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## Are you leader material?

The MCBA is establishing a new Leadership Institute to help attorneys gain leadership skills. **Page 3.**

## New 'Default on Demand' project will change family court practices

By J. W. Brown  
Maricopa Lawyer

Over the next few weeks, family law attorneys will be introduced to a new Default on Demand system that will allow litigants to more quickly resolve family court cases pending in Maricopa County Superior Court.

"Default on Demand represents a significant step forward in how the courts respond to the needs of the public and the bar," explained Family Court Presiding Judge Norman Davis. "Litigants, who have been used to waiting several weeks to have their case heard at an available time provided by the court, and who may need to take time off from work or travel for the hearing, should welcome the ability to select hearing dates convenient to their own schedule, even as early as the next day."

"With the many competing demands for their time, attorneys should also benefit from the flexibility to set hearings at the convenience of their clients and to accommodate their own heavy schedules," he added.

A large portion of family law matters are resolved during uncontested hearings after one party fails to respond or when the parties reach agreement on all the issues in the case.

The idea of implementing default on demand is to simplify, streamline and make the court process more "user friendly" for litigants seeking judgments and orders by default.

"The new program will allow any litigant or a litigant's attorney to schedule a default hearing by calling a dedicated phone line to schedule the hearing at

— See **Default** on page 3

## MCBA will host Maricopa County Attorney debate

By Kathleen Brieske  
Maricopa Lawyer

The Maricopa County Bar Association and its Criminal Law Section will hold a debate for Maricopa County Attorney candidates at 7 p.m. on Thursday, Sept. 2, at the Board of Supervisors Auditorium, 205 West Jefferson, in Phoenix. The moderator of the event will be José Cardenas, host of *Horizonte* on KAET-Channel 8. Both attorneys and journalists will act as questioners. Each candidate will have the opportunity to respond to pertinent issues. The debate, which is free and open to the public, will take place right before the county attorney primary election on Sept. 7.

All but one of the candidates vying for the position will participate in the debate. Those present will be Mike Bailey, Donald Harris, Jonathan Warshaw, Tom McCauley, Andrew Pacheco, Jerry Landau and Rick Poster. Andrew Thomas will not attend due to an already scheduled engagement.

County Attorney Rick Romley is currently serving his fourth and final election term in office, making this the first time in 16 years that a new County Attorney will be elected. The new race includes eight candidates, of which two are Democrats and six are Republican.

The role of the county attorney is to prosecute those who commit crimes within the county as well as to implement crime reduction programs. According to Maricopa County Bar Association President Jerome Elwell, this upcoming debate is especially important to the

local legal community because the County Attorney's Office serves as the prosecuting body for Maricopa County.

"It is important to take the time to understand the candidates' positions on issues spe-

cific to Maricopa County before election time, and the debate will provide a platform to do so," Elwell said.

To learn more about each candidate, please turn to candidate profiles on page 8. ■

## New hall of justice



The hallway of the new 263,000 square foot courthouse at 3131 W. Durango stands ready for its first visitors just before its July 12 dedication. The \$38 million construction project provides 12 courtrooms and 220 detention beds. In addition to the added space, the three-story courthouse features cutting edge design, technology and amenities.

## Trial misconduct leads to severe sanctions against prosecutors

By Daniel P. Schaack  
Maricopa Lawyer

In opinions filed within weeks of each other, trial misconduct has resulted in severe sanctions for two experienced prosecutors in Pima County. One, who challenged psychiatric evidence without any evidence basis, was suspended. The other, who presented perjured testimony in an attempt to bolster the credibility of a snitch, was disbarred.

We turn first to Assistant Pima County Attorney Thomas J. Zawada. In 1994, he prosecuted Alex Hughes for first-degree murder and other crimes arising out of a fatal shooting. Hughes raised an insanity defense. Each of six mental-health experts who examined him with respect to the shooting — including the state's experts — found him mentally ill.

The jury rejected the insanity plea, finding him guilty of first-degree murder, attempted second-degree murder and aggravated assault.

He was sentenced to life for the murder, and a total of 184 years for the other crimes. The Arizona Supreme Court reversed his conviction based on Zawada's misconduct during the trial.

With all experts agreeing that Hughes was mentally ill, Zawada set about to attack the credibility of those who testified. Through his questions while cross-examining one expert, he implied that the expert had made up his diagnosis to coincide with Hughes' theory of the case. In closing argument, he accused defense counsel of having paid the expert to fabricate the diagnosis. He also impugned the profession in general, harkening back to a New York judge who had been accused of stalking his law clerk. In his rebuttal argument, Zawada said: "You know what they did, they created a syndrome for him to try to justify his action." After Hughes was convicted, the Supreme Court reversed the conviction based on the cumulative effect of Zawada's trial misconduct. *State v. Hughes*, 193 Ariz. 72,

## COURT WATCH

969 P2d 1184 (1998). It held that double jeopardy barred his retrial.

The State Bar of Arizona subsequently held proceedings against Zawada. The hearing officer found that Zawada's conduct was wholly unsupported by any evidence and violated several ethical rules. He recommended that Zawada be censured, placed on probation and be required to attend continuing legal education classes on the effective use of and response to psychiatric and psychological testimony and be barred from trying any case involving such testimony until he had completed the CLE. The Disciplinary Commission, with one dissenting member,

— See **Courtwatch** on page 4

AUGUST 2004

INSIDE

### The blog advantage

The growth of law blogs has turned into a boon for legal research. **Page 6.**

### Lawyers as peacemakers

Attorney Mark Winsor ponders Lincoln's advice to discourage litigation. **Page 15.**

## COLUMNS

# Mid-year a good time to evaluate progress

Although August is an opportune time to relax and regroup — and many of our members find themselves on vacation — you should know that the Maricopa County Bar Association is moving full speed ahead. The 2004 year is flying by, and we are excited about the several successes thus far. With only half a year left of my term, this is fitting time to provide you with an update on some of the exciting accomplishments this year.

But first, let me thank you, the members, for playing such a vital role in the success of the organization. Our members have participated in outstanding community outreach programs including Law Week 2004, which provided an unprecedented number of people with free legal advice, and the Barristers Ball, where the Young Lawyers Division raised more than \$11,000 for HomeBase Youth Services. Without your dedication and support of our service goals, there would be little to report. Additionally, we

would be nowhere without the commitment of our staff. They have participated in every MCBA activity and have done so with pride and enthusiasm. We owe each staff member at the MCBA a great round of applause.

In February, the legal community celebrated the opening of the Justice Museum in the historic Old Courthouse. I was fortunate to participate in the opening events where honored guest U.S. Supreme Court Justice Sandra Day O'Connor was the keynote speaker. The MCBA is continuing to play an important part in the creation of the Justice Museum, with our board behind it 100 percent. Also in February, O'Connor spoke at the annual Volunteer Lawyers Program luncheon, where she commended the efforts of our community in our outreach of legal aid to the poor. She also commented that cities like ours always have room for improvement. We took her words to heart.

I am excited that we have recently embarked upon a joint effort with the State Bar of Arizona to provide even greater access to lawyers through our Lawyer Referral Service program. We are in the process of developing a stronger LRS agenda that reflects the long-standing history of the program as

well as its effectiveness as a community outreach vehicle.

More recently, we have been involved in the new security bypass review with the Maricopa County Superior Court. Members of our Bench Bar Committee and members of our board of directors are serving on committees to advise Presiding Judge Colin Campbell in structuring the new program. We look forward to a new plan that considers both the security needs of the court system and the convenience of access to the courts by our membership.

Finally, I am excited about the financial future of the MCBA. When I first took office as president, I made a promise to keep vigilant track of the budget. I am pleased to report that

the MCBA has surpassed all projected results. Overall, the net profitability for our association has been maintained and the service to our membership has not been sacrificed. Our income has exceeded our forecasted budget and expenses have been consistently

controlled. These exciting results are due to the cooperative effort of the staff and management of the association as a whole. The board of directors has done an excellent job of making difficult decisions in creating a realistic budget designed around the concept of fiscal responsibility and a more competitive organization. Everyone, including each section, division, committee and department, are to be congratulated. Our financial plan is working.

As I have said many times, our membership is the most valuable asset of this organization. As a result, we have placed significant emphasis on programs and benefits designed

**We are committed to making the MCBA an even stronger and more prestigious organization for all of our members.**



Jerome  
**ELWELL**  
MCBA PRESIDENT

to create value for your membership dollars. We have expanded the opportunity for our members to gain leadership experience and to network with peers within the community. We have provided all of our members with

higher quality and more consistent CLE programming and we have expanded the number and quality of the sections and committees in which you can participate.

It is always fun to look back on a successful several months. It is also necessary to reflect from time to time in order to strengthen the plan for the future. I am proud of the accomplishments of the MCBA thus far, but we will not rest. We are committed to making the MCBA an even stronger and more prestigious organization for all of our members. The rate at which the Maricopa County Bar Association is growing is due to the efforts of so many people. Each member of the MCBA has — and still is — working to make this an organization that far exceeds expectation. Thank you for your efforts and I hope you will join me in looking forward to our continued success. ■

## Nominations open for two Paralegal of the Year awards

Who will be the 2004 Arizona Paralegal of the Year? We are looking for the best of the profession has to offer. Are you a role model in the Arizona paralegal community? Is someone you work with worthy of representing the Arizona paralegal community?

As the MCBA Paralegal Division approaches its fifth annual Arizona Paralegal Conference, scheduled for Monday, Nov. 8, at the Arizona Historical Museum, the division would like to formally recognize important contributions to the paralegal profession made by individuals within our local community.

We value your input and are asking you for nominations for two distinguished awards. You may nominate more than one person and you may nominate for more than one award.

**Paralegal of the Year Award:** The award will recognize an Arizona paralegal who has made extraordinary contributions during the year to an employer, organization or community, who has had a positive and demonstrable impact on that employer, organization or community, or who has made extraordinary contributions during the year to the advancement of the paralegal profession and the Arizona paralegal community. Criteria for recipient: Must be a working paralegal residing in the state of Arizona.

Clare  
**PENDLETON**  
PARALEGAL DIV.  
PRESIDENT



**Member of the Year Award:** This award will recognize an MCBA Paralegal Division Member who has made extraordinary contributions during the year that has had a positive and demonstrable impact on the MCBA Paralegal Division and has furthered the mission of the division, as outlined in the division's mission statement. Criteria for recipient: Must be a current member of the MCBA Paralegal Division and must have been a division member for at least two years prior to the year of nomination.

For more details regarding the Paralegal Division Awards of Excellence, the nominations and the nomination forms, please visit our Web site at [www.maricopaparalegals.org](http://www.maricopaparalegals.org). The deadline for nominations is Aug. 31.

For more information about the Paralegal Division contact Clare Pendleton at [president@maricopaparalegals.org](mailto:president@maricopaparalegals.org) or Kim Carolan at [kcarolan@mcbar.org](mailto:kcarolan@mcbar.org) or (602) 257-4200, Ext. 138. ■

### 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 can be e-mailed to [tbooth4@cox.net](mailto:tbooth4@cox.net) or mailed to: Editor, *Maricopa Lawyer*, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.



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Errors will be corrected in a subsequent issue. The MCBA does not necessarily endorse the views expressed by contributors and advertisers.

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# MCBA establishes Leadership Institute

By Kathleen Brieske  
Maricopa Lawyer

In the fall of 2004, the Maricopa County Bar Association will lend a hand in producing some of the county's — and state's — best community leaders. Functioning as a "vehicle of service for the benefit of its members, the legal profession, the judicial system and the public," the Maricopa County Bar Association is excited to announce a program that will not only advance the organization's mission, but will also develop and enhance its members' personal leadership potential. The MCBA Leadership Institute Program will train mem-

bers for leadership roles not only at the bar itself, but also within the legal profession and the community.

Still in the development stages, the MCBA Leadership Institute is set to present a two-session leadership development CLE that will amount to a total of four continuing legal education hours. The seminars will bring together experts focusing on matters such as financial oversight, volunteer management, governance, meeting management, fiduciary responsibility and leadership styles.

Superior Court Commissioner Glenn Davis, Sam Coppersmith, senior partner at Coppersmith Gordon Schermer Owens &

Nelson, and Larry Rosenfeld, partner at Greenberg Traurig and co-chair of the firm's national labor and employment practice, are all key figures in the implementation of this innovative program. Each brings unique insight and ideas to the table.

"This new program is obviously experimental but I genuinely think this could serve as an excellent way to make members not only better attorneys but also better citizens," said Coppersmith. "It is a chance for lawyers, particularly young lawyers, to grow not just as attorneys but as leaders in the community."

The program is expected to build a core of legal professionals to lead the MCBA, resulting in raising the standards of section, division and board leadership. When the effectiveness of the organization increases, so will its fundamental value to its members. Furthermore, the program will enhance the public image of the MCBA and legal professionals, along with their contributions to the community. Additionally, it will provide community leadership by offering non-profits and other associations the opportunity to attend the sessions as well.

For the MCBA's board, sections and divisions members, the Leadership Institute's worth goes beyond CLE credits. Whether developing or strengthening leadership skills, members will be able to further their careers with what they learn in the program.

The MCBA Leadership Institute will be offered this fall to members interested in serving leadership roles at the Bar as well as in the outside community. More information, including in-depth information on topics and faculty, will follow in next month's *Maricopa Lawyer*. ■

## Default...

Continued from page 1

their convenience," Davis said.

The dedicated phone line is: (602) 372-3332.

The project is scheduled to begin Aug. 2 with downtown cases, and will expand to other superior court locations as well. Steps include:

- Litigants who call before noon on one day to request a regular (non-specialty) default will have the option of being placed on a 1:30 p.m. default calendar the next day. Litigants can also call to schedule an appointment for a future date.

- Litigants will not be able to schedule a hearing for publication, interpreter or other specialty defaults the day after they call. However, they will be able to call and schedule their matter for the next available calendar/hearing.

- Family Court Administrative staff will conduct a brief telephonic screening when the litigant requests a default hearing.

- Files will be reviewed immediately before hearing.

- Litigants will not be denied a default hearing unless they have not met jurisdictional or statutory requirements. Deficiencies will be immediately corrected when possible and, if necessary, referred to a stand-by judge.

Hearings under the new procedure are

held on the third floor of the Central Court Building, 201 W. Jefferson. The hearings are set for a morning or afternoon calendar, Monday through Friday. Morning hearings are intended for parties who requested their hearing further out than the next day. Afternoon hearings are anticipated to be set for people who request a next-day hearing, which will allow the court to access the file in time for the hearing.

A schedule of back-up judges has been established through November to provide for overflow hearings.

Litigants, or their lawyers, are expected to call on the morning of the day before they want a next-day hearing. Each caller will be interviewed with standard questions about dates of filing, serving, etc., and to determine eligibility for a default hearing.

The review process is expected to be accelerated significantly because basic information can be gathered by court staff when a lawyer or litigant calls the dedicated phone number to set a hearing. Deficiencies can be identified and addressed during the phone contact. Staff will review the file on the day of the hearing, which also is expected to improve the review process.

"The courts belong to the citizens and we should do everything possible to accommodate their needs for prompt and efficient justice," Davis said.

➤ J.W. Brown is communications director for trial courts in Maricopa County. ■



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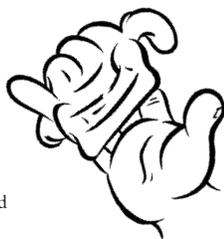
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## Courtwatch...

Continued from page 1

removed the probation and CLE, and substituted a requirement that he be referred to the Member Assistance Program.

The Supreme Court on *sua sponte* review of the case, increased the sanctions. Chief Justice Charles E. Jones, writing for a unanimous court, quoted the court's opinion vacating Hughes' conviction in holding that Zawada had knowingly committed misconduct by "imply[ing] unethical conduct on the part of an expert witness without having evidence to support the accusation."

Jones noted that Zawada had several options in responding to the evidence of Hughes' insanity. But his options did not include the use of "irrelevant, insulting cross-examination and baseless argument designed to mislead the jury."

"A prosecutor is surely entitled to an opinion as to the persuasiveness or validity of mental health evidence," Jones wrote, "but must nevertheless adhere to established rules and standards in the presentation of evidence and argument in the courtroom." Zawada, he noted, had "accused the psychiatrist of indecision and of reaching a conclusion of insanity only after he was hired by the defense and paid for his services."

According to Jones, Zawada had improperly pressed his attack in closing argument by "suggesting, still without evidence, that defense counsel paid money to the mental health expert to fabricate a diagnosis of insan-

ity." "This ... was an intentional, knowing attack by Zawada on defense counsel, on the experts, and on the mental health profession."

Jones concluded that Zawada's "grossly improper and deliberate" misconduct violated the criminal rules, which allow a defendant to present an insanity defense. He opined that Zawada's methods were especially dishonest because the "evidence of insanity was substantial" and the state "had no evidence that Hughes had fabricated" his defense.

Zawada, Jones wrote, "attacked the experts, their profession and credibility through disingenuous, baseless argument and cross-examination. This was highly improper ..." The extreme consequences of Zawada's misconduct also caught Jones' eye. Quoting the dissenting Disciplinary Commissioner, he wrote that "Zawada's knowing, deliberate and intentional misconduct either caused a murderer to walk free, or it helped convict an innocent man of first-degree murder. Either way, no harm could be more serious."

Jones also noted that although Zawada had not previously been disciplined by the SBA, his record was not untarnished. He pointed to a previous case where Zawada had intentionally acted improperly in trying to force the defense to ask for a mistrial so that the prosecution could get a new indictment correcting the charges.

Also aggravating the seriousness of Zawada's misconduct was his stubborn refusal to admit that he was wrong. "Zawada has refused, and to this day continues to refuse, to acknowledge wrongful conduct" which led Zawada to outright hostility. Representing himself in the disciplinary proceedings, he accused the court of "simply wish[ing] to punish me for thinking [differently] on the issue of the admissibility of, reliability of, psychiatric-psychological testimony." His case, Zawada believed, "expose[s] the Arizona Supreme Court's pro-psychiatry/anti-prosecution position; its pop culture values; its overzealousness in pursuit of those values."

Zawada also asserted that there was no case law supporting the accusation that he had acted unethically. To that, Jones responded by again quoting the dissenting commissioner: "Zawada fails to acknowledge that he is single-handedly responsible for much of the law in Arizona on the consequences of extreme prosecutorial misconduct."

Jones concluded that the discipline recommended by the hearing officer and the commission were inadequate. "A mere censure of Zawada or even the imposition of probation without suspension ... would undermine the

disciplinary process applicable to all lawyers, would contravene the presumptive discipline suggested by the ABA Standards, and would be grossly disproportionate to discipline imposed in other cases in which serious misconduct was found." Jones therefore ordered that, in addition to the recommended CLE and ban on prosecuting cases involving psychiatric and psychological evidence, the probation, and referral to the Member Assistance Program, that Zawada also be suspended for six months and a day. *In re Zawada*, No. SB-02-0103-D (Ariz. July 1, 2004).

The fate of another Pima County prosecutor was even worse after he repeatedly introduced perjured testimony in prosecuting three people on murder charges. Kenneth J. Peasley was the prosecutor in the infamous El Grande Market triple-murder case. He proceeded against Martin Soto-Fong, Andre Minnitt and Christopher McCrimmon.

A key piece of evidence in the trials of Minnitt and McCrimmon was the testimony of informant Keith Woods, who claimed that both had admitted to him that they and Soto-Fong had done the El Grande murders. The police conducted an interview of Woods and had him on tape making his accusation.

The evidence was not exactly airtight, however. First, Woods was a not the world's best witness. He was a drug addict with multiple felony convictions. He was facing yet another felony charge with a long prison sentence. He agreed to testify against the three in exchange for the state dropping that charge. As if that weren't enough, the circumstances surrounding the taped interview also raised suspicions. The police interview with Woods had been conducted in two parts. The first part was not recorded; the second part — the one where Woods leveled his accusations — was.

Peasley was thus faced with a situation where the defense could easily accuse Woods of lying to escape prosecution and accuse the police of having fed him the information used in the accusation. It was Peasley's efforts to counteract those accusations that led to his downfall.

The lead detective on the case was a friend of Peasley's. He had considered Minnitt and McCrimmon suspects *before* the Woods interview. He had also known, before the interview, that Soto-Fong had previously worked at the El Grande Market.

Nevertheless, in the trial against McCrimmon and Minnitt, Peasley told the jury in his opening statement that the detective did not know of the suspects until the Woods interview. On direct questioning by Peasley, the detective so testified, even though he had submitted a report stating that the truth was otherwise. Continuing the subterfuge, Peasley told the judge in a bench conference that the detective had not begun investigating the three suspects until after the Woods interview. Peasley continued these misrepresentations in closing argument.

McCrimmon and Minnitt were convicted and sentenced to death. The Supreme Court later reversed their convictions. *State v. McCrimmon*, 187 Ariz. 169, 927 P.2d 1298 (1996). Their cases were then severed and Minnitt was the first to be retried. Peasley and the detective repeated, and even augmented, their performance from the first trial. The case mistried because the jury could not reach a verdict.

McCrimmon's retrial began shortly after the jury hung in Minnitt's. McCrimmon's lawyer had sat in on Minnitt's retrial, and he discovered the detective's false testimony. This time, the detective recanted his testimony from the

previous trials. Faced with this, Peasley argued to the jury that the detective had testified falsely in the earlier trials to protect confidential informants and to avoid a mistrial. He asserted that a "sick system" had placed the detective in the position of having to testify as he had. McCrimmon was acquitted.

Minnitt then moved to dismiss the charges against him based on prosecutorial misconduct. He argued that double jeopardy applied and barred retrial. The motion was denied, and Minnitt was eventually re-convicted (in a trial with a different prosecutor) and again sentenced to death. However, the Supreme Court overturned the conviction and held that double jeopardy barred Minnitt's retrial. *State v. Minnitt*, 203 Ariz. 431, 55 P.3d 774 (2002).

The State Bar then proceeded against Peasley. The hearing officer found that he had intentionally acted unethically by not being candid toward the tribunal; by making false statements of material fact; by acting with dishonesty, fraud, deceit, or misrepresentation; and by conduct prejudicial to the administration of justice. Although acknowledging that the presumptive sanction for Peasley's conduct was disbarment, the hearing officer felt that mitigating factors called for a sixty-day suspension. The Disciplinary Commission disagreed, recommending disbarment.

A unanimous supreme court agreed with the commission.

Writing for the court, Justice Michael D. Ryan noted that Peasley, using false testimony to establish a crucial fact, had gotten convictions and the death penalty against McCrimmon and Minnitt. Ryan could not "conceive of a more serious injury, not just to the defendants but to the criminal justice system, than a prosecutor's presentation of false testimony in a capital murder case."

Ryan found Peasley's substantial experience to be a factor against him. "Peasley understood far better than would an inexperienced prosecutor how a jury would likely react to a suggestion that Detective Godoy 'fed' information about Minnitt and McCrimmon to Woods." He also ascribed selfish and dishonest motives to Peasley, as a prosecutor who was willing to obtain a conviction at any cost and at the expense of his prosecutorial duty to do justice.

Like Zawada's, Peasley's previously unblemished disciplinary record did not sway the court. Again, like Zawada, Peasley's history had reported decisions evidencing misconduct in prosecuting cases. In one, he had violated discovery rules and failed to ensure that the defendant received a fair trial. *State v. Rodriguez*, 192 Ariz. 58, 961 P.2d 1006 (1998). In another, he had made inflammatory remarks about the defendant and had improperly commented on his invoking his right not to testify. *State v. Trostle*, 191 Ariz. 4, 951 P.2d 869 (1997). Although his misconduct in those cases had not led to bar discipline or to reversals of convictions, Ryan concluded that they nonetheless "demonstrate that his misconduct in this matter was not entirely out of character."

Ryan concluded that it was proper to throw the book at Peasley and disbar him. "Peasley's intentional elicitation of false testimony ... and exploitation of that false testimony in the closing argument in both trials, could not have been more harmful to the justice system," he wrote. "Peasley's misconduct has severely undermined the public's trust and confidence in Arizona's criminal justice system."

"Any sanctions less than disbarment," Ryan concluded, "would be an inappropriate statement of what the bar and this court should and would tolerate." ■

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# Working while on the road now easier than ever

I am dictating this column into the new WordPerfect 12 software using Windows XP voice recognition software. I will write a full evaluation of the new WordPerfect in the coming months, but at the moment, I can already say it is fantastic. In the meantime, it is summer and I'm traveling and this column is about my efforts to keep up with my office while on the road. Unlike years past, it is a story of some success, sometimes minimal and sometimes spectacular.

If all you really want is to check your email while away from home, then Web mail is probably enough. Most commercial Internet Service Providers provide Web mail services and all you need do is to log on from any computer with a web browser to check your email. You can have your office forward your email (or better yet, only part of it) to the Web mail site. Since computers with Internet access are almost everywhere, Web mail is the easiest way to go. But you may want, and need, more. For example, you may need a lot of important files, and the programs that run them, on a regular basis. There are a number of options that will allow you to do that.

It is amazing how accessible the Internet has become by virtue of the rapid rollout of broadband connections in recent months. If you are in one of the major chain hotels (both first class and budget) you probably will be able to purchase a broadband connection for about \$10 a day or less. Some even offer broadband free of charge. A broadband connection opens a whole new range of connectivity with your home or office network.

Some of the hotels offer broadband access through a network port on your computer. I have found that to be the Acura of connectivity—fast, fun and sure. Other hotels offer wireless broadband which is very good but considerably slower than the network connection. That is the Honda of connectivity—very good, very reliable and half the price. If you go to Starbucks when you travel you can sign up for T-Mobile wireless service that you can access from most Starbucks locations as well as many other places.

There are other wireless access points or "hotspots" in virtually any location. Intel provides a service for locating them at



<http://intel.jjwire.com/index.htm>. There are 43,000 and counting hot spots around the world including 28,000 in the United States, 200 of them free. There are 1,000 hotspots in New York City and one in Seligman, Arizona. You can even find one at the airport in Nairobi, Kenya. If you have access to a physical broadband connection through the network port on your laptop, the choice for connecting with your home or office is easy. GotoMyPC ([www.gotomypc.com](http://www.gotomypc.com)) allows you to replicate your home or office computer on your laptop. If your broadband connection is fast, GotoMyPC allows you to work on your distant computer just as if it were in front of you. It is a remarkable program that has received rave reviews. Because of the way GotoMyPC accesses your home computer it is technically very secure and clearly appropriate for everything but the most sensitive kind of work.

GotoMyPC requires that your home computer be turned on and booted up so if there is some kind of glitch like a power outage or other computer failure, you may not be able to access your computer until it has been restarted. You need to take that into consideration when planning your computer access needs during travel. I always have someone available in my home office who can reboot or repair my computer. So as long as I have broadband access it is like working there. You can even get a Web based fax service such as Intellifax ([www.IntelliFax.com](http://www.IntelliFax.com)) or eFax ([www.efax.com](http://www.efax.com)) which will allow you to receive faxes on your laptop or anywhere you can find an Internet connection.

I have even used GotoMyPC at airport Internet kiosks and it works well there if the kiosk offers sufficient high speed bandwidth. If you have access to a printer, GotoMyPC allows you to print locally just like home. GotoMyPC suffers as the bandwidth drops and at dialup modem speeds it is not usable

as a virtual replica of your home machine. It can, however, still function for the simple retrieval of information and other basic chores that do not require the full functionality of the home computer. Of course, if you are away on vacation instead of business you may not want your virtual office at all. You probably still want to stay in touch by email and here you have a variety of options. If you're still willing to lug your computer through airport security you can access your email by dialup modem. For years, I have kept my AOL account simply because there are so many available points of dialup access in the AOL network. It is hard to find a town of any size that does not have AOL access at a local number. Recently, however, AOL competitors have build networks that are at least as universal as AOL and in some cases provide even more local dialup numbers. Those competitors (Earthlink and PeoplePC) offer another feature that I scoffed at until I actually tried it. That feature is so-called "acceleration" software that lives on your computer that actually doubles or triples the speed of access to the Internet.

PeoplePC is considerably cheaper than Earthlink and I have found it to work very well. Both Earthlink and AOL are very aggressive about curbing popups, spyware and viruses for users of their service. There are allegations on the Internet that PeoplePC permits installation of spyware on your computer but PeoplePC itself denies that and I have been unable to find any spyware on my computer after using PeoplePC for more than a week. (If you decide to use PeoplePC and are concerned about spyware, you can find a workaround at <http://www.spysweeper.com/uninstall-peoplepc.html>.) Earthlink is,

of course, the old standby and has a long history of a high quality product and great customer service. Though it is almost twice as expensive as PeoplePC it is my choice for dialup software on my laptop. One of the reasons is that the accelerator software really works and makes a slow dialup connection almost bearable. One unintended benefit that I have found is that it speeds up slow DSL connections by a factor of four or five, even when the connection is not a part of the Earthlink system.

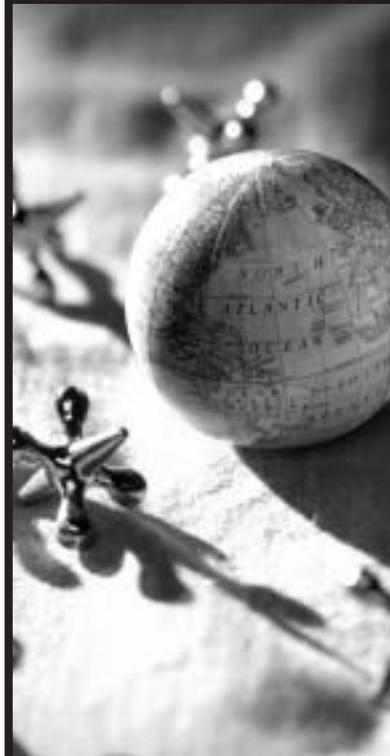
Finally, there are several "palm" type devices that claim to bring you interactive access to your calendar and email 24/7. I have looked at several of them and it seems that the Blackberry handheld device is far and away the one most lawyers prefer. It is expensive, but it does provide the total connectivity that many desire or need.

In the near future we will have complete access anywhere, anytime via satellite. We will have lots of choices then. On the other hand, Workaholics Anonymous ([www.workaholics-anonymous.org](http://www.workaholics-anonymous.org)) provides a wonderful 12 step program for those who cannot leave work behind that is cheaper and healthier than any of the choices mentioned here!

Have a wonderful summer and I will see you in the fall.

► 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 an electronic-litigation consultant. He welcomes questions and comments by e-mail 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). ■

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# Blawg, blog, blogger, blogging...

## Law blogs fast becoming valuable resource for attorneys

By Joan Dalton  
Maricopa Lawyer

The year 2003 was dubbed "year of the blawg" by a handful of technology savvy lawyers. For anyone unfamiliar with the vernacular, the term "blawg" is Internet slang for "law blog," just as the term "blog" is Internet slang for the phrase "Web log." A Web log is a publicly accessible Web page, the content of which is formatted as postings in reverse chronological date order. A person who updates a blog is a "blogger." When a person is "blogging" they are essentially keeping a journal on the Web. A blog may be focused on any number of topics and is frequently updated with commentary and links to other web pages.

Vernacular aside, blogs have rooted themselves on the Internet as both toys and tools. Amusing blogs are plentiful and attest to a desire of many individuals to journal their

thoughts, opinions, and musings as a form of self-expression. Examine, for example, the content of a posting from the self-proclaimed dullest blog in the world:

### Looking at a wall (dull, May 19)

I was standing quite near to a wall. I turned my attention towards it for a few moments. Having done this for several seconds I turned away from it and carried on doing something else.

Although law blogs (blawgs) are also forms of expression, they serve as useful legal tools as well. Blawgs can offer timely substantive news and analyses in a given legal practice area.

One of the premier law blogs for appellate practitioners is SCOTUSblog at <http://www.goldsteinhowe.com/blog/>. Attorneys interested in keeping up with the news, orders, and opinions of the United States Supreme Court can check in with this blawg, which is maintained by the

Washington, D.C. law firm of Goldstein & Howe. (Goldstein & Howe describe their firm as "the nation's only law firm devoted principally to litigation before the Supreme Court of the United States.") The following is a July 8, 2004 posting from SCOTUSblog:

### 11:53 AM | Marty Lederman

Link to this Post  
All Blakely, All the Time  
The folks over at USSGuide.com have created this amazingly comprehensive and helpful page at which one can find virtually all documents concerning the effect of Blakely on the Federal Sentencing Guidelines — judicial decisions, DOJ memos and briefs, articles, transcripts, e-mails, etc.

Also, Professor Berman's blog continues to be invaluable, as does this "Blakely Blog" run by Jason Hernandez, who describes himself as "a 3rd year law student at Columbia Law School whose Note is in serious jeopardy of entering the circular file following Blakely"!

Arizona's premier Web log for appellate practitioners is azapp, a law blog maintained by the Phoenix law firm of Osborn Maledon. This blawg allows Arizona lawyers to keep current with news and summaries of civil opinions emanating from Arizona's appellate courts.

Dan Kaplan, a lawyer at the firm, tuned into the idea of an Arizona appellate blog when he learned of Thom Goldstein of Goldstein & Howe (the two knew each other from Washington, D.C., where both clerked for D.C. Circuit Judge Patricia Wald) launching the SCOTUSblog. After talking with Goldstein, Kaplan and Osborn Maledon lawyer Taylor Young began drawing up plans for the firm's Arizona appellate blog (<http://www.azapp.com/>).

Kaplan and Young developed a process by which a group of lawyers at the firm take turns reviewing breaking blog material with the goal of having it summarized and posted on the blog within 48 hours. Proceeding cautiously with the understanding that maintaining a broad topic blog could prove burdensome to firm resources, they decided to begin by summarizing civil appellate case opinions only. However, the blog also links news from Arizona's appellate courts, news having to do with Arizona appellate opinions that are issued, as well as links to supplemen-

tal materials (e.g., statutes that might be referenced in a posting, or appellate briefs that are available in .pdf format.)

"Generally, if it's of interest to us, we figure it's of interest to anyone reading the blog," says Kaplan. A posting from Osborn Maledon's Arizona Appellate blog follows.

### Monday, July 12, 2004

Guenther & Drannan v. Allstate  
& Gaub: Division Two Issues  
Revised Opinion

Division Two has vacated its earlier opinion, described in this post, and issued a revised opinion, "in light of certain points raised" in motions for reconsideration filed by both sides. The disposition of the case remains unchanged.

Kaplan is encouraged by the feedback the firm has received since the appellate blog was launched. Some of the blog's users have commented that they check the blog daily for breaking Arizona appellate news. Although Kaplan notes that the azapp blog is "straightforward," in that it's "not a chatty discussion blog with a lot of commentary," the blog is nonetheless "a valuable resource for people interested in the goings-on in the appellate courts."

Law blogs that might be useful for other practice areas include:

- "How Appealing" at: <http://legalaffairs.org/howappealing/> (tracks new and opinions issued in federal appellate courts)
- "Statutory Construction Zone" at: <http://www.statconblog.blogspot.com/> (devoted to federal statutory construction)
- Rick Hansen's "Election Law" blog at: <http://electionlawblog.org/> (tracks election law, campaign finance, legislation, voting rights, initiatives, and redistricting)
- The "HIPPA" blog at: <http://hippa.blog.blogspot.com/> (describes itself as "a discussion of medical privacy issues buried in political arcana")
- "CharterSchoolLaw" at <http://www.charterschoollaw.com/blog/> (information for the charter school community)
- "The Trademark Blog" at: <http://www.schwimmerlegal.com/blog/> (Intellectual Property)
- "Disability Law" blog at: <http://www.jkevinmorton.com/> (Disability law)
- "Construction Law Blog" at: <http://fordblog.xdesign.ws/> (tracks news and commentary on legal cases, events and trends related to the U.S. construction industry)
- "The Securities Law Beacon" at: <http://www.securitieslaw.blogspot.com/> (securities law) ■



## PUBLIC DEFENDER

Class Code: 7515  
Salary: \$73,896 - \$146,806 (DOE)

Pima County is undergoing a complete revision and restructuring of its indigent defense programs to improve processes, data systems and efficiency. Two studies by the Spangenberg Group (case weighting in 2003 and a follow up review of indigent defense services in 2004) are the basis for this effort. The County is creating a Criminal Justice Coordinating Council to establish goals and address the systemic problems. Improved administration and implementation of new quantitative reliable workload standards in the Public Defender's Office will be among the first priorities of the Coordinating Council.

The new Public Defender will be a member of the Coordinating Council and serve in a leadership position in the criminal justice system. This position will be responsible for all of the statutory duties set forth in A.R.S. §11-584 performing work of unusual difficulty representing, defending, advising and counseling persons not financially able to employ counsel in criminal and other proceedings, in the Court of Pima County. In addition, this position is responsible for all assignments approved by the County Administrator or Board of Supervisors, and the organization and administration of an office of attorneys and staff.

Desired Qualifications: Graduation from an accredited school of law and six years of experience in criminal litigation, three of which must have been specialized in criminal defense and two of which involved supervisory or management responsibilities.

Licenses and Certificates: Admission to the Bar of the State of Arizona.

This is a management position in the unclassified service and is exempt from the Pima County Merit System Rules.

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# Investing for the future for small to mid-sized firms

*Editor's note: In a column new to the Maricopa Lawyer, a business expert will answer questions relevant to small to mid-sized law firms' business practices, both on a financial and management level.*

According to Barbara Barone, president of the Phoenix-based Biltmore Advisors, Inc., "attorneys are some of the most 'time-challenged' professionals." This means they do not always take the time to develop investment plans for themselves or their firms.



Barone

## ASK THE EXPERT

Based on her experience, Barone said the most critical financial questions for attorneys are: "How do I plan for the future, particularly retirement?" And once that decision is made, "How do I manage the money on an ongoing basis?"

"Although everyone intuitively knows that it is critical to begin saving for retirement as soon as possible," Barone said, "many professionals are overwhelmed by the details and postpone taking that first important step."

She then outlined the initial step is in

choosing a retirement plan as well as the investment strategy process that should follow.

**What type of retirement plan is right for me?**

The good news is that there are many types of retirement plans that are suitable for the solo practitioner or small to mid-sized law firm. There are several types of 401(k) plans, profit sharing plans, and IRAs. What works for you and your firm is determined by your specific circumstances. However, pre-tax contributions and tax-deferred earnings are common to virtually all retirement plans.

The benefits include reducing your income taxes by deferring a percentage of your compensation on a pre-tax basis into your retirement plan and investing your funds on a tax deferred basis. When you make contributions to a retirement plan, you benefit from lower income taxes immediately and defer taxes on the earnings until you begin to withdraw at retirement. A competent investment advisor can guide you to the right plan for you and your firm. Today's retirement plans are flexible, affordable, and easy to administer.

**Once I have determined what type of retirement plan is best for me, how do I decide the best way to invest my retirement dollars?**

Although every investor is unique because of his or her own fact pattern and preferences, it is important that you follow a disciplined investment process to assure that you develop and maintain a successful investment strategy.

Keep in mind that the investment strategy process is ongoing. It is also a blend of art

and "science." The "art" refers to the experience and intuitive skills of an effective investment advisor. Important characteristics of an advisor are the ability to listen effectively; understand his or her clients; clearly communicate the steps in the investment process; monitor the portfolio on an ongoing basis; and rebalance, or adjust the mix of asset classes, when appropriate. The "science" relates to the sophisticated techniques used to create the appropriate asset allocation (mix of investments, stocks, bonds, etc.), selecting investment vehicles and monitoring performance.

The investment strategy process should unfold in the following manner:

- Establish investment objectives: determine risk tolerance, time horizon, expected rates of return
- Develop investment strategy recommendations: identify the right mix of investments to meet your specific objectives
- Implement investment strategy recommendation: select the specific funds or managers to execute your strategy
- Monitor progress: review your statements and reports and contact your advisor with questions
- Reevaluate investment objectives: meet with your advisor at least annually to review investment strategy and objectives.

The steps in the process are logical, and when combined with competent professional advice, will provide you with an investment strategy that precisely meets your needs.

➤ Barbara Barone can be reached at 602-252-1556 or at [bbarone@biltmoreadvisors.com](mailto:bbarone@biltmoreadvisors.com), [www.biltmoreadvisors.com](http://www.biltmoreadvisors.com). ■

# Supreme Court asks for attorney comments to proposed rule changes

By Brian Cieniawski  
Maricopa Lawyer

Changes have been proposed to Arizona Rules of Civil Procedure 45(a)(3) and 45(b), related to subpoenas. Comments concerning these proposed changes are due to the Supreme Court by Aug. 20, 2004. One proposed change would explain that when a subpoena commands the appearance of a party at trial or at a hearing, fees and mileage would not need to be tendered. The proposed changes would not alter the existing rule explaining that a subpoena issued on behalf of the state or an officer or agency thereof also need not include a tender of fees and mileage. Another proposed change would require that copies of all subpoenas shall be served on each party in a case, rather than only pre-trial document subpoenas. A third proposed change would add language explaining that an attorney, as an officer of the court, may also issue and sign a subpoena. This last proposed change would allow attorneys to exercise the same power of subpoena, but would allow them to exercise it directly rather than through the clerk of the court.

## COURT RULES

The court also has ordered the petition circulated for comments any to adopt two changes to Arizona Rule of Civil Procedure 58(e). Comments are due by Aug. 20. The first proposed change explains that minute entries may now be sent to the parties by methods other than through the United States mail. The change would require the clerk to distribute copies of all minute entries either by U.S. mail, electronic mail or attorney drop box. Immediately upon the entry of judgment, the clerk must distribute a notice of the entry of judgment stating the date of entry to every party who is not in default for failure to appear and shall make a record of the distribution.

A second change proposed for Rule 58(e) would explain that notice of entry of judgment shall be accomplished by a specifically designated notice form, a minute entry or a conformed copy of the file stamped judgment. ■

## Ernest Calderón

*thanks Jennings, Strouss & Salmon, P.L.C. for a wonderful 14-year run, its friendship and its traditions. Que Dios los bendiga.*

*Ernie*

---

Mr. Calderón is pleased to announce the opening of

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(Effective August 1, 2004)

Mr. Calderón, formerly a partner with Jennings, Strouss & Salmon, will be joined by associate Nicole M. Seder, a 2001 graduate of Arizona State University College of Law and former law clerk to Arizona Court of Appeals Judge Patrick Irvine.

The firm will focus on employment and labor law, professional licensing, education law, administrative law, general business law, and civil litigation.

**The firm is now accepting referrals.**

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# 8 candidates for county attorney on September primary ballot

With the September primary coming up in just weeks, *Maricopa Lawyer* asked all eight candidates for county attorney for a short biography and position statement. Here, the candidates describe themselves and their qualifications for the job in their own words:

## Mike Bailey Republican

**Bio:** Mike Bailey moved to Arizona in 1987 when he enrolled at the ASU College of Law. After graduating in 1990, Bailey practiced civil litigation and spent four years as a college professor. He joined the Maricopa County Attorney's Office in 1998, and has been a member of both the Sex Crimes and Homicide Bureaus. He is on the teaching faculty of Prevent Child Abuse of Arizona. He is married and has two small children.



Bailey

**Position Statement:** Every candidate in this race claims distinguishing experience. Mine? I am the only candidate who specialized in the prosecution of the worst criminals — violent murderers, rapists, and child molesters. My experience notwithstanding, I'll be the first to admit that a candidate's vision for MCAO's future is determinative.

This race, being political, is intoxicated on illusory promises. Some candidates offer magical "task forces" that will end identity theft. Others will "stop illegal immigration," and "focus like a laser" on this, that, or the other. But there is no panacea. There are only so many trials in our arsenal. There are only so many prison and jail cells to fill. How do we divide a 30,000 case per year load among the 200 or so criminal division lawyers?

Having witnessed daily the damage to victims of the most serious crimes, and having seen the depravity of those committing these crimes, I contend that we must stop treating all crime equally. Our primary focus must be on those cases where people have been victimized with the loss of property, dignity, or life. Those cases comprise about half. The other half includes varied matters that are simple or victimless, such as minor drug offenses. Such cases must be prosecuted more efficiently. I hope to make this community safer by filling the prisons with those who most deserve it — those who are victimizing others. If you agree, I'd appreciate your support. If not, have I told you about my plan for world peace?

## Don Harris Democrat

**Bio:** After receiving his law degree at the University of Arizona, Don Harris volunteered for service in Vietnam. He was discharged from the United States Marine Corps as a Captain and later received the Navy Commendation Medal from the Secretary of the Navy. Upon his discharge, Harris was appointed



Harris

a deputy county attorney. In 1971, he entered private practice and remained there until he was called upon by the Maricopa County Board of Supervisors to take over as the Maricopa County Attorney in 1976.

Harris has served as unpaid magistrate for Paradise Valley for five years and as a Maricopa County Superior Court judge pro tem. He is the father of daughter Courtenay, an attorney in Chicago, and son David who is the Vice-Principal of a Tucson Charter School. Harris is also the proud grandfather of one-year-old Jonah Black.

**Position Statement:** A priority for my tenure as the county attorney would be the regaining of the respect of the office staff for the top echelon leaders and the giving back of loyalty and trust to the troops. The staff deserves this and the county attorney cannot expect loyalty from the bottom up if it does not first come from the top down.

Protection of the very young and old is a priority. Enhanced sentencing for criminals who prey on children and the elderly will be fought for by my office.

Consumer fraud has raged out of control and is near the top of concern for my office. The sophisticated criminal has access to too much information on our citizenry. The creation of a task force to implement a program to curb this flow of personal information is of paramount importance to me.

Finally, the legal system is floundering under the strain of minor drug related cases, which are subject to the diversion program. Therefore, prosecution of the less serious marijuana cases should be left to municipal authorities. Large fines for the repeat users would provide additional funding for the prosecution of more serious crime. It would also free up money and time to train major felony prosecutors for the more important prosecution of homicides, assaults, white collar criminals and dealers.

I will provide the leadership to protect our community.

## Jerry Landau Republican

**Bio:** Jerry Landau served the Maricopa County Attorney's Office for 24 years of his

29 year legal career as a trial attorney, division chief and special assistant. Jerry tried numerous cases, criminal and civil, and possesses a management and administrative background. A proven leader, Landau is the first Maricopa County deputy attorney to specialize in gang and vehicle homicide prosecution. He is a national expert and trainer in the prosecution of Vehicle Homicide and DUI.

Landau also has been the liaison to the state legislature and Arizona Supreme Court where he played an integral role in writing many criminal statutes and court rules such as victim's rights, domestic violence and Rule 15 disclosure. He is endorsed by Maricopa County Attorney, Rick Romley. He is married with a nine year old son.

**Position Statement:** Public safety and the ability of our families to live in a safe secure environment are paramount. However, emerging criminal activity and trends must be vigorously attacked.

I will establish a statewide identity theft task force encompassing the public and private sector to track down and prosecute these modern day thieves, work with victims to help them regain the financial reputation and educate business and consumers on how to prevent identity theft.

I plan to target crimes against our most vulnerable, our children and elderly. Sex crimes against children and financial fraud of our elderly will gain special attention.

Enhanced technology and efficiencies will be utilized to strengthen the ability of the County Attorney's most prized resources, its employees to do their job. Long term retention of employees is a major priority.

## Tom McCauley Republican

**Bio:** Tom McCauley has served the people of Maricopa County for his entire professional career. For 13 years

he fought the war on crime as a front line prosecutor in the Maricopa County Attorney's Office. While working in the Domestic Violence Unit, one perpetrator prosecuted by McCauley received the longest prison sentence in Arizona history for a first time felony offender convicted of stalking. In accordance with state law,



Landau



McCauley

McCauley left the County Attorney's Office in August 2002 when he decided to run for Maricopa County Attorney. He currently practices civil litigation with the Hassett Law Firm in Phoenix where he specializes in liability defense.

**Position Statement:** Of all the candidates, I am the only one who, until I had to resign to run, spent his entire career in the County Attorney's Office. I have more time as a front line prosecutor than any other candidate (at least twice as much as all but one opponent). I worked for eight years in a felony trial unit, three years in the Domestic Violence Unit, and two years in the Juvenile Crimes Unit.

During that 13 years I watched a decline in office morale and a drop in the experience level as veteran prosecutors left in high numbers. I saw middle management, and it accompanying micro-management, increase. Attorneys who had never tried a felony case were placed in supervisory positions over attorneys who were trying cases. The head of the training division, who was in charge of training attorneys, was not even an attorney. Of great concern was the use of the office as a tool to advance a political career and the creation of an office police force.

I was the first candidate to announce (November 5, 2003) at a time when the incumbent had not announced whether he would seek another term. I was prepared to run against the incumbent because change was essential.

I have the experience, vision, and dedication to make the changes necessary in the Maricopa County Attorney's Office. I will re-establish a high level of experience and return the morale to a high level. I want to make the office one of the most highly effective and efficient crime fighting organizations in the country.

## Andrew Pacheco Republican

**Bio:** Pacheco earned his juris doctorate from the University of Houston Law Center.

He has prosecuted criminals for both the Maricopa County Attorney's Office and the United States Attorney's Office. This experience includes directing criminal investigations at both the federal and state levels. It also includes leading investigations against such groups as the New Mexican Mafia. As a Deputy Maricopa County Attorney, Andrew joined an elite group of prosecutors who targeted violent street gangs and the worst repetitive offenders. As an Assistant United States Attorney, he worked as an Organized Crime, Drug Enforcement Task Force prosecutor where he worked with the Federal Bureau of Investigation's Violent Street Crimes Task



Pacheco

### Maricopa Lawyer classified ad categories

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  - **For sale** (real and personal property)
- To place a classified ad, call the MCBA office at 602-257-4200.

Force and the Drug Enforcement Administration to fight some of the most violent and harmful criminal organizations in the United States. Pacheco lives in Phoenix with his wife Jessica, and their three-year-old son.

**Position statement:** My top priorities as county attorney will be prosecuting the crimes associated with illegal alien smuggling as organized crime, fighting identity theft and consumer fraud crimes, and making sure those criminals who commit sexual crimes against children and women receive the maximum sentences allowed by law. My determination and commitment to fighting crime is second to none. This was never more apparent than when criminals threatened my life and the life of my family. I stood steadfast then and will continue to as the next county attorney.

## Rick Poster Republican

**Bio:** Rick Poster spent almost three years prosecuting criminal cases in Michigan where he prosecuted more than 2,000 cases. He also represented several counties at civil commitment hearings designed to help those who were in need of mental health treatment. After coming to Arizona, Poster joined the Maricopa County



Poster

Attorney's Office where he spent five years prosecuting criminal cases in several divisions including: research, pre-trial, check enforcement, information technology division, vehicular crimes, and juvenile crimes; reviewing and charging cases, and presenting grand jury investigations.

The bulk of Poster's time at the Maricopa County Attorney's Office was spent in trial. As a result, he earned a great deal of local trial experience, and the respect of judges, police officers, and defense counsel. After leaving the Maricopa County Attorney's Office, Poster spent a year in private practice representing a wide variety of criminal and civil cases, adding valuable experience to his background. Currently, Poster is in private practice where he has practiced criminal law exclusively for almost two years. In all, he can account for between 200 and 300 jury trials, most of which were felonies, for offenses up to and including homicide. He also is licensed to practice in federal court.

**Position Statement:** My mission is simple:

- Eliminate the policy manuals to allow the office staff to do their jobs.
- Organize the office to run more efficiently and eliminate wasteful spending.
- Create a fair pay structure to promote office stability and reduce turnover.

### Tell us!

Have you won an award?

Is your law firm involved in an interesting community project?

Send information for our People in Law column to *Maricopa Lawyer*, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or email to: [tbooth4@cox.net](mailto:tbooth4@cox.net).

## Andrew Thomas Republican

**Bio:** Andrew Thomas received his law degree from Harvard Law School. He has served as a deputy Maricopa County Attorney, an assistant attorney general for Arizona, deputy counsel and criminal justice policy advisor to the governor of Arizona, and the chief attorney at the Arizona Department of Corrections. Andrew helped draft and campaigned for the Stop Juvenile Crime Initiative, which was passed overwhelmingly by Arizona voters in 1996. At the Department of Corrections, Thomas helped lead a crack-down on prison gangs, and fought the U.S. Labor Department's attempts (during the Clinton administration) to force Arizona to pay the minimum wage to its inmates. He also fought activist federal judges who tried to impose prison law libraries and other questionable inmate "rights" on Arizona's prisons. He currently works for the law firm of Wilenchik & Bartness. Thomas and his wife, Ann, live in Phoenix with their four children.



Thomas

**Position Statement:** There are major challenges before us. In 2003, Phoenix set an all-time record for homicides. Maricopa County leads the nation in its rates of automobile theft and identity theft. I believe we need new ideas, energy and leadership to tackle these challenges

As county attorney, I will marshal the resources of the Maricopa County Attorney's Office to crack down on sex offenders and other violent criminals, illegal immigration, auto theft and identity theft, cyber-crime and Internet fraud, and fraud against seniors. Many of these crimes are skyrocketing across the Valley and demand special enforcement efforts. I also will use my experience as an attorney in private practice by representing county taxpayers in civil court. These and other cost savings will help keep county property taxes down. I'd be honored to put my experience in fighting crime to work for the people of Maricopa County. I'm a proud, law-and-order conservative and I'll stand up for the values that matter most in public office.

## Jonathan Warshaw Democrat

**Bio:** Jonathan Warshaw began his career as a Mesa police officer, then earned his law degree at Arizona State University. He worked as a deputy county attorney for more than three years before moving to private practice in 2003. He lives in Gilbert with his wife and three young sons.



Warshaw

**Position Statement:** The County Attorney's Office needs reform and it needs it now. The office has lost its way. It is governed by inflated egos that put divisive politics ahead of the relentless pursuit of justice against criminals on our streets. I will reshape the Maricopa County Attorney's Office into a lean, no-nonsense

# Plaintiff's questions for jurors make important impression

By Jack Levine  
Maricopa Lawyer

The jury selection process and the voir dire examination of jurors is the first opportunity that jurors have to form an impression of the attorney — an impression which may never change throughout the trial. Therefore, it is essential that you approach this task with confidence so that a good initial impression is made. You must feel comfortable with all questions put to the jurors so as not to make the jurors feel ill-at-ease. At the same time, you must persuade the jurors that some of their attitudes and beliefs should be shelved or modified in order for them to exercise their duties in a fair and impartial manner.

In personal injury cases, there is a prevailing cynicism among potential jurors that accident victims should not be paid for their pain and suffering, or that people who sue for injuries are feigning or exaggerating their injuries. These issues, as well as some of the more standard subjects, should be questioned. Here are some suggestions for exploring these concepts and opening a dialogue with the jury panel on issues that have become recurring themes in the courtroom.

1. I am sure that all of you have heard the term "proof beyond a reasonable doubt." That is the burden of proof in a criminal case. This is a civil case. In a civil case, the burden of proof is merely a preponderance of the evidence. Is there anyone who would require a higher standard of proof than that in this case?

2. Do you understand that if someone is negligent, that doesn't mean that they acted with the intent to injure anyone? It simply means that they were careless.

3. Do you have any disagreement with the law's requirement that a person who is negligent should be responsible for fairly and adequately compensating someone who has been injured because of that negligence?

4. Is there anyone who believes that a person should not be held responsible for the consequences of their negligence if that negligence injures someone?

5. Does anyone believe that tragedy is preordained; that it is God's will and therefore one shouldn't bring a lawsuit, for any reason. Does anyone hold that view?

6. Have you or anyone in your family, or in your circle of friends, ever sued or been sued?

7. As you know, no amount of money can restore one's good health. The only thing that our system of justice can provide in cases of this kind is an award of money to compensate those who have been injured for the loss of their health, for the loss of their ability to support their family, and the loss of the enjoy-

ment of life. How do you feel about awarding money for those kinds of losses?

8. Is there anyone who is suspicious of someone who sues for injuries?

9. Is there anyone who believes that people are getting large jury awards that they don't deserve?

10. In those cases where you recall hearing about someone receiving what appeared to be a large amount of money in an injury case, were you aware of the circumstances of the case, i.e. how badly the person was injured, the extent of their medical bills, whether they were ever able to return to work, whether they lost their home because they had no income and other facts which may have played a part in the jury's award?

11. Is there anyone who would be reluctant to award money to compensate a person who truly suffers injuries and has economic losses as a result of another's negligence?

12. Under our system of justice a party who negligently inflicts injuries on another is required to compensate the injured party for the loss of enjoyment of life that such injuries involve. If the evidence shows that my client's enjoyment of life has been diminished because of the defendant's negligence, would you have any reluctance in awarding damages for this loss?

13. Do you have any arbitrary limits in your mind as to the amount you would be willing to award someone who has been injured?

14. If the evidence indicates that my client is entitled to your verdict, would you have any hesitation to award damages for whatever losses are shown by the evidence to exist, even though it might seem to you to be a large amount of money?

15. Has anyone in your family, or in your circle of friends ever had an accident, illness or disease that resulted in a disability?

16. Have you or a close relative or friend ever worked in either the legal or health care field?

17. Have you, any members of your family, or any close friend ever worked as a claims adjuster or investigator?

18. Has anyone on the jury ever been under the care of a psychologist or psychiatrist, or had a family member or friend who was?

19. Is there anyone who does not believe that there is a close relationship between the body and the mind or does not believe that it is possible for an injury to the body to have an effect on the mind and for an injury to the mind to have an effect on the body?

20. Have any of you observed as a matter of general experience that there are some people who can withstand severe injuries with little pain or emotional consequences while

— See *Voire Dire* on page 14

operation with one mission in mind: make the Valley the safest county in America by being smarter and tougher than the criminals we prosecute. My opponents learned about crime in a college classroom. I learned about fighting crime the same place criminals are educated: on the street.

When an injury forced me to leave police work I went to law school and became a prosecuting attorney where my street experience helped win convictions. That's when I became convinced that in order to make Maricopa County as safe as it can for my family and yours, we must be both street tough and book smart.

As county attorney, I will start assigning

prosecutors to neighborhood clusters with the mission to create effective, working relationships with police officers, residents and business owners. We will create a seamless crime-fighting web of neighbors, police officers, and criminal prosecutors. Maricopa County prosecuting attorneys will know more about crime than what they read in a file folder. They will have an unprecedented knowledge of and respect for the communities they are sworn to defend. I also pledge to crack down on drunk driving, catch up with identity theft and protect seniors by prosecuting elder abuse crimes that have not received adequate time and attention. ■

## LEGAL BRIEFS

### Audio recordings of senate sessions now available.

Beginning with the 46th Legislature, 1st Regular Session, the Arizona State Senate Web site is posting audio recordings of Senate Standing Committee meetings and floor debates. To access the audio recordings, enter the Senate Web page from the Arizona Legislative & Information Service's home page (<http://www.azleg.state.az.us>). Then, once you're at the Senate's Web page (<http://www.arizonasenate.org>), click into "Audio Archives." ([http://www.arizonasenate.org/audio\\_archives.htm](http://www.arizonasenate.org/audio_archives.htm)). You will need to download the DSS Lite player to hear the recordings.

### Class of 2004 generous to ASU College of Law

The class of 2004 at Arizona State University's College of Law presented Dean Patricia White with a pledge check in the amount of \$35,850. Class organizers Doug Mangnuson and Paul Avelar began the pledge drive during their first year of law school.

White praised the initiative of the graduating students: "This gift shows the strong sense of gratitude and good will shared by our alumni."

The money will go to the Career Services Office, to be directed toward employment marketing for small and medium sized law firms. "That's what our classmates wanted," Avelar said.

### Brown & Bain joins forces with Perkins Coie

In July the law firms of Perkins Coie, known for technology-oriented legal services, and Brown & Bain, known for intellectual property litigation and complex commercial litigation, joined together to form a single firm.

"This is an incredible fit," said Bob Giles, Perkins Coie managing partner. "They supplement our strengths so that together, we will be among the very top firms in the country."

Perkins Coie, with 550 lawyers in 12 American cities and two cities in Asia, rep-

resents companies such as Boeing, Microsoft, Costco, Albertsons, Dell Computer, United Parcel Service and Weyerhaeuser. Brown & Bain, with 70 lawyers based in Phoenix, represents a broad range of companies, including Intel, Honeywell International, United Technologies, Phelps Dodge Corporation and America West Airlines.

"From the beginning, it was like looking at a mirror image of our firm, in terms of style, values and priorities," said Joe Mais, managing director for Brown & Bain. "Both firms have very talented lawyers who truly like practicing with one another."

In Arizona, the combined firm will be known as Perkins Coie Brown & Bain.

### Ethics training set for pro tem judges

A special half-day training session is scheduled for all lawyers serving as pro tem judges with the trial courts of Maricopa County. The session begins at noon and concludes at 5 p.m., on Friday, Oct. 1, in the Board of Supervisors Auditorium, 205 West Jefferson, Phoenix (on the west end of the Central Court Building Plaza).

The session is the annual ethics training that should be attended by anyone who is serving as a pro tem judge. Pro Tem Coordinator Kathryn Wallace is available to answer questions. Her direct telephone number is (602) 506-6826.

### The application deadline for pro tem judges is approaching

Applications to become a judge *pro tempore* for trial courts in Maricopa County are due Friday, Aug. 6. The required forms are available on the Internet at [www.superiorcourt.maricopa.gov](http://www.superiorcourt.maricopa.gov). Go to the index on the home page and scroll to pro tem judges, to find applications and additional information.

All current, existing pro tem judges have until Friday, Sept. 10 to submit a short, three-page application for the year 2005. Letters, with application forms, are being sent to attorneys on the active pro tem list to facilitate reapplication for the upcoming year.

Additional questions about requirements and appointment process can be answered by Pro Tem Coordinator, Kathryn Wallace, (602) 506-6826.

### Tell us!

Have you changed employment? Has your law firm named new partners?

Send information for our Legal Moves column to

Maricopa Lawyer, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or email to: [maricopalawyer@mcbar.org](mailto:maricopalawyer@mcbar.org).

# MCBA CALENDAR

This calendar includes all CLE seminars presented by MCBA as well as MCBA meetings, luncheons and events and those of other voluntary bar associations and law-related organizations. The divisions, sections and committees listed here are those of the MCBA, unless noted otherwise. Everything takes place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix; Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor; Bank One Building, 201 N. Central, Phoenix. For information about MCBA events or to register for any of the

AUG. 2004

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				

MCBA seminars, contact the MCBA at 602-257-4200 or visit [www.maricopabar.org](http://www.maricopabar.org).

### AUGUST 2004

#### August 2

- Maricopa Lawyer editorial board, 5:15 p.m.

#### August 9

- Young Lawyers Division, noon

#### August 10

- VLP Advisory Committee, noon
- Hayzel B. Daniels Meeting, 5:30 p.m.

#### August 11

- MBCA Executive Committee, 7:30 a.m.

#### August 12

- Personal Injury/Negligence Section Meeting, noon

#### August 16

- Paralegal Division board of directors, 5:30 p.m.

#### August 18

- \*Bench Bar Committee, 12:15 p.m., Central Courthouse

#### August 19

- MCBA board of directors, 4:30 p.m.

#### August 20

- Maricopa County Bar Foundation board of trustees, 7:30 a.m.

#### August 24

- Employment Law Section, 11:30 a.m.

#### August 25

- Criminal Law Section, 7:30 a.m.

#### August 26

- Estate Planning, Probate & Trust Section, 7:30 a.m.

## PEOPLE IN LAW

■ Richard Goldsmith, a partner with Lewis and Roca, has been elected to the board of trustees for the Phoenix Art Museum. Goldsmith is a past member and chairman of the Phoenix Arts Commission. He practices with the Lewis and Roca's business section and concentrates in the areas of finance, real estate, general contract drafting and alternative dispute resolution.

■ Bryan Cave attorney James T. Tucker, an adjunct professor at Arizona State University's Barrett Honors College, has been elected to a one-year term as president of the Barrett Honors College chapter of the Arizona State University Alumni Association and to a two-year term on the association's board of directors. The association has over 250,000 members. Tucker holds one of two college chapter representative positions. Tucker is a member of the Bryan Cave's labor and employment client service group.

■ Donald L. Myles Jr., a partner with Jones, Skelton & Hochuli, has been elected President of the Arizona Association of Defense Counsel (AADC). AADC is a non-profit organization composed of defense attorneys who practice in the area of civil defense



Goldsmith



Myles

litigation which is dedicated to the education of its members and increasing community awareness of positive aspects of the legal profession.

■ Stinson Morrison Hecker attorney Dave Selden



Tucker

was honored with the 2003-2004 Volunteer of the Year Award by the Arizona Chamber of Commerce. Selden was recognized for his service as chairman of the chamber's Employee Relations Committee, his frequent testimony on behalf of employers before the Arizona Legislature, his authorship of the landmark 1996 Arizona Employment Protection Act, his pro bono service as general counsel to the chamber, his membership on the chamber's board of directors, and his role in conducting employment law seminars and editing the chamber's 500-page book on Arizona employment law. ■

# Understanding trustee investment management responsibility

By **Brian Coughlan**  
Special to Maricopa Lawyer

With a mighty slash, the Arizona State Legislature postponed the new Arizona Uniform Trust Code until January 1, 2006. The new law, which was scheduled to go into effect January 1, 2004, was meant to be a guide for the uniform creation and administration of trusts, and to create a definitive statement of Arizona trust law. In the long run, trustee responsibilities will certainly not decrease, and most likely will continue to become more onerous for those serving in that capacity, so now may be a good time to review the investment responsibilities of a trustee.

Due to recent corporate governance issues, corporate fiduciaries have been faced with progressively increasing levels of accountability and liability. One consequence of this is ERISA's relatively new "prudent expert" standard (a tougher one than the "prudent man" standard that governs pension plan oversight). ERISA's new level of responsibility not only requires a fiduciary to act in a prudent manner, but also to act as someone adept at performing money management duties. This includes setting formal investment policy guidelines, having a formal set of processes and procedures in place for determining correct investment mix, reviewing holdings for suitability and performance, and maintaining a record of all decisions with regard to the plan. Fiduciaries that breach this responsibility may be held liable for any financial loss. As in the corporate arena, the recent proposed changes in trust law are placing more responsibility on individual trustees.

The rules that govern trustee investment responsibility can be found in Chapter 7 of Title 14, Article 6, of the Arizona Revised Statute. They state that a trustee who directs the investments and manages trust assets has a duty to comply with the prudent investor rule. The rule requires that an individual or corporation with the responsibility of overseeing a trust must provide a certain standard of care, and must understand and implement a specific portfolio strategy to ensure that risk and return objectives associated with the trust are met at all times. In addition, the trustee must take into consideration the purpose of the trust, whether that is to generate income, growth, preserve capital or a combination of the three, as well as the terms of the trust, distribution requirements and any other circumstances specific to the trust. The trustee must exercise reasonable care, skill, and caution, which often requires that they have a sufficient level of expertise to fill this role.

For large trusts, the necessary management and due diligence can become complicated.

As with any investment portfolio, the trustee should view the portfolio of investments as a whole, then take the time to understand the specific function of each investment and how it correlates with the goals of the trust. This is best performed by utilizing portfolio management software, frequently examining the portfolio's structure or asset allocation, and making the proper adjustments in allocation where needed to meet the specific needs of the trust. The

specifics of the UTC and prudent man rule require the trustee to synthesize an enormous amount of information on a regular basis. Trustees need to do more than review the investment portfolio at a single point in time. The portfolio allocation should be part of a larger overall strategy where the risk and return objectives correlate with those of the trust. Trustees are responsible for having up-to-date information with regard to risk tolerance levels, goals, and return objectives.

The actual investment management of the trust can take shape in several different ways. If the investments held within the trust are being managed by one of the trustees, that trustee is responsible for the implementation of the proper standard of care. If the trustee has the ability to hire a qualified investment adviser, a professional money management firm may also advise the trust. Accordingly, either trustee or manager must have breadth and depth of experience and knowledge when managing investment portfolios. Evaluating individual investments to ensure a proper fit takes time, care, patience, and above all, experience. According to the Arizona code, when making changes to a trust's portfolio, trustees are required have the following knowledge:

- ▶ Understanding of general economic conditions
- ▶ Possible effect of inflation or deflation
- ▶ Expected tax consequences of investment decisions or strategies
- ▶ The role that each investment or action has within the overall trust portfolio
- ▶ Expected total return from income and capital appreciation
- ▶ Other resources of the beneficiary
- ▶ Need for liquidity, steady stream of income or capital appreciation
- ▶ An asset's special relationship or special value

The ability to bring together these various requirements is often out of reach for individuals, as their ability to access analysts and independent research is often limited. Without this access, the ability to verify com-

pany facts and financials places a trustee in the precarious position of making investment decisions based on inferior or incomplete information.

The current code gives trustees an important responsibility with regard to the investment management of a trust portfolio. Trustees take on the role of a fiduciary, much in the same way as a board of directors oversees a corporation. As we have seen in the wake of corporate scandals, fiduciaries of all types have come under increased scrutiny with regard to the actions they have taken, and are facing increased levels of liability. With this in mind, it would be wise for trustees to ensure that they have the proper understanding and experience if self managing a trust, or engage a professional manager. The trustee should position him or herself like the CEO of a company, whose prime responsibility is to ensure that each part of the organization runs smoothly. This responsibility includes hiring the most suitable people to perform specific tasks, in this case, the money manager and custodian.

Typically a trust company, bank or brokerage firm would act as custodian, and the trustee would either use the in-house investment group at the custodian (if offered) or bring in an independent professional money management firm. The ability of the trustee to separate these functions is powerful, as it

helps avoid conflicts of interest, and ensures that the best firm is hired to perform each task. Should a relationship or service levels deteriorate with the money management or custodial functions of the trust, a change to that one function can be made without changing everything. Thought should also be given to successor trustees and beneficiaries in regard to the flexibility they will have to ensure that trust assets are properly managed and used.

▶ **Brian Coughlan** is a portfolio manager with Stellar Capital Management ([www.stellarmgt.com](http://www.stellarmgt.com)), a private money management firm, and an adjunct professor of finance at the Keller Graduate School of Management. ■

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# Family law attorney enjoys fruits of following her dream

By Kathleen Brieske  
Maricopa Lawyer

Like many children, Amber Mied knew from a young age what she wanted to be when she grew up — an attorney. What set her apart was that she also knew exactly what kind of attorney she wanted to be: a “custody lawyer.” Today she says that what drew her to that particular area of practice is the emotional dynamics that family law provides. Now 31, she is living out her childhood dream as a successful family law attorney in her own boutique firm.



Mied

After receiving an undergraduate degree from Calvin College in Grand Rapids, Michigan, Mied went on to earn a law degree from San Francisco's Golden Gate University. She began practicing at a large law firm in California's Bay Area and scaled back in firm size thereafter. After working at a mid-sized firm, Mied decided to start her own practice.

An Arizona resident since 2001, Mied currently practices in both states, with offices in Scottsdale and Los Angeles. She focuses solely

## MCBA MEMBER PROFILE

on family law, but her firm, Mied Law Offices, also includes an attorney who specializes in tax law, estate planning and asset protection.

Her move to small practice was due in part to the type of clients she was working for in a large firm setting — the corporate “absentee clients.” Mied wanted something more personal, where attorney-client relations were based on consistent interactions. And although a former boss gave her the teasing parting advice of “be careful what you wish for,” she has not looked back.

The satisfaction Mied receives from being the owner of a small law firm lies in being in control of her own destiny — she decides who she works with, both on a client and employee level, as well as when and how much she works.

“There is no reason not to enjoy my career,” Mied said.

As if running a law firm is not enough, Mied belongs to the Maricopa County Bar Association, serving as chair of its Lawyer Referral Service program, in addition to being an active part of the State Bars of Arizona and

California and the Los Angeles County and Scottsdale Bars.

Still new to the Maricopa County when she joined the Lawyer Referral Service, Mied wanted to network with other attorneys from various areas of law as well as perform community outreach. Because she was fortunate to begin her practice with a strong client base, she “did not initially use the program as a marketing tool or as a way to secure new clients.” However, the program did become a tool for client development on its own and now provides Mied with a number of valuable clients each year.

Mied is quick to point out the perception that a lot of attorneys have about the Lawyer Referral Service is not accurate.

“Contrary to the perception that only the less fortunate use the service, I have found out a lot of clients choose LRS because of its confidentiality factor as well as the convenience of matching client and attorney by location,” Mied said. She also noted that there is no administrative work involved on the attorney's end.

“It requires no work and you can opt when to take clients and how many you want—how much simpler can it get?” she added.

When asked what her formula is for being such a successful attorney, Mied provided

some insightful advice. The number one priority is a strong commitment to each and every one of her clients. Mied does not use a shared approach to working on cases, and although at times she can feel thinly stretched, the payoff of giving clients her full attention is huge.

Mied also believes in “spending a lot to make a lot.” Even when she was just starting off, she put sufficient money into building a quality staff and attaining valuable resources. “Not being afraid to spend money initially is what allowed me to succeed in the long run.”

Her innate sense of business management does not hurt her practice either.

“I recognize the practice of law is largely an operation of business which requires complex strategies to keep it up and running.” Her experience at larger firms taught her that knowing how to run a business is equally as important as knowing how to practice law successfully. Mied says she currently puts 60 percent of her focus on the legal side and 40 percent on the business side.

She is so satisfied with where she is in her career, that when asked where she sees herself in ten years, Mied envisions herself continuing practicing family law within her own firm, just on a more efficient scale: “I intend to become a certified specialist in family law in the near future as well as to limit my practice to post-decree matters, particularly child custody modifications which arise after the divorce is completed.”

For Mied, being able to control her own destiny and gaining professional and personal satisfaction with every aspect of her career is not something is going to let go. ■

## Arizona's health care directives registry will help attorneys better serve clients

By Denise McClain  
Special to Maricopa Lawyer

If your client was involved in a medical emergency and could not ask for the type of medical treatment he or she wanted (or did not want), would the client's loved ones or medical team know what his or her wishes were?

Recent legislation in Arizona creating an Advanced Health Care Directives Registry could spare your clients the agony of expensive, intrusive, or undesired medical treatments by granting certain persons instant access to copies of documents concerning

their medical desires. And the best part is that it will not cost your clients a penny.

It is likely that you have heard the sad stories of Nancy Cruzan (from Missouri) and more recently, Terri Schaivo (in Florida) — both situations involve young women who were kept on life support machines while they remained in persistent vegetative states for years. Heart wrenching stories such as these certainly highlight the fact that everyone, not just older members of the population, needs to have a living will and a medical power of attorney. These documents set forth the individuals' particular wishes concerning their medical quality of life and their right to die.

As an estate planning attorney, many people come to my office prepared to discuss issues regarding the transfer of their assets when they die. Many do not expect that the conversation will turn into a series of “what if” questions about what they would want to have happen if they were brain dead and hooked up on life support. I believe it is critically important that my clients tell their loved ones what their wishes are concerning their medical care in the event that they cannot act for themselves. Because of this, I draft health care power of attorney instruments and living wills (sometimes called “advanced directives” or “health care directives”) as a matter of course for my clients. I do not want any of them, or their families, to be the subject of another Terri Schaivo-type story.

Although signing an advanced directive is

— See *Directives* on page 16

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# LEGAL MOVES

■ Susan B. Court and Eduardo J. Celaya have been made partners in Winsor Law Firm. Court (J.D. 1977, Brigham Young University) concentrates her practice in education law, estate planning, probate and general business law. Celaya (J.D. 1992 ASU) concentrates his practice in immigration, international law and employment law.

■ Gust Rosenfeld announced the addition of Raul Abad, who practices in the area of creditors' rights and related litigation, includ-

ing Chapter 7 and Chapter 13 bankruptcy matters and trustee issues. Abad (J.D. 2002 John Marshall Law School) is admitted to practice in Illinois and Arizona.

■ Lynda R. Rupp has joined Lewis and Roca as of counsel in the firm's construction practice group. Prior to joining Lewis and Roca, Rupp (J.D. 1995, New York University) was a litigation associate in the Phoenix office of Greenberg Traurig.

■ Court S. Rich has joined Jordan Bischoff McGuire Rose & Hiser as an attorney specializing in real estate and land use matters. Rich was previously an attorney with Nearhood Law Offices, serves as pro bono counsel for the Institute for Justice and is an associate scholar at the Goldwater Institute for property rights.

■ Lewis and Roca has named six attorneys as partners: W. Todd Coleman, Troy P. Foster, James T. Giel, Michael T. Hallam, Thomas J. Morgan and Maria E. Spelleri. Coleman (J.D., ASU) practices with the firm's commercial litigation, intellectual property and construction groups. His practice also includes commercial landlord/tenant litigation, telecommunications litigation, representation of brokers-dealers in NASD arbitrations and general contract law. Foster (J.D., ASU) is a member of the firm's labor and employment practice and focuses on the defense of employers in Title VII, ADEA, ADA and similar claims. Giel (J.D., Temple University) is a member of the firm's business group where his practice is primarily focused on public finance. Hallam (J.D. University of North Carolina) practices with the firm's government and regulatory and intellectual property groups. On the regulatory side, he represents telecommunications providers, electric and gas utilities, and water and wastewater



Abad



Celaya



Coleman



Court



DeSandro



Foster



Gerchick



Giel



Hallam



Morgan



Rupp

utilities. Morgan (J.D., University of Oklahoma) practices with the business section in the areas of securities, corporate and tax law with an emphasis in public and private securities offerings, mergers and acquisitions, regulatory industry compliance and commercial transactions. Spelleri (J.D., Boston University) is a member of the firm's corporate group with a concentration in municipal and project finance. She has experience in a variety of financing structures including, revenue bonds, refundings, letter of credit transactions and in related areas of state and federal securities and tax law.

■ Nathan Andersen has joined Burch & Cracchiolo as an associate. Andersen (J.D., Brigham Young University) focuses his practice on land use, zoning, administrative law, real estate law, civil appeals, and real estate litigation.

■ Brad DeSandro has joined Lewis and Roca as of counsel. DeSandro is a patent attorney and will join the firm's intellectual property practice. Prior to joining the firm,

DeSandro (J.D., Regent University) was a managing attorney with the northwest law firm, Lee & Hayes, where he focused on software patents.

■ Cari Gerchick, an attorney with the Clerk of the Superior Court's Office, has been named chief deputy of the office. She will continue to coordinate legislative, media and policy issues for the clerk's office. Gerchick currently serves as president of the Maricopa Chapter of the Arizona Women Lawyers Association and recently chaired the State Bar of Arizona's annual convention. ■



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## Voir Dire...

Continued from page 9

other people can suffer a lesser injury and yet suffer severe pain and emotional consequences?

21. Is there anyone who feels that they would have little patience for those who have a low threshold for pain or who have a weak emotional structure?

22. Is there anyone who believes that he or she would have difficulty in awarding damages for an emotional injury if the evidence warrants it?

23. Knowing what you do about this case, if you were in my client's place, would you feel comfortable having a person like yourself, with your feelings, beliefs and attitudes sitting on a jury to decide a case such as this?

24. Our system of justice is the best in the world because it permits a case such as this to be resolved in a fair and impartial way. If, for any reason, you believe that you may not be able to be totally fair to either party in this case, I assure you that you will have the esteem and respect of the court and the parties for your honesty and your fairness if you tell us that because of your feelings or convictions you should not serve as a juror in this case.

► Jack Levine is a past president of the Arizona Trial Lawyers Association and a past chairman of the Trial Practice Section of the State Bar of Arizona. He practices in the areas of personal injury, employment law and family law. ■

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## OPINION

*Maricopa Lawyer and the MCBA do not necessarily endorse the views expressed by contributors*

# Lincoln advised lawyers to discourage litigation, become peacemakers

**By Mark A. Winsor**  
Maricopa Lawyer

I have been taught all my life to be a peacemaker. My mother's voice still rings in my memory: Remember the golden rule and do unto others as you would have others do unto you; blessed are the peacemakers; and, get off your little brother and stop making him cry. As the years have sped by it has been increasingly clear to me that being a peacemaker isn't easy. In fact, avoiding or resolving a dispute between two parties can be tremendously complicated and tricky.

Our society provides wonderful opportunities to explore different needs, benefits, opinions, desires and objectives. One person's challenge becomes another person's opportunity. I wouldn't have it any other way. I wonder, however, if society has crossed the line of imbalance in its attempt to balance opposing objectives using the advocacy system of justice.

In my view, a system that could create fair resolution to any dispute would be ideal. Although I am sure many people believe our system of litigation is designed to bring such fair results to disputes, I don't buy it. One of the attorneys I chose as a mentor when I was a law clerk told me the courts were not interested in exacting justice for a wronged plaintiff, but instead merely wanted to resolve the dispute as quickly and efficiently as possible. I do not know if he was right, but I have discovered that sometimes one person's justice is another person's injustice. It seems that even more often, a dispute taken through litigation results in injustice to every party involved.

Do not misunderstand, my point is not to replace our system with some impossible dream of harmonious litigation. I personally like our system and believe it to be the best in the world. As long as we have dishonesty, bullies, greed, insurance companies and the litany of other imperfections in society, our system works just fine. But again, I wonder if we are crossing unhealthy lines by blatant misuse of litigation and the courts.

I don't claim to have all of the answers, but I have found that developing a peacemaking attitude, desiring to avoid and discourage litigation, helps more people when the dust settles in the end.

I love old books. I was recently reading in an old book published by The World Publishing Company in 1942 titled *The Wit and Wisdom of Abraham Lincoln*, edited by H. Jack Lang. It is a wonderful book. One of the entries in the book was "Notes For A Law Lecture" prepared by Lincoln for a contemplated lecture in about 1850. The following is an excerpt from those notes.

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time.

As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it.

My personal experiences confirm Lincoln's wisdom. I remember a number of years ago two siblings sat in my office furious because their cousins had created a trust for their aunt weeks before her death which con-

veniently superseded a will and changed beneficiaries from my clients to the cousins. My clients wanted justice. They did not need the money and persistently exclaimed their only desire was to get the wrongfully gained assets from their sneaky cousins, even if it cost them all of their inheritance to do it. It was interesting how their attitudes changed over the painful course of litigation. Discovery yielded beneficial fruit with evidence of mental incapacity, duress and exploitation. But the nasty side effects of litigation gradually took hold, corrupting any sense of obtaining perceived justice. In the end, we were able to "split the baby" with a settlement that then gave rise to unjustified complaints about attorney fees and how little inheritance was left for our two swords-of-justice clients. We were all reminded again that revenge is not really that sweet.

I personally believe there is an internal moral price paid with most litigation. Certainly, each situation is different, and at times the easiest settlement is obtained through aggressive litigation. A quick reality check leaves us without easy lines to draw in decisions related to pursuing litigation. An individual attorney can, however, resolve to follow Abraham Lincoln's counsel to be a better peacemaker. Most of us profess a desire to improve the communities' perception of attorneys. Yet far too many lawyers approach litigation with attitudes and tactics far removed from Lincoln's "discourage litigation" approach. I agree with Lincoln; being a peacemaker does give the lawyer a superior opportunity of being a good person.

We can always use more good people. ■

## A farewell to Judge Sticht

Dear Editor,

On June 2, 2004, the Honorable John R. Sticht passed away. We are but four lawyers out of the thousands who appeared before him in his judicial career. Our most significant appearances before him were as opponents in a complex case tried in three parts for over 17 weeks. The manner in which he presided over the case fostered professionalism and cooperation among counsel, and earned him our admiration and deep respect.

During that trial, he struggled to stay on the job and to finish his tasks while facing enormous health problems. He was hospitalized not once during trial, but twice. Before the second occasion, he briefly attempted to conduct trial from a prone position so that he could continue to breathe which he could not do sitting up in his wheelchair. When that did not work, he

### LETTER TO THE EDITOR

finally consented to adjourn the trial and to seek medical care.

This was a judge who treated every lawyer with respect. On motion practice he showed courage and tenacity. Reading was difficult for him because of his struggles to simply turn a page. Yet, he read every word of the motion papers prior to argument and often knew what the lawyers had written better than they did. There are so many things we tend to take for granted. Judge Sticht took nothing for granted and always searched with diligence for the right answer. During oral arguments he asked perceptive

questions and then "faced" the lawyers with his decisions by dictating his rulings in front of them. As he did so, he often fought for air in order to dictate clearly.

There was a goodness about this judge. Arguments often went on long, in chambers and at the bench, because he wanted to be sure that every aspect of an issue was considered before he ruled, and to make sure that each side felt they had been fully heard. He was never afraid to rule, nor to stick to his guns when he did rule, but he wanted to be sure that advocates (and their clients) had a fair chance to make their case.

John Sticht was a fine judge. He was also a kind man; perhaps the nicest that many of us will ever know.

*Sincerely,  
Brian Michael Goodwin, Lori Berke,  
Burt Kinerk and Karl Lautz ■*

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## Directives...

Continued from page 12

important, this executed document is of no value if it is not readily available to the people who will need to read it and use it when "the time" comes. Keeping a living will or health care power of attorney in a desk drawer or in a locked filing cabinet will not prove helpful to medical personnel or loved ones in the event of a medical emergency. Up until now I have advised my clients to give copies of their advanced directives to their doctors for placement in their medical files, but with the new legislation, my advice to them will change. I will now encourage them to register their living wills and medical power of attorney instruments with the Arizona Secretary of State's office in the new Health Care Directives Registry.

In May of 2003, the 82nd Arizona Town Hall recommended that Arizona create a centralized registry for health care directives. One short year later, due to the efforts of Secretary of State Jan Brewer, State Representative Deb Gullett, University of Arizona Medical Center Dean Dr. Merlin

"Monte" DuVal and elder law attorney Chick Arnold, Gov. Janet Napolitano signed House Bill 2172 creating the Arizona Health Care Directives Registry, scheduled to be online later this year.

The statutes concerning the registry will be located in Article 7 of Chapter 32 in Title 36. The registry will work as follows: After a person executes his advanced health care directives, he sends copies of the documents to the Secretary of State's office. The documents will be scanned into the secretary's system, and a printed record of the scanned document will be sent back to the applicant for review. The person will also receive a wallet sized card containing a file number and a confidential password. The person will review, sign and return the printed record confirming that the information contained is correct. Once the confirmation is received by the Secretary of State's office, the file number and password on the wallet card will be activated.

"Security and accuracy are two important keys to the registry," said Brewer. Gene Palma, the director of business services at the Secretary of State's office (the division which will oversee the registry), added, "it is the

applicant who has the personal responsibility to be in charge of what goes on the system and who can access his documents."

Individuals can give their individual file numbers and passwords to anyone they want to have access to their health care directives. Such people might include their doctors, attorneys, agents, family members, or trusted neighbors. When needed, these people enter the access code and password in the registry's Web site, and obtain copies of the directives via the Internet.

The hope is that instead of fumbling through a pile of papers trying to locate a person's health care directives in the case of an emergency, the medical team or family members will find the card in the person's wallet or purse and be able to obtain copies of the person's documents immediately. DuVal pointed out that one great feature of Arizona's online registry is that people can access copies of their directives even if they are out of state when a medical emergency occurs.

In addition to giving people peace of mind that their health care directives will be followed, Arizona's new registry will be free to everyone who wants to participate. What?

No fee? How is that possible? The registry will be privately funded. When the details of the registry were discussed, private funders, such as Hospice of the Valley, stepped up to the plate by pledging to assist in the funding of the registry. Brewer praised the hospice, stating that "it is wonderful that the medical community, the people who are dealing with these emergencies, are willing to put up the money so that there will not be any barriers for people to use the registry and everyone can participate."

Arizona is the first state in the nation to have a free, privately funded, advanced directives registry. (North Carolina is currently the only state that has a registry, however, a fee is charged to submit each document.) Certainly Arizona's registry will be a model piece of legislation for the entire country.

Do yourself a favor: execute a living will and medical power of attorney today and register them. Then advise your clients, parents, and friends to do the same. When the time comes, you (and they) will be thankful that you took the time to do so.

► Denise McClain is a trusts and estates attorney with Quarles & Brady Streich Lang. ■



Art: *Turning Clouds* by Ed Mell

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