harvard, where he teaches American Indian law, gaming law and criminal law. He will be joined at the Canby lecture by Diane J. Humetewa, nominee for U.S. Attorney for Arizona, and Jon M. Sands, Federal Public Defender for the District of Arizona.

The speakers will address issues of interest to tribal officials, tribal court prosecutors and defenders, tribal attorneys, Indian law attorneys, law enforcement officials on or near tribal lands, and students of American Indian studies, criminal justice and Indian law.

The lecture is free and open to the public and will be followed by a reception. Registration is preferred at www.law.asu.edu/ILP or by calling (480) 965-7715.

Kevin K. Washburn

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CLERK’S CORNER
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Economic Census

As the newly-elected president of the Arizona Association of Counties, I take this opportunity to encourage your support of the 2007 Economic Census. Nearly all businesses will receive a 2007 Economic Census form from the U.S. Census Bureau in this tally done once every five years.

The forms ask for basic information like your location, employment, payroll, and sales by type of service. Businesses that receive a form are required by law (Title 13, U.S. Code) to respond by the February deadline. Federal Reserve Board Chairman Ben Bernanke has called this census “indispensable to understanding America’s economy.”

Businesses, communities, and governments use Economic Census data for planning and market development. Statistics are published for more than a thousand industries as well as for states, counties, cities and metropolitan areas at www.census.gov.

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DIVERSITY
continued from page 1

Please contact MCBA staff, Laurie Williams, 602-257-4200 ext. 102 or lwilliams@maricopabar.org if you would like the Diversity Committee to assist in any of these ways.

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PARALEGAL
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Phoenix Convention Center, offering speakers from the legal community and up to six hours of CLE credit.

These events and others throughout the year can only happen with the dedication of our paralegal and student members, and there are many opportunities for you to get involved and work with one of our committees and help plan the events. Be sure to check our website (www.maricopaparalegals.org) and watch for our e-mails regarding upcoming activities.

On behalf of the 2008 MCBA Paralegal Division Board of Directors, we are looking forward to serving our membership and having a great year in 2008.
New Commissioners Create Numerous Assignment Changes

By J.W. Brown

New Commissioners have been added to the Superior Court bench, which has resulted in changes to a number of commissioners’ assignments.

Jerry Bernstein, a former deputy county attorney, and Jeff Rueter, a former assistant attorney general, are the most recent additions to the commissioner’s roster. Commissioner Bernstein’s appointment to Initial Appearance (IA) Court became effective on Dec. 19, and Commissioner Rueter’s appointment to Juvenile Night Court is effective Jan. 7.

Each of the two new commissioners will spend two weeks in training before assuming their calendars. Once trained, the commissioners whose calendars they are taking will relocate to new assignments.

Commissioner Barbara Hamner leaves IA Court when Commissioner Bernstein completes training in IA Court, and will move to a mixed Civil and Probate Court calendar, which was assigned to Commissioner Phemonia Miller.

Commissioner Miller moves to Commissioner Pamela Svoboda’s Initial Pre-Trial Conference calendar. In her move, Commissioner Svoboda assumes Commissioner Steve Lynch’s criminal case calendar focused on DUI trials.

Commissioner Lynch has been assigned to a newly created calendar to handle Class 4, 5 and 6 felony jury trials.

After Commissioner Rueter’s training for his new post in Juvenile Night Court is complete, it will allow Commissioner Peter Thompson to move to his new assignment—Commissioner Brian Rees’ Juvenile Calendar in the Southeast Court Facility. Commissioner Rees takes over Commissioner Barbara Spencer’s Mental Health calendar assignment and she takes over new responsibilities in a second newly created criminal case calendar focused on Class 4, 5 and 6 jury trials.

The creation of two new calendars provides a cushion for a smooth transition in the commissioners’ assignment rotations. Unexpected delays in training commissioners new to the bench or those moving to new assignments will be accommodated with the postponement of the start date for the two newly created calendars.

Scholarship to Honor Tony Lucia, Brilliant Lawyer, Mentor, Friend

Tony Lucia was passionate about practicing law, representing his clients to the fullest and winning over opposing counsel with kindness during a career in Arizona that spanned nearly three decades.

Now, a new scholarship in Lucia’s name at the Sandra Day O’Connor College of Law at Arizona State University will encourage students to follow in his footsteps. The Anthony R. Lucia Scholarship is being established through the efforts of Lucia’s former long-time partners at the Phoenix law firms of Lucia Stark Williamson LLP and Treon, Aguirre, Newman & Norris, PA.

“Our goal is to raise $250,000,” said Linda Williamson, a partner of Lucia’s for more than 20 years.

Tony Lucia died of cancer in May 2005 at the age of 54.

“As a lawyer in this community, Tony earned a reputation as a brilliant advocate, and I was frequently impressed with his creative legal arguments,” said Curt Clausen, a partner at Lucia Stark Williamson.

“However, it was the manner in which he practiced law that I found most inspiring. Tony was able to be an advocate without being confrontational.”

Lucia received his J.D. from Ohio State University but practiced law exclusively in Arizona and was an integral part of the legal community in Phoenix.

“We thought ASU would be an appropriate place to establish this scholarship because we want to keep Tony’s memory and the spirit in which he practiced law alive in this community,” Clausen said. “It would make him happy to know that students will benefit in this way in his honor.”

For more information about the scholarship or to contribute to it, e-mail Clausen at cwc@lswaz.com or contact Terrence McManus, director of development at the Sandra Day O’Connor College of Law, at (480) 727-0645 or e-mail him at tmcmanus@asu.edu.
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Join today by contacting Cynthia at 602-257-4200 Ext. 114 or cquinonez@maricopabar.org.

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**Court Commissioner Applications Due**

By J.W. Brown

Recruitment is quickly nearing its deadline for Maricopa County Superior Court commissioners. Attorneys interested in becoming court commissioners are urged to apply soon.

The application deadline is 3 p.m., Wednesday, Jan. 9. Application packets are available from the court’s Human Resources Department, 101 W. Jefferson, Phoenix, and can also be downloaded from the court’s website:


Assignments are varied and include criminal, civil, family, juvenile, probate and mental health legal matters.

The Commissioner Nomination Committee will meet to determine which applicants will be interviewed. The interviews will take place on Thursday, Feb. 7. An eligibility list will be created for Presiding Judge Barbara Rodriguez Mundell following the interviews. Judge Mundell will appoint new commissioners from that list as vacancies occur.

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**OPINION** continued from page 2

level of independence possible.

At trial, our experts and care providers explained that a nursing home does not tie down residents, even if they are high-fall risks. Instead, our witnesses explained that their nursing home does not “rush to restrain.” Rather, they used progressive measures in lieu of physical and chemical restraints.

However, the jury first had to agree to our fundamental message that the standard of care specifically requires nursing homes to allow some risk that the residents may fall because residents have a right to the highest level of independence under the circumstances.

The jury also needed to understand that in the balance between protecting residents and allowing them to live, life happens. Accepting risks is adequate and reasonable and appropriate. In the end, the jury agreed that the nursing home had promoted the woman’s right to be as free as possible and to live her life as fully as possible.

In Arizona, and throughout the country, a small percentage of nursing homes and assisted living facilities will continue to face legal, professional, and political challenges because they do violate the standard of care.

At the same time, many other long term care facilities will face those challenges as a direct consequence of their faithful adherence to that standard. It is on their behalf that we must make every public effort to define and clarify their overriding professional obligations and dedication to the quality of life.

Jill S. Goldsmith is a partner at the Phoenix law firm of Bouman and Brookes. Her trial practice is concentrated in complex civil litigation with an emphasis on defense of product manufacturers throughout the region and the defense of nursing homes in Arizona long-term care facilities.

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**COURTWATCH** continued from page 10

Vásquez, Judge Peter J. Eckerstrom noted that the Fourteenth Amendment does not provide absolute protection of parents’ fundamental liberty interest in their children’s custody, control, and management. Their interests may be outweighed by the State’s interest in the children’s health and welfare.

Eckerstrom agreed with Diana that the dependency adjudication did not extinguish her parental rights. Under A.R.S. § 8-531(5), she retains residual parental rights, and the State’s responsibility for the child’s medical care was subject to them. The legislature did not define those residual rights, but Eckerstrom concluded that they include the right to determine the child’s religious upbringing.

He determined that although § 8-512 gives CPS the authority to consent to immunization for a dependent child in foster care, the parent’s residual religious rights trumped that authority. He relied on Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526 (1972), where the Supreme Court had affirmed a parent’s First Amendment exemption from the state’s compulsory school-attendance requirement.

Although Yoder had not established a precise formula for balancing the state’s and the parent’s rights, it had emphasized that “only those interests of the highest order and those not otherwise served can override legitimate claims to the free exercise of religion.” Only a compelling state interest could overcome the parent’s rights, Eckerstrom concluded.

Religious rights prevail

Despite the State’s interest in the health and welfare of its children, Eckerstrom concluded the legislature had tipped the balance in favor of the parent’s religious rights. For instance, in A.R.S. § 36-883(C) it had subordinated the State’s interests to the parent’s, he wrote, by allowing parents to get around immunization requirements based on their objections following “the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.” Eckerstrom also cited a similar exemption in school-attendance statutes.

Thus, “far from asserting a state interest in immunization sufficiently compelling to overcome Diana’s right to determine the religious upbringing of her child,” Eckerstrom concluded, “Arizona law instead repeatedly honors faith-based parental objections to immunization.”

The dissent

Judge Philip G. Espinosa dissented, arguing that the majority had “effectively elevated[d] the rights of the irresponsible parent over the needs of an innocent child and justified it by patching together constitutional doctrines and statutes that have no bearing on the situation at hand.”

Despite CPS’s temporary custody of Cheyenne and the plan for reunification, “Cheyenne could remain in ADES custody for more than a year until permanent custody is resolved . . . and no evidence in the record supports the majority’s conclusion that her immunization is ‘non-urgent.’”

**Yoder rejected**

Espinosa also rejected the reliance on Yoder, calling the majority to task for “failing to recognize crucial distinctions between that case and the circumstances presented here.”

The Amish parents there, he argued, had shown that their alternative modes of vocational instruction were an adequate substitute for the state’s mandatory education requirement and had shown that “accommodating [their] religious objections . . . would not impair the physical or mental health of [their] child[ren].”

He pointed to other language from Yoder: “To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation . . . if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.”

He insisted that “[t]he respondent judge’s decision that immunization is in Cheyenne’s best interest and necessary for her safety is supported by reasonable evidence in the record . . . and is entitled to our deference.”

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