

# MARICOPA Lawyer

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## Sister bars

The MCBA wants to help you become more acquainted with its "sister" bars – the regional and specialty bar associations in Maricopa County. **Pages 8 & 9**

## Former State Bar president new head of discipline system

ROBERT B. VAN WYCK, A FORMER president of the State Bar of Arizona who most recently served as an appointed Coconino County Superior Court judge, is the new head of the lawyer discipline system.

Van Wyck, 55, took over the job as director of the State Bar's Lawyer Regulation Department — a position traditionally known as chief bar counsel — July 1.



Van Wyck

"One of my first priorities is to meet with and listen to lawyers and members of the public to see how the bar can make the lawyer regulation system even more effective," Van Wyck said in a press release. "The Lawyer Regulation Department has made tremendous strides over the last few years. There is great momentum for me to build upon."

He said his "wide variety of perspectives" will "help me better serve the public and lawyers."

Van Wyck becomes a State Bar employee only a few years after serving as its volunteer elected leader. During 1997-98, Van Wyck served as president of the State Bar board of governors. In moving up through the officer ranks to become president, Van Wyck served as first vice president, a position that, by Arizona Supreme Court rule, has the responsibility to serve as the probable-cause panelist for the discipline system. Among other duties, the panelist decides whether to accept a bar counsel's recommendation to pursue formal proceedings against a lawyer.

Van Wyck received his law degree from the University of Maine and worked as a prosecutor in Maine before — See **Van Wyck** on page 7

## The real Ring

# Jury must find facts, not decide death penalty

By Daniel P. Schaack  
Maricopa Lawyer

By now you've heard or read the media reports on the opinion in *Ring v. Arizona*, and you know that the U.S. Supreme Court ruled that the jury, rather than the judge, must sentence the defendant to death in a capital case, right?

No, not quite.

While the court did overturn Arizona's death-penalty sentencing scheme, it did not rule that the U.S. Constitution requires jury sentencing. Rather, the court held that the Sixth Amendment right to a jury trial requires the jury to find any fact that would result in the harsher death penalty rather than life imprisonment.

In 1997, Timothy Ring was sentenced to death for the 1994 murder of the driver of an armored car, which he and others robbed of more than \$500,000 in cash. The driver suffered a fatal gunshot to the head. Ring was charged with both premeditated and felony murder. The jury unanimously found him guilty of first-degree murder, but split on whether it was premeditated.

Following the guilty verdict, the trial judge conducted a sentencing hearing as directed by A.R.S. § 13-703. Because Ring was convicted of felony murder,

## COURT WATCH

not premeditated murder, the judge recognized that Ring was eligible for the death penalty only if he was the actual killer or if he was a major participant in the armed robbery that led to the killing and had exhibited a reckless disregard or indifference for the driver's life.

The judge heard testimony from one of the co-conspirators, who by then had pleaded guilty. He testified that Ring was their leader and had planned all the tactics. He also testified that Ring had fired the fatal shot with a rifle equipped with a homemade silencer. Ring had even gone so far as to chide his fellow conspirators for not congratulating him on his shot.

The judge found that Ring was the actual killer and found the presence of two aggravating factors: the expectation of pecuniary gain and an especially heinous, cruel or depraved killing. The only thing the judge found in Ring's favor was his minimal criminal record, but this was not enough to overcome the aggravating factors. The judge sentenced him to death.

In Ring's automatic appeal to the Arizona Supreme Court, he argued that the sentencing hearing and death sentence violated his right to a jury trial. The argument was ill-fated because the U.S. Supreme Court had recently rejected the same argument in *Walton v. Arizona*, 497 U.S. 639,

110 S.Ct. 3047 (1990). Relying on *Walton*, the Arizona high court affirmed. *State v. Ring*, 200 Ariz. 267, 25 P2d 1144 (2001). But the U.S. Supreme Court accepted Ring's petition for certiorari on the sentencing issue.

Why would the court elect to — See **Courtwatch** on page 3

## Northwest court opens



PHOTO BY LEN KESCO/CLERK OF THE COURT'S OFFICE

The new Northwest Regional Center opened for business July 22, barely six months after ground was broken. The facility's four state-of-the-art courtrooms have digital- and voice-activated video recording equipment, flat screen video monitors, two-way video conferencing equipment for off-site witnesses and infrared hearing devices for hearing-impaired jurors and court visitors. The facility includes a clerk's filing counter, where probate, civil and Family Court cases can be filed. No juvenile or criminal cases are assigned to the court center.

# The why and how of hyperlinked briefs

By Pendleton Gaines and  
Keith L. Hendricks  
Special to Maricopa Lawyer

Consider, from the judge's perspective, the receipt of an apparently well-supported motion for summary judgment. Such a motion requires references to a statement of facts. The statement of facts, in turn, requires references to evidence such as contracts, deposition transcripts, affidavits or other potentially voluminous materials. The complete documents may be attached as exhibits to various filings for context, completeness or simply out of an abundance of caution. This hypothetical motion may be based, in part, on authorities from courts outside Arizona, which the attorney may also wish to provide. The paper filings, although complete, may be voluminous.

Does the judge, who may be responsible for a calendar of 1,300 cases, have time to analyze

and study the papers carefully and thoroughly?

A partial solution to this problem is to provide the judge with a tool that will enable him or her to immediately jump from the argument to a supporting legal authority or source document to analyze, confirm or disprove a particular lawyer's argument. This is what a "hyperlinked" brief can do.

At a recent meeting of Maricopa County Superior Court civil judges, one judge discussed her experience with a CD-ROM, which had been submitted as a supplement to the briefing on a pending motion. The CD-ROM contained an electronic copy of the briefing with "hyperlinks" to the cited case law and source documents. The judges at the meeting were enthusiastic and supportive of the concept. The consensus was that this supplement to written submissions has much to offer the busy trial judge.

Most of us know something of the Internet and the ability to move from cite to cite by

clicking a "hyperlink." Most younger attorneys, and a few computer-savvy older ones, also know of the value of hyperlinks in research services such as Westlaw that allow you to jump to a cited authority with a click of the mouse. The hyperlinked brief recently discussed by the civil department judges simply incorporated this technology into motion practice.

The judges felt that the hyperlinking tool would help them, for at least the following reasons:

➤ The volume of paperwork at hand (and, perhaps, at home in the evening or on the weekend) is reduced or eliminated in favor of one or two small discs.

➤ Significant time is saved following the links, for example, to a particular fact in a statement of facts and the underlying source, as compared to manual search and retrieval.

➤ The use of technology is a natural fit — See **Hyperlink** on page 11

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## Law office computing

QuickBooks Pro 2002 is a very impressive suite of business services for a relatively low price. **Page 5**

## Judges pro tem

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## COMMENTARY

# Fire victims – two- and four-legged – need help

Although the Rodeo-Chediski fires have been contained for quite some time, their victims continue to suffer. So many of our neighbors lost their homes, jobs, cars and family pets. Fortunately, Maricopa County lawyers can and are helping the victims get back on their feet by providing volunteer legal services or contributing to the Arizona Humane Society's Wildfire Relief Fund.

The State Bar of Arizona graciously agreed to host and answer a toll-free telephone number set up for the victims of the fires. In accordance with the American Bar Association Young Lawyers Division's agreement with the Federal Emergency Management Agency, lawyers are providing pro bono legal services to the victims. Questions have ranged from "Do I have insurance to cover my losses?" to "I lost my job and can't pay my rent. Is there anything I can do?" to "My will was in my home and was destroyed by the fire. Can you help me draft a new one?" The volunteer attorneys can answer most of the questions over the telephone in only a few minutes. Pursuant to the ABA YLD's agreement with FEMA, the volunteers cannot handle a fee-generating case, and those matters are referred to a local lawyer referral service.

If you are interested in volunteering to help the victims, please contact Mira



Susan  
**WISSINK**  
MCBA / YLD  
PRESIDENT

Radovich at the State Bar at [mira.radovich@staff.azbar.org](mailto:mira.radovich@staff.azbar.org). We are looking for volunteers in the areas of insurance, wills, landlord/tenant, employment, business and creditor/debtor, and environmental and natural resources, although we welcome all volunteers. When a victim calls the toll-free number, the State Bar will collect some information and then contact a volunteer attorney with experience in the area of law needed. The volunteer attorney then calls the victim and works directly with the victim to assist with his or her legal needs.

Thanks to the State Bar's Cynthia Zwick, Matt Silverman and Mira Radovich for agreeing to host the toll-free number, organizing the volunteers and providing this invaluable service to those hurt by the Rodeo-Chediski fires.

Another way to help the victims of the disaster is to donate to the Arizona Humane Society's Wildfire Relief Fund. During July, Jamie Burgess of Fennemore Craig coordinated a drive to help raise funds to assist the pets that were left behind or displaced because of the fires. Although several thousand dollars were raised in June and July, the humane society still needs more to help with continued veterinary needs and future emergency rescue and relief efforts, and to help fund veterinary care for animals in crisis, such as animals evacuated from fires, floods or other natural disasters and victims of animal cruelty. If you would like to contribute, please make your check payable to the Arizona Humane Society Wildfire Relief Fund and mail it to the Arizona Humane Society, 1521 W. Dobbins Road, Phoenix, 85041.

The MCBA YLD would like to recognize its volunteer of the month for August, Carolyn Martin of Jennings, Strouss & Salmon, for editing the Statute of Limitations Guide. The guide has been a tremendous success and we couldn't have done it without all of the Carolyn's hard work. ■

# Help foundation give money away

By Gregory R. Knight  
MCBF President

We have money to give away, but we need your help.

No, this isn't a sweepstakes or government program. We are the Maricopa County Bar Foundation, a charitable organization affiliated with the Maricopa County Bar Association. Part of our funding comes from your annual dues. We also host an annual golf tournament, which will be combined this year with the Volunteer Lawyers Program.

The MCBF is looking for non-profit organizations that need funds. Applicants should provide legal services for underprivileged individuals and promote legal education. The exact requirements and application forms are available from Brenda Thomson, executive director of the MCBF and the MCBA.

Here are some examples of the types of organizations that the MCBF has supported in the past:

## The Never Again Foundation

The Never Again Foundation actively protects the civil rights of physical- and sexual-abuse victims. It pursues civil remedies against abusers and raises the public's awareness of civil remedies available to abuse victims. Although the money judgments it obtains are rarely satisfied, they are symbolic victories that provide dignity and emotional closure to victims of abuse.

Recently the foundation won a historic civil judgment of \$1.25 million against a man who beat his wife almost to death. The convicted abuser agreed to a divorce and relinquished his claim to more than \$1 million in marital property in exchange for full settlement of the civil judgment against him.

The foundation is currently representing a woman shot in the face by her husband after only one week of marriage; a 6-year-old boy who had been sexually abused by his stepfather; a 13-year-old mentally handicapped girl impregnated by her father; two teenage girls molested by their uncle; and several women who suffered domestic violence at the hands of those purporting to love them.

The foundation also recently raised public awareness to a legal loophole that convicted sex abusers are using to avoid civil accountability to their victims. According to A.R.S. §13-807, *criminally convicted* defendants may not deny their actions in subsequent civil suits brought by their victims. However, because the statute of limitations for civil claims is only two years, many convicted sex offenders are avoiding civil accountability to their victims. Many sex crime victims do not file a civil claim within two years due to trauma, guilt, ongoing

criminal proceedings and other reasons.

## Advocates for the Disabled

The MCBF also supports Advocates for the Disabled which, among other things, helps underprivileged people navigate the complexities of obtaining Social Security and disability benefits.

It recently helped a disabled 56-year-old single woman who was living on the street. She was unable to work, had no income and no place to live, and suffered from severe asthma and depression. Advocates for the Disabled helped her get medical assistance, disability payments and subsidized housing, and even acted as the woman's payee to manage her funds. Now the woman is settled in an apartment, has medical help and is able to manage her own affairs in a dignified way.

Advocates for the Disabled also recently assisted a 42-year-old single man who was living in his truck. He was diabetic and disabled and had spent his last dollar on medicine. He literally had nothing to eat. The organization immediately helped him get food and other resources for the homeless. It also helped him to fill out paperwork for disability, medical help and cash assistance, and assisted him with getting an apartment.

The Never Again Foundation, Advocates for the Disabled and other similar groups are helping people, one at a time, to improve their lives through the law. We, as lawyers, have the ability to restore hope where there is now hopelessness and to bring mercy into people's lives in situations where we are uniquely qualified to do so. The alternative is for us to pass by on the other side of the street and do nothing. ■

## THOSE WHO NEED LEGAL HELP AS

a result of the Rodeo-Chediski fires may call, toll-free, 1-866-255-4495 and leave their contact information on the State Bar's hotline. A qualified attorney will return their call within 48 hours. The volunteer attorneys are able to assist in areas including insurance claims, real estate, wills and probate issues, employment and labor, business and creditor and debtor. Because of the anticipated volume of calls, the volunteer attorneys will only be able to provide basic services such as filling out forms and free consultation. ■

## Winning thoughts

Kathleen Mullin, a paralegal at Quarles & Brady Streich Lang, won the MCBA's second gourmet food basket for contributing her thoughts about how



the MCBA can best communicate with its members. The MCBA distributed surveys to members at seminars, meetings and other events. Mullin's name was selected at random from among those who returned surveys to the MCBA after early June. ■



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# Courtwatch...

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consider an argument it had rejected only a scant few years before? Because of the intervening *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 (2000).

After he fired several shots into the home of a Black family and later proclaimed that he did not want Blacks in his neighborhood, Charles Apprendi pleaded guilty to illegal firearms possession. The crimes to which he pleaded carried possible prison terms of five to 10 years. But the trial judge applied a statutory sentence enhancement, found that he had committed a hate crime, and ordered him imprisoned for 12 years.

The U.S. Supreme Court reversed, holding that Apprendi's right to a jury trial was violated when the judge, rather than the jury, found a fact necessary to increase his maximum punishment. The court held that the Sixth Amendment does not allow a judge to find facts leading it to sentence a defendant to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone. The court rejected New Jersey's argument that the judge's additional findings were only sentencing factors, not elements of the crime.

In so holding, the court had to deal with *Walton*. In that case, it had upheld Arizona's death-penalty statute, under which the judge's own findings determine the punishment. The court decided the two cases were reconcilable. Unlike the New Jersey law, the Arizona statute started at the top and worked down: "[O]nce a jury has found the defendant guilty of all the elements of an offense which carries as its maximum penalty the sentence of death, it may be left to the judge to decide whether that maximum penalty, rather than a lesser one, ought to be imposed."

Dissenting, Justice Sandra Day O'Connor called this distinction "baffling." She decried the majority's claim that "the jury makes all of the findings necessary to expose the defendant to a death sentence." She stated that this was "demonstrably untrue," because a "defendant convicted of first-degree murder in Arizona cannot receive a death sentence unless a judge makes the factual determination that a statutory aggravating factor exists. Without that critical finding, the maximum sentence to which the defendant is exposed is life imprisonment, and not the death penalty."

Ring argued that *Walton* and *Apprendi* truly were incompatible. This time, the

majority agreed. *Ring v. Arizona*, No.01-488 (June 24, 2002). Writing for the majority, Justice Ruth Bader Ginsburg stated that the Arizona statute authorizes a maximum penalty of death only in a formal sense, "for it explicitly cross-references the statutory provision requiring the finding of an aggravating circumstance before imposition of the death penalty." She agreed, therefore, that *Walton* and *Apprendi* are irreconcilable: "[O]ur Sixth Amendment jurisprudence cannot be home to both."

"Because Arizona's enumerated aggravating factors operate as the functional equivalent of an element of a greater offense," Ginsburg concluded, "the Sixth Amendment requires that they be found by a jury."

"Accordingly, we overrule *Walton* to the extent that it allows a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty."

Thus, contrary to various reports in the media, the court did not require jury sentencing in death-penalty cases. Rather, it reaffirmed the traditionally distinct roles the judge and jury play. The jury finds all the facts necessary to sustain a conviction and subject the defendant to the indicated punishment. The judge may then order the defendant to undergo that punishment. There is nothing in *Ring* that precludes the state from establishing a procedure that leaves it to the court to impose the sentence, even the ultimate — the death penalty — as long as the jury has fulfilled its role of finding all the necessary facts.

The Arizona Supreme Court has taken unusual measures to deal with the *Ring* decision. Now that all defendants whose direct appeals are not yet final must be re-sentenced and there is no current statutory system to do so, the court has consolidated all those cases for supplemental briefing and oral argument on the capital-sentencing issues, as it noted in *State v. Jones*, No. CR-99-0536-AP (July 10, 2002).

Meantime, the court has decided not to keep all those cases languishing in the hopper, at least as to non-sentencing issues. In *Jones*, the court states: "[W]e have decided that it would be in the best interests of all — the justice system, defendants and victims — to issue opinions on the guilt issues in all cases that have been argued and submitted to the court for decision, including those in which we have concluded the verdict and judgment of guilt should be affirmed."

Junk mail is an irritant that has bedeviled us all for years. And there seems to be little we

can do to stem the tide of unsolicited solicitations we receive daily in the mail, the "spam" emails flooding our computers and the blasted faxes tying up our fax machines overnight.

My father let me in on a guerilla technique he used when he received junk mail from the Republican Party. (My father seldom saw eye-to-eye with the Republican Party). When it sent him mail with a business-reply envelope and asked him for a contribution, he would simply fold up everything it had mailed him, place it in the reply envelope and mail it back, sans contribution.

It was an eloquent move with a touch of poetic justice. But whatever sense of satisfaction it gave him, I doubt it did much to reduce the amount of junk mail he received.

Enter Congress. It passed the Telephone Consumer Protection Act of 1991, which, among other things, restricts the use of fax machines to send unsolicited advertisements. It also gives victims a private cause of action against violators, with damages of \$500 per violation that can be trebled.

Now enter a Texas company called American Blast Fax and its client, United Artists Theatre Circuit. UA paid ABF \$3,375 to blast Phoenix-area fax machines with one-page advertisements for discount movie ticket packages — 90,000 of them. Some of the recipients requested information on the packages, and 29 actually purchased gift certificates, paying UA a total of \$12,080.

Unfortunately for ABF and UA, one of their victims was ESI Ergonomic Solutions. Of all the victims, only ESI complained, but it could be one significant complaint. ESI filed suit against both companies for violating the Telephone Consumer Protection Act. ESI sought to certify a plaintiff class of those who

had received the unsolicited faxes. It sought an injunction and statutory damages of \$500 per violation with possible trebling.

After the suit was filed, UA filed bankruptcy. Ironically, using ABF's services once again, UA sent a court-approved notice to each of the fax recipients advising them that they could file claims in the bankruptcy case. ESI was the only one to file a proof of claim, purportedly on behalf of the entire class. Meanwhile, ABF had dissolved and disappeared from the case.

The Bankruptcy Court allowed the state action to proceed, with any damages limited to UA's insurance policies, not the company's own assets. But the trial court refused ESI's request to certify the class. It noted that a single plaintiff was filing suit on behalf of a 90,000-member class, actual damages were minuscule and no other recipients had complained. The possible damages of \$45 million to \$135 million for transmitting a one-page ad, it further stated, would be "horrendous, possibly annihilating punishment," out of proportion to the damages ESI had suffered, and out of proportion to the benefits UA and ABF had reaped.

Division One of the Court of Appeals reversed, finding the trial court's concerns misdirected. *ESI v. United Artists*, CV 01-0396 (July 16 2002). Writing for the court, Judge Cecil B. Patterson Jr. first rejected the inference UA sought to draw from the fact that no recipient other than ESI had filed suit or a proof of claim. He noted that this did not necessarily mean that none of the other victims desired compensation. Rather, he found it reasonable to infer that circumstances made it uneconomical for the victims to seek dam-

— See *Courtwatch* on page 4

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# Myriad of changes to criminal disclosure rules

By Brian E. Cieniawski  
Maricopa Lawyer

## COURT RULES

The Arizona Supreme Court has adopted numerous amendments to Rule 15, Ariz.R.Crim.P. The amendments apply to all criminal cases in which the indictment, information or complaint is filed on or after Dec. 1 or in which service of the mandate of an appellate court ordering a new trial upon the reversal of a judgment occurs on or after Dec. 1.

The amended version of Rule 15.1, concerning disclosure by the state, explains that unless otherwise ordered by the court or provided by local rule, the prosecutor — at the arraignment or preliminary hearing, whichever occurs first — shall make available to the defendant all reports containing items listed in subsection (b), paragraphs 3 and 4 of Rule 15.1 that the prosecutor filing the charge possesses at the time of that filing. The amendment to subsection (b) concerning the scope of supplemental discovery adds language that requires the prosecutor to make available to the defendant for examination and reproduction material or information within the possession or control of the prosecutor or of a law enforcement agency, including all original and supplemental reports prepared by a law enforcement agency as part of the investigation of the case, subject to Rule 39(b). Amended

subsection (b) deletes the requirement that experts' written reports and statements in connection with the case be disclosed.

Unless otherwise ordered by the court, the prosecutor in Superior Court cases must disclose the materials and information under Rule 15.1(b) not later than 30 days after arraignment or 30 days prior to any plea deadline, whichever occurs first, and at the pretrial conference in limited-jurisdiction courts.

With respect to prior felony convictions in felony cases, amended Rule 15.1(e) requires that within 30 days prior to trial or 30 days after a request from the defendant, whichever occurs first, the state shall make available all prior felony convictions of witnesses the prosecutor expects to call at trial and a list of the prior felony convictions the prosecutor will use to impeach a defense witness at trial. Under amended Rule 15.1(e), in misdemeanor cases, the state shall make available to the defendant the information within 10 days before trial.

Under amended Rule 15.1(f), within 30 days of a written request, the prosecutor shall

make available to the defendant for examination, testing and reproduction any specified items contained in the list submitted under Rule 15.1(a)(5). The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect the physical evidence produced under this section. Amended Rule 15.1(f) also requires the prosecutor to produce any then-existing 911 calls or radio transmissions between law enforcement personnel relevant to the case and any written reports, statements and examination notes made by experts listed in Rule 15.1(b)(4) in connection with a particular case.

The prosecutor's obligation under the rule extends to material and information in the possession or control of the prosecutor, the prosecutor's staff, any law enforcement agency that participated in the investigation of the case and which is under the prosecutor's direction or control, or any other person who has participated in the investigation of the case and who is under the prosecutor's direction or control.

In a capital case, amended Rule 15.1(g) requires that if a prosecutor files a notice of intent to seek the death penalty, the prosecutor shall at the same time provide the defendant with a list of aggravating factors relied on by the state in deciding to seek the death penalty. The prosecutor shall supplement disclosure of any additional aggravating factors no later than 10 days after the verdict. The amendment prohibits courts from considering any motion challenging the propriety of a listed aggravating factor prior to the presentence hearing.

Under amended Rule 15.2(b), "defense of others" has been added as a defense for which the defendant must give notice to the prosecutor.

New Rule 15.2(d) requires a defendant to disclose the materials and information listed in Rule 15.2(b) and 15.2(c) not later than 40 days after arraignment, 20 days prior to any plea deadline, or within 10 days after the prosecutor's disclosure for all cases in Superior Court, and within 20 days after the

prosecutor's disclosure for cases in limited-jurisdiction courts.

Under amended Rule 15.2(e), within 30 days of a written request, the defendant shall make available to the prosecutor for examination, testing and reproduction any specified items set forth in that subsection. The scope of disclosure extends to defendant's attorneys, staff, agents, investigators or any other persons who have participated in the investigation of the case or are under the defendant's direction or control.

The amended version of Rule 15.6 concerning the continuing duty to disclose explains that each party shall make additional disclosure seasonably whenever new or different information subject to disclosure is discovered. Any party that determines additional disclosure will be made within 30 days of trial shall immediately notify both the court and other parties of the circumstances and when the disclosure will be available.

The new version of Rule 15.7(a) explains that a party seeking sanctions must certify to the court that the party has personally made a good-faith effort to resolve any outstanding discovery issue. Under amended Rule 15.7(b), if a court finds that a party has failed to comply with the provisions of the rule or an order issued pursuant to it, the court must order the disclosure of the information not previously disclosed. In addition, the court shall impose sanctions it finds appropriate, unless the court finds that the failure to comply was harmless or that the information could not have been discovered and disclosed earlier even with due diligence and the information was disclosed immediately upon its discovery. Orders imposing sanctions shall take into account the significance of the information not timely disclosed, the impact of the sanction on the party and the victim, and the stage of the proceeding at which the disclosure is ultimately made. If disclosure is made within five days of trial or during trial, the sanction imposed shall ordinarily include at least one of the sanctions list-

— See **Rules** on page 5

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## Courtwatch...

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ages individually. Thus, the lack of other suits militated in favor of certifying the class, not against it.

Patterson rejected the trial court's concern for the possibly annihilating damages, in part because this was not a proper factor for deciding whether to certify the class.

He also found the trial court's concern misplaced.

"[T]he fairness of the statutory penalty for the specific form of violation alleged here," he stated, "has been decided by Congress in enacting the law."

He wrote that Congress was not concerned only with the plaintiffs' actual damages. In setting the appropriate penalties, he wrote, "Congress established a penalty designed not only to compensate for the actual damages and unquantifiable harm, but also to deter offensive conduct."

Patterson also pointed out that the defendants could have determined the amount of damages to which they might be subjected. "To deny the superiority of a class action because the size of the class made the damages annihilating," he opined, "would serve to encourage violation of the statute on a grand rather than a small scale."

Judges William F. Garbarino and John C. Gemmill joined in Patterson's opinion. They held that the trial court's order refusing class certification was an abuse of discretion.

I don't know if my father received any junk faxes before he died, but if he did, I'm sure ESI's efforts have him smiling now. It seems a safe guess that possible awards ranging from \$5 to \$1,500 for each unsolicited piece of junk has a little more deterrent value than the business-reply postage for approximately two ounces of paper.

Now to get rid of all that spam. ■

## NATIONALLY RECOGNIZED OFFICE SEEKING PROSECUTORS

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# Quickbooks Pro 2002 makes small-firm bookkeeping easy

One of the most frequent questions I get asked is, "What law office accounting software should a small firm use?"

I have used Intuit's QuickBooks Pro for years. Intuit has made its business by taking the accounting out of small business management and substituting a simple, computerized, record-keeping model that only requires the entry of information via a checkbook motif. QuickBooks Pro has allowed me to provide my accountant with reasonably accurate information regarding my financial affairs.

Older versions of the program were not always easy to use. Even QuickBooks Pro 99, which adopted new and more powerful features, was sometimes difficult to use. The procedures necessary to print and format checks, for example, were maddeningly obscure. Changing information about clients and suppliers was not always easy, and the process of list management — which is central to the program's operation — was not always clear and user friendly.

QuickBooks Pro 2002 solves all of those problems and introduces some exciting new advantages. That is why it recently won an Editor's Choice Award from Cnet Software, one of the most objective reviewers on the Internet. Go to [www.cnet.com/software](http://www.cnet.com/software) to read the review.

Setting up the program for a law office is extremely flexible and automated, using the wizard approach popularized by Microsoft. It took me about 20 minutes to set up a law office accounting program using the wizard.

One of Intuit's most impressive changes is to open QuickBooks code to third-party developers who have spent many hours integrating their applications with QuickBooks. Data for critical activities can be shared between other applications and QuickBooks without entering it twice. The most popular practice management program, Amicus Attorney, has built the necessary links to completely integrate programs with QuickBooks 2002. With the combination, you can have a full-featured practice management and accounting system for just a few hundred dollars.

If you don't care to spend the money for a practice management application, QuickBooks Pro 2002 now has an easy-to-use, built-in time-tracking mechanism. It is



much improved over earlier versions. It does not do what many of the high-end time and billing programs do, but it runs over a network and provides the basic information necessary to create a bill for legal services.

Once you see the improved QuickBooks Pro 2002 timer, you may decide it is all you need to maintain electronic time records because the program allows you to create custom billing templates with ease. QuickBooks Pro 2002 integrates completely with Microsoft Word and will launch it automatically, formatting documents with basic customer information and financial data. The integration of Word also allows for the creation of a library of pre-written and pre-formatted business letters that you can customize by using the letter-writing wizard.

One of the most useful features is the ability to write a wide variety of reports, which are the foundation of accounting. The program contains more than 100 reports that will fit almost any need. If there is something not built into the program, you can probably get it from the QuickBooks website, where there are additional report templates created by Intuit and by QuickBooks users.

The first widely successful business software program at the dawn of the personal computing era was a product called VisiCalc, a spreadsheet program. Since that day, spreadsheets have remained one of the most exciting and powerful business management tools. The Microsoft Excel spreadsheet is widely regarded as one of the best, if not the best, of the current spreadsheet products. QuickBooks Pro 2002 provides complete integration with Excel, as well as all of MS Office applications. This means you can export a QuickBooks Pro 2002 report to an Excel spreadsheet with all of the formulas and formatting remaining intact. What shows up on your screen looks like, and is, a normal spreadsheet and is subject to all of the various manipulations, what-if scenarios,

graph creation and additional reports that are built into Excel. Anybody who uses spreadsheets to work with financial data will be amazed at the ease with which the QuickBooks software is able to produce a spreadsheet version of information.

QuickBooks Pro 2002 has a number of other very attractive modules that now make it possible to automate cash-flow reports, print deposit slips and track cash back on deposits, keep track and pay owners and contractors for time spent on projects and jobs, and track IRS form 1099 information for independent contractors. QuickBooks Pro 2002 is designed to run on a network and allow multiple users to access the program from multiple computers.

All in all, it is a very impressive suite of business services for a relatively low price. QuickBooks Pro 2002 sells at retail for under \$250. But there are various rebates and special offers. Check [Amazon.com](http://Amazon.com) for one of the

best U.S. prices or, if you want to take advantage of the rate of exchange with Canada, go to [www.discountquickbooks.com](http://www.discountquickbooks.com).

The QuickBooks software has long been the most popular general-purpose accounting software for small business. With the introduction of the enhancements described above and an increased capability to set up the software for use in the law office, QuickBooks Pro 2002 gets my hearty recommendation. Its integration with the Excel spreadsheet software is, to my mind, a home run. You need look no further.

► *Winton Woods is a lawyer, professor at the University of Arizona College of Law and director of the college's Courtroom of the Future project. He also serves as general counsel to Lex Solutio Corp. and as an electronic litigation consultant. He welcomes questions and comments by email at [wintonwoods@mail.com](mailto:wintonwoods@mail.com) or by phone at 520-881-6118. Visit him at [www.wintonwoods.com](http://www.wintonwoods.com) or [www.digitaltrial.net](http://www.digitaltrial.net).* ■

## Rules...

*Continued from page 4*

ed in subparagraphs (1) or (2) of Rule 15.7(b).

Under amended Rule 15.7(d), evasive or incomplete disclosure is to be treated as a failure to disclose. Under amended Rule 15.7(e), if the prosecution has imposed a plea deadline in the case, but fails to comply with the provisions of the rule, the court, in determining the appropriate sanction to impose, shall consider the impact of the failure to comply on the defendant's decision to accept or reject a plea offer. If the court concludes that the prosecutor's failure to comply materially impacted defendant's decision and the prose-

cutor declines to reinstate the lapsed plea offer, the presumptive minimum sanction shall be preclusion of any witness or evidence that was not timely disclosed.

The Supreme Court has extended the comment period to Oct. 1 on the State Bar of Arizona's proposed system for regulating the unauthorized practice of law. The deadline for submitting comments had been Aug. 1.

In a July 17 order, Chief Justice Charles E. Jones said, "It has come to the court's attention...that the State Bar is amenable to working with interested parties to consider modification to the proposal to all concerned." The delay is to allow the parties to "complete" this work, he said. ■

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# New family, juvenile legislation

By Mark W. Armstrong  
Special to Maricopa Lawyer

This is a summary of family- and juvenile-related legislation approved during the 2002 regular legislative session. The Legislature adjourned May 23, so all legislation is effective Aug. 22, except as otherwise noted.

## Family law

1. SB1028 (Chapter 310): **Child Support**  
The Child Support Coordinating Council Subcommittee proposed this bill.

► Changes statutes governing child-support and spousal maintenance modifications or terminations, including allowing addition of health insurance coverage as a substantial and continuing change of circumstances. (A.R.S. § 25-327A)

► Requires a petitioner who requests a transfer of a proceeding to pay the related fee within 10 days after the date the court clerk mails the notice of the requirement to pay the postjudication fee. (A.R.S. § 25-502G)

► Provides that modification and termination of support orders are effective on the first day of the month following notice of the petition, unless the court orders a different date, but not earlier than the filing date for the petition. (A.R.S. § 25-503E)

► Provides for automatic termination of a child-support order if the obligee and obligor marry one another and specifies that arrearages do not accrue after the marriage date but the person to whom support is owed, or the state, may still collect arrearages accrued before that date. (A.R.S. § 25-503L)

2. SB1088 (Chapter 332): **Domestic Relations Omnibus (Child Support; Domestic Relations; Integrated Family Court Plan; Spousal Maintenance; Military Deployment)**

► Separate committees on child support (Child Support Committee) and domestic relations (Domestic Relations Committee) replace the current combined committee and membership of the committees change.

(A.R.S. §§ 25-323.01, 25-323.02)

► Requires the Domestic Relations Committee to prepare and submit a statewide plan for an integrated family court on or before Dec. 31. (A.R.S. § 25-323.02B)

► A spousal maintenance enforcement program is created; court clerks are authorized to provide programs to assist in enforcement of child support, spousal maintenance, parenting time and in establishment and modification of child support. (A.R.S. §§ 12-283H, 12-289; A.R.S. §§ 25-319A(2) and (4), 25-319B(12), 25-551, 25-552 and 25-553)

► Criminalizes willful failure to pay spousal maintenance (class 1 misdemeanor). (A.R.S. § 25-511.01)

► Military deployment of a custodial parent who is a member of the armed forces is not a change in circumstance that materially affects the welfare of the child, if the custodial parent has filed a military family care plan with the court and the deployment is for less than six months. (A.R.S. § 25-403T and U)

3. SB1394 (Chapter 323): **Protective Orders; Service Fees**

The federal Violence Against Women Act (VAWA) requires that fees for service of process on all orders of protection and injunctions against harassment be statutorily removed to ensure continued federal funding of Arizona programs after October. Last year, Arizona received an estimated \$6.5 million in VAWA funds. The bill amends A.R.S. §§ 11-

445, 12-1809 and 13-3602 as follows:

► Removes service of process fees for all orders of protection and injunctions against harassment.

► Makes a clarifying change to indicate that the court must determine whether the petition arose out of a dating relationship.

► Removes inconsistencies to clarify that modified orders of protection and injunctions against harassment become effective when served on the defendant.

► States that the Supreme Court shall adopt rules for the service of process that prohibit service on any person who is a patient in a hospital or clinic unless the person's physician or the chief administrator of the hospital or clinic consents to the service.

4. HB2095 (Chapter 227): **Child Support Enforcement; DES**

Starting July 2003, the state Department of Economic Security must distribute to the obligee (usually the custodial parent) the equivalent of the state and federal share of any support payments received for children in certain circumstances related to welfare assistance. Undeliverable payments may be applied to arrearages and other debts to the state if the person ordered to make support or spousal maintenance has agreed to pay arrears. The time to locate the obligee before payment is returned to the person ordered to pay support or spousal maintenance is

— See **Legislation** on page 7



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# GRANT FUNDS AVAILABLE

APPLICATIONS FOR 2002 GRANTS from the Maricopa County Bar Foundation for law-related educational, literacy, scientific and charitable endeavors are being accepted. Deadline for grant applications is Aug. 31. If you know of a worthwhile charity in the community, please invite it to submit an application.

To obtain an application, contact  
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# Legislation...

Continued from page 6

extended to 120 days from three months. The bill amends A.R.S. §§ 25-320, 25-503, 25-504, 25-522, 46-402, 46-407, 46-408 and 46-441.

## Juvenile law

### 1. SB1059 (Chapter 154): Juveniles; Voluntary Commitment

The court is empowered to appoint a guardian for a minor who is on adult probation for the minor to be admitted to a mental-health agency, if a parent or guardian cannot be located after reasonable efforts. For the purposes of obtaining a court-ordered mental-health evaluation, the term "person" is defined as a child who has been transferred to the criminal division of a Superior Court and is under the supervision of an adult probation department. The court must appoint a guardian for the child if a parent, guardian or custodian is unavailable after a reasonable effort has been made to locate the parent, guardian or custodian. (A.R.S. §§ 36-518, 36-520)

### 2. SB1109 (Chapter 158): Juvenile Offenders; Prevention

With regard to child-related issues, the term "prevention" is defined as the creation of conditions, opportunities and experiences that encourage and develop healthy, self-sufficient children and that occur before the onset of problems, as recommended by the Juvenile Justice Coordinating Committee. (A.R.S. § 8-201(23))

### 3. SB1287 (Chapter 173): Adoption; Paternity Actions

➤ The notice, rights and responsibilities of potential fathers are specified regarding consent to adoption, rights of a father to initiate paternity proceedings and notice that the natural mother plans to place the child for adoption. If a paternity action is not filed within 30 days after the notice is served, or within 30 days after the child's birth, whichever occurs first, an action for paternity rights may not be asserted. (A.R.S. § 8-106G and I)

➤ Having had sexual intercourse with the mother is deemed to be notice to the putative father of pregnancy. (A.R.S. § 8-106.01F)

➤ A confidential intermediary may not contact persons under the age of 18 (changed from 21). (A.R.S. § 8-134C)

➤ Adds a ground for termination of parental rights: "That the putative father failed to file a notice of claim of paternity as

prescribed in section 8-106.01." (A.R.S. § 8-533B(6))

### 4. SB1396 (Chapter 226): DNA Testing and Database

Amends A.R.S. §§ 12-116.01, 13-610 (previously 13-4438), 41-2418 and 41-2419; repeals A.R.S. § 31-281, as follows:

➤ The list of persons required to submit to DNA testing is expanded to include felons convicted of sexual exploitation of children; and beginning Jan. 1, all felons convicted of drug-related charges; and all convicted felons beginning Jan. 1, 2004.

➤ If a conviction is overturned in certain cases, a person's records must be expunged from the DNA identification system.

➤ An additional 3 percent fee is added to every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and civil penalties for traffic violations (from 77 percent to 80 percent total surcharge).

➤ Includes juveniles who have been adjudicated delinquent and detained, placed on probation or committed to the Department of Juvenile Corrections for certain offenses, as follows:

This section [13-610(O)] applies to persons who are adjudicated delinquent for the following offenses:

1. A violation or an attempt to violate any offense in Chapter 11 of this title, any felony offense in Chapter 14 or 35.1 of this title or Section 13-1507, 13-1508 OR 13-3608.

2. Any offense for which a person is required to register pursuant to Section 13-3821.

3. Beginning on January 1, 2002, a violation of any felony offense in Chapter 34 of this title that is prosecuted pursuant to Section 13-501, Subsection B, Paragraph 2.

4. Beginning on January 1, 2004, a violation of any felony offense that is listed in Section 13-501.

### 5. HB2203 (Chapter 263): Juvenile Detention

Currently, A.R.S. § 8-243 allows the Juvenile Court, when awarding or committing a child to the Department of Juvenile Corrections or other state department or institution, to inquire into the ability of the child, the child's estate, parent or guardian or the person who has custody of the child to bear the cost of the child's incarceration. This bill adds subsections C and D to A.R.S. § 8-243, as follows:

➤ Allows the Juvenile Court to make this inquiry when it awards or commits juveniles to any juvenile detention facility.

➤ Stipulates that if the Juvenile Court is satisfied that the child, the child's estate, parent or guardian or the person who has custody of the child can bear the expense or any portion of the expense, then the court shall fix the amount of the costs and mandate that amount be paid to the Juvenile Court.

➤ Makes the assessment collectable as a civil judgement.

➤ Requires the Juvenile Court to acknowledge the receipt of the monies and transmit the funds monthly to the county treasurer for deposit in the county general fund.

➤ Requires the Juvenile Court to transmit a copy of its orders regarding payment along with its orders of commitment.

➤ Stipulates that foster parents and group homes shall not be responsible for the costs of the child's commitment to a juvenile facility.

➤ Mark W. Armstrong is the Maricopa County Superior Court associate presiding judge and presiding Family Court judge. ■

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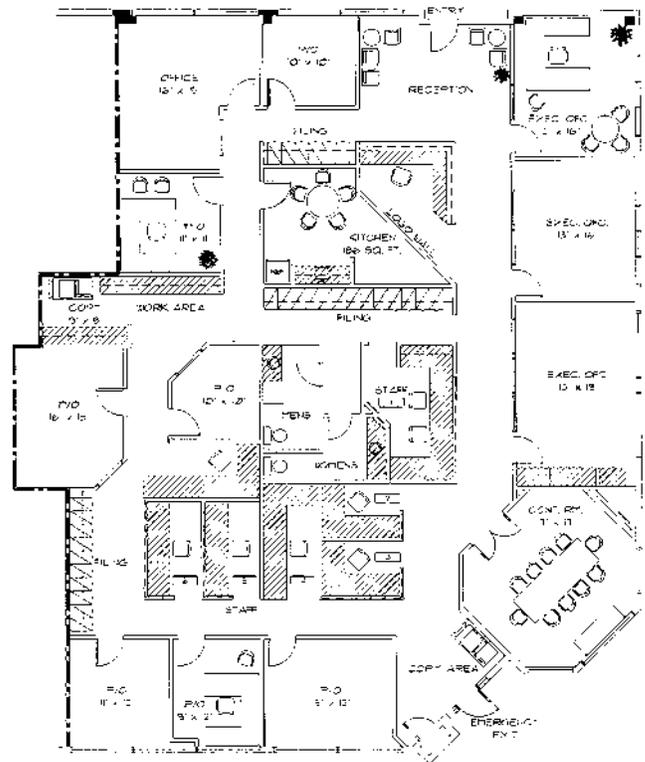
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# Van Wyck...

Continued from page 1

moving to Arizona in 1983 to become a deputy Santa Cruz County attorney. From 1984-91, he worked for Mangum, Wall, Stoops & Warden in Flagstaff, focusing his practice on insurance defense litigation and health care and domestic relations. He then spent an additional eight years in private practice in Flagstaff focusing on health care law and general litigation.

In August 1999, Van Wyck was appointed to fill in for Coconino County Superior Court Judge J. Michael Flournoy, who had been suspended for misconduct. After his 18-month suspension, Flournoy returned to the bench in December 2000. Van Wyck then became the part-time judge for the court's newly created Drug Court.

While serving as Drug Court judge, he also was of counsel in general litigation and health care law for the Flagstaff-based firm

Hufford, Horstman, Mongini, Parnell & McCarthy. Last fall, he announced his plans to run this year for election to the judgeship held by Flournoy.

To take the State Bar position, he not only resigned as the Drug Court judge but also withdrew from the judge race.

The chief bar counsel position has been vacant since January, when the State Bar restructured its top legal job, splitting the position of assistant executive director — legal into two: a chief bar counsel and a general counsel. The State Bar had had the two separate positions until 1998, when they were combined to create the assistant executive director — legal position. Allen Shayo most recently served as assistant executive director — legal, then became solely general counsel after the positions were once again separated. While the State Bar has filled the chief bar counsel position with Van Wyck, the general counsel position now is vacant, as Shayo resigned in June to move out of state. ■

# Get to know our seven 'sisters'

This month we are featuring information about what we like to call our "sister bar associations." Our sister bars include the regional associations (the East Valley, West Valley and Scottsdale bar associations); the minority bars (the Asian American and Hayzel B. Daniels bar associations and Los

**Michael D. JONES**  
MCBA  
PRESIDENT



Abogados); and the Arizona Women Lawyers Association — Maricopa Chapter.

In the spirit of cooperation, we at the MCBA are learning that promoting and serving the needs of our sister bar associations increases our understanding of the needs of our changing MCBA membership.

To help you become more acquainted with these other organizations, we asked their leaders to provide to *Maricopa Lawyer* pertinent information about their objectives, projects and programs. Please join with me to support these other associations' projects and activities. ■

## East Valley Bar Association

**Number of members:** Approximately 250  
**Annual dues:** \$20

**President:** Thomas R. Puklin, sole practitioner



**Puklin**

**Special events/receptions:** Participated in Lawyers Make a Difference Day, held June 28. The attorneys provided pro bono consultations to 131 people this year.

**Seminars/programs:** On the third Friday of each month, we hold a luncheon at the Landmark Restaurant in Mesa. One hour of CLE is presented. The cost for the program and luncheon is \$20 for members and \$25 for non-members.

## West Maricopa County Bar Association

**Number of members:** 54  
**Annual dues:** \$20

**President:** David Brnilovich, Jennings Strouss and Salmon.

**Special events/receptions:** A judges reception and a holiday party.

**Seminars/programs:** Monthly luncheons/CLE programs at Carver's Steakhouse, 8172 W. Bell Rd. for the 2002-03 year.

**Other information:** Congenial group; non-members always welcome



**Brnilovich**

## Scottsdale Bar Association

**Number of members:** 217  
**Annual dues:** \$30

**President:** William G. Klain, Lang & Baker

**Special events/receptions:** Quarterly social events/mixers for the members; formal event in the spring; annual golf tournament.

**Seminars/programs:** Monthly luncheons



**Klain**

with presentations by a wide range of speakers on matters of interest to the legal community, many of which may qualify for CLE credit; several CLE programs each year on topics including bankruptcy, trust/probate and mediation; publication of a member directory, which includes listings of members by area of practice.

**Charitable activities:** For the past four years, we have organized and staffed the monthly Paiute Neighborhood Legal Aid Clinic for those of limited financial resources.

**Other information:** We have a diverse membership, ranging from sole practitioners to members of small and mid- and large-sized firms. We attempt to provide our members with a wide variety of professional programming and opportunities to interact with other members in informal social settings.

## Hayzel B. Daniels Bar Association

**Mission:** The Hayzel B. Daniels Bar Association (HBDBA) is an association of African American attorneys and is named for the first African American to be licensed to practice law in Arizona and the first African American to be appointed to the bench. HBDBA's mission is to enhance the professional lives of its members, further the cause of justice in Arizona through active participation in the court system, recognize the special duty of the HBDBA to the public and enhance the public perception of African American lawyers.

**Number of members:** Represents the interests of more than 130 African American attorneys throughout Arizona

**Annual dues:** \$50  
**President:** Patrick L. Mixon, Snell & Wilmer

**President-elect:** Nicole C. Davis, Brown & Bain

**Special events/receptions:** Endowed scholarships for the ASU and UA law colleges; established a mentor-mentorship program with minority ASU law students; hosted the Martin Luther King Jr. Scholarship Banquet.

**Charitable activities:** Conducts Thanksgiving food drive for adopted families in the Phoenix area and a holiday season food, clothing and special needs drive for identified families in the Phoenix area.



**Mixon**



**Davis**

## Arizona Women Lawyers Association — Maricopa Chapter

**Mission:** AWLA—Maricopa Chapter promotes and encourages the success of women lawyers. We monitor and celebrate the accomplishments of individual members and women lawyers in our community.

**Number of members:** 498

**Annual dues:** \$50  
**President** (through December): Paige Martin, Sacks Tierney

**President-elect** (beginning January): Mary Beth Phillips, U.S. Attorney's Office

**Special events:** The highlight of our year is our fall wine and cheese reception, honoring a woman who has contributed to the success of women lawyers. The 2002 honoree is Arizona Supreme Court Justice Rebecca White Berch. In the spring, we held a reception for (AWLA members only) in honor of Arizona Supreme Court Chief Justice Charles E. Jones. We hold monthly luncheons (except the November/December luncheon is combined) at the Arizona Club in the Bank One Building in Phoenix.

**Seminars/programs:** In 2001, AWLA's state chapter held the first trial college for



**Martin**



**Phillips**

women, by women at the ASU College of Law. AWLA plans to hold the trial college again. Once a year, the Maricopa Chapter's Judicial Appointments Committee holds a seminar on the nuts and bolts of applying for a judgeship, which is always extremely well attended. We hold CLE seminars for our members throughout the year, with all-women faculty. In 2002, we co-sponsored a program with the State Bar of Arizona called "The Ethics of Lawyering." It was the first time that the State Bar had all women presenters at a CLE seminar.

**Charitable activities:** Community Service Committee members donated and cooked dinner for sick children and their families at the Ronald McDonald House. They also will participate in Make a Difference Day, sponsored by the Volunteer Center of Maricopa County in coordination with the National Points of Light Foundation. This year, the events will be in memory of the Sept. 11 victims. This committee also will be involved in Race for the Cure, which raises money for breast cancer research. Finally, the committee will choose an animal welfare project to complete in 2002.

**Other information:** Visit our website, [www.awla-maricopa.org](http://www.awla-maricopa.org), or for more information, email our administrator, Leslie Thomas, at [awla\\_maricopa@hotmail.com](mailto:awla_maricopa@hotmail.com).

## Los Abogados

**Mission:** Los Abogados is a non-profit professional organization established in 1976 to represent the interests of Hispanic attorneys, judges, law professors, law students and the Hispanic community in Arizona.

**Number of members:** Approximately 200



PHOTO BY TERRI ZIMMERMAN

The AWLA - Maricopa Chapter hosted a social hour March 5 to welcome Arizona Supreme Court Chief Justice Charles E. Jones to the top court position. Leah Pallin-Hill (far left) hosted the event for Jones and his wife, Ann (far right) and about 70 AWLA members. Paige Martin (second from left) is the current AWLA - Maricopa Chapter president.

members consisting of primarily Hispanic lawyers, judges, legal assistants/law clerks, law students and professors.

**Annual dues:** \$60 to \$100 depending on years of experience

**President:** Virginia Herrera-Gonzales, Arizona Attorney General's Office

**President-elect:** Gary Husk, Jamison & Gutierrez

**Special events/receptions:** Hosts the Val Cordova Scholarship Dinner/Dance and Golf Tournament annually to fund the Val Cordova Scholarship Program at ASU College of Law.

**Seminars/programs:** Established committees include: CLE, Membership, Legislative, Community Service, Endowment, Fund-Raising, Appointments, Website, Scholarships, Newsletter and Civil Rights

**Charitable activities:** Annual holiday toy drive. Past activities have included Habitat for Humanity, St. Vincent de Paul food service, Pappas School.

**Other information:** Monthly membership meetings are held on the fourth Thursday of each month at noon at the Crowne Plaza, 100 N. First St.. The cost is \$15 with an RSVP (to 602-253-0547). Website: www.losabogados.net.



## Arizona Asian American Bar Association

**Mission:** The Arizona Asian American Bar Association was founded in 1992 as a non-profit organization of legal professionals, law student and members of the community interested in Asian American issues. Our mission is to provide a vehicle and forum for unified expression of opinions and positions by our members regarding current social, political, economic, legal and other issues of concern to Asian Americans. We also promote the professional growth of Asian American lawyers as well as assist Asian American law student financially and academically by generating funds and scholarships for their support, including the Thomas Tang Law Scholarship, endowed in honor of the late Ninth Circuit Court of Appeals judge.

**Number of members:** 60

**Annual dues:** \$50

**President:** JoAnn Garcia, Arizona Attorney General's Office

**Special events/receptions:** Past activities include participating in a voter-registration drive and community outreach featuring immigration seminars. Last year, in addition to its annual installation banquet with keynote speaker Bill Lann Lee, Assistant



PHOTO BY TERRI ZIMMERMAN

**This year's officers of the Arizona Asian American Bar Association attending the group's annual banquet included (front row, from left to right) Leezie Kim, board member; Catherine Parker-Williams, secretary; and founding members Viet Le, Marian Yim, Lisa Loo and Phoenix Municipal Court Judge Roxanne Song-Ong; (back row, left to right) George Chen, board member; Rosa Mroz, treasurer; Teresita Mercado, vice president; and JoAnn Garcia, president.**

Attorney General for Civil Rights, AAABA hosted the 2001 National Asian Pacific American Bar Association Convention. More than 300 members from all over the world attended the three-day convention and had the opportunity to listen to Fred Korematsu speak about his experiences underlying the famous *Korematsu* decision as well as visit the Gila River Internment Camp and participate in an inaugural golf tournament.

**Seminars/programs:** Events this year have included continuing AAABA's mentor

program with students at Arizona law schools, participating in the annual minority bar convention, collaborating with Los Abogados and the Hayzel B. Daniels Bar Association on a joint meeting featuring Jaime Molera, state superintendent of public instruction, as a speaker, and social activities including a member barbecue. Future plans for this year include updating AAABA's website, other group social events, including a Monte Carlo night, and a membership drive. ■

## Social for CLEO students, summer associates draws more than 100

By Michael D. Ryan  
Special to Maricopa Lawyer

Being a summer associate in Phoenix may sometimes seem to be the equivalent of a hike in the desert without water. But on June 20, a social hour at the Maricopa County Bar Association's office offered a brief relief from the heat.

The MCBA's Task Force on the Recruitment and Retention of Women and Minority Lawyers hosted the event, together with the Hayzel B. Daniels Bar Association, the Arizona Women Lawyers Association — Maricopa Chapter, Los Abogados and the Arizona Asian American Bar Association. Summer associates from Phoenix firms and students attending the Council on Legal Education Opportunity (CLEO) summer program at the Arizona State University College of Law were invited. With more than 100 attendees, the event was an unqualified success.

Over hors d'oeuvres and beverages, the attendees had an opportunity to meet summer associates from other law firms, along with members of the MCBA board of directors and the presidents and officers of the sister bar associations. The social gave these associates and students a chance to socialize with lawyers and judges they might not otherwise have an opportunity to meet.

The CLEO students were especially grateful to have been included. The CLEO program is a pre-law summer course that helps prepare students for the rigors of law school. The CLEO students at ASU came from around the country and will be attending law schools in nearly every state. The social introduced them to the MCBA and some of the leaders in Phoenix's legal community. In the view of most of these students, the social left them with a very positive picture of Maricopa County's legal community.

The MCBA staff did an outstanding job in coordinating and setting up the event. MCBA President-elect Yvonne Hunter worked her special magic in getting contributions from Bryan Cave, Fennemore Craig, Lewis and Roca, Meyer Hendricks & Bivens, Quarles & Brady Streich Lang and Steptoe & Johnson.

The MCBA and the task force thanks all those who helped in ensuring the success of this event. It was even more successful than last year's inaugural social. Next summer's social will be hard pressed to top it.

► Arizona Supreme Court Justice Michael D. Ryan is chair of the Task Force on the Recruitment and Retention of Women and Minority Lawyers and a member of the MCBA board of directors. ■



PHOTO BY TERRI ZIMMERMAN

**Ashonti Harvey (left) and Mark'a Jones (right), both with ASU's CLEO program, talk with Matthew Meaker, a summer associate, at the social hour.**

## Ryan honored for 'advancing equal opportunity' in profession

Arizona Supreme Court Justice Michael Ryan has received the State Bar of Arizona's Committee on Minorities and Women in the Law 2002 Award for Outstanding Achievement in Advancing Equal Opportunity in the Profession. State Bar President Nick Wallwork (left) presented the award at the State Bar convention annual luncheon in June. Since 1998, Ryan has chaired the MCBA's Task Force on the Recruitment and Retention of Minority and Women Attorneys, which has been active in recruiting minority law students for consideration by Phoenix firms and has sponsored summer socials for minority summer associates. Ryan also co-chaired the 100 Women and Minority Lawyers Dinner, held in October 2000, which honored Arizona's women and minority lawyers whose careers demonstrated courage and commitment to improving the legal profession and who blazed the path for equal opportunity. Ryan has served on the planning committee of the Minority Bar Convention for the past three years and was a presenter several times at the convention. ■



PHOTO BY EDWARD MCCANN/COURTESY OF STATE BAR OF ARIZONA

# Federal bench offered 'opportunity of a lifetime' to a top state jurist

By Jack Levine  
Maricopa Lawyer

Frederick J. Martone had planned on retiring in several years, after he had logged 20 years in the state judicial system, the first seven as a Maricopa County Superior Court judge and the last 13 as a Supreme Court justice.

Although he immensely enjoyed his Supreme Court work, particularly hearing oral arguments and writing opinions, he felt that it left him little opportunity for further growth. And, under the state's retirement system, there would have been a financial disincentive to remain working in the state court system more than 20 years.

Then, last fall, he received "the opportunity of a lifetime and a chance to learn new things and experience new challenges" when President Bush nominated him to the U.S. District Court bench.

After being confirmed by the U.S. Senate in December, Martone left the Supreme Court at the end of January and became an Article III federal judge, a lifetime appointment.

It's "a great honor and special privilege," he said.

Martone has spent virtually his entire professional legal career in Arizona. After earning his law degree in 1972 from the University of Notre Dame and his L.L.M. in 1975 from Harvard University, he clerked for Massachusetts Justice Edward Hennessy. He then moved to Phoenix and went to work for Jennings, Strouss and Salmon. He was appointed to the Superior Court in 1985 and then to the Supreme Court in 1992, where he acquired a reputation as the court's conservative conscience, frequently authoring sharp dissenting opinions.

Martone, by virtue of his past experience and his keen, passionate interest in his work, evidences an in-depth understanding of the workings of the Arizona legal system and, eventually, hopes to develop a similar comfort level in the federal system. He points out the many similarities between the two, particularly the civil procedure and evidence rules.

He recently completed phase two of his training as a new federal judge at the Federal Judicial Center in Washington, D.C. According to Martone, the initial part of his

training dealt with what a judge needs to know "right out of the box," including "the voluminous Federal Sentencing Guidelines, which required three days out of the five-day program."



Martone

During his recent training session, Martone was exposed to issues of federal jurisdiction and removal, preemption doctrines, Title VII and Section 1983 Civil Rights cases and federal habeas corpus, as well as civil- and criminal-case management.

While he noted that it was a great honor to serve on the state's highest court, he said that "individual justices do not decide cases as do judges on the U.S. District Court, they merely have a vote in deciding cases." He also observed that "in starting out in this job, virtually every issue that comes before me is new."

"A U.S. District Court judge, unlike a judge in the state court system, has the opportunity to hear more cases of national importance," he said.

Martone gives the appearance of immensely enjoying his new job.

He declined to offer any observations, comments or criticisms on the federal system because, he said, he is "still learning." He believes that it will take several years before he can have a feeling for the system. However, Martone does acknowledge some general reservations about the continued need for U.S. District Courts to exercise jurisdiction in diversity cases. He pointed out that from an historical perspective, there may well have been some early discrimination against non-resident individuals and businesses that justified Congress creating jurisdiction in the U.S. District Courts in diversity cases.

Martone pointed out that through the years Congress has raised the jurisdictional limits in diversity cases from time to time, recalling that when he started practicing the limit was \$10,000, whereas now it is \$75,000. Martone could think of no instance in his career, either as a lawyer or as a judge, in which an individual or business from out-of-state did not appear to receive equal treat-

ment with the local litigant in Arizona's courts. Although recognizing that the abolishment of diversity jurisdiction would certainly lighten the burden on the U.S. District Court, Martone pointed out that it would merely shift the burden to the state court system. However, he also noted that "since these cases involve purely state issues there would be nothing inappropriate about such cases being there."

Because of his Superior Court and appellate court experience, Martone said, "I am always mindful of the importance of making

the right record." Now when he makes rulings as a federal trial judge, he is constantly thinking about what portion of his ruling is "discretionary" and what part consists of "legal conclusions." In making decisions on diversity issues, he is often reminded of conferences he had at the Supreme Court where many of these same legal issues were debated and decided.

As of mid summer, Martone had already published one opinion in the Federal Supplement Reporter involving novel issues

— See *Martone* on page 12

## Pro tem appointments moving to calendar year

By Mark W. Armstrong  
Special to Maricopa Lawyer

The Maricopa County Superior Court appreciates the tremendous time and effort devoted by lawyers who serve as judges pro tem. Without their help, our jobs would be much more difficult. Attorneys who meet the requirements of A.R.S. § 12-142 may apply to serve as judges pro tem for civil, criminal, probate, juvenile and family cases, as well as family settlement conferences. Attorneys also may apply to be judges pro tem of the justice of the peace courts. We currently have more than 200 lawyers serving as judges pro tem in our Superior Court.

We've made some changes in our judge pro tem process. About a year and a half ago, the court created a standing Judge Pro Tem Committee to simplify application forms, develop guidelines and training and oversee the appointment and reappointment processes. While our work is ongoing, we have made some progress. We shortened the application form from eight to four pages; we revised and

slightly abridged the application for reappointment; we updated our guidelines; and, during the last legislative session, we proposed legislation that will expand the terms of judges pro tem to 12 months from six months. That legislation, HB 2358, was passed and will take effect Aug. 22.

Based on the passage of HB 2358, the chief justice has asked us to move to a calendar-year system for appointments and reappointments.

For the 2003 term (Jan. 1 through Dec. 31, 2003), which is the next annual term that will be considered by the committee, new applications must be submitted by Sept. 13. Current judges pro tem who were recently appointed or reappointed for the fiscal 2002-03 term (July 1 through June 30) do not need to reapply at this time. Their appointments will be extended automatically (unless removed for cause) until Dec. 31, 2003. They will, however, need to apply for reappointment in fall 2003 for the 2004 term.

The new guidelines and application forms may be obtained by writing to Superior Court Administration, Attn: Judge Pro Tem Administrator, 201 W. Jefferson, Central Court Building, fourth floor, Phoenix, 85003, or on our website at [www.superiorcourt.maricopa.gov/courtInfo/proTem/proAppsIns.asp](http://www.superiorcourt.maricopa.gov/courtInfo/proTem/proAppsIns.asp). We strongly encourage you to apply and serve.

► Mark W. Armstrong is the associate presiding judge and presiding Family Court judge in the Maricopa County Superior Court. ■

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### The Law Office of Marshall G. Whitehead, P.C.

is pleased to announce that  
**Monika Sud-Devaraj**  
has joined the firm as an Associate

Ms. Sud-Devaraj was a prosecuting trial attorney for the U.S. Immigration and Naturalization Service for the past ten years. She will focus her practice on the defense of foreign nationals before the Immigration Court. Ms. Sud-Devaraj will be available to the criminal bar for legal advice on issues involving the representation of criminal aliens.

The firm has emphasized its practice in **Immigration Law** for the past twenty-six years and has represented clients from over 120 countries throughout the world. We are pleased to have Ms. Sud-Devaraj join our firm to assist us in serving the needs of foreign nationals.

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# Hyperlink...

Continued from page 1

for the court as it moves into the era of "e-courtrooms," electronic filings and other innovations to improve the administration of justice.

➤ Technologically proficient judges are comfortable with computerized submissions.

Even judges (like this article's co-author) who may be behind the curve of current technology find it easier to follow the case links rather than independently accessing a legal research site to locate the cases.

## Creating the hyperlinked brief

There are a number of sources available to guide a lawyer in preparing hyperlinks in

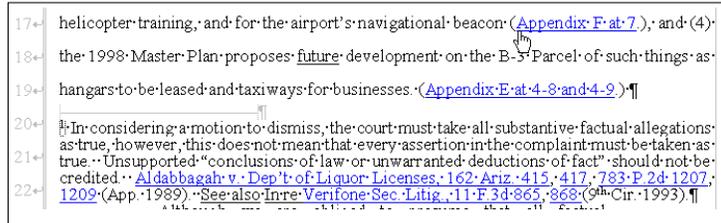


Figure 1

briefs. For example, the co-author of this article found his firm's information-system staff were invaluable in assisting him, and Westlaw representatives were helpful in teaching him how to download cases to a useable form. Outside computer software consultants, such as Lex Solutio, also provided valuable guidance. Customer support for the various word

that can be scanned into an electronic form. A deposition transcript in an ASCII format, for example, can be highlighted, bookmarked and hyperlinked. If there is not an electronic version of the document, the document can be scanned and saved in Adobe's portable document format (PDF) and linked and viewed with Adobe Acrobat Reader. (If a document is saved in a PDF file, the Word hyperlinking tool will link to that document, but does not recognize bookmarks placed in the PDF document. Accordingly, the reader must be instructed to open the bookmark function in Acrobat Reader, and use the bookmark tool to jump to the relevant or highlighted portion of the document.)

In short, the hyperlinking process requires a word-processing program that has a hyperlink feature; the ability to locate and download electronic copies of case law; the ability to scan

or load electronic versions of source documents; and the ability to create a CD-ROM containing the brief and the linked documents.

Court rules currently do not permit electronic filings. A hyperlinked brief, thus, cannot replace paper filing. Instead, lawyers must supplement their paper filings by providing a CD-ROM with the hyperlinked briefs and

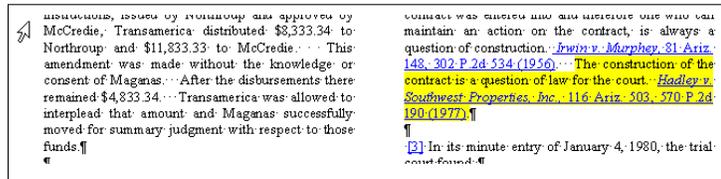


Figure 2

processing products may be another good source of guidance.

Although it is beyond the scope of this article to provide a detailed explanation of how the process works, a brief summary may be helpful. Current word-processing programs, such as Word, offer a hyperlink feature. The hyperlink tool allows you to highlight a section of text, such as a case citation or the reference to an exhibit, and link it with an electronic copy of that document. (An example of how a hyperlink might look in a brief is shown in Fig. 1.)

Because the hyperlink creates a link to another document, you must obtain an electronic version of the document you wish to link. For case law, this simply means downloading or saving an electronic version of the case. This can be done through Westlaw, Lexis or other computerized research mediums. Once the cases are saved in an electronic format, the attorney can highlight the relevant text from the case, and place a "bookmark" in the document and in the hyperlink so that the court will be taken immediately to the highlighted pinpoint cite. (An example of a highlighted pinpoint cite is shown in Fig. 2.)

The judge can then scroll up or down and read the entire case if he or she so chooses.

Hyperlinks also can be used for source materials such as contracts or any document

# New Durango garage to open

By Terri Zimmerman  
Maricopa Lawyer

More than \$1 million under budget, the new parking garage at the Durango Juvenile Court Center is expected to open early this month.

Maricopa County held its ribbon-cutting ceremony June 25, but the garage couldn't open then because Phoenix declined to issue a certificate of occupancy until exit lights were purchased and installed.

The garage is just one step among many toward developing the County Business Center at Durango, which will stretch from 27th to 35th avenues and from Durango to Lower Buckeye roads, with integrated pathways and landscaping throughout, according to county Manager David Smith.

At the ribbon-cutting ceremony, District 4 Supervisor Max Wilson said the planned County Business Center, combined with the jail expansion downtown, is a \$525 million project, the largest in the nation at this time. The project is funded by the voter-approved jail tax.

The new court building at the center is under construction and is expected to be completed by the end of 2003. It will include offices for the Durango juvenile deputy county attorneys and public defenders in addition to the courtrooms, court staff offices and new juvenile detention units.

Existing structures include the Durango, Towers and Encanto jails (expanded by "Tent City"); the state Department of Transportation, Flood Control; county probation offices; the Juvenile Court Center; and the Residential Treatment Center, which is not yet operational. Recently completed is a tree and grass area in a flood retention basin behind Animal Control. It provides an area for prospective pet adoptive owners to walk the animals to see how they bond with them.

Plans for the center include a food-court service, preschool daycare center and credit union within the garage. Funding for those projects would come from the general fund, but

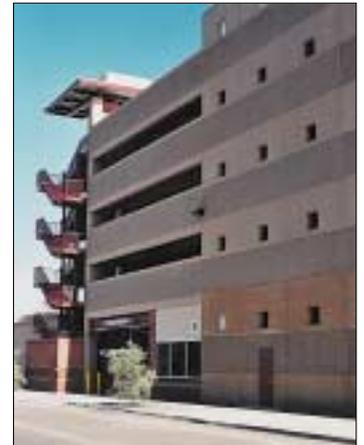


PHOTO BY TERRI ZIMMERMAN

More than \$1 million under budget, the new parking garage at the Durango Juvenile Court Center is expected to open early this month.

the facility review committee has not approved the expenditures due to budget concerns.

Voters approved a jail tax for nine years or \$900 million, whichever came first. The Board of Supervisors is now concerned how it will fund operation costs, so it is requesting the jail tax be continued for 20 years. The proposed continuation will be on the November general-election ballot. ■

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➤ Pendleton Gaines is the associate civil presiding judge of the Maricopa County Superior Court. Keith Hendricks is a director with Fennemore Craig, specializing in real estate litigation. Hendricks submitted the CD-ROM with the hyperlinked brief referred to in this article. Gaines was not the judge assigned to Hendricks' case. ■

## Martone...

Continued from page 10

related to the scope of an assessment preliminary to requiring the filing of an environmental impact statement under the Federal Environmental Protection Act. He feels that the ability of federal trial court judges to publish opinions in appropriate cases should be retained. However, he believes these should be limited to unsettled legal issues that are truly unique and that will contribute to the development of the law. Otherwise, he believes "that the courts should not clutter up the official reports with 'stuff' that does not add anything to the doctrine of *stare decisis*." This trend toward unpublished opinions has become the established policy among all appellate courts, he said.

In looking back over his years in the Arizona judicial system, he feels that Arizona has a very sound system. In traveling around the country over the past 10 years and attending conferences with judges, Martone observed that the overwhelming sentiment expressed by other judges is that "Arizona is a leader in sound, progressive judicial reform." Martone recalled one conference several years ago when judges from around the country were first introduced to the idea of permitting jurors to take notes. Martone recalled that "this seemed to be a radical notion in judicial circles at the time, but many courts in the country have since adopted this as well as other Arizona innovations."

Martone also recalls that he often experienced a sense of frustration while on the Supreme Court because "our Superior Court has been chronically handicapped by a lack of resources for handling criminal cases. By the time we appropriate more money and appoint more judges the state has grown to the extent that the new judges and additional funds are no longer adequate."

One improvement that Martone believes is long overdue is increasing the Arizona Supreme Court to seven members from its present five. Arizona, he said, is the only state of its size with a five-member Supreme Court. He pointed out that more than 10 years ago, when the present Arizona State Courts building was planned and built, it was specifically designed for seven members, anticipating that the court would soon be increased. Martone believes that a larger court would produce a better mix of justices with more diversity in life experiences, attitudes and backgrounds.

A larger court membership also would make it harder for any small group of justices to control it, he said. Martone also believes

that having more justices would permit a greater diversification of duties so that justices could be more efficient and issue opinions faster. He pointed out that the U.S. Supreme Court adjourns at the end of June and recesses until October of each year. That court normally issues opinions on all cases that it has heard during that term, before it adjourns.

"They are able to do this because they do not schedule oral arguments after the last two or three months of the term so they can concentrate on writing opinions," Martone said. As a result, cases are not held over from one term to the next.

Martone also believes Arizona's merit-selection system is working reasonably well, but he would like to see the results of the judicial evaluation polls receive wider publicity. He would like to see the commissions on trial and appellate appointments be headed by a lawyer or layperson rather than the chief justice, as is presently required, because "it removes any suggestion that judges are being selected by judges." Martone is opposed to limiting the terms of judges, as some have suggested, because "judging is a separate profession from lawyering and once having been on the bench for a number of years it would be very difficult for judges to go back into private practice."

Martone has been married to his wife, Jane, for 33 years. She is an on-call social worker at Mesa Lutheran Hospital. They have two children: a son, John, 29, who is a broadband specialist with AOL Time Warner, and a daughter, Anne, who is a special education teacher with the Kyrene School District.

Martone enjoys reading (current favorite: David McCullough's biography of John Adams), films (all time favorite: Casablanca), opera (favorite: Verdi's Nabucco) and classical music (favorite symphonies: Beethoven's 7th and 9th). Recreation includes jogging five miles per day through city streets with running mates E.G. Noyes and Ed Voss of the Court of Appeals and Tom O'Toole and John Foreman of the Maricopa County Superior Court bench. Their normal course runs from the Phoenix Suns Athletic Club near Second Street and Jefferson to Third Avenue and Encanto Boulevard and back.

One activity Martone regrets having to give up because of the present demands on his time is teaching his course on judging to third-year Arizona State University law students. He taught the course for five years before going on the federal bench.

Assisting Martone in his new job are law clerks David Cowles, an ASU law graduate, and Cassie Bray, a University of Arizona law graduate. ■

## LEGAL MOVES

■ The Law Offices of David M. Reeves has moved to 4500 N. 32nd St., Suite 112, Phoenix, 85018. Telephone and fax numbers remain the same, but email addresses have changed to david.reeves@azbar.org and lisa.shannon@azbar.org.

■ The Phoenix office of Stinson Morrison Hecker has added two new associates and promoted an attorney to partnership. Geoffrey M. Ossias (J.D. *magna cum laude*, University of California Hastings College of Law) is a new commercial litigation associate. Ossias is admitted to practice in California as well as Arizona. JoAnn Sakato-Ahearn is a new associate in the firm's employment law practice. Sakato-Ahearn (J.D., University of Hawaii) is a retired FBI special agent. She is admitted in Hawaii as well as Arizona. David E. Koval has been elected to partnership. Koval (J.D. *cum laude* 1993, Arizona State University) has been with the firm since 1999 and practices in appellate matters and civil litigation.

■ Brian K. Moll has been promoted from associate to counsel in Bryan Cave's Phoenix office. Moll (J.D. with honors 1991, Ohio State University) is a member of the firm's corporate finance and securities client service group.

■ Gallagher & Kennedy has added three attorneys. Brian W. LaCorte (J.D. 1988, George Washington University) joins as a shareholder. He focuses his practice on intellectual property matters, including complex patent, trademark and copyright litigation. John G. Kerkorian and Christy L. Myers join the firm as associates. Kerkorian (J.D. 1988, Arizona State University) practices in the firm's litigation department with an emphasis on business, employment and technology matters. Prior to joining the firm, he was vice president and general counsel for ServiceWare Technologies Inc. Myers (J.D. *cum laude* 2000, Brigham Young University) practices in the areas of real estate transactions, land use and governmental affairs.

■ Holm Wright Hyde & Hays has relocated to the Freeway Executive Center, 10429 S. 51st St., Ste. 285, Phoenix, 85044; telephone 480-961-0040; fax 480-961-0818. In addition, "Trey" A.R. Dayes III, David K. Pauole and James E. Holland have joined the firm as associates.

■ John Paul Parks has relocated his office to Two Renaissance Square, 40 N. Central



Erickson



Kerkorian



Koval



LaCorte



Moll



Myers



Ossias



Sakato-Ahearn



Tucker

Ave., Suite 2800, Phoenix, 85004-4487; telephone 602-253-1740.

■ Kimberly E. Erickson and James T. Tucker have joined Bryan Cave as associates. Erickson (J.D. *cum laude* 1997, Oklahoma City University) will practice in the firm's class and derivative actions client service group. Prior to joining the firm, she worked for an Oklahoma City firm and for State Farm Ins. Cos. in Bloomington, Illinois. Tucker (J.D. with high honors 1994, University of Florida; LL.M., 1998, and S.J.D., 2001, University of Pennsylvania) will practice in the firm's labor and employment client service group. He previously worked with Bryan Cave in 1998-99 before joining the U.S. Department of Justice, Civil Rights Division, in Washington, D.C.

■ Goldberg & Osborne has added three attorneys. Bruce Squire, formerly a partner at Brown, Arenofsky and Squire, has joined the firm as a management attorney in Phoenix. Squire (J.D. 1981, Arizona State University), is a certified specialist in personal injury and wrongful death. Darren Clausen (J.D., University of Arizona), formerly with the MacBan Law Offices, has joined the firm's litigation group in Tucson. Robert Barry (J.D., Whittier Law School), previously with Hastings and Hastings, has joined the firm's Phoenix-area practice as an associate. ■

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■ **Gallagher & Kennedy** recently donated 60 computers to various local organizations. Firm employees were given the opportunity to submit names of potential recipients and selections were made based on need. Five organizations received computers: South Mountain High School (to use as loaners to Academic Decathlon student participants without computers); North Canyon High School (to complete an accelerated reader lab); Ronald McDonald House (to provide parents with Internet access to conduct research on their children's condition and treatment and to provide email capability); Phoenix Theater (for management of its non-profit performing arts activities); and Southwest Autism Research Center (for a computer lab for teens with autism).

■ **Quarles & Brady Streich Lang** has donated more than \$10,500 to victims of the

Rodeo-Chediski fire. Collected funds have been deposited in The AZ Fire Fund, set up by Bank One, to defray fire victims' economic hardship due to the fires. The firm matched donations collected by employees. The firm also is supporting several Valley charities. Firm employees recently helped raise more than \$7,000 in pledges for Valley Big Brothers Big Sisters' annual Bowl for Kids Sake. Earlier this spring, the firm teamed up with the Arizona Diamondbacks Charities and delivered two van loads of clothing and household items to the Salvation Army along with 175 pounds of non-perishable food items and cash donations to St. Mary's Food Bank. In an ongoing effort, employees donate their time and talents to Capitol School, an economically disadvantaged inner-city school in Phoenix. One of the many programs the firm sponsors each year for the school is the Young Artist Gallery, an art fair at which firm employees can purchase students' art. This year, \$740 was collected. Students receive half of the sale proceeds and the remainder is donated to the school's art fund. ■

## Establishing a viable ADR practice

By **Elizabeth A. Winter**  
Special to Maricopa Lawyer

Over the past year, new Alternative Dispute Resolution Committee members attending our monthly meetings have asked how they can establish a viable ADR practice. Because this is a question of general interest to Maricopa County Bar Association members, we turned to an expert for sage advice.

Retired Maricopa County Superior Court Commissioner Judith Joseph founded the MCBA ADR Committee more than 10 years ago. Her Superior Court experience, a national reputation and an ADR practice led me to ask her about setting up an ADR practice.

**Q:** What led to your interest in an ADR practice?

**A:** After devoting my bench career to advancing the causes of ADR, I was motivated to do something that was concrete and interactive between the bench and the bar. A first focus of the ADR Committee was to train lawyers in mediation. With an eager core of trained lawyers, the ADR Committee collaborated with the Superior Court's Civil Division to initiate a mediation pilot program. The program was highly successful. From there, it was a natural progression for me to move to the world outside the judicial system to further advance ADR in business and community.

**Q:** What did you find most challenging about establishing an ADR practice?

**A:** I was appointed to the American Arbitration Association Arizona panel of retired judges and started my practice with challenging arbitration cases from all over the country. The challenges I faced were not in initiating my ADR practice, but in being responsive to a wide variety of arbitration cases.

**Q:** What is most rewarding about your ADR practice?

**A:** Particularly after a bench career where it was my role to make decisions for other people, I find it most rewarding to empower people to resolve their own concerns and conflicts. In this way, I see people maintaining control and retaining their own dignity.

**Q:** What advice would you give to lawyers desiring to practice ADR today?

**A:** First, I would advise lawyers to cultivate a great number of clients, particularly if

## ADR CORNER

you plan to serve as an arbitrator. Second, cultivate a variety of levels of ADR practice.



**Joseph**

Third, get involved in the MCBA ADR Committee and the State Bar of Arizona ADR Section. I see this as a time for joint CLE seminars with other practice areas.

**Q:** What is on the horizon for the ADR practice?

**A:** Particularly in light of the modifications to Rule 16(g) of the Uniform Rules of Practice, I foresee that more ADR will be taking place, whether voluntary or mandatory, prior to filing cases with the court. As more professionals become involved in an ADR practice, it will become more used by consumers, business and community.

Stay tuned to the MCBA ADR Committee as we are committed to bringing you the most recent developments in the ADR practice.

► *Elizabeth A. Winter is past chair of the MCBA ADR Committee.* ■

### Write a letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. *Maricopa Lawyer* reserves the right to edit all letters for length. Letters to the editor must be typed on your letterhead, signed and submitted to Editor, *Maricopa Lawyer*, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.

# Lawyer represents, runs for child-abuse victims

By **Lisa Lewallen**  
Special to Maricopa Lawyer

On Sept. 26, 2001, 20-month-old Liana Sandoval was reported missing from her northwest Phoenix home. The search for Liana continued over the next two days until her body was discovered in a Phoenix canal. Liana had been brutally beaten and killed. Her mother's live-in boyfriend, Juan Velazquez, and her mother, Virginia Venegas, are charged with first-degree murder and child abuse and are currently held in custody awaiting trial.



**Liana Sandoval**

As a partner at Jennings, Haug & Cunningham, I am assisting my firm partner and lead attorney, Jorge Franco, in representing Liana's father, Anthony Sandoval, and Liana's surviving three-year-old sister, Isabella. Isabella, also a victim of physical abuse allegedly by Velazquez, was present when her sister's body was dumped in the canal.

On Nov. 17, Childhelp USA, a national child-abuse prevention and services organization headquartered in Phoenix, will sponsor a marathon fundraising team to raise awareness of child abuse. As a member of the Childhelp

USA marathon training team, I will be running in memory of Liana and in honor of Isabella.

The Sandoval girls' story is one of unspeakable tragedy, but it is also one of unwavering hope. Through Childhelp USA, Isabella and her family are receiving much-needed services and support in their attempt to deal with the devastating effects of child abuse suffered by their family.

The Sandoval family has graciously given their permission to lend Liana and Isabella's story in support of Childhelp USA's fundraising marathon to create greater awareness of child abuse, the services and support available through Childhelp USA and, ultimately, the protection of Arizona's abused children.

As a marathon team member, I have committed to raise at least \$4,200 for Childhelp USA to assist child abuse victims and their families. My personal goal, however, is to raise \$250,000.

If you are interested in supporting Childhelp USA and me in our fight against child abuse, please contact me by email at [lg1@jhc-law.com](mailto:lg1@jhc-law.com) or phone at 602-234-7842. ■

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E-mail Scot at: [sgt@andersonbrody.com](mailto:sgt@andersonbrody.com)

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# PEOPLE IN LAW

■ Robert H. Feinberg, of Snell & Wilmer's healthcare litigation practice group, has been appointed vice chair of the Healthcare Liability and Litigation Substantive Law Committee of the American Health Lawyers Association.

■ Two associates in Bryan Cave's Phoenix office have taken leadership positions in two young lawyer organizations. George C. Chen has been appointed to the board of the State Bar of Arizona Young Lawyers Division. Pamela S. Gates is national chair of the American Bar Association YLD's Environment, Energy & Resources Law Committee.

■ Several Lewis and Roca attorneys have been elected to leadership positions in a variety of organizations. Jim Belanger has been elected president of the Arizona State University College of Law Alumni Association. Maria Spelleri is a director of Valle del Sol, a community organization specializing in behavioral health services for the Latino community. Dustin Jones has been appointed to the board of the West Valley Fine Arts Council, which promotes arts opportunities and education. Dean Fink is a member of the board of Business Volunteers for the Arts, which links business professionals as volunteer management consultants with art organizations.

■ Leland M. Jones, chair of the technology industry group at Jennings, Strouss & Salmon, has been elected to a two-year term on the board of the Arizona Software and



Belanger



Chen



Feinberg



Fink



Gates



Huginnie

Internet Association. He has served on the board for approximately six years.

■ John W. Moody, a partner with Jennings, Strouss & Salmon, has been appointed to the Greater Phoenix Chamber of Commerce Public Affairs Committee and the Greater Phoenix Crime Coalition. In addition, he has been appointed to the State Bar of Arizona's Appointments Committee.

■ Two Gust Rosenfeld partners have moved up in the leadership ranks of the State Bar of Arizona. Charles "Chas" W. Wirken became the State Bar board of governors' first vice president and Michael Salcido was elected treasurer of the Securities Regulation Section.

■ Maricopa County Superior Court Judge Maurice Portley will receive the Black Board of Directors Project's 2002 Lincoln J. Ragsdale Sr. Outstanding Director Award. Portley is on the boards of St. Luke's Health Initiative, Arizona Foundation for Legal Services and Education, National Council of Juvenile and Family Court Judges, Arizona Judicial College, Grand Canyon Council's Scouting Executive Committee and others.

■ The State Bar of Arizona's board of governors has appointed Fernando Gonzales and J. Denise Huginnie as its two



Justin, D.



Jones, L.



Moody



Portley

non-attorney board members. Gonzales, of Tucson, is co-owner of the janitorial company Jan-Co. Huginnie, of Scottsdale, is a principal in the economic and financial consulting firm Economists.com. ■



Salcido



Spelleri



Wirken

## Commissions set to interview for appellate, trial vacancies

Twenty lawyers and Maricopa County Superior Court judges have applied for the vacancy on the Arizona Court of Appeals created by the appointment of Judge Michael Ryan to the state Supreme Court.

Applicants are Judge Louis A. Araneta, Judge Edward P. Ballinger Jr., Judge David R. Cole, Robert L. Eelman, Jeffrey R. Finley, Colleen L. French, Randall M. Howe, Timothy R. Hyland, Donald W. Jansen, Judge Michael D. Jones, Donn G. Kessler, Patricia K. Norris, Melinda K. Poppe, Judge Maurice Portley, Judith M. Praker, Christina Urias, Marc J. Victor, Tracey J. Westerhausen, Judge Eileen S. Willett and Lawrence F. Winthrop.

The Commission on Appellate Court Appointments will meet at 10:30 a.m. Aug. 9 to discuss the applications and decide which candidates it will interview. The meeting will

be held at the Arizona State Courts Building, 1501 W. Jefferson, Phoenix, in conference room 345.

The commission will interview the selected applicants on Aug. 27.

Twenty-four lawyers and Superior Court commissioners and hearing officers have applied for the trial bench vacancy created by the retirement of Judge Sherry Hutt.

Applicants are Commissioner Elizabeth P. Arriola, Robert L. Baumann, Commissioner Harriett E. Chavez, Carl W. Eckhardt Jr., Richard W. Garnett III, Jo Lynn Gentry-Lewis, Patricia A. Gitre, Gerald R. Grant, Larry Grant, Kristin C. Hoffman, Steven K. Holding, Robert C. Houser Jr., Christopher C. Kempley, Commissioner Raymond P. Lee, Charles E. Martinez, Terrance C. Mead, Wesley E. Peterson, John C. Rea, Kelly Y. Schwab, Graham A. Turner Jr., Benjamin E. Vatz, Michael A. Vincent, Robert J. Weber and R. Jeffrey Woodburn. Eckhardt, Hoffman, Holding, Peterson, Vatz and Woodburn are Superior Court hearing officers.

The Maricopa County Commission on Trial Court Appointments will meet at 9 a.m. Aug. 8 to review applications and select the applicants it will interview. ■

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85004; fax to 602-257-0522; or  
email to: [maricopalawyer@mcbabar.org](mailto:maricopalawyer@mcbabar.org).

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## MCBA CALENDAR

JULY 2002

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

*The divisions, sections and committees in the calendar are those of the Maricopa County Bar Association, unless noted otherwise. All events are meetings and take place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues for meetings and events include the University Club, 39 E. Monte Vista, Phoenix; Arizona State University Downtown (ASUD) Center, 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, Bank One Building, 201 N. Central, Phoenix.*

- 1 ADR Committee, 4:30 p.m.
- 5 YLD Domestic Violence Committee, noon
- 7 Barristers Ball Committee, noon
- 8 Paralegal Conference Committee, 5:30 p.m., Pointe Hilton Squaw Peak
- 12 YLD board, noon  
*Maricopa Lawyer* editorial board, 5 p.m.  
Paralegal Division board, 6 p.m.
- 14 Environmental Law Section, noon  
MCBA Executive Committee, noon  
Hayzel B. Daniels Bar Association, 5:30 p.m.
- 16 Maricopa County Bar Foundation board, 7:30 a.m.
- 20 Estate Planning & Probate Section Executive Committee, 7:30 a.m.  
VLP Committee, noon  
Bankruptcy Law Section, 5 p.m.
- 21 Litigation Section Executive Committee, 7:30 a.m.  
Sole Practitioners Section, 11:30 a.m.  
LRS Committee, noon  
Bench Bar Committee, 12:15 p.m., Central Court Building 4th floor conference room

- 22 Paralegal Outreach Committee, 5:30 p.m.
- 23 Task Force on Minority and Women Lawyers, 8:30 a.m.
- 26 Juvenile Practice Section, noon
- 27 CCD board, 4:30 p.m.
- 28 Arizona Women Lawyers Association lunch meeting, Arizona Club. Speaker: Fred Linch. Plate lunch will be served at noon; the formal program begins at 12:30 p.m. Reservations (required): 602-863-7678 or luncheons@awla-maricopa.org by noon Aug. 26. Information: Amy Schwartz, 602-956-4438.

## Got an itch to write more than motions?

*Maricopa Lawyer* welcomes contributions, from news and feature articles to humor and opinion pieces, that are law-related or of special interest to the legal profession. The *Maricopa Lawyer* editorial board reserves the right to reject articles and to edit contributions for length or content. Contributions must be typed (double-spaced) and submitted to *Maricopa Lawyer*, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004. A copy of the submission on computer disk would be appreciated.

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# VLP honoree takes contentious family cases

**By Peggi Cornelius**  
Special to Maricopa Lawyer

Distinguished by his willingness to provide pro bono representation in contentious divorce and custody cases, attorney Roger K. Gilbert is among the most dedicated participants in the Volunteer Lawyers Program. His lengthy and effective advocacy in such matters has brought him recognition as VLP's Attorney of the Month.

In 1995, Gilbert joined VLP by responding to an annual recruitment campaign in which attorneys are asked to sign up for one pro bono case per year, when joining or renewing their membership in the Maricopa County Bar Association. Since then, he and his staff have donated hundreds of hours on VLP cases.

Gilbert, a partner with Warner Angle Hallam Jackson & Formanek, doesn't see his volunteer work as exceptional.

"There are others in the firm, such as Jerry Angle and Ted Warner, who are well known for their community service, and it's very rewarding for us all," he said. "By representing VLP clients, I've been able to make a positive difference in many ways, but regardless of the outcome, I've found pro bono clients to be grateful for my assistance."

Although Gilbert believes attorneys have a professional obligation to perform community service, it seems he comes by it naturally, too. He speaks with pride of his mother's volunteer role in the conservation of the Phoenix Mountains Preserve, noting a video about her preservation efforts has been made and the Dottie Gilbert Reading Room at South

Mountain Park was named in her honor.

After his undergraduate education at California Western University, Gilbert had planned to obtain an MBA. Realizing that many others were pursuing business careers, he reconsidered.

"I attribute my interest in law to a gifted professor who taught a business law class I took as an undergraduate. That, and the influence of a friend, convinced me to apply to law school," he said.

He graduated from California Western School of Law. His career has encompassed representing corporations and individuals, including civil litigation in both business and family law.

Beyond the tide of clients in need and the

finite number of family law attorneys to help, there is more that makes the pro bono efforts of attorneys like Gilbert stand out.

Motivated by compassion and a desire to make a difference, family law volunteers accept complex cases that may take years to conclude. In cases involving domestic violence, they also face the possibility of hostile behavior by opposing parties. And if the outcome of their hard work is disappointing, they are asked to separate the principles from the parties involved and remain committed to ongoing volunteer work. For all these reasons, Roger Gilbert is outstanding.

► Peggi Cornelius is VLP's programs coordinator. If you or members of your firm would like to know more about pro bono opportunities through VLP, contact director Patricia Gerrich at 602-254-4714. ■

## VLP thanks attorneys who recently accepted cases

The Volunteer Lawyers Program, co-sponsored by Community Legal Services and the Maricopa County Bar Association, thanks the following attorneys and firms in Maricopa County who recently agreed to assist 39 low-income clients with these civil legal needs:

### Bankruptcy

Robert D. Beuler, Phillips & Associates  
Jeffrey L. Phillips, Phillips & Associates

### Consumer

Frank W. Busch III, Snell & Wilmer  
Timothy J. Casey, Snell & Wilmer  
John M. Curtin, sole practitioner

### Debt collection

Kent S. Berk, Berk & Moskowitz  
Christina Urias, DeConcini  
McDonald Yetwin & Lacey

### Education

E. Megan Fischer, Bowman & Brooke

### Family law/domestic violence

Glenn M. Davis, Arizona State Senate  
Raleigh W. Johnson, sole practitioner

Claudia D. Work, Mariscal Weeks  
McIntyre & Friedlander  
Andre J. Zenda, sole practitioner

### Guardians ad litem for children in Family Court

Thomas V. DelRosario, Snell & Wilmer

Tracy M. Krall, Goldberg & Jones  
Emily H. Mann, Quarles & Brady  
Streich Lang (2 cases)

Monica L. Miller, Quarles & Brady  
Streich Lang (2 cases)  
Natasha M. Price, Steptoe & Johnson

### Guardianships (minor children)

Dorothy Brogan, sole practitioner  
Diana J. Calais, sole practitioner  
William F. Doran, sole practitioner

Sharon L. Fabian, Snell & Wilmer  
Michelle Lynn Hibbert, Steptoe & Johnson

Nancy E. Tribensee, ASU general counsel's office  
Adrienne Wray Wilhoit, Fennemore Craig

### Guardianships (incapacitated adults)

Abbie Shindler, Mohr Hackett  
Pederson Blakley & Randolph  
Wilford L. Taylor, sole practitioner

### Home ownership

Neal H. Bookspan, Hahn Howard & Green

Renee B. Gerstman, Gerstman & Zdanczewicz  
Michael R. King, Gammage & Burnham

Andre H. Merrett, Quarles & Brady  
Streich Lang  
Jody K. Pokorski, Snell & Wilmer

### Tax

Timothy D. Brown, Gallagher & Kennedy  
William A. Loutos, Loutos Consulting

### Tenants' rights

Michael J. Christopher, Snell & Wilmer  
Kevin E. O'Malley, Gallagher & Kennedy

### Tort defense

Denis R. Malm, Wachtel Biehn & Malm

### Other issues

Candess J. Hunter, Sacks Tierney ■

## NEED HELP FINDING CLIENTS?

The Maricopa County Bar Association Lawyer Referral Service puts people seeking legal information, advice and representation in touch with Maricopa County attorneys.

LRS handles thousands of phone calls each year from people with legal concerns.

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If you have questions or would like to join this valuable service, please call Margarita Flores at the MCBA office, 602-257-4672, during regular MCBA business hours, Monday - Thursday 8:30 a.m. to 5:00 p.m., and Fridays 8:00 a.m. - 4:30 p.m.

## Pro bono golf tourney to benefit VLP

The Maricopa County Bar Foundation and the Volunteer Lawyers Program will present the 2002 Pro Bono Golf Classic on Sept. 28 at the Westin Kierland Resort and Spa. The day's events will include breakfast, 8 a.m. shotgun start for 18 holes of golf, lunch with CLE, and a silent auction.

Prizes include a chance to win a vacation for two in Hawaii, putters, dinner at Morton's, a kid golf set, a cigar humidor and a Golfsmith gift certificate.

The tournament will benefit VLP, which arranges advice and assistance from volunteer attorneys for low-income clients with civil legal needs and provides support for rewarding pro bono opportunities for attorneys. VLP programs benefiting from the tournament include the Children's Law Center, Family Lawyers Assistance Project, Assistance to Non-Profits Project and other legal services for children, adults and families.

Susan Lagerman, co-chair of the VLP

Advisory Committee, said the event is "a wonderful opportunity to have fun and also help VLP get resources to support more pro bono assistance." VLP co-chair Brian Rees said, "Many attorneys volunteer with VLP and know first hand why these services are so important and what a difference VLP makes. Participating in this tournament is another way to help."

The Pro Bono Golf Classic Committee, led by John Hendricks of the MCBF and Pat Fowler of the VLP Advisory Committee, is arranging sponsors for the event. All hole sponsors and corporate sponsors will be recognized in pre- and post-tournament publicity and with signs at the event. Anyone interested in sponsorship opportunities is urged to contact Fowler at 602-382-6213 or Hendricks at 602-279-1600. The committee also is seeking donations of prizes and silent auction items.

To register for the tournament, call the MCBA at 602-257-4200 ext. 146 or mail or fax your registration form to MCBA. ■