

MARICOPA LAWYER

Volume 22 • Number 1

Official Publication of the Maricopa County Bar Association ■ www.maricopabar.org

January 2002

'Life should be a circus'

*Magician, lawyer
Bob Bluemle plans
to clown around
in retirement*

By Terri Zimmerman
Maricopa Lawyer

Harry Potter might be envious of one magical Valley lawyer's plans for the new year.

Robert L. Bluemle, a veteran Phoenix lawyer, is trading in his vested raiment as an attorney for a wizard's robe and the Valley's hot summers for the East Coast cold winters as he returns to a magical life, not in Hogwarts but in Vermont.

Bluemle is a formidable individual who has been the leader and driving force in the numerous and distinct activities in which he has been involved, ranging from being a performing magician to heading a winery to practicing law.

This month, Bluemle, who retired from practicing law last year, will move to Vermont to be closer to his 3-year-old grandson and his two daughters. He already has been named to the faculty of the Flynn Center for the Performing Arts, where he will teach magic to 10- to 15-year-olds. He will resume his career in performing magic and mentalism, playing a street organ and demonstrating his flea circus, "Jason and the Golden Fleas," in which he, dressed as a ringmaster, will preside over his fleas, who walk a tightrope holding an umbrella, fly on the trapeze, are shot from a cannon and sign autographs.

When asked why he was adopting such a radical change in lifestyle, Bluemle said, "Because life should be a circus and it is time for me to clown around before I take my final bow."

Admitted to the bar in 1959, Bluemle is almost a native Arizonan, having attended Kenilworth Elementary and North Phoenix High schools before receiving a bachelor's degree, with distinction, and an MBA from Indiana University and his law degree from the University of Michigan.

The magic bug bit Bluemle when he was 10. By the time he was in high school he was touring as a comedy magician with a mentalist and ventriquist and later as a magician's assistant with Dr. Dracula's Den of Living Nightmares, a spook show of the late 1940s.

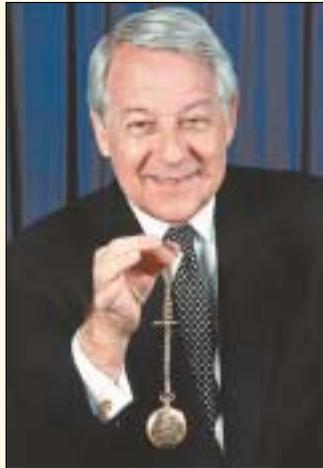


PHOTO COURTESY ROBERT L. BLUEMLE

Bluemle paid his college expenses by performing magic shows. He performed on several tours of the Southwest with other entertainers and then on a collegiate U.S.O. tour of Korea and the Far East with one other man and 27 women. It was, he professed, "the best summer of my life."

He then served as an attorney and financial analyst with the U.S. Securities and Exchange Commission in Washington, D.C., marched in the inaugural parade of President John F. Kennedy, married an actress he met in New York City and temporarily put aside his magic wand.

He returned to Phoenix in 1961 and practiced law for 40 years. During that time he served for 18 years as chairman of the State Bar of Arizona's Committee on Securities Regulation and was the founding chairman of the State Bar's Securities Law Section. He also served as president of the Scottsdale Bar Association and as Arizona head of Furth, Fahrner and Bluemle, a national law firm based in San Francisco.

Along the way, he was president of Chalk Hill Winery in Sonoma County, Cal., for 10 years and hosted a cable television talk show, "Law Talk," for five years. He hosted his own television show in the early 1950s on KPHO-TV (Channel 5), was a film critic for *Phoenix Magazine* for three years and produced a successful play in the Bay area.

At some point, magic again infiltrated his life. He found time to travel to more than 100 countries, performing magic in each as

— See **Bluemle** on page 3

Premeditation without actual reflection makes illusory benchmark

By Daniel P. Schaack
Maricopa Lawyer

Premeditated, first-degree murder requires premeditation, doesn't it?

The answer to that seemingly simple question is a bit tricky in Arizona, as Division One of the Court of Appeals recently learned when it grappled with the case of a man who murdered his wife. *State v. Thompson*, 359 Ariz. Adv. Rep. 5, No. 1 CA-CR 00-0439 (App. Oct. 15, 2001).

In Arizona, first-degree murder usually requires premeditation: "A person commits first degree murder if...[i]ntending or knowing that the person's conduct will cause death, the person causes the death of another with premeditation." A.R.S. § 13-1105(A)(1). By statute, premeditation "means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection." A.R.S. § 13-1101(1).

Although the statutory definition does not, by its own terms, require actual reflection, that requirement has been imported by judicial gloss. In *State v. Krepis*, 146 Ariz. 446, 706 P.2d 1213 (1985), the Supreme Court held that first-degree murder required that the defendant have formed a plan to kill the victim after "deliberation and reflection." It reiterated this holding in *State v. Schwarz*, 176 Ariz. 46, 859 P.2d 156 (1993), when it noted that "[i]n addition to intention or knowledge, premeditation requires reflection."

The Court of Appeals echoed this sentiment in *State v. Ramirez*, 190 Ariz. 65, 945 P.2d 376 (App. 1997), when it reversed a conviction because a jury instruction failed to specify actual reflection must occur.

The Legislature subsequently acted to overrule *Ramirez*. In 1998 it amended A.R.S. § 13-1101(1) to specifically provide that "[p]roof of actual reflection is not required" Thus the quandary: to get a conviction for first-degree murder under A.R.S. § 13-1105(A)(1), the state must prove "premeditation" but not "reflection."

Larry Thompson brought this situation to the fore when he was indicted for first-degree murder after he shot and killed his estranged wife. He admitted the killing but claimed that it was not premeditated so he was guilty only of manslaughter or, at worst, second-degree murder. The jury convicted him of first-degree murder, and he was sentenced to life imprisonment.

On appeal, Thompson argued that by removing the need to prove actual reflection, the Legislature had obliterated any distinction between first- and second-degree murder and that the first-degree murder statute was vague and therefore violated due process. A majority of the court agreed.

Judge James B. Sult, joined by Judge Cecil B. Patterson Jr., held that the Legislature, by amending A.R.S. § 13-1101(1) as it did, removed actual reflection from the elements of first-degree murder. "[T]he Legislature could

— See **Courtwatch** on page 5



Martone exchanges state's high court for federal trial bench

The search is expected to begin soon for a new member of the Arizona Supreme Court as Justice Frederick J. Martone moves down the street to the federal courthouse.

The U.S. Senate confirmed Martone Dec. 14 to replace U.S. District Court Judge Roger Strand, who is retiring.



By late December, it was unknown when Martone would leave the Supreme Court and take his new federal position. The Arizona Commission on Appellate Court Appointments cannot solicit applicants to replace him until he gives Gov. Jane Dee Hull his resignation.

Martone, 59, was appointed to the Supreme Court in February 1992 by former Gov. Fife Symington. He previously had served for seven years on the Maricopa

— See **Martone** on page 3

New year (whew!), new board members, new staff and...more volunteers?

By Mike Jones
MCBA President

Happy New Year, everyone! I'm sure you will join with me in wishing that 2002 is a better year than 2001.

In 2001 we all were faced with unprecedented challenges to our economy, national security and peace of mind. In these difficult times, it is more important than ever to support, protect and preserve our system of justice.

The Maricopa County Bar Association is pleased to welcome four new members to our board of directors:

► **Leslie Davis**, a sole practitioner, will wear multiple hats this year as she not only joins the board but also continues to chair the Family Law Section for the third year.

► **Jay Zweig** of Gallagher & Kennedy



is new to the board but has volunteered at the MCBA for many years. Jay was a founding member of the Litigation Section and last year's chair of that section.

► **George Chen** of Bryan Cave joins us this year with new ideas and an excellent track record in civic service. He has been a leader in the Asian American Bar Association and donated many pro bono hours to Community Legal Services and the Florence Immigration Project, to name just a few.

► We also are pleased to have my Superior Court colleague, **Judge Louis Araneta**, join the board. He has been a member of the bench since 1989 and brings a wealth of experience in all areas of the law. We hope to continue our civic and educational programs with the bench and bar, and learn from his insights.

Finally, we are pleased to have **Terri Zimmerman** returning. Terri is the only incumbent who was re-elected, and she has been an active member of the board for two terms. She also has been an active member of the *Maricopa Lawyer* editorial board for more than a decade. No doubt you've seen her photographs, which appear regularly in this publication. Terri is back by popular demand.

We are having a ball...the Barristers Ball, that is! On Feb. 9 we host our *ninth* Barristers Ball and Silent Auction at the Camelback Inn Resort. This year's beneficiary is The Center for Habilitation, which works to help empower Arizonans with disabilities. The ball is a wonderful and fun black tie dinner and dance (with a live band) that you don't want to miss. The theme this year is Mardi Gras. The auction always includes artwork, golf packages, spa visits and weekend getaways at prices that are a bargain. Tickets are \$100 per person or \$1,000 per table. The Young Lawyers Division is working hard to find sponsors and auction donations. If you would like more information about the ball, becoming a sponsor or donating items, please contact Shane Clays, MCBA YLD director, at 602-257-4200, ext. 111. Come on out and have a ball and help raise funds for a good cause at the same time.

The MCBA is pleased to welcome several new members to the bench. On Jan. 30, the Maricopa County Superior Court will swear in as its newest hearing officers: **Bernard Owens, Wesley Peterson, David Arrow** and **Steven Holding**.

Cynthia Peterson joins the MCBA staff as our new program coordinator in the CLE Department. Cynthia is a native Phoenician who returns to the valley after living and working in Austin, Texas. She is off to a great start and will be bringing



Araneta



Chen



Davis



Zweig

some exciting CLE programs your way this year.

The MCBA continues to rely on volunteers, like you and me. If you've ever had an interest in becoming more active in your

MCBA, this is the time to volunteer for one of our standing committees:

► The **Volunteer Lawyers Project Board** is an advisory committee to the Volunteer Lawyers Project (a joint venture of the MCBA and Community Legal Services);

► The **Membership Committee** not only brainstorms ideas for attracting new members but also recommends and develops new benefits for our members;

► The **Bench-Bar Committee** works to continue good bench-bar relations and communications;

► The **Maricopa Lawyer editorial board** supports this publication and is always interested in new writing talent and ideas;

► The **CLE Committee** creates and develops ideas for CLE programs;

► The **Lawyer Referral Service Committee** monitors and supports the MCBA's Lawyer Referral Service; and

► The **Website Committee** develops creative ideas for your MCBA website, www.maricopabar.org.

The MCBA exists to help its members. If we can help you, or if you simply have ideas to share, please call us at 602-257-4200 or me directly at 602-506-2030. I appreciate your input and suggestions. □

A few hours can make a difference

By Susan Wissink
MCBA / YLD President

As I embark on my new position as president of the Maricopa County Bar Association's Young Lawyers Division, I welcome your thoughts on what we want to accomplish this year. I look forward to working with you and hope that many of you will become involved with the YLD.

When I graduated from law school and joined a law firm, I felt like I didn't have any free time to spare on bar activities. A friend asked me to volunteer at Law Week during my first year of practice. The few hours I donated turned into more as I grew to enjoy supporting the community through YLD activities. It turned out that balancing my career with my volunteer work not only helped me grow as a person, but also helped my professional career as well.

In the past few months, the work of volunteer lawyers throughout our country has served thousands of people victimized by the Sept. 11 terrorist attacks. Through a committee I chair for the Young Lawyers Division of the American Bar Association, I have coordinated disaster legal services on behalf of the ABA's YLD and the Federal Emergency Management Agency for the terrorist victims. Within days of Sept. 11, more than 1,500 attorneys wanted to donate their time to help. To date, the ABA's YLD has helped more than 1,000 relatives of victims with legal issues ranging from negotiating with landlords over extensions of time to pay



rent to helping obtain death certificates for missing loved ones.

Hopefully, we'll never see another terrorist act or tragedy, let alone one of such overwhelming scale and impact. If any good comes out of such a horrible day, I hope that it is the renewed commitment of attorneys to help others in need.

The MCBA's YLD offers you the opportunity, right here at home, to make a difference in your community. We have several committees, including Law Week, which is a weeklong "give back to the community" event. Volunteer to work at pro bono clinics, or you can offer to grade essays for students. Head up a committee, or just give a couple of hours. The YLD also sponsors a domestic-violence drive each year that allows women and children who have escaped from abusive partners the opportunity to obtain personal items and clothing. We're always looking for volunteers to help collect items and work at the drive itself.

This year, we're starting a new project called "Tolerance Through Education." The ABA's YLD, in conjunction with educators, has put together a curriculum to take to third-grade classrooms and teach children about the importance of tolerating others' differences. We will need numerous volunteers to give two to three hours of their time to work with students, in addition to preparation time.

If any of these projects interest you, please contact Shane Clays at the MCBA, 602-257-4200. We hope you will get involved in our organization and make a difference in someone else's life.

► *Susan Wissink is an associate at Fennemore Craig and practices in the areas of mergers and acquisitions, securities and general corporate law.* □

MARICOPA LAWYER

Maricopa Lawyer is published monthly by the Maricopa County Bar Association (Michael D. Jones, president; Brenda Thomson, executive director).

Contributions of articles and letters to the editor are encouraged. All materials must be submitted by the 10th of the month to be considered for the next issue. All submissions may be edited for content, length and style.

Errors will be corrected in a subsequent issue.

The MCBA does not necessarily endorse the views expressed by contributors and advertisers. The editorial policy is available upon request.

Editorial board

Chair: David A. Thomson
Members: J. W. Brown, Brian Cieniewski, Cari Gerchick, Maureen P. Kane, Jack Levine, Gerald F. Moore, Tom Murphy, Theresa A. Prater, Ken Reeves, Daniel P. Schaack and Terri Zimmerman.

Editorial content

Managing editor: Patricia A. Sallen
602-956-4546
602-956-4419 (fax)
patricia.sallen@azbar.org

Advertising

Display advertising: Kirra Philpott
480-515-5719
480-515-5446 (fax)
keymarkingsrv@aol.com

Classified advertisements: MCBA
602-257-4200
602-257-0522 (fax)

Makeup/Production

Marty Marsh, Marlan Publishing Group
1125 W. Baseline Rd., #2-153, Mesa, AZ 85210
480-777-8552
480-777-0844 (fax)
marty@marlanpub.com

© 2001 Maricopa County Bar Association
303 E. Palm Lane
Phoenix, AZ 85004
602-257-4200 • 602-257-0522 (fax)
www.maricopabar.org

Subscriptions: \$36 yearly

Martone...

Continued from page 1

County Superior Court bench. Prior to becoming a judge, he was a partner with Jennings, Strauss & Salmon, where he practiced Indian and water law, federal civil rights litigation, copyright and trademark law, and commercial and appellate litigation.

Martone earned his law degree in 1972 from the University of Notre Dame and an LL.M. in 1975 from Harvard University.

Hull has selected a civil litigator in private practice and a criminal-defense attorney to fill two vacancies on the Maricopa County Superior Court bench.

A. Craig Blakey II and Connie C. Contes fill vacancies created by the retirement last fall of judges Donald Daughton and David Roberts.

Blakey, who focuses on civil litigation, including medical-malpractice defense, currently is associated with Olson, Jantsch, Bakker and Blakey. In making the appointment, Hull lauded Blakey's "extensive trial experience."

Blakey received his law degree from California Western School of Law.

He is a member of the Phoenix Association of Defense Counsel and has participated in Arizona Town Halls addressing education and health care. He also serves as a mediator in Phoenix's Community Mediation Program and as chairman of Paradise Valley's Personnel Appeals Board.

Blakey, 50, an Independent, is married and has two children.

Contes currently serves in the Maricopa County Office of the Legal Defender, where she handles juvenile cases. She also is a judge pro tem for the Gilbert Municipal Court. Hull cited Contes's background in private practice and ser-

vice in the Legal Defender's Office as assets.

Contes received her law degree from the University of California at Los Angeles. She is involved in the Volunteer Lawyers Program and has been a volunteer for the Courthouse Experience.

Contes, 42, a Republican, is married and has six children.

The Maricopa County Commission on Trial Court Appointments has recommended five candidates to Hull to fill the newly created Division 91:

- ▶ Harriett E. Chavez, 48, Democrat, of Phoenix, a Superior Court commissioner;

- ▶ Gerald R. Grant, 48, Democrat, of Phoenix, chief of the county attorney's criminal appeals bureau;

- ▶ Margaret R. Mahoney, 44, Independent, of Phoenix, of counsel to Bryan Cave;

- ▶ Linda H. Miles, 45, Democrat, of Scottsdale, a Superior Court commissioner; and

- ▶ Robert J. Weber, 57, Republican, of Mesa, a sole practitioner.

In addition to those five, the commission also on Dec. 17 interviewed Helene F. Abrams, Arthur C. Atonna, Dawn R. Gabel, Larry Grant, Burt A. Jorgensen, Nancy K. Lewis, Rosa P. Mroz and Leah Pallin-Hill. □

Legal Brief

■ E. Norman

Veasey, chief justice of the Delaware Supreme Court, will deliver the first annual Kiewit Foundation Lecture on Business



Law in the 21st Century at 4 p.m., Jan. 17, at the Arizona State University College of Law, room 105. His topic will be "Current Developments in Corporate Law." The lecture is free and open to the public. Veasey also is chair of the American Bar Association's Ethics 2000 Committee, which has proposed dramatic revisions to the Model Rules of Professional Responsibility. He will give another talk, "Amending the Model Rules: Action and Reaction in the Struggle to Define Professional Conduct and Ethical Values," from noon to 1:30 p.m. Jan. 18 in the law college's faculty center. The second speech is free and open to members of the bar. Because lunch will be provided, anyone wishing to attend must make a reservation by Jan. 14 with Amanda Breaux, 480-965-6405. □

Bluemle...

Continued from page 1

an icebreaker amidst those who did not speak English. Among his favorites: visiting the People's Republic of China before U.S. diplomatic recognition, entertaining 5,000 natives at a sing-sing in highlands of Papua New Guinea and performing for priests in Tibet.

Bluemle is a lifetime member and national officer of the two largest international fraternal magic organizations in the world. Locally, he was a member for 55 years of Ring 55 of the International Brotherhood of Magicians and also served as an officer and strong leader who brought in top magicians to educate and entertain magicians and audiences, demonstrating professionalism by example. He served as the founding president of Assembly 248 of the Society of American Magicians and formed an association of mentalists in Arizona that produced a highly praised series of videotapes, "Desert Brainstorm."

On Dec. 6, Ring 55 and Assembly 248 local magicians honored Bluemle at their holiday banquet at the Holiday Inn SunSpree Resort in Scottsdale. During a tribute to Bluemle, Brad Zinn, a local entertainer/magician and past Ring 55 president, said, "This is without question a great loss to the magical community here in Arizona."

"Robert is one of those rare individuals whose dedication to things magical has

touched the lives of every single person in this room, whether you know it or not. His influence will be felt for a long time to come, whether he knows it or not." Zinn said. "Ladies and gentlemen, we shall have no other choice but to miss him, and wonder aloud from time to time, 'how would Bob Bluemle handle this?' And the answer will come back, 'Bigger and better, with dignity and class.'" □

**Court-Appointed Receiver
Real Estate Consultant
Property Manager
Expert Witness**



Richard K. Olsen
Designated Broker

602-216-6600

Blue Chip Asset Management, Inc.
www.bluechip-az.com

Partnerships Available.



Let us be your no-overhead litigation department for personal injury, malpractice, products liability, insurance bad faith and sexual harassment or discrimination cases. We promptly will pay referral fees in compliance with E.R. 1.5.

Van OSTEEN
Van O'Steen and Partners
Referral Litigation Unit

For complete information,
call Steve Leshner in Phoenix at 252-8888.

**BAR COMPLAINT?
UNFAMILIAR WITH THE
DISCIPLINE PROCESS?**

**GET EXPERIENCED &
KNOWLEDGEABLE HELP**

NANCY A. GREENLEE

**5 YRS - STAFF BAR COUNSEL
WITH STATE BAR OF ARIZONA
DISCIPLINE DEPARTMENT**

**FREE INITIAL CONSULTATION
AT YOUR OFFICE**

**CALL 264-8110
OR FAX 264-8125**

Rhees, Hopkins & Kreamer announces the retirement of founding partner Michael L. Rhees. With Mr. Rhees' relocation to Indiana, effective January 1, 2002 the firm will do business as HOPKINS & KREAMER, L.L.P. The firm's practice will continue to be limited to civil litigation, with particular emphasis on personal injury, construction, and commercial matters. We wish Michael the best on his return to Indiana.

Hopkins & Kreamer, L.L.P.

4000 N. Central Avenue, Suite 1750
Phoenix, AZ 85012
Phone: 602.263.6010
Fax: 602.263.6016
Website: www.hopkinskreamer.com

Pro bono work means most to VLP honoree

By **Peggi Cornelius**
Special to Maricopa Lawyer

If a pro bono poster person were chosen to advance the cause of equal justice for all, attorney Benjamin R. Norris could easily qualify. His success in helping those less fortunate, his commitment to community service and his ability to inspire others to volunteer make Norris an invaluable member of the Volunteer Lawyers Program. Since he completed his first VLP case in 2000, there was never any question of whether Norris would be honored as VLP's



Attorney of the Month—it was only a matter of when.

Even with a court order, it can be difficult for a consumer to remedy an unfair business transaction without legal help. Norris's first VLP

client learned that when he obtained a judgment against a mechanic who had not only

failed to repair his vehicle, but had damaged it. Although the client had been resourceful in obtaining a judgment against the offending mechanic, he had not been able to collect the judgment. Ultimately, he sought help at VLP. Norris succeeded in collecting more than \$1,000 in damages.

"It felt good when we collected from an opposing party who should have paid, but there was also a more intangible benefit to the client in this case," Norris said. "The car involved belonged to the client's sister. In their Vietnamese culture, the client was disgraced by the trouble his sister had endured as a result of his attempt to have her car repaired. Resolving the problem restored harmony in their family relationship."

VLP clients often are consumers burdened by situations that deprive them of

transportation and saved or borrowed money they cannot readily replace with new income. In another of Norris's VLP cases, the client had been working for the owner of a transmission repair shop, from whom he also was purchasing a car over time. Although the car payments were current when the employment relationship deteriorated, the employer took the car from the client. Norris successfully obtained compensation for the wrongfully seized vehicle.

Sometimes, consumers lose belongings, like the family who hired a moving company to relocate them from Illinois to Arizona. On arrival, the clients found themselves disputing the amount due the moving company, while delivery of their furnishings was denied and storage fees mounted. With Norris as their advocate, the debt was reduced to an amount they could pay and their belongings were delivered. Norris says this case hinged on a technicality, however. His advice to those hiring moving companies is to obtain a binding estimate before the move.

Norris grew up outside New York City and obtained his undergraduate degree in political science at Yale. He graduated from Northwestern University School of Law in Chicago. The first years of his law practice included working for the U.S. Justice Department, but eventually he changed direction professionally and geographically.

Now, Norris specializes in commercial and bankruptcy litigation at Quarles and Brady Streich Lang.

"The firm is very supportive of pro bono work. In fact, our compensation system provides significant credit for pro bono hours," he said.

No one has more persuasive reasons for participating in VLP than does Norris.

"Providing access to justice for those who can't afford to pay or whose cases are not lucrative is what it's all about. I've engaged in other community service, such as volunteer work with the Nature Conservancy, but I think I can contribute the most to the community by sharing my skills as an attorney. After all, people from all walks of life can give their time to an organization like the Nature Conservancy, but only an attorney can provide free legal advice or representation."

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

Maricopa County Bar Association

Barristers Ball 2002

MARDI GRAS

Saturday, February 9, 2002

Camelback Inn Resort



If you can't attend the ball, you can still help with a donation!

Popular ideas for Silent Auction

- ◆ Artwork
- ◆ Autographed Art/Sport Items
- ◆ Condo - Timeshares
- ◆ Golf Rounds
- ◆ Resort Weekend Packages
- ◆ Spa Packages
- ◆ Sporting Event Packages
- ◆ Theater Passes

Yes, I would like to donate a Silent Auction item to this year's Barristers Ball to benefit The Centers for Habilitation

Name _____ Firm _____

Phone _____ Address _____

Donation(s): _____

- We will deliver Arrange for Pickup

Please send this form by fax or mail to:
Shane Clays, YLD Director
MCBA, 303 E. Palm Lane, Phoenix, AZ 85004-9890
602-257-9727 (fax)

Your firm may have clients who would like to contribute to this worthwhile cause. If you are unable to donate items to the Silent Auction, we encourage you to contribute to the Ball as a Table Host and/or as a Corporate Sponsor. For a table host form, or for information on becoming a Corporate Sponsor, please contact Shane Clays at the phone number listed above.

Mark your calendar!

February 14, 2002

Take a sweetheart to lunch and celebrate the 20th Anniversary of the Volunteer Lawyers Program

Hyatt Regency

Recipients of VLP 2001 Pro Bono Awards will be honored

Information: Peggi at 602-258-3434, ext. 255

Courtwatch...

Continued from page 1

not constitutionally retain actual reflection as an element of premeditation yet relieve the state of the burden of proving it," he wrote. He concluded that the Legislature intended "to ensure that premeditation was defined solely as the passage of a period of time."

Because the plain meaning of the word "reflection" requires a "somewhat complicated and involved thought process" and "careful consideration," Sult interpreted the statute to require the jury to find "a time period sufficient to encompass a complex thought process." Thus, on its face, the statute provides a sufficient standard to adequately distinguish between first- and second-degree murder. If he had been writing on a clean slate, Sult would have upheld the statute against the vagueness challenge.

But the statute's vagueness could not be decided on this interpretation because the Supreme Court had previously departed from its plain language. In *State v. Hulton*, 143 Ariz. 386, 694 P.2d 216 (1985), the Supreme Court had held that the amount of time necessary to show premeditation "can be as instantaneous as the time it takes to make successive thoughts to kill" and, in *State v. Kreps*, it had held that premeditation can be "as instantaneous as successive thoughts of the mind."

The newly amended statute relieves the state from having to prove actual reflection. Sult stated that the issue facing the court was whether a jury can adequately determine if the state has proved premeditation using a standard "that does not implicate careful consideration, or meditation, or study, but [which] occurs as quickly as the human mind can think successive thoughts." He concluded that the statute is too vague.

Sult noted that "the seminal event" in any intentional killing or murder "is the formation of the intention to kill." If premeditation occurs between the formation of this intent and the actual act, then the crime is first-degree murder. If there is no premeditation, the murder is in the second degree. Getting rid of the need to prove actual reflection, Sult held, obliterates the distinction.

"[W]hen premeditation is just an instant of time and nothing more," he wrote, "irrefutable evidence of premeditation will exist in every case of intentional or knowing murder. This is so because common sense teaches that it is impossible to form the intent to kill and then perform the act of killing without there existing in between at least one instant of time sufficient for one thought."

This led Sult to conclude the statute does not give the jury an adequate standard to differentiate between degrees of murder. "Every murder will be a premeditated murder and a jury will never be able to find differently except upon a basis other than the evidence, such as sympathy, prejudice, or some other arbitrary ground."

He continued that "although the Legislature purported to classify murder by degree and impose significantly differing punishments depending upon the degree found by the jury, and further purported to pride a benchmark by which juries could reasonably distinguish between degrees, the benchmark is an illusory one."

Sult therefore concluded that statute and

its judicial interpretation created "a standardless vacuum in which determinations of degrees of guilt can only be decided arbitrarily." This made A.R.S. § 13-1101(1) unconstitutionally vague.

Thompson's victory on his constitutional challenge turned out to be quite hollow for him, as any error was harmless. His jury was not instructed on the instantaneous-as-successive-thoughts concept, and a great deal of evidence established that he did indeed premeditate.

Judge Susan A. Ehrlich concurred in the result only. She disagreed with the majority's conclusion that premeditation had been written out of the statute.

Ehrlich noted that the statute says that the defendant's intent and knowledge must precede the murder by a length of time sufficient to permit reflection. "Thus," she wrote, "'premeditation' is a period of time during which the mind actually considers the performance of an act, the formation of an intention or determination to kill, which results in the death of another."

While the passage of time may suggest reflection, she wrote, "premeditation relates to mental processes not necessarily readily susceptible to 'proof of actual reflection.'" Thus, although there may be no evidence of the defendant's expressions of contemplation nor overt evidence of planning activity or other facts indicating the killer's design to take the victim's life, "there nonetheless might be evidence regarding the nature or manner of the death sufficient to demonstrate an intent to kill according to a preconceived design."

Ehrlich reasoned that "[t]he true test is not the duration of time but ... the extent of the reflection." A cold and calculated decision to kill can occur in a brief period of time, she wrote, and if there is time for the mind to consider the act and then determine to do it, this is sufficient.

Winning doesn't mean cash in pocket

Can you win a case and still be considered the loser? In *McEvoy v. Aerotek Inc.*, No. 1 CA-CV 00-0521 (App. Nov. 20, 2001), the Court of Appeals held that the plaintiff was entitled to costs as the successful party even though the jury's verdict in her favor entitled her to no money from the defendant.

Sheila McEvoy was injured in an automobile accident due to the negligence of the other driver, Shawn Dale, who was on business for his employer, Aerotek Inc.

McEvoy sued both Dale and Aerotek. She settled with Dale for \$100,000, paid from his personal automobile policy. Believing her damages to be greater than that, she went to trial against Aerotek. The jury found in her favor but awarded total damages of only \$75,000. Despite recovering nothing from Aerotek, McEvoy sought and was awarded costs as the successful party under A.R.S. § 12-341, because the verdict was in her favor. Aerotek appealed.

The Court of Appeals affirmed. In an opinion by Patterson, the court rejected Aerotek's argument that McEvoy was not entitled to costs unless her trial victory actually put cash in her pocket.

Patterson noted that the successful party is the one who wins the lawsuit, which the trial court determines from the totality of the circumstances. A party still may win even if she does not get everything she asked for, Patterson noted. He further noted that, "at the time McEvoy pursued her suit, damages had not been assessed, and the record does not reflect that Aerotek had accepted responsibility for its part in McEvoy's injury."

McEvoy's pretrial settlement with the driver was not a setoff and did not preclude her from being considered the victor. He agreed with other courts that have held that "a plaintiff is the prevailing party when a jury reaches a verdict in favor of the plaintiff and awards damages, even if the entire amount of damages awarded is offset by a prior settlement."

Joining in Patterson's holding were Judges Noel Fidel and Rebecca White Berch. Berch

— See *Courtwatch* on page 7

*Best Wishes for a
Happy and Prosperous
2002
New Year
to the*

*Maricopa Lawyer
Advertisers*

*Maricopa County Bar
Association Members
Board
and Staff*

*The Marlan Group
and
Gannett Offset Phoenix*



*From
Kirra Philpott
Display Advertising
Marketing
Representative*

DON'T PLAY AROUND WHEN IT COMES TO IMMIGRATION LAW



IMMIGRATION LAW

HirsonWexlerPerl is a full service immigration law firm dedicated to your immigration legal needs. Our firm represents employers, corporations and individuals and handles all immigration cases including intra-company transfers, H-1B professionals, investors and family related petitions. We can help you and your clients work through the extensive red tape surrounding immigration cases.

- LABOR CERTIFICATIONS
- CONSULAR PROCESSING
- EMPLOYER SANCTIONS (I-9)
- FAMILY RELATED PETITIONS
- OUTBOUND VISA CAPABILITY
- DESIGN CORPORATE IMMIGRATION POLICIES
- TEMPORARY WORK VISAS
- Intra-company Transfers
- Professionals & Investors
- Free Trade Agreement (NAFTA)
- Entertainers & Sports Professionals
- Blue/White Collar Employee Immigration Assistance

HIRSON WEXLER PERL
ATTORNEYS AT LAW

AV Rated

For more information
phone: 602-266-4700
fax: 602-265-8108
email: hirson-az@hirson.com

www.hirson.com
also in Newport Beach, Los Angeles
and San Diego, CA • Las Vegas, NV
• New York, NY • Wilton, CT
• Toronto, Canada

Pro Consul, Inc.
Right Expert Right Away!

3,000 Medical & Technical Experts

- Nationwide Service
- Free Resume Binder
- Rigorous Standards
- Fast Inspections
- Customized Searches
- Our Service Is a Cut Above

1(888) 9-EXPERT

(602) 279-2422 Fax (602) 604-9454
1714 E. Bethany Home Road
Phoenix, Arizona 85016
E-mail: experts@expertinfo.com

www.ExpertInfo.com

An emphasis on empathy?

Emerging legal theory bucks traditional view that emotion precludes reason

By Robert L. Gottsfield
Special to Maricopa Lawyer

When should a court supply contract terms not expressly negotiated by the parties?

Should the death penalty be abolished in this country?

These are two widely disparate dilemmas of law and public policy, one mundane but essential and the other arguably, outside of abortion, the most soul-searching and contentious legal and moral issue of our day.

Nonetheless, how does one arrive at an answer to either question? There are multiple legal approaches, some long-standing and others in the making. For example, the common scenario of an incomplete contract exists in the marketplace because it is difficult and costly to resolve all matters within the four corners of a contract, especially those which are long term.¹ So when should a court supply terms not expressly negotiated by the parties?

Familiar approaches to any legal dilemma include *classical liberal theory* (a classic misnomer because all problems must be resolved from the four corners of the contract, as described by Williston in his text on contracts)² and *neoclassical theory* (as espoused by Corbin in which courts must interpret, fill gaps and in doing so admit extrinsic evidence but only to enforce the contract the parties actually intended to make and not to establish another meaning or intention).³

More recent methods of solving the contract gap are *relational theory* (the complex contractual relationship makes it inevitable that adjustments be made in the contract and this is accomplished by reference to the "entire relation" between the parties); *fairness theory* (the focus is on bargaining impediments caused by differences in bargaining position that might justify a court refusing to enforce all or part of a contract); and the *law and economics* approach (exemplified in the writings of Seventh Circuit Judge Richard A. Posner, in which contract formation and gap-filling by courts should achieve efficiency goals and maximize social welfare gains, and economic analysis is used to discern a methodology for such efficiency).⁶

While the foregoing theories, especially law and economics, could conceivably be used to provide answers to whether a particular state or this country should abolish the death penalty, it may make more sense to analyze this weighty issue using the following additional approaches. Interestingly, these so-called "skeptical"⁷ legal movements (which include law and economics) have been traced to the views of Justice Oliver Wendell Holmes Jr., whose book *The Common Law* is considered by Posner as "the best book on law ever written by an American."⁸ All such views argue that judges do not merely find facts or apply

legal principles in a completely accurate and unbiased fashion. It has been stated of Holmes, who was wounded in three different battles during the Civil War, that the war (and the abolitionist⁹ movement that he felt provoked it) "took from him every vestige of a faith in fixed principles for whose sake we might feel duty-bound to get ourselves killed."¹⁰ He espoused pragmatism,¹¹ and his goal as a judge was to think clearly without "illusions" and not be the "victim of large and dangerous certainties."¹²

The death-penalty problem is amenable to the following viewpoints, which we judges and lawyers would perhaps rarely apply in the day-to-day trenches (as opposed to what is current in academia, including law schools — not meant as a criticism of either of us but to point out and even decry the fact that intellectual movements going on in universities rarely touch most of our lives). With the caveat that most contributors to these views would strenuously resist defining themselves, especially in the abbreviated descriptions that follow, we could examine the death-penalty issue from the viewpoint of *critical legal theory* ("the focus of its critique is to demonstrate that behind its façade of political neutrality and pretense to objective even-handedness, both the doctrinal content of American law" and its "institutions...function...to entrench and preserve the privileged positions of the powerful, the male, the wealthy and members of racial and ethnic majorities"¹³); *radical feminism* (women as a class are unfairly dominated by men and the differences between men and women have been constructed to contribute to the inequality of women¹⁴); and *critical race theory* (a jurisprudence that accounts for the role of racism in American law and works toward the elimination of racism as part of a larger goal of eliminating all forms of subordination¹⁵). So-called "outsider scholarship" encompasses critical race theory, radical feminist theory and gay legal studies.

Nor would it be proper to leave out of this discussion Supreme Court Justice Antonin Scalia's *textualism*, which is his belief that the "words of the constitution have a range of meaning that is both limited and discernible" and that going "beyond the words of the text and what they can mean is to violate good constitutional reasoning."¹⁶ (The skeptical schools of thought referred to in this short article, as well as by other critics of textualism, would argue to the contrary — that there is no completely objective or historical way to interpret a text because the presuppositions of the interpreter will always influence the reading of it.¹⁷)

Are you ready for this? Add another movement — *law and emotion*. In what may become a seminal review in this field, Laura E. Little¹⁸ has critically reviewed *The Passions*

of Law,¹⁹ a collection of 14 essays edited by Susan A. Bandes.

The ubiquitous Posner has contributed an essay to the collection, "Emotion versus Emotionalism in Law," in which he "acknowledges the inevitable and salutary results of emotion intersecting with law"

while insisting "that the ideal of the dispassionate principled decision-maker mandates close policing of the connection between law and emotion."²⁰

Our own Arizona State University Professor Jeffrie G. Murphy,²¹ who is at the forefront of law and emotion theory and has lectured to both local and national bench and bar about the merits of "forgiveness" as described by Kant and others, also has offered an essay. In it, he cautions that our own failings as human beings should require us, in punishing others for crime, to "act with caution, regret, humility and with a vivid realization that we are involved in a fallible and finite human institution"; that

Notes

1. The discussion concerning incomplete contracts is taken from Julie P. Kostritsky, *When Should Contract Law Supply a Liability Rule or Term?: Framing a Principle of Unification for Contracts*, 32 *Ariz. St. L. J.* 1283 (2000), which interestingly enough for purposes of this article is written in the tradition of law and economics.

2. *Id.* at 1290-96; see also Gottsfield, *Darner Motor Sales v. Universal Underwriters: Corbin, Williston and the Continued Viability of the Parole Evidence Rule in Arizona*, 25 *Ariz. St. L. J.* 377, 383-85 (1993).

3. *Id.*

4. *Supra* n. 1 at 1292, discussing, among others, the work of Ian R. Macneil, *Contracts: Adjustment of Long-Term Economic Relations Under Classical, Neoclassical and Relational Contract Law*, 72 *N.W.U.L. Rev.* 854, 890 (1978) and Robert E. Scott, *A Relational Theory of Default Rules for Commercial Contracts*, 19 *J. Legal Stud.* 597 (1990).

5. *Supra* n. 1 at 1293, discussing, among others, the work of David Charney, *Nonlegal Sanctions in Commercial Relationships*, 104 *Harv. L. Rev.* 375, 386-89 (1990), and Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 *Harv. L. Rev.* 1685, 1777 (1976).

6. *Supra* n. 1 at 1297. And see Posner's *Economic Analysis of Law*, which first appeared in 1973 and literally began the law and economics movement. See also Richard A. Posner, *Overcoming Law* (1995). But also note Posner's contribution in *Passions*, the book under review, as described in the text and at n. 32.

7. Peter J. Messitte, in his review of Albert W. Alschuler's book, *Law Without Values* (University of Chicago Press 2000), about the legal philosophy of Oliver Wendell Holmes Jr., states that Alschuler "identifies Holmes as the progenitor of all the skeptical legal movements - law and economics, critical legal studies, critical race theory, and radical feminism - that characterize today's indolent, cynical, and bitter society." *Trial*, May 2001, at 74.

8. *Supra* n. 7, Messitte review at 74.

9. While Holmes himself was an abolitionist, he opposed the so-called zealots who would destroy the union of states and bring about war to satisfy their demands. See Alan Ryan's review of Louis Menand's book *The Metaphysical Club* (Farrar, Straus and Giroux, 2001) found in *The New York Review of Books*, May 31, 2001, at 16. And see Samuel H. Pillsbury, "Harlan, Holmes, and the Passions of Justice," in *Passions*, especially at 336 and his discussion of Holmes' "Yankee Dispassion."

10. *Supra* n. 9, Ryan review at 16.

11. *Id.*

12. *Id.*

13. Maurice J. Holland, in *Symposium: Ill-Assorted Musings About Regulatory Takings and Constitutional Law*, 77 *Or.L.Rev.* 949, 976 at n. 73 (1998); see also *A Symposium of Critical Legal Study*, 34 *Am. U. L. Rev.* 929 (1985); *Black's Law Dictionary* 382 (7th ed. 1999).

14. Patricia A. Cain, *Symposium: Feminism and the Limits of Equality*, 24 *GA.*

L. Rev. 803, 832-33 (1990). See also Black's, *supra* n. 13, at 859.

15. Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 *Yale L. J.* 1329, 1331 at n. 7 (1991). See also Black's, *supra* n. 13, at 382.

16. Barry Hankins, *Supreme Court Justice Antonin Scalia, Textualism, Original Intent and the Constitution: A Very Public Religion*, Liberty, May/June 2001, at 3; and see Antonin Scalia, *Originalism: The Lesser Evil*, 57 *U. Cin. L. Rev.* 849 (1989).

17. *Supra* n. 16, Hankins at 3.

18. Laura E. Little, *Negotiating the Tangle of Law and Emotion*, 86 *Cornell L. Rev.* 974 (2001).

19. *The Passions of Law*, ed. Susan A. Bandes (New York University Press 1999).

20. *Supra* n. 18 at 977; see also 990.

21. Regents professor of law and philosophy. He is the author of numerous books and articles on moral and legal philosophy, including for our purposes Kant: *The Philosophy of Forgiveness and Mercy* (with Jean Hampton) (Cambridge University Press 1990), and *Punishment and Rehabilitation* (Wadsworth Pub. Co. 1995). See also *Symposium, The Role of Forgiveness in the Law*, 27 *Fordham Urb. L. J.* 1351 (2000).

22. *Passions*, *supra* n. 19 at 161.

23. *Id.* at 127; see also Peter A. French, *The Virtues of Vengeance* (University Press of Kansas 2001) (vengeance is essential for morality and justice).

24. Catherine Gage O'Grady, *Empathy and Perspective in Judging: The Honorable William C. Canby Jr.*, 33 *Ariz. St. L. J.* 4 at 7 (2001).

25. *Id.*

26. See James Boyd White, *The Legal Imagination* (1973, abridged edition 1985); Wayne Booth, *The Company We Keep: The Ethics of Fiction* (1998); and Posner's contribution. Two journals devoted to law and literature themes are the *Yale Journal of Law and the Humanities* and *Cardozo Studies in Law and Literature*.

27. *Supra* n. 18 at 974, 979.

28. *Id.* at 975.

29. *Id.* at 981.

30. *Id.*

31. *Id.* at 976.

32. Richard A. Posner, "Emotion Versus Emotionalism in Law," in *Passions* at 309 *et seq.*

33. *Supra* n. 18 at 987.

34. *Id.*

35. Robert C. Solomon, "Justice v. Vengeance: On Law and the Satisfaction of Emotion," in *Passions* at 131.

36. *Supra* n. 18 at 989-90, 995. There are pitfalls in cognition itself that can cause a variety of decision-making errors, as recently described in a study using 167 federal magistrate judges as participants. See Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 *Cornell L. Rev.* 777 (2001). The article discusses the effect of cognitive illusions known as anchoring effects, framing effects, hindsight bias, the inverse fallacy and egocentric bias.

37. *Supra* n. 18 at 998.

38. *Id.* at 1000.

39. *Id.* at 976, n. 3, and 980. □

we often forget “that nothing but iniquity and madness awaits us if we let ourselves think that, in punishing, we are involved in some cosmic drama of good and evil — that, like the Blues Brothers, we are on a mission from God.”²² (Do you know of any philosopher who writes as simply, beautifully and humorously?)

Contrasted to this view is the article, also in the anthology, by Robert C. Solomon entitled “Justice v. Vengeance: On Law and the Satisfaction of Emotion,” in which he argues that vengeance is not wholly irrational (“unlike Kant and other philosophers who deny any rationality to vengeance”), contains a “kernel of rationality” and “rightly demands satisfaction.”²³

Although these excerpts should disabuse you of the notion that the law and emotion school confines itself solely to intellectual esoteric writings, witness the rightly deserved tribute to Ninth Circuit Judge William C. Canby Jr. in a recent issue of the Arizona State Law Journal commending Canby for “judicial decision-making that incorporates empathy.”²⁴ By this the author means that a judicial decision should indicate knowledge of applicable law, statutes, precedent, legal theory and policy “and an incorporation of common sense and judgment informed by an empathic understanding of context.”²⁵

This emphasis on empathy — which characterizes the law and emotion approach to proper decision-making — is reminiscent of yet another legal movement, the older *law and literature school* (studying the humanities, especially reading good fiction, gives a better understanding of human nature and makes one a better — read “empathic” — judge or decision-maker than merely studying the social sciences; reading the humanities builds emotional intelligence).²⁶

Those writing in the area of law and emotion refer to “both sides” of the “and,” in which the “left [side] of ‘and’” refers to law and the “right [side] of ‘and’” refers to emotion.²⁷ Taking the right side of “and” and trying to posit a comprehensive summary of the new field is made all the more difficult because of disagreements within emotion theory itself.²⁸ While in *The Passions of Law* most of the essays explore one or only a few human emotions, emotion scholars posit anywhere from two emotions (which generate all the others) to 40 or more,²⁹ so there is as yet no coherent view of what is the “emotion” in law and emotion theory. Moreover, there is no general agreement on a second key issue, especially important for lawyers and judges: the relationship of emotion to cognition or the reasoning process.³⁰

In her review of *Passions*, Little finds that one reason given for the resurgence of studies of emotion and its impact on rationality is the popular and undoubtedly correct view that knowledge does not come solely from pure rationality³¹ (even Posner would agree).³² Yet the law’s traditional view is that when emotion exists, reason and gravitas are temporarily in abeyance. In her discussion of the concept of cognition, which she defines as “the action or faculty of knowing.”³³ Little advises that, like emotion, cognition has no common definition.³⁴

Law and emotion scholars also debate the role of cognition theories in improving legal process. In discussing retribution, one of the contributors to *Passions* argues that “one purpose of law is to rationalize and satisfy the most powerful social passions.”³⁵ Those in the field appear to agree nevertheless (consistent with the law and literature movement) that emotion actually improves law and decision-making because emotion acting with cognition leads to a “truer” perception of an issue and this in turn results in more accurate moral and fairer legal decisions.³⁶

The law — the left side of the “and” — also needs further development, according to Little in her 26-page review of *Passions*, especially of the extent to which “how law fully permeates society” and of the “emotional bond between the law and its subjects.”³⁷ Many of the contributors to *Passions* explore these intersections of law, culture and society. Little devotes a number of pages to the view that “we stand to learn much about law” as research in law and emotion continues so that “perhaps one day we may be able to chart its boundaries.”³⁸ She devotes many pages to the specific areas of the law to which law and emotion studies can contribute. The essays themselves discuss such phenomena as cowardice crimes, hate crimes, judicial candor and disclosure, forgiveness, shame, revenge, disgust, remorse, love, fear, justice, mass violence, human rights atrocities, authority, emotionalism, anger, restoring victims, victim impact statements, punishment, popular culture, the human body, distaste, danger, responsibility, the consciousness of judges, retribution and the “Clumsy Moral Philosophy” of Jesus Christ.³⁹

As noted by Little, we have had interdisciplinary scholarships and research in areas such as law and psychology, law and psychiatry, law and philosophy, law and biology and law and history as well as contributions by those working in neuroscience or psychophysiology.⁴⁰ It is thus proper to ask what law and emotion studies have to offer and how this new scholarship would differ from any other legal-theory movement.

Unfortunately, these questions cannot be answered in the remaining lines of this article, not only because you have probably had enough about legal theories to this point, but mainly because it is beyond my expertise and enjoyment. Yes, I know, the worst law school classes (only grudgingly beneficial) for most of us were those staffed by professors who threw out loads of questions and never answered them. At my school, some 40 years ago, there was Happy Harrop and his question hour. (Just give me the black letter law, you stiff, what the heck are you paid for anyway?) To allay some of those emotions you may now be feeling, remember the limited stated purpose of this article was just to familiarize ourselves with some current movements in academia land. Hopefully, now we all can recognize law and emotion theory when we see it.

► *Robert L. Gottsfeld is a Maricopa County Superior Court judge.* □

Court changes pro tem procedure

By Mark W. Armstrong
Special to Maricopa Lawyer

The Maricopa County Superior Court appreciates the tremendous time and effort devoted by lawyers who serve as judges pro tem. Without their help, our jobs would be made much more difficult.

Lawyers who meet the requirements of A.R.S. § 12-142 may apply to serve as judges pro tem for civil, criminal, probate, juvenile and family cases, as well as family settlement conferences. Our court currently has more than 200 lawyers serving as judges pro tem.

We have made some changes in our judge pro tem process. About a year ago, the court created a standing Judge Pro Tem Committee to simplify application forms, develop guidelines and training, and oversee the appointment and reappointment processes. While our work is not complete, we have made some progress. We have shortened the application form to four pages from eight. We have revised and slightly abridged the application for reappointment. We have updated our

guidelines, and we have proposed legislation that would expand the terms of judges pro tem to 12 months from six months.

Our updated guidelines require that judges pro tem apply annually for reappointment using a simplified 1½-page form. The guidelines also provide that judges pro tem shall, if offered, accept at least two days of service during the year. Any part of one day counts as one day.

All current judges pro tem must submit an application by March 8 for reappointment for the July 1, 2002, through June 30, 2003, term, which is the next term that will be considered by the committee. New applicants for that term also must apply by March 8.

The new guidelines and application forms may be obtained by writing to Superior Court Administration, Attn: Judge Pro Tem Administrator, 201 W. Jefferson, Central Court Building, Fourth Floor, Phoenix, AZ 85003. We strongly encourage you to apply and serve.

► *Mark W. Armstrong is the associate presiding judge and presiding special assignment judge of the Maricopa County Superior Court.* □

Courtwatch...

Continued from page 5

wrote separately to express her opinion that in some circumstances the defendant might be the successful party if the verdict is less than a pretrial settlement.

A set of wheels, nonetheless

Visitors to Sun City and similar towns are sometimes surprised to find golf carts — complete with license plates — driven like cars on the city streets. This Arizona reality is reflected in the state law, to the consternation of at least one juvenile. In *In re Adam P.*, No. 1 CA-JV 01-0046 (App. Nov. 20, 2001), the Court of Appeals affirmed that the juvenile could be held delinquent for theft of a “means of transportation” under A.R.S. § 13-1814 after he ripped off a golf cart.

Adam was found delinquent under A.R.S. § 13-1814, which criminalizes theft of a “means of transportation,” defined as “any vehicle.” “Vehicle” is defined in A.R.S. § 13-105(36) as “a device in, upon or by which any person or property is or may be transported or drawn upon a highway, waterway or air-

way, excepting devices moved by human power or used exclusively upon stationary rails or tracks.”

On appeal, Judge Daniel A. Barker had little trouble concluding that a golf cart indeed qualifies as a vehicle and is therefore a means of transportation. He held that the plain language of A.R.S. § 13-105(36) clearly includes golf carts, as it encompasses a vehicle in which a person “is or may be transported.”

Second thoughts about conscription?

The Ninth Circuit may be having second thoughts about whether Arizona attorneys must serve as arbitrators under the state’s compulsory-arbitration system.

In September, this column reported on *Scheehle v. Justices of the Supreme Court*, 257 F.3d 1082 (9th Cir. 2001), in which the Ninth Circuit affirmed a District Court judgment rejecting an attorney’s suit alleging that compulsory service constituted an unconstitutional taking of property and involuntary servitude. The Ninth Circuit has since withdrawn its opinion and ordered additional briefs, which the parties have filed.

Stay tuned. □

Never A Set-up Fee. Never An Administrative Fee.

Unlike most other mediation, arbitration and settlement conference services, we never charge a set-up or administrative fee. You pay only for the time actually spent on your case by one of our expert facilitators, and these very reasonable costs typically are shared by both parties.

RESOLUTIONS
Out-of-Court Arbitration Mediation Settlement

3605 North Seventh Avenue Suite One
Phoenix, Arizona 85013-3638
602-285-5558
FAX 602-285-5562



Tom Novak Irwin Harris Janis Ravallak Rich Green Irwin Bernstein
Domestic Relations • Personal Injury • Wrongful Death • Malpractice • Products Liability • Labor • Employment • Discrimination • Civil Rights

MSN DSL: Bad service, bad deal

By Winton Woods
Special to Maricopa Lawyer

By the end of the 20th century, telecommunications companies had laid millions of miles of fiber-optic cable around the country. Today, 95 percent of that capacity remains unused and is referred to as "dark" fiber.



Why is so much unused? There are a number of reasons, but the most significant one is that the data pipeline from your home or office to the Internet often is too small to allow for the transfer of large data files such as video or multi-page documents and graphics. [Think of the entire fan population for the World Series entering Bank One Ballpark through a single turnstile.] This is known as the "last-mile" problem. Many view the last-mile problem as the principle obstacle to a truly revolutionary telecommunications future.

Until recently, those of us fortunate enough to live in Arizona had a variety of choices. We were one of the first areas in the country to have DSL capabilities through US West. The cable companies provided access to the Internet over their systems. Sprint provided wireless access via our rooftop antenna, and several companies

LAW OFFICE COMPUTING

began to offer access via satellite. Only a year ago I was able to proclaim that Arizona lawyers who needed to overcome the last-mile problem could use one of several available solutions. I was decidedly optimistic about the coming of ubiquitous broadband capacity in Arizona and the end of the last-mile problem.

Today I am decidedly pessimistic about those possibilities for several reasons.

First, Sprint apparently has abandoned the expansion of its wireless network pending the development of new technologies. When, if ever, that new technology will come back online is unknown. Second, we hoped that we could access the Internet via satellite with the same success we have with television. But access via the DirecPC network has turned out to be problematic. I have tried satellite access and at the moment I cannot recommend it as a solution in the office context. It is too slow and too unstable to rely on as an office communication tool. Third, many of the cable providers do not yet provide access for businesses, thus limiting that option to home offices.

All of those things were bothersome but

not critical because a large proportion of the law offices in the state had access to the DSL service provided by Qwest Communications. I wrote less than a year ago about how wonderful the Qwest service had become. Its "ride the light" advertising campaign was both a joy and a promise of a high-speed digital future. Then Qwest entered into a relationship with Microsoft that has effectively destroyed the utility of its DSL service.

The big Qwest megabit pipes still exist, but the primary way of accessing those pipes now has become the Microsoft network. MSN is a very small pipe that severely limits the size of files you can send through the Qwest DSL lines. MSN is the single turnstile at BOB. You cannot ride the light on MSN.

Over the last month I have had some pretty unbelievable interactions with MSN. If you have Qwest DSL service, you will soon be forced to switch over to MSN or find another Internet service provider (ISP). Qwest is abandoning its role as an ISP and turning all of its customers over to MSN. If you have alternative sources of access to the Internet, now is the time to explore them and put something in place before you get switched over. You will not like MSN unless you have exceedingly modest expectations for using the Internet.

My experience with MSN started about a month ago when I received email from Qwest telling me that by the first of next

year I would have to access its DSL lines through MSN. I thought that I had some obligation to you, my readers, to explore the transition earlier rather than later and so I went to the Qwest transition service to get my new MSN service. It didn't take long and I liked the fact that I could get dial-up service all over the country through MSN. I was excited about the possibilities but totally unprepared for what happened next.

I had anticipated that the joining of the Qwest DSL capability with MSN was a marriage made in heaven. After all, Bill Gates has spent an enormous amount of time, energy and money over the last year touting Microsoft's Internet strategy. Because MSN is a key element in that strategy, I expected a first-class service. I also knew that MSN was in a fight to the death with AOL for the consumer space and has been making major gains in the last few months. That competition, I thought, would cause Microsoft to provide a better service than AOL.

I was wrong on all counts. The MSN service is shoddy, its people are rude and the fundamental design of the system is incompatible with the effective use of broadband in the office. MSN is a low-level consumer exploitation tool designed for simple email and chat, not a professional tool for document transfer and other Internet needs.

My first MSN experience came when my DSL service went down two days after the switch. I waited a while thinking there might be some start-up problems but after a few days working on a 56K modem I decid-

Law office computing continues on next page

CITY OF PHOENIX MUNICIPAL COURT HEARING OFFICER

The Phoenix Municipal Court is accepting applications for the position of Municipal Court Hearing Officer.

SALARY: \$65,205 annually

DUTIES: A Municipal Court Hearing Officer is responsible for the hearing and adjudication of civil traffic and other city code civil violation cases. This appointment is for a two (2) year period, renewable by the Chief Presiding Judge.

EXPERIENCE: Qualified applicants will possess either (1) a Juris doctor or equivalent law degree, OR (2) a bachelor's degree with at least three years of experience in the area of traffic law. It is highly preferred that applicants possess a law degree, and be admitted to the Arizona State Bar. Applicants should also have experience in and knowledge of Rules of Procedure in Civil Traffic Violation Cases, traffic laws and City ordinances, Local Rules of Practice and Procedure of the Phoenix Municipal Court for Civil Cases, courtroom procedures and Rules of Evidence.

ADDITIONAL REQUIREMENT: Applicants must be 21 years of age and be of good moral character. Successful completion of a course for certification to act as a Hearing Officer will be required following hire.

HOW TO APPLY: Applications are available at the Office of Chief Presiding Judge B. Robert Dorfman, 300 West Washington Street, 9th Floor, Phoenix, Arizona 85003, 602-262-1608 or through the Phoenix Municipal Court's web site: phoenix.gov/COURT.

Applications must be received no later than 5:00 p.m., January 18, 2002.

Successful applicants will be required to take and pass a drug test and employment will be contingent upon successful completion of any required drug test and consideration of background, references, and other job-related selection information.

AA/EEO/D Employer

Jerome, Gibson, Stewart, Friedman, Stevenson & Engle, P.C.

is proud to announce that

Joel F Friedman

was elected President of the National Organization of Social Security Claimants' Representatives (NOSSCR). NOSSCR is the only national provider of educational, referral, and legislative services for Social Security law.

The firm continues to focus on Social Security and Arizona workers' compensation claims and is available for referrals, consultation, and as co-counsel, including for coordination with long-term and other disability benefits and retirement or state planning.

Certified in workers' compensation law
State Bar of Arizona, Board of Legal Specialization:

*Joel F Friedman
Darryl Engle*

*James L. Stevenson
Debra Runbeck*

1001 North Central Avenue, Suite 701
Post Office Box 2551
Phoenix, Arizona 85002
602-254-8481
friedmanjif@aol.com

ed to call MSN support and get back on my broadband connection. I was totally unprepared for technical support people who were basically untrained in the technology they were supporting. They only could tell me that there were some "issues" with the Tucson servers. Over the course of the next few days, my DSL service was up and down — and much more down than up.

Moreover, I found that I could not send ordinary documents and files using the new service. During one of my many conversations with MSN support, I finally learned that MSN did not allow files larger than one megabyte. That's OK, I thought, because I can use my office server at the university to send larger files. I then found that MSN would not allow me to access the university server to send files. When I called MSN technical support to find out why that was so, I was given a bunch of techno mumbo jumbo that was either the product of ignorance or of design.

I subsequently discovered that the inability to access my university server for the purpose of sending large files is not a glitch but an apparently intentional decision by MSN to preserve its own bandwidth at the expense of its customers, thus creating more profit for MSN. When I suggested to my MSN support person that the failure to disclose such a restriction had some legal implications for the recent lawsuit brought by the Arizona attorney general, I was told that the fact that I had mentioned legal action required her to terminate the call. She then hung up on me.

The next morning, I called my local cable company and arranged for the installation of the @Home service. A week later, a very nice young man arrived at my house with the cable modem. In less than an hour my cable system was up and running. It is 10 times as fast as my old DSL service and costs a little bit less. I can access my university server with ease.

The only problem is that Excite@Home, which is in bankruptcy and is scheduled to cease operations within the next few months, provides the @Home service. I am told that Cox Communications is committed to maintaining its Internet access no matter what happens. After Excite@Home shut off the AT&T cable customers, Cox paid \$160 million to keep its service running for another

three months. I am confident that Cox will live up to its obligations to its customers.

If you cannot get cable Internet service, you have some DSL choices. FastTucson.net (www.fasttucson.net or 520-618-7873), which is the old Starnet system, is dedicated to providing high-speed DSL without the file size restrictions now imposed by MSN. In Phoenix and other areas of the state, contact Digizip.com (www.digizip.com or 602-264-1410). Both of these organizations pride themselves on client service and are a welcome relief from MSN's shuck and jive. They can provide alternative ways of reaching the big Qwest pipes you may have come to love.

Meantime, I am riding the light with my @Home cable access. I love it and I hope it lasts for more than three months!

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

Why consider mediating your case?

Because alternative dispute resolution was not taught in law schools until the past 10 years, many attorneys wonder about considering mediation and the benefits of ADR.

The classic reasons to consider mediating a lawsuit are:

- **Quicker resolution.** The settlement rate for commercial mediation is more than 80 percent. Most cases can be scheduled within 30 days.
- **Confidentiality.** Sessions and agreements are private.
- **More flexible remedies.** The judicial process focuses on damages. Mediation focuses on creative solutions to underlying interests.
- **Reduced litigation fees.** Law firms find that mediation is cost effective because it settles the right cases and frees up time to focus on major litigation. Of course, clients appreciate settlements with lower costs.
- **Continued relationships.** The adver-

ADR CORNER

sary system discounts the value of relationships. Mediation, if desired, can focus on relationships.

► **Certainty.** Mediation avoids the uncertainty of trial process and appeals. Agreements are binding contracts.

The Maricopa County Bar Association's Alternative Dispute Resolution Committee meets at 4 p.m. on the first Thursday of each month. The committee chair is Troy Dodge of Ryan, Woodrow and Rapp. To join the committee or inquire about continuing legal education, contact Sandra Montoya at 602-257-4200, ext. 131, or smontoya@mcbar.org.

► *This is the third in a series of articles about alternative dispute resolution submitted by the ADR Committee. The editor of this series is Richard Fincher, a full-time mediator and arbitrator of employment and class-action litigation. □*

Put your contacts to work for you.

Many seasoned professionals have parlayed their contacts and experience into lucrative financial service practices.

For an independent opportunity to rejuvenate your career, contact Doug Jones at The Pendley Group 2111 E. Highland Avenue, Suite 400 Phoenix AZ 85016 douglas.jones@nmfn.com Or call us at 602 808 3440

To measure your self-employment potential, visit www.doprofile.com, password: NMFN

 **Northwestern Mutual**
FINANCIAL NETWORK™

05-2044 © 2001 The Northwestern Mutual Life Insurance Co., Milwaukee, WI 1001-060



ARBITRATION & MEDIATION Edward C. Rapp Superior Court Judge - Retired

20 Years - Superior Court
8 years - Civil Division



Please Call: 602-957-3467 or 602-956-7042

P.O. Box 32596
Phoenix, Arizona 85064-2596

ERISA DISABILITY CLAIMS

(602) 264-6400

RICHARD M. WAUGH, LTD
1612 E. Montebello Avenue
Phoenix, Arizona 85016

Fax 602-264-4755

e-mail richard.waugh@azbar.org



CLE CHOICES

UPCOMING SEMINARS

Nuts & Bolts of Personal Injury Practice

Friday, January 18, 2002 1:00 - 4:30 PM
ASU Downtown Center, Mercado, Bldg. C (5th Street & Monroe)
Up to 3 hours of MCLE

Document Management and Assembly for the Practitioner-

A Look at Strategies, Tools and Implementation for the Law Office
Thursday, January 24, 2002 1:00 - 4:30 PM
ASU Downtown Center, Mercado, Bldg. C (5th Street & Monroe)
Up to 3 hours of MCLE

Emerging Issues in Intellectual Property Litigation

Wednesday, January 30, 2002 1:00-4:30 PM
ASU Downtown Center Mercado, Bldg. C (5th Street & Monroe)
Up to 3 hours of MCLE

ECF - The Future is Here

Thursday, January 31, 2002 1:30 - 3:30 PM
ASU Downtown Center Mercado, Bldg. C (5th Street & Monroe)
Up to 2 hours of MCLE

Evidence: How Should the Court Rule?

Thursday, February 7, 2002 1:30 - 5:00 PM
ASU Downtown Center Mercado, Bldg. C (5th Street & Monroe)
Up to 3 hours of MCLE

For additional information regarding CLE programs, materials or series tickets please contact the MCBA CLE Dept. at 602-257-4200

Or see our website at

www.maricopabar.org

UPCOMING SEMINARS

Search and Seizure
Federal Sentencing Guidelines
Internet Tools and Tricks

Clerk begins year with technology news

By Michael K. Jeanes
Clerk of the Superior Court

The Maricopa County Superior Court Clerk's Office is entering the new year with some technological advancements in our Electronic Document Management System (EDMS), the Minute Entry Electronic Distribution System (MEEDS) and our "For the Record" project.

EDMS is our office's most significant technology project. EDMS is an electronic document-management system that, among other things, eventually will turn the office into a paperless environment. It will allow us to electronically capture, route and store all documents that we receive.

This month, we took a major step in making EDMS become a reality. We began imaging (scanning) the paper documents that come to our office for filing. This is now being done with all case types we receive — criminal, civil, Family Court and juvenile. We already were scanning in the probate, mental health and tax filings to test the scanning technology.

As we implement more aspects of EDMS, having the documents in an electronic format will enable us to quickly route them throughout the courthouse for further processing and allow simultaneous access to the same document by multiple users. It also will significantly increase the efficiency and

CLERK'S CORNER

speed of our service.

Our office receives more than 6.5 million pieces of paper per year. In fact, you may remember that we just moved into a new 113,060 square-foot customer-service facility at 601 W. Jackson to accommodate the ever-increasing number of records we receive. Now that we have the technological capability to convert paper documents into an electronic format, we are going to save a tremendous amount of space as the court gradually moves away from paper.

Another benefit of EDMS will be the ability to electronically file documents, which also will reduce paper, save space and provide an important service to the legal community.

The second technological development involves MEEDS, which is the program we designed to automate the entire minute-entry process. This automation includes printing, sorting and distributing the minute entries from the court division to the parties, court docket, the

website and — thanks to the new pilot program we just implemented — law firms. By doing this, we are saving considerable time, printing costs and paper, as well as providing better service to the legal community, who receive the minute entries in a more efficient manner. Details on how to enroll in this program will be forthcoming as the project expands.

Please note that most minute entries for newer cases can be accessed at anytime via our website. Go to www.clerkofcourt.maricopa.gov and click on "Minute Entries," then enter the case number. Most criminal minute entries are available from January 2000; most probate minute entries from December 2000; most civil and tax minute entries since April; and

most Family Court minute entries since May.

The final item relating to new technology in our office is our "For the Record" project, which is a digital recording software program being used by our Juvenile Court courtroom clerks and some criminal division clerks. The new software provides better clarity than an audiotape and eliminates background noise. In addition, it is more efficient because courtroom clerks can simply notate a time that an event occurs in court and then go directly to that time on the recording when they are preparing the minute entry. This serves as a note-taking alternative for courtroom clerks without shorthand skills. We plan to expand this program to all courtroom clerks. □

Calendar

The divisions, sections and committees in the calendar are those of the Maricopa County Bar Association, unless noted otherwise. All events are meetings and take place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise.

- 1 MCBA closed in observance of New Year's Day
- 3 Alternative Dispute Resolution Committee, 4 p.m.
- 7 Young Lawyers Division Domestic Violence Drive Committee, noon
Maricopa Lawyer editorial board, 5 p.m.
- 8 Scottsdale Bar Association lunch meeting, noon, restaurant at McCormick Ranch Golf Club, 7505 E. McCormick Parkway, Scottsdale. Speaker: Retired Arizona Court of Appeals Judge Rudolph Gerber. Program: View from the bench, deficiencies in litigation system, benefits of alternative-dispute mechanisms. Lunch: \$13 in advance, \$16 at the door. Information and/or reservations: Jill Miller, 480-481-3047.
- 9 Estate Planning & Probate Section breakfast CLE, 7:15 a.m., Arizona State University — Downtown
Environmental Law Section, noon
Hayzel B. Daniels Bar Association, 5:30 p.m.
- 10 Membership Services Committee, noon
- 11 Task Force for Recruitment and Retention of Minority Attorneys, 8:30 a.m.
- 14 YLD board of directors, noon
Paralegal Division, 5:30 p.m.
- 15 Estate Planning & Probate Section Executive Committee, 7:30 a.m.
International Law Section, noon
Bankruptcy Law Section, 5 p.m., University Club, 39 E. Monte Vista, Phoenix
- 16 Sole Practitioners Section, 11:30 a.m.
- 17 Phoenix chapter of the Federal Bar Association lunch meeting, noon, Arizona Club, 38th floor, Bank One Building, 201 N. Central, Phoenix. Speaker: Joe Garagiola Jr., Arizona Diamondbacks general manager. Program: To be announced. Lunch: members \$15; government attorneys, public-interest lawyers, judges and law clerks \$13; all others \$18. Reservations must be made by Jan. 15.

JANUARY	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				

Information/reservations: Kevin Bonner, 602-528-4080 or kbonner@ssd.com.

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

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

21 MCBA closed in observance of Martin Luther King Jr. Day

22 Bench Bar Committee, 12:15 p.m.
Corporate Counsel Division board of directors, 4:30 p.m.

24 Continuing Legal Education Committee, noon

25 MCBA board of directors retreat

28 Juvenile Practice Section, noon

30 Arizona Women Lawyers Association lunch meeting, Arizona Club, 38th floor, Bank One Building, 201 N. Central, Phoenix. Plate lunch will be served at 11:30; the formal program begins at noon. Speaker: Martha Sue Petrie, WISH (Women in the Senate and House) List. Program: *Freedom is not Free: Creating Equal Representation for Women in Politics and Government*. Lunch: members \$15; non-members \$20. Reservations (required): 602-863-7678 by noon Jan. 28. Information: Amy Schwartz, 602-956-4438.

ARE YOU MISSING NURSING HOME NEGLECT & ABUSE CASES?

Nursing home residents are neglected and abused more often than we think. Poor outcomes in the care of the elderly may be a signal of neglect or abuse. However, the investigation and analysis of liability are complex and labor intensive.

In order to maximize recovery, an attorney must possess a working knowledge of federal and state regulations governing nursing homes, as well as an understanding of industry practice (both clinical and fiscal).

Representing nursing home residents and their families in cases

of neglect and abuse can have a positive impact on the quality of care given to all residents of nursing homes.

Our **Nursing Home Litigation Division** is available for association with referring counsel. We promptly pay referral fees in compliance with E.R. 1.5.

For additional information call or write:
Martin J. Solomon
Solomon, Relihan & Blake, P.C.
1951 W. Camelback Road, Suite 110
Phoenix, Arizona 85015
(602) 242-2000



THE MORTON GROUP

TAKE
THE
RIGHT
STEP

THE
LEGAL
PLACEMENT
FIRM

5151 North 16th Street
Suite 234
Phoenix, Arizona 85016
602.279.5662
fax: 602.279.6215
legaljobs@mortongrp.com
www.mortongrp.com

Classifieds

POSITIONS

ARIZONA COMMISSION ON JUDICIAL CONDUCT has immediate opening for staff attorney to conduct confidential investigations of complaints against judges. Requires admissions to state bar, minimum five years experience, and excellent research and writing skills. Full state benefits. Visit office at 1501 W. Washington, Suite 229, Phoenix, or call (602) 542-5200 to obtain a detailed job announcement.

JENNINGS HAUG & CUNNINGHAM L.L.P. has openings for associate attorneys. Requirements include at least 2 years of civil litigation experience in large or mid-size firms as well as strong research and writing skills and ambitious work ethic. Please submit letters of interest with resumes, writing samples and references to the firms hiring partner, Jorge Franco, Jr., Jennings Haug & Cunningham, 2800 N. Central Ave., Suite 1800, Phoenix, AZ 85004 or fax to (602) 277-5595.

PI ATTORNEYS LARGE PLAINTIFFS PI FIRM SEEKS ASSOCIATES at two levels 1) with 2-5 years legal experience, preferably PI, for locations in Tucson & Phoenix, and 2) with 5-10+ years PI litigation experience, including significant trial experience, for Phoenix location. Fluency in Spanish helpful for all positions. Send resume to: Goldberg & Osborne, Attn: R. Lott, 2860 W. Peoria Ave., Phoenix 85029; Fax (602) 808-6970 or Email rlott@1800theeagle.com.

POSITION AVAILABLE FOR MOTIVATED ATTORNEY expanding downtown Phoenix Law Firm seeks an energetic with about 2-4 years experience to join our civil defense, trial practice. Some experience in medical malpractice and/or construction defect matters is preferred. Candidates should have excellent research, writing, analytical and organizational skills. Submit your resume in confidence to (602) 252-4431.

STATE BAR OF ARIZONA 111 WEST MONROE, Suite 1800, Phoenix, Arizona 85003-1742 Fax: (602) 271-4930 The State Bar of Arizona seeks to fill the following full-time position: **Chief Bar Counsel** Hiring Range: \$100,500 — \$110,550 Qualifications: Must be (or be willing and able to become) an active member of the State Bar of Arizona in good standing and have a minimum of ten years of practical legal experience, including litigation and trial experience. As head of the State Bar's attorney discipline system, strong executive, management and interpersonal skills are required, along with a thorough knowledge of the Rules of Professional Conduct, investigative and prosecution techniques, budget preparation, and educational writing, speaking and training. This position is a member of the State Bar's senior management team. We offer an excellent benefits package including vacation, sick leave and holidays; health, dental, life and long-term disability insurance; medical and dependent care flexible spending accounts; flexible work hours; paid parking or bus pass; pension and 401(k) plans. For more on our organization, please visit our web site at www.azbar.org. To apply,

send a letter of interest, resume and writing sample, along with salary requirements, to the State Bar of Arizona, Attention Human Resources-MCBA, at the above address.

The State Bar of Arizona is an Equal Opportunity Employer.

THE PHOENIX OFFICE OF HINSHAW & CULBERTSON a full-service, leading law firm with a nationally recognized professional liability practice, is seeking an associate with one to three years of experience in **professional liability litigation**. The ideal candidate will also have superior communication and writing skills. This is an excellent opportunity to join our growing office. The firm provides a comprehensive benefits package. Compensation is commensurate with experience. Please submit your resume to: Brian Holohan, Hinshaw & Culbertson, 3800 North Central Ave., Suite 1600, Phoenix, AZ 85012-1946 or email: bholohan@hinshawlaw.com.

Associate position for an attorney with two to six years of experience in insurance defense, bad faith and coverage litigation. Please forward your resume to: Mariano & Allen, PLC 3003 N. Central Avenue, Suite 1850 Phoenix, Arizona 85012 fax to 602-385-1051 cmariano@cmlawyers.com

MUNICIPAL JUDGE - TOWN OF GILBERT Serves as a judicial officer of the municipal court for the Town of Gilbert. The judge is appointed to a two-year term by the Presiding Judge with the approval of the Town Council, and sits as judge in all matters assigned in civil traffic, criminal traffic, criminal, domestic violence, injunctive orders and municipal code cases. Requires membership in good standing with the State Bar of Arizona, or a Master's degree in political science, social science or a related field with at least five years of court experience. Equivalent combinations of training and experience that provide the require knowledge, skills and abilities may be considered. Application and supplement available at the Employment Center, Town of Gilbert Municipal Building, 1025 South Gilbert Rd., Gilbert, AZ 85296, or on the web at www.ci.gilbert.az.us. Completed application and supplement must be returned to the Employment Center by 5:00 PM, January 25th. \$89,273 to \$95,522 annually, pending Council authorization.

OFFICE SPACE

ATTORNEYS' OFFICES AVAILABLE overlooking McCormick Ranch Golf Course in Scottsdale. Large conference room and reception area. Referral opportunities. Contact Law Offices of Robert H. Kleinschmidt at (480) 951-3949.

DOWNTOWN PHOENIX LAW OFFICES AVAILABLE Time for a change? Expense sharing/of counsel options. Experienced, friendly staff and all amenities immediately available at prime location. Contact Lisa or Tom, Crowe & Scott, P.A., 1100 E. Washington 85034, (602) 252-2570.

EXECUTIVE SUITES — McCormick RANCH Location, Location, Location on beautiful Lake Marguerite, a short walk from Buster's (480) 467-0200.

MESA — LAW OFFICE NEAR FIESTA MALL Solo practitioner looking to sublease one office to experienced domestic relations or civil litigation attorney. Includes: conference room, receptionist, high-speed internet access, copier, fax & phones. (480) 615-6445.

NEED A NORTH SCOTTSDALE ADDRESS? \$50.00/month Also available: Executive Suites & Office's \$10.00/hour (480) 467-0200.

NORTH CENTRAL OFFICES (16th St./Glendale-Northern) 3 individual offices available (10 x 14), (12 X 9) and (12 x 10), shared conference room, kitchen, copy, fax and postage machines, telephone and reception provided, \$1,300/month firm per office — Call Don at (602) 749-9050.

ONE OFFICE AVAILABLE in law office at 44th Street and Thomas. Park-like setting. Newly remodeled. Use of conference room, library, receptionist, copier, fax, secretarial stations. Includes racquetball courts and exercise facility. Call Terri at (602) 952-8500.

PRESTIGIOUS SPACE AT REASONABLE RATES Class "A" building in great Scottsdale location. One larger office, two smaller offices available in beautiful suite of congenial, A-V rated attorney. All amenities. Staff space available. Call Michele at 480-348-9999.

2nd STREET/SOUTH OF OSBORN — Converted house with guest house 100% total remodel — new everything — 2100 sq. ft. all or part — fenced yard, parking, gorgeous great floor plan, 120 E. Lexington — (602) 369-3115.

SHARED OFFICE SPACE...POTENTIAL "OF COUNSEL" relationship with international law firm. Beautiful law suite. Small firm practicing primarily in the areas of international transactions throughout the globe, with an emphasis upon international real estate investments, resort properties and time-sharing condominiums. Offices in Mexico and other countries for 20 years and Bali, Indonesia office opened in 1996. Seeking "Of Counsel" in various areas of support to our international law practice. Also separate suite sublease for 2 attorneys. Call (602) 263-9111.

SOLOS OR SMALL LAW FIRM: Just bring your staff, furniture and phones to our mid-town offices. We have a receptionist, conference rooms, law library, lounge and covered parking, plus fax and copy machines. CALL (602) 248-9465.

SUCCESSFUL AND BUSY A-V RATED FIRM, LAW OFFICES OF JAMES J. EVERETT, P.C. has office space available on an association/expense sharing basis. Seeking well-regarded attorneys with complimentary practices, for likely referral and/or of counsel alliance, not merely office renters. Congenial atmosphere. Located in Class "A" Building, at 2999 N. 44th Street, in Concord Place. Amenities include: beautiful spacious offices, large conference room, secretarial bays, phone system, covered parking, receptionist, copier, fax, postage, etc. If interested, please call (602) 230-2212.

TEMPE/AHWATUKEE PERSONAL INJURY LAW OFFICE 4100 square feet, has extra offices for attorneys practicing other areas of law. Possible of counsel relationship. Includes copier, conference room, kitchen; brand new phone system, carpet, paint. Furnished offices and receptionist avail. Spacious offices. Professional, friendly atmosphere. Flexible arrangements. Call Mark 480-496-7310.

THOMAS AT 7TH AVENUE, PHOENIX, EXECUTIVE LAW SUITES. No move in cost and free rent incentives. Completely remodeled from \$195 to \$440 per month, receptionist, 6 conference rooms, state-of-the-art telephones, fax and photocopier, library, covered parking, employees lounge and more. Call (602) 277-4441, ext. 242.

WESTSIDE LAW OFFICE AVAILABLE Includes Receptionist, Secretarial space, Conference Room, Fax, Kitchen, access to copier, basic telephone. Some overflow and coverage work available as well. Contact Robert Robinson 623-937-1609.

\$10.00 PER HOUR — McCormick RANCH furnished offices or conference room (480) 467-0200.

FOR RENT

KAUAI — LUXURY 3 BEDROOM EXECUTIVE HOME for rent in Princeville on Kauai's north shore. Sleeps up to 10 people — perfect for families. For information see www.kauaibalihai.com or contact Steve Ryan at (480) 443-1148.

LET THE BEAUTY AND CHARM OF SAN CARLOS bring you to a vacation hideaway where the desert meets the Sea — Condominiums Pilar. Pilar offers one, two, and three bedroom beachfront condos. Located just 255 miles South of the AZ/Nogales border, this unspoiled bay offers the ideal scenario to experience all that San Carlos has to offer. Please call our office at 602-265-2220 or visit our website @ www.seaofcortezrentals.com.

SERVICES

MEDIATION SKILLS FOR LAWYERS A two-day program designed for lawyers who currently mediate or want to expand their practice. Presented by Conflict Pros: Joan Tobin, M.S.W. — John Kaminsky, J.D. — Mark Goldman, M.A. Your current skills will be enhanced by: Impasse Management Strategies; Flexible Mediator Styles; Core Interest Identification and Trust Building Communication Techniques. May qualify for 14 units of CLE and Ethics credits. DATES: January 30-31, 2002 or March 20-21, 2002; Fee: \$265 (Early - by 12/20/01 or 2/6/02) \$295 (regular) Information & Registration: Call 602-390-3858 or visit www.conflictpros.com.

SOUTHWEST LEGAL ASSISTANCE — (602) 993-2250 Paralegals available on a contract basis experienced in various areas of law, including Domestic Relations, Personal Injury, Commercial and Civil Litigation, Insurance Defense, Bankruptcy, Federal Litigation, Real Estate. Available for short or long term assignments.

MISCELLANEOUS

Did the late Joseph C. Drozdik have an attorney and a will? If so, please contact nephews by responding to Box 1217 at 303 E. Palm Lane, Phoenix, AZ 85004.

MCBA SECTION STUFF

Upcoming Section Meetings

- The Environmental Section will be meeting on Wednesday, January 9th, 2002 at 12:00 p.m. at the MCBA, 303 E. Palm Lane, Phoenix.
- The Sole Practitioners Section will be meeting on Wednesday, January 16th, 2002 at 11:30 a.m. at the MCBA, 303 E. Palm Lane, Phoenix.
- The Juvenile Practice Section will be hosting the second in the series of CLE luncheons "MCWA with Paul and Virginia Matthe" on Monday, January 28th, 2002 at 12:00 p.m. at the MCBA, 303 E. Palm Lane, Phoenix.

The following Section Executive Boards will meet in January:

- **BANKRUPTCY SECTION**, on January 15th, at 5:00 p.m. at the University Club, 39 E. Monte Vista, Phoenix.
- **ESTATE PLANNING SECTION**, on January 15th, at 7:30 a.m. at MCBA, 303 E. Palm Lane, Phoenix.
- **INTERNATIONAL SECTION**, on January 15th, at 12:00 p.m. at MCBA, 303 E. Palm Lane, Phoenix.

For information about Section membership or to register for events, please contact the CLE Department at phone: (602) 257-4200 fax: (602) 257-0522 e-mail: cle@mcba.org

LEGAL MOVES

■ **Maureen P. Kane** has been appointed staff counsel to the Democratic caucus of the Arizona House of Representatives. She replaces **David Gass**, who was promoted to chief of staff. Both Kane and Gass are 1994

graduates of the Arizona State University College of Law. Gass replaced **Michael Mandell**, who joined Brown & Bain.

■ The firm formerly known as Zemp, Kapsal, Carpenter & Hazlewood is now Carpenter Hazelwood (with partners **James H. Hazlewood** and **Scott B. Carpenter** and associate **Jeffrey B. Corben**). The firm represents community associations. **Joyce Kapsal**, who represents also represents community associations and also handles construction defect litigation, has started the Scottsdale office of Berding & Weil, a San Francisco-based firm.

■ **Kelly A. Brown** has become associated with Jaburg & Wilk.

■ **Shawn E. Nelson** and **Juan F. Moreno** have joined Robbins & Green as associates. Nelson, a *cum laude* graduate of the University of Arizona College of Law, will practice commercial litigation. Moreno will handle commercial transactions, including cross-border related transactions. He is licensed to practice in Mexico as well as Arizona and received law degrees from UA and the Instituto Tecnológico y de Estudios Superiores de Monterrey in Mexico. He also holds a master's degree in international trade.

■ **Scott A. Erickson** has become a shareholder and director of Bonnett, Fairbourn, Friedman & Balint. Erickson, a 1993 law graduate of the University of Texas, specializes in estate planning, probate and trust law. The firm also has added 11 new associates to its Phoenix office. **Edward O. Comitz**, a 1993 University of Puget Sound law graduate, will concentrate on complex commercial litigation. Practicing class-action litigation will be **Kathryn A. Jann**, a 1998 Creighton University law graduate; **Patricia N. Hurd**, a 1999 California Western law graduate; **Guy A. Hanson**, a 1990 University of Florida law graduate and formerly of counsel to the firm; and **Colleen M. Auer**, a 1990 University of Southern California law graduate. **Michael F. Beethe**, a 1997 law graduate of the University of Missouri—Kansas, will concentrate on construction litigation and equine law. **Christopher D. Stickland**, a 2000 law graduate of Michigan State University-Detroit, and **Jonathan S. Wallack**, who graduated with honors last year from UA, will focus on tort law. **Ronitha Maharaj**, a 1999 graduate of Michigan State University-Detroit, will focus on tort and employment law. **Misty Leslie**, a 1999 Creighton law graduate, will emphasize employment law and class-action litigation. **Brigham A. Cluff**, who graduated last year from ASU, joins the firm's real estate and transactions practice. The firm also has opened an office in **Durango, Colo.**, to be staffed primarily by one of the firm's founding partners, Jerry C. Bonnett.

■ **Merton E. Marks** has opened an office in Scottsdale as an arbitrator and mediator. He previously was a partner in Lewis and Roca for 27 years, representing clients in insurance, product liability and commercial litigation, arbitrations and mediations. His office is at 8655 E. Via de Ventura, Suite G-223, Scottsdale, 85258-3363; telephone, 480-346-1055; fax, 480-346-1056; email, memarkspc@hotmail.com.

■ **Linda D. Weaver**, whose practice focuses on health care and commercial litigation, has joined Osborn Maledon. Weaver formerly was executive vice president and chief clinical officer of Magellan Behavioral Health, which covered 70 million insured persons in the U.S. and Canada. Weaver attended law school while she worked for Magellan, graduating last year from Georgetown University Law Center.



Linda D. Weaver

■ The State Bar of Arizona is restructuring its top legal positions, creating once again a chief bar counsel position and establishing, for the first time, a full-time general counsel position. Executive Director Cynthia Zwick has appointed **Allen B. Shayo** as general counsel. As assistant executive director-legal, Shayo has been responsible for overseeing both the lawyer regulation system as well as serving as general counsel. Shayo's duties will include representing the State Bar and its board in all legal matters. The State Bar is hiring to fill the chief bar counsel position. □

NATIONALLY RECOGNIZED OFFICE SEEKING PROSECUTORS
\$49,105-\$108,300 Annually
(Salary Commensurate with Experience and Qualifications)

Join one of the largest and most modern prosecutor's offices in the nation. The Maricopa County Attorney's Office is seeking both experienced attorneys and recent law school graduates to try felony cases. Exceptional training program. Excellent leave package, coverage under the State retirement program, deferred compensation plan, low cost medical, dental, life insurance and more. Must be a member in good standing of the AZ State Bar Assn.

Obtain req'd app from:
 MARICOPA COUNTY
 Human Resources Dept.
 301 W. Jefferson St., Phx 85003
 M-F/8-5 (602) 506-3755
 TT: (602) 506-1908 EOE
 Internet@www.maricopa.gov

Need a Paralegal?

ARIZONA PARALEGAL TRAINING PROGRAM PROVIDES:

- ✓ NO FEE PLACEMENTS FOR FULL AND PART TIME
- ✓ PLACE YOUR JOB LEAD ON OUR WEBSITE
- ✓ ALL GRADUATES COLLEGE DEGREEED
- ✓ INTERNS AVAILABLE AT NO COST
- ✓ ABA APPROVED

ARIZONA PARALEGAL TRAINING PROGRAM
 111 W. MONROE STE. 800
 PHOENIX, AZ 85003
 PHONE (602)252-2171 FAX (602)252-1891
 WEBSITE: PARALEGAL-EDUCATION.COM

Contact: Natalie Witt - Career Development ~ nwitt@paralegal-education.com

PEOPLE IN LAW

■ Lawyers **Christine Weason** and **Kathie J. Gummere** are among the recipients of awards to be given by Planned Parenthood of Central and Northern Arizona at a Jan. 18 luncheon commemorating the 29th anniversary of *Roe v. Wade*. Weason, a member of the Arizona House of Representatives, is one of two legislators to be honored for their work on reproductive rights issues. Gummere is one of two recipients of an award honoring their work fighting discrimination and lobbying for repeal of Arizona's archaic sex laws. □

The Maricopa County Bar Association
 Young Lawyers Division
 and
 The Centers For Habilitation
 Would like to thank

WEST GROUP
 Provider of Westlaw

For generously agreeing to become a
 "Benefactor" Corporate Sponsor
 (our highest level of Corporate Sponsorship)
 of the 2002 Barristers Ball.

Your support of this event is greatly appreciated!

BAR DISCIPLINE DEFENSE

Bar Complaints Disability Proceedings
 Reinstatements Ethics Consultation

Ralph Adams

10 years State Bar experience:

Eight years, State Bar of Arizona
 Former Senior Bar Counsel
 Two years, Utah State Bar
 Former Senior Staff Counsel

Initial consultation:
 No charge
 At your office

602-799-1353
rwlaw@hotmail.com