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Legal Marketing
The Lawyer Referral Service is one of the most effective legal marketing tools in Maricopa County. **Page 11.**

Bankruptcy court to move downtown

By Sybil Taylor Aytch
Maricopa Lawyer

This fall, the U. S. Bankruptcy Court for the District of Arizona, Phoenix Division, will have a new home. Due to the projected growth in the number of new cases, the court will move from its current location at 2929 N. Central Ave. to the refurbished federal building downtown at 230 N. First Ave., the former location of the U. S. District Court.

The move will take place over the last two weeks of September, with the court remaining open at its current location through Friday, Oct. 1. The court will be open for business at its new location on Monday, Oct. 4, with the first court hearings to be held on Tuesday, Oct. 5. In addition to the bankruptcy court, the Office of the United States Trustee and other executive agencies will be located in the building.

The bankruptcy court's Phoenix Division has participated in the Case Management/Electronic Case Filing (CM/ECF) program since the late 1990s, when complex Chapter 11 cases were first set up for electronic filing. The ECF system was developed by the Administrative Office of the U.S. Courts to support the electronic filing of documents and the viewing of case dockets and documents via the Internet. ECF requirements at the bankruptcy court have since been expanded to include filings in all chapters.

The court's move will result in some improvements and changes regarding court operations, including enhanced courtroom technology.

"All courtrooms will have evidence presentation systems through monitors on the counsel tables and elsewhere," said Michael R. Temple, the chief deputy clerk of the bankruptcy court. "The attorney will be able to use his or her laptop with the evidence presentation system." He added that there will be "smart tables" in all courtrooms that will allow attorneys further accessibility to technology.

However, while the courtrooms will allow for electronic presentations, "there will not be the capability for an attorney to hook his or her laptop to the ECF [system]," Temple said.

– See ***Bankruptcy*** on page 5

Durango juvenile court to be dedicated July 12

Judges, along with court, county and juvenile probation officials will dedicate the newly completed Juvenile Court Center, Durango Facility, 3131 West Durango, Phoenix, at noon, Monday, July 12. The $38 million project, under construction since October, 2001, includes a three-story, 12-courtroom court building and a detention building with 220 beds to house juveniles.

On Aug. 3, each juvenile court judicial officer at the new facility will start each day's calendar by finalizing an adoption. In addition to courtrooms, the building will also include space for Juvenile Court Administration, Clerk of the Court, Juvenile Probation Court Services, Victim Services, Court Appointed Special Advocates (CASA), Court Security, Legal Advocate, Public Defender and County Attorney.

Division One splits over visitation for stepparents and worker's compensation

COURT WATCH

Ninth Circuit says IRS may have intimidated jury

By Daniel P. Schaack
Maricopa Lawyer

The issue of whether a widowed stepmother may obtain court-ordered visitation to her stepchild — over the mother's objection — has sparked an extensive debate that has carried into a published court of appeals opinion. The majority held for the stepmother, believing that it was deciding one narrow issue. Their dissenting colleague responded with a voluminous opinion decrying what he believed to be the holdings' wide-ranging implications, including same-sex parenting and polyamorous relationships. *Riepe v. Riepe*, No. 1 CA-CV 03-0184 (Ariz. App. May 25, 2004).

The controversy centered on eight-year-old Cody Riepe. His parents, David and Brandy Jo Riepe, were divorced in 1990. They shared joint custody, with David as the primary residential parent. After the divorce, David married Janette Rae Smith, and he and Cody moved in with her and her three sons. Cody remained close to his mother while at the same time developing a loving relationship with his stepmother.

Soon after Janette and David were married, David died in a traffic accident. Brandy Jo then assumed full custody Cody and cut off contact between him and Janette. So Janette sought a court order allowing her visitation, asserting that she stood in loco parentis to Cody.

Although finding that Cody had bonded with Janette — who was a caring and supportive stepparent — the superior court denied her request for visitation. The court was not persuaded that Cody viewed his stepmother in the same light that he viewed his mother. Janette appealed.

Under A.R.S. § 25-415(C), the court may grant visitation to "a person who stands in loco parentis to a child." Subsection (G) defines a person "in loco parentis" as "a person

– See ***Courtwatch*** on page 4

Attorneys and courts handed new guidelines by state lawmakers

By Joan Dalton
Maricopa Lawyer

The Second Regular Session of Arizona's 46th Legislature adjourned May 26, 2004. The following enactments may impact the Maricopa County legal community.

2004 Ariz. Sess. Laws, Ch. 39 (HB 2138)

Performance audit; supreme court administration and programs

Chapter 39 directs the auditor general to conduct a performance audit of the Administrative Office of the Courts at the request of the Joint Legislative Audit Committee. The performance audit is limited to the administration and operation of the Supreme Court, and to the programs and funds that are administered by the Supreme Court.

According to A.R.S. § 41-1278, a performance audit determines:

- Whether the audited agency is managing or using its resources in an economic and efficient manner;
- The causes of inefficiencies or uneconomical practices in the audited agency;
- Whether desired results are being achieved; and,
- Whether objectives established by the legislature or other authorizing body are being met.

The bill was introduced by Republican lawmakers; however, it passed through both the House and Senate without opposition. Gov. Janet Napolitano signed the bill into law on April 2, 2004.

2004 Ariz. Sess. Laws, Ch. 239 (HB 2539)

Eminent domain; attorney fees; appraisals

Chapter 239 increases the obligations

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JULY 2004
INSIDE

COLUMNS

Jerome
ELWELL
MCBA PRESIDENT

CLE program ends on a high note

By now you all have satisfied the mandatory CLE requirements for 2003-2004, right? Your CLE affidavits are completed and dutifully forwarded in compliance with the Arizona Supreme Court Rules, right? And so we can all take a breath because the next CLE deadline is a full 11½ months away, right? Well, almost right.

As we all know and can appreciate, along with the end of June comes the end of the rush to obtain our 15 hours of CLE credit. While July is perhaps the opportune time to forget about CLE seminars until the start of 2005 (or perhaps June of 2005), I would like to take this chance to reflect on the value of our CLE department and the seminars we offer to our members.

This year, CLE seminars brought notable successes to the Maricopa County Bar Association. Our strength in this area has again risen to the level of quality reminiscent of years past. Congratulations to all of the MCBA sections and divisions, as well as the CLE Department and staff, for your outstanding effort and dedication to this program. You should take pride in its success. Also, thanks to each and every one of you, our MCBA members, for attending and participating in our seminars.

As you may already know, our CLE program is the Maricopa County Bar Association's premier banner program. The strength of our CLE program benefits both the MCBA and our members. The MCBA provides 60 to 70 CLE opportunities throughout the year and generates revenue to support and sponsor other valuable programs within the organization. The high quality seminars offer a wide variety of topics along with exceptional faculty and presentation.

The uniqueness of the MCBA's CLE seminars can be directly attributed to our membership. Most, if not all, of our seminars are prepared and presented by our members. And members have the unique opportunity to provide immediate input and feedback to increase the effectiveness of our programs. At each step of the way, our members have the opportunity to provide ideas, speakers and material for upcoming seminars. The result is seminars that provide attorneys with valuable and current information about the legal community, both locally and nationally.

The purpose of these seminars is not only to guarantee that each member earns their mandatory hours of credit, but also to provide an opportunity for those who have ideas and information to share with their peers.

Finally, as you also know, the money you save for attending MCBA seminars as a member pays for the membership itself! The value of our CLE seminars comes in many forms. So thank you, MCBA Members, CLE Staff and CLE panelists for making the 2003-2004 year such an outstanding year for our CLE program! ■

Why you should begin your case by reviewing jury instructions

Andrew
EVERROAD
MCBA/YLD
PRESIDENT

Several weeks ago I was preparing for trial when another attorney asked me if I had already prepared my jury instructions. I had not. The other attorney was surprised that I had not yet *begun* representing my client by reviewing the Recommended Arizona Jury Instructions (RAJIs) and drafting my proposed jury instructions. Needless to say, I was surprised he was surprised. But as I began preparing proposed jury instructions for my upcoming trial, I quickly recognized the benefit of "beginning at the end."

As attorneys who spend months — or, more likely, years — preparing a case for trial, we can lose focus of our intended audience, the jury. Often we do not spend much time thinking about how the judge will instruct the jury until the weeks leading up to trial. Yet the final jury instructions are usually critical to the case and are the very filter through which the jury views the evidence. By at least reviewing the RAJIs at the outset, we can create the framework for our disclosure, written discovery, and deposition questions.

For example, RAJI (CIVIL) 3rd Contracts 23 — Mitigation of Damages provides:

[Defendant] claims that [Plaintiff] did not make reasonable efforts to prevent or reduce damages.

[Plaintiff] may not recover for any damages that could have been prevented or reduced through reasonable efforts. [Defendant] must prove:

❶ [Plaintiff] did not make reasonable efforts to prevent or reduce damages;

❷ [If [Plaintiff] had acted reasonably, [Plaintiff] could have prevented or reduced damages; and

❸ [The amount of [Plaintiff's] damages that could have been prevented or reduced through reasonable efforts.

A review of this instruction quickly creates a partial outline for the defense:

I. Mitigation of Damages
  i. Damages could have been prevented or reduced
    1. Propound discovery regarding efforts at mitigating damages
    2. Retain an expert or otherwise demonstrate additional mitigation options
    3. Address in deposition(s)
  ii. Reasonableness
    1. Demonstrate the reasonableness of mitigation options not considered by the plaintiff
    2. Address in deposition(s)
  iii. Amount of damages the plaintiff failed to mitigate

Correspondingly, this RAJI allows the plaintiff's attorney to create an outline focusing on its client's efforts at mitigating damages and the unreasonableness of defense counsel's proffered mitigation options.

By spending time at the outset of our cases reviewing the applicable RAJIs and preparing outlines for each issue we may face during litigation, we can create a checklist for use during the course of discovery. As the case progresses, we can better evaluate our clients' positions (and keep our clients informed) by looking at the items we have not yet checked

– See ***Everroad*** on page 6

Advanced legal writing for paralegals

Clare
PENDLETON
PARALEGAL DIV.
PRESIDENT

At the MCBA Paralegal Division's June 8 quarterly meeting, attorney Timothy R. Grimm of Petersen Johnsen presented "Advanced Legal Writing for Paralegals." Speaking on the subject of effective writing versus legal writing, Grimm stated, "Trick question! All writing should be effective. There is no difference."

Grimm explained step by step how to effectively keep the reader's interest. Explaining the differences in using transitions, parallelism, active and passive voice, sentence length and structure, the order of ideas, word choice, alliteration and allusion, he emphasized how to create a flow in writing.

He also discussed the common mistakes made in writing and the need for proofreading and spell checking. An additional hint he offered in this area: "Read it backwards, word by word" to see the glaring misspellings and repeated words.

Reviewing the types of writing assignments paralegals do daily, pleadings, discovery requests and responses, letters, memos and an occasional brief, Grimm pointed out the differences in style, as well as the need for client confidentiality, the need to pay close attention to the audience and the need to always be professional.

He provided a handout of sample pleadings, memoranda of points and authorities, statement of the case and statement of facts, and pointed out that although the paralegal is not always in the position of being an originator of the work, it remains a paralegal's responsibility to review the writing and help make sense of the arguments.

If you are interested in joining the MCBA Paralegal Division, please contact Monica Rapps, CP, Membership Committee chair at (602) 440-4876 or members@maricopaparalegals.org. The MCBA Paralegal Division supports the paralegal community with a comprehensive web site at www.maricopaparalegals.org. ■

MARICOPA Lawyer
www.maricopabar.org

303 E. Palm Lane
Phoenix, AZ 85004
602-257-4200 • 602 257-0522 (fax)
www.maricopabar.org

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Errors will be corrected in a subsequent issue.

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Editorial content
Managing Editor: Teena Booth
480-785-5222
602-257-0522 (fax)
maricopalawyer@mcbabar.org

Advertising
Display advertising: Kathleen Brieske
602-257-4200 ext. 106
602-257-0522 (fax)
kbrieske@mcbabar.org
Classified advertisements: MCBA
602-257-4200
602-257-0522 (fax)

Layout/Design/Production
Marty Marsh Graphics & Design
P.O. Box 3355, Idyllwild, CA 92549
909-659-3493 • 909-659-3514 (fax)
marty@martymarsh.com

Four new commissioners 'gaveled' by MCBA president

By J. W. Brown
Maricopa Lawyer

Four new Maricopa County Superior Court commissioners were sworn in recently by Presiding Judge Colin Campbell. Maricopa County Bar Association President Jerome K. Elwell also participated in the investiture ceremony.

Commissioners James T. Blomo, Susan M. Brnovich, Steven P. Lynch and Julie P. Newell took their oaths of office, were robed with the help of family members and then received the traditional MCBA gift: a new judicial gavel.

The new commissioners bring an interesting mix of experience to the bench.

Blomo, who received his law degree from the University of San Diego College of Law in 1989, began his career as a county prosecutor, then went on to form a law firm specializing in criminal defense and personal injury. While in private practice, he also served as a judge pro tem for the City of Tempe. He is married and has two daughters.

Brnovich also began her career as a deputy county attorney. She specialized in prosecuting cases involving family violence. Before earning her law degree, she studied finance and Spanish at the University of Wisconsin. She completed a portion of her studies in Valencia, Spain. She continued her studies in graduate business school, earning a master's degree in finance in 1994, the same year she got her law degree, also from the University of Wisconsin. She is married and has two daughters.

In 1986, Lynch graduated with distinction from the University of Michigan and went on to the University of Virginia School of Law, graduating in 1989. He launched his career with the Phoenix law firm of O'Connor Cavanagh. Lynch moved on to prosecuting criminal cases and served two stints with the county attorney's office beginning in 1991. For several years he served as general counsel to the Arizona Department of Corrections. He is married and has two children.

A native of Maine, Newell is an expert in law enforcement with 14 years in police work. In 1974, she earned a bachelor's degree in political science from Colorado Women's College and became the first female police officer in the Thornton (Colorado) Police Department. She was hired in 1978 as an intelligence officer with the Central Intelligence Agency. After moving to Phoenix in 1984, Newell earned a master's degree in 1986 and worked in electronics and security. A decade later she earned her law degree from the Oklahoma City Universitys School of law. The next year she became a deputy Maricopa County Attorney.

"It is with great pleasure that we welcome our new commissioners to the court," Campbell said.

Attorneys interested in becoming commissioners for Trial Courts in Maricopa County are invited to contact Campbell's office at (602) 506-3837. With the retirement of Commissioner Elizabeth Arriola, there is a vacancy to be filled. A new eligibility list is being created. ■

Expedited Services to get new management

By Karin Philips
Special to Maricopa Lawyer

Expedited Services, a department previously under the administration of the Maricopa County Clerk of the Superior Court, is now under the direction of the Trial Courts of Maricopa County.

In a cooperative decision made by the clerk and trial courts, the change became effective on July 1. The program provides assistance to family court litigants with disputes involving contact with their children and grandchildren.

"In a large urban court, it is necessary to constantly change and improve to stay ahead of the growth and serve the public better," said Family Court Presiding Judge Norman Davis. "This change will allow better integration of court services and enhance the efficient delivery of services to the public."

By separating the services, both the clerk and the court were prevented by law and custom from addressing all issues in a case at one time in one setting. The essence of the change is to deliver judicial services in the most effective manner.

"Expedited Services will continue to provide services as before, but the change will allow significant flexibility to integrate programs and reduce hearings and matters at the court for the public," said Davis. "Multiple trips to and from the court to resolve issues will be eliminated."

On average, about 124 cases are processed through Expedited Services weekly.

To facilitate a smooth transition, Judy Bushong, who served as director of the program for the past three years with the clerk's office, is continuing to manage the agency. Additionally, the majority of caseworkers and conference officers also are transferring to identical or equivalent positions with the court. A few will remain with the clerk's Family Support Center.

"We will switch to a walk-in default system in the near future that will allow people to set their court date on a day convenient to them," Davis said. "Often these hearings involve child support calculations that we will be able to coordinate with Expedited Services on the day the hearing is scheduled."

The clerk of the court will continue to perform statutory duties including child support collection.

Expedited Services was created in 1988 by the clerk's office to assist parents and grandparents involved in disputes over court-ordered access to children. Trained caseworkers and conference officers help parents determine positive ways to resolve disputes regarding court-ordered access.

➤ *Karin Philips is the community outreach director for trial courts in Maricopa County.* ■

Courtwatch...

Continued from page 1

who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time."

In their briefs, the parties debated whether the statute required Janette to prove that Cody's relationship with her was equivalent to or superior to his relationship with Brandy Jo. Relying on a dictionary definition of "in loco parentis," Brandy Jo argued that Janette had to prove that she "stood in the place of" Brandy Jo. She argued that since she and David had continued to fulfill their parental rights and obligations following the divorce, Janette could not have stood in the place of either of them.

Judge Ann A. Scott Timmer held that the statute did not require Janette to prove that she stood in the place of either parent. She rejected Brandy Jo's dictionary definition because legislation had already defined in "loco parentis." Under A.R.S. § 25-415(G)(1), she held, Janette had merely to prove that Cody had treated her as a parent and that they had formed a meaningful parent-child relationship for a substantial period. This did not require her to prove that Cody's relationship with her equaled or exceeded his relationship with Brandy Jo.

"[I]n deciding whether [Janette] stands in loco parentis with Cody," Timmer wrote, "the [superior] court should consider only whether Cody views [her] as a parent, and whether they have formed a meaningful parental relationship, which has endured for a substantial period of time." If so, she held, the court should then consider whether granting visitation with Janette was in Cody's best interests. Joining Timmer"s opinion was Judge Jefferson L. Lankford.

Judge Daniel A. Barker dissented, filing a 73-page opinion complete with a table of contents. He opined that the majority had misconstrued the statute "by utilizing an alternative definition of 'in loco parentis' that judicially unhinges the ties of number and gender that pertain to that term."

Barker noted that the legislature had defined "in loco parentis" the same for visitation and custody. He focused on the meaning of "parent" and "parental relationship" in the in-loco-parentis statute, terms that the legislation had not defined. He believed that "parent" was correctly limited to "one who begets or brings forth an offspring," or "the natural father or mother."

Janette had contended that a parent should include "a person who brings up and cares for another." Barker rejected this argument, writing that if it were so defined, then "there is no limitation in the number or gender of persons who may simultaneously parent a child." He preferred his definition because it would mean that only two persons could qualify as parents — one man and one woman. "They need not be the legal parents," Barker wrote, "but they are nevertheless limited in number and by gender."

For Barker, "the issue is whether the legislature intended to authorize new family structures incorporating *additional parents*, even though existing parents were already functioning, or whether it intended to leave family structure alone but statutorily recognize others who *take the place of* parents within that family structure when the biological or adoptive parents (legal parents) were not fulfilling these duties." Under his definition of in loco parentis, "the question of whether additional parents are permitted answers itself. They are not." He explained that "[t]he limitations in number and gender (one man as a father and one woman as a mother) preclude additional parents."

Barker expressed concern over the possible ramifications of not limiting the definition of "parent" as he advocated. These included same-sex parenting, group relationships, marriage, and the democratic process.

Barker first turned to same-sex parenting and group relationships, noting various examples of legal literature that advocated them. He acknowledged that the present case "is not ... about same-sex parenting in the sense of sexual orientation, relating to lesbian women or gay men." He nevertheless believed that "the end result of the majority's decision is that there are two persons of the same gender as parents for the same child at the same time."

This did not, in his opinion, accord with the legislative will: "If the legislature had intended to reconstruct the definition of 'parent' as being different from Arizona's long-standing definition of 'parent' (with gender restrictions), it could have (and this dissent suggests, would have) made that plain in the language of the statute."

He next turned to polyamory — group relationships. He spurned the notion that this was an irrelevant, hypothetical concern. "[T]he extent of legal literature on the subject, both favorable and unfavorable, demonstrates otherwise."

"Of course," he wrote, "as a matter of logic, once one breaks down the concept of parents as one man as a father and one woman as a mother, polyamorous relationships come into play." He explained that "[a]llowing more than one person to take the place of a single parent has the potential consequence and effect of permitting polyamorous parenting." Like same-sex parenting, he wrote, the legislature did not intend to raise this issue in the in-loco-parentis visitation statute.

Barker next turned to the potential effects on marriage, noting that express legislative policy establishes the importance of marriage between one woman and one man. In his opinion, not adopting his definition of "parent" ran counter to this policy.

Those three concerns tied into his fourth. "In an area as critical as defining the structure of families," he wrote, "[t]he sharply contrasting views on issues that this case directly implicates (same-sex parenting, polyamorous relations, marriage and family structure) should be resolved by principles of representative democracy, not judicial interpretation."

Barker conceded the importance of relationships with stepparents. He nonetheless felt constrained not to modify statutory language to accommodate them. "This is particularly so," he concluded "when the consequence of making the modification for a stepparent would be to judicially unhinge the ties of gender and number contained within Arizona's definition of the term 'parent.'"

In an opinion released a week after *Riepe*, Timmer and Barker again found themselves at loggerheads. And once again, it was the former who rounded up another vote to prevail, this time finding unconstitutional the legislature's attempt to allow employers to avoid paying workers'-compensation benefits to injured employees who have been using illegal drugs. *Grammatico v. Industrial Commission*, No. 1 CA-IC 01-0117 (Ariz. App. May 20, 2004).

Section 8 of Article 18 of the Arizona Constitution establishes a workers'-compensation system that requires compensation when an employee is hurt on the job if the injury "is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof." In 1999, the legislature enacted a law that allows employers to establish a drug-free workplace policy. Under A.R.S. § 23-1021, a company that establishes a policy may avoid paying compensation to employees who suffer on-the-job injuries if they test positive for alcohol impairment or illegal drug use.

An injury David Grammatico suffered while installing sheet-metal trim on a building exterior led him to test the constitutionality of the legislation. Grammatico worked on 42-inch-high drywall stilts while installing the trim. He fell while walking through a cluttered area, suffering fractures to his wrist and knee.

Grammatico admitted having used marijuana and methamphetamine in the previous two days, and as late as nine hours before his shift began. A urine sample tested positive for metabolites of both drugs, so the worker's-compensation carrier denied his claim for benefits because his employer, AROK Inc., maintained a drug-free policy. An administrative law judge upheld the denial, so Grammatico turned to the court of appeals. In a split decision, the court ruled in his favor.

Timmer's majority opinion held that the drug-policy statute conflicted with the Constitution. She noted that the constitutional system established a tradeoff for Arizona workers: in exchange for a no-fault method of obtaining industrial compensation, they give up the right to sue the employer for tort damages.

To be eligible for compensation, the injured worker must establish both legal and medical causation. "Legal causation is established if a necessary risk or danger of Grammatico's employment wholly or partially caused or contributed to his accident," Timmer wrote, while "medical causation exists if Grammatico's fall from the stilts caused his broken bones."

As Timmer framed it, the pivotal issue was whether the statute altered legal or medical causation, for the Legislature may do the latter but not the former. She concluded that

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Legal community loses respected judge, John Sticht dies at 63

By Teena Booth
Maricopa Lawyer

Former Maricopa County Superior Court Judge John R. Sticht died on June 2, 2002. Well known for his devoted service to the law, to the bench and to the citizens of Maricopa County, Sticht's death is a "tremendous loss" to the legal community say colleagues.

"His insight, his intelligence and analytical abilities will be greatly missed by those of us who had the privilege to work with him," said Maricopa County Superior Court Judge Steve Sheldon. "I spent many lunch hours with him talking about cases, talking about life. He was a terrific, terrific man."

Sheldon recalled that Sticht had only been recently assigned to the bench in 1984 when he was given the infamous Price Waterhouse case, which turned into an 11-month trial that most consider to be the longest trial in Maricopa County Superior Court history.

"He was the new guy on the block and he got buried," Sheldon recalled. "It was very tiring and exhausting and yet he not only did a great job, he did it with grace and a sense of humor. That case established his reputation as a contentious and thorough judge who could handle anything that was thrown at him."

The fact that Sticht was able to take on the enormously difficult case as the first disabled judge ever appointed to the Superior Court bench only added to the admiration felt by colleagues.

Wendy Sticht, his wife of 36 years, said the outpouring of sentiment and gratitude for her husband has been overwhelming.

"I always knew John was generous to a fault, we couldn't see someone with a flat tire on the side of the road without him insisting that we stop to offer a hand," she recalled. "But since his death, I am finding out how many things he did to help other people that he never even told me about."

Wendy Sticht believes that colleagues and attorneys respected Sticht because he treated them with such respect.

"He always respected other people's dignity, as well as their time," she said. "And that went for everyone in his courtroom, from attorneys to witnesses to other employees."

She added that Sticht "loved his work" and the opportunity it gave him to learn about people, and about the world. She said most people were drawn to his enthusiasm as well as his caring and kindness.

Sticht was born in Douglas, Arizona on October 10, 1940. He earned his bachelor's, master's and juris doctorate degrees from the University of Arizona. His first position as a new lawyer was clerking for Arizona Court of Appeals Judge Francis J. Donofrio. He then served as a deputy county attorney before returning to the Court of Appeals, first as a staff attorney, then later as a chief staff attorney.

In January, 1984, he was appointed by Gov. Bruce Babbitt to the Maricopa County Superior Court, where he served for 18 years, the majority of the time in the civil department. He also tried criminal and domestic relations cases and was known as a wise and resourceful judge who would take complex and lengthy cases reassigned from other judge's calendars. Sticht retired in November 2002, but continued serving the legal community as a mediator.

Sticht is survived by his wife, Wendy, his son John Michael Sticht, his son and daughter-in-law, David Jasper and Angela Porter Sticht, as well as three grandchildren, Taylor, John and Logan.

The Sticht family has established a perpetual memorial fund for the purpose of providing assistance to disabled people who are striving for productivity and independence through careers in the legal profession. Tax deductible contributions can be sent to Kevin S. Ruegg, Executive Director, Arizona Foundation for Legal Services & Education, 111 W. Monroe, Suite 1800, Phoenix, Arizona, 85003-1742. Please note that your contributions are for the Honorable John R. Sticht Memorial Fund. ■

Bankruptcy...

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In addition, two courtrooms will have video conferencing capability.

Since use of the ECF system will be required for all filings by the time of the move (including new bankruptcy petitions and adversary complaints), this means that filings can be made online at any time. Consequently, there will be no drop box for after hours filings at the new location. As an indication of how things have changed in a post-9/11 world, Temple said that "drop boxes now have to meet very severe specs to absorb explosive blasts, which make them cost prohibitive."

Despite ECF requirements, mandatory e-filing is not yet required for pro se filers. The court, however, will make the requisite arrangements when this does come to pass. Temple says that when e-filing is mandated for all filers, "pro se filers will be able to use computers at the court to e-file."

In an effort to further eliminate paper files, the court recently formed a Paperless File Committee. The committee is charged with determining how to implement the court's goal of paperless files, meaning that after a certain date, the court will no longer create a case file folder for each new bankruptcy case. The cases will only exist as computer entities. The committee will examine what procedures need to be put into place to meet this goal.

In 2003, there were over 30,000 bankruptcy cases filed in Arizona with the Phoenix Division handling nearly 100 bankruptcy filings per day.

➤ *Sybil Taylor Aytch, RP, is a paralegal at Quarles & Brady Streich Lang and is a member of the bankruptcy court's ECF Users Group.* ■

Courtwatch...

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medical causation was not questioned because the parties agreed that the fall solely caused his injuries.

Thus, the statute altered the proof of legal causation: under it, Grammatico could obtain compensation only if he could prove that his drug use did not contribute to his fall from the stilts. "Even if a necessary risk or danger inherent in working on drywall stilts partially caused or contributed to Grammatico's fall," Timmer wrote, "he must be denied compensation if his drug use also contributed to the accident."

She noted that the ALJ had found sufficient evidence might have existed showing that his drug use was not a substantial contributing cause. But the statute required more: he was not entitled to compensation unless he proved that his drug use did not causally contribute to his fall in any way.

And that was the statute's downfall. "Because § 23-1021(D) abrogates claims for injuries partially caused or contributed to by necessary risks or dangers of employment," Timmer held, "it impermissibly conflicts with Article 18, Section 8, of the constitution."

Timmer was not unsympathetic to the other side, agreeing "that drug and alcohol use have no place in the working world and should not be encouraged or rewarded." But she could not "ignore that our constitutional system for worker's compensation requires the payment of benefits if a necessary risk or danger of employment partially caused or contributed to an industrial accident, without consideration of any fault by the injured employee." She concluded that the Constitution would have to be amended first before the Legislature could accomplish this task.

Judge William F. Garbarino joined Timmer in this opinion.

In his dissent, Barker's tack differed from the majority's: he defined the issue differently than the majority. "I appreciate that the act of *being on stilts* for this employee was a 'necessary risk' of his employment," he wrote. "But being on stilts *while under the influence of illegal drugs* was not a 'necessary risk.'" "It does not take an imaginative mind to consider that such conduct is a 'self-inflicted' injury just waiting to happen."

Barker found § 23-1021 to be "a narrow, focused statute that may be upheld on the basis that the intentional and voluntary use of illegal drugs does not constitute a 'necessary risk' of employment." He believed the statute to be within the legislature's legitimate powers.

We now cross a sister state's border to take up a matter involving a double whammy: taxes and criminal prosecution. Many people fear the Internal Revenue Service. In this case, the IRS's power of intimidation may have actually worked against it.

Martin and Naja Rutherford were prosecuted in Nevada federal court for having filed false tax returns and not paying taxes. In defense, the Rutherfords contended that they had not intentionally underpaid their taxes but had followed inaccurate and misleading advice from supposed tax professionals.

The Rutherfords introduced expert testimony that they had been overassessed and were entitled to carry forward overpayments that they had made. The government countered with evidence tending to show that the Rutherfords had vowed never to pay taxes again, including letters they had written to the IRS contending that Congress had excluded their wages from taxation.

The jury returned guilty verdicts on both counts. The Rutherfords moved for a new trial, contending that the jurors had been intimidated into finding them guilty. They appealed when the district court denied their motion. They found a slightly more sympathetic ear in the court of appeals.

Their intimidation claim centered on the presence of IRS agents in the courtroom. According to the Rutherfords, current and former IRS agents attended the trial and glared at the jurors.

One of the jurors testified that they had discussed possible IRS retaliation "because there were a number of IRS employees who attended the trial, were present every day, and every time I looked at them they seemed to be glaring at the jury." This behavior was very unsettling to some jurors. She averred that "given the behavior of the IRS towards the Rutherfords over a nearly 10 year period, we were very aware that the IRS could make it difficult for individuals who crossed them."

Another juror told a friend that "some of the other jurors felt intimidated by the Internal Revenue Service and discussed the possibility of being audited if they acquitted the Rutherfords."

The IRS agents who attended the trial testified that they were there to observe and did not mean to intimidate the jury. Although the district judge believed the testimony that the jurors were intimidated, he refused to grant a new trial because of the IRS's lack of intent.

The Ninth Circuit remanded. Judge Stephen Reinhardt held that improper contacts with the jury during trial are presumptively prejudicial, and the government has a heavy burden in trying to rebut that presumption. This is the rule because there is a significant potential for prejudice, but it is very difficult to prove.

Applying this rule, Reinhardt held that the district court had erred in focusing on intent. "The appropriate inquiry," he wrote, "is whether the unauthorized conduct 'raises a risk of influencing the verdict.'" Because the district court had improperly excluded evidence, he remanded the case to the lower court for reconsideration of the request for a new trial.

Joining Reinhard's opinion were Judge Betty B. Fletcher and Chief International Trade Judge Jane A Restani, sitting by designation. *United States v. Rutherford*, No 03-10158 (9th Cir. June 10, 2004). ■

Good lawyers make good judges pro tem

Arizona attorneys who practice in Maricopa County are still needed to serve as judges pro tem in the county's trial courts. Through their service, attorneys provide invaluable assistance in helping resolve cases in the court's criminal, civil, juvenile, family and probate departments, as well as in the justice courts.

Lawyers who meet the criteria of A.R.S. section 12-142 are encouraged to apply to serve as a judge pro tem.

There is one more month to submit applications. Attorneys who currently serve as judges pro tem are required to reapply annually. The deadline for lawyers to submit applications for renewal or new appointment for the 2004-2005 year is Aug. 6.

Application forms are available from Trial Courts Administration, Attention - Ken Crenshaw, 201 West Jefferson, Central Court Building, Phoenix, AZ, 85003, or by visiting our Web site at www.superiorcourt.maricopa.gov.

From the home page go to "Site index" and scroll down to "Judges Pro Tempore," where you will find both applications. ■

Everroad...

Continued from page 2

off. Ultimately, the benefits of this practice are clear, and I see no reason not to "begin at the end" and take advantage of the rough outlines the RAJIs already offer.

On a final note, the Civil Jury Instruction Committee of the State Bar of Arizona recently revised the RAJIs, and we now have the *REVISED* ARIZONA JURY INSTRUCTIONS (RAJI (CIVIL) 4th). I emphasize revised because the Arizona Supreme Court has not approved the latest RAJIs. In fact, the court decided it would no longer issue or qualify approvals for any jury instructions. Accordingly, I encourage you to read the disclaimer that is now required to be included with the RAJIs. ■

Internet scourges can be managed with right software

Winton WOODS
LAW OFFICE COMPUTING

Ten years ago this column observed:

> "It seems that every place you go in the last few months you hear people talking about the Internet. The vast majority of them know very little about it, but the 'Net's global characteristics are so intriguing that expanded knowledge runs the risk of interfering with the fantasy of a seamless electronic world without boundaries. In that fantasy world the Internet has broken down the walls created by language and culture and nationalism and rendered us instead into a homogenous world called cyberspace.
>
> The fantasy is at once close to the mark and hopelessly naive. The Internet does connect us in many ways, but the protocols for accessing it are often arcane and difficult to use. The arcaneness of the Internet has been the principal barrier to its expansion to the masses of computer illiterates and semi-literates. Just as the intricacies of DOS for a decade kept the masses away from computers, so too have the text-based protocols of the Internet made access highly difficult. " (Law Office Computing, May 1995)

In the month following, Microsoft introduced Internet Explorer 1.0 which was designed to compete with the Netscape Internet browser that had appeared in October, 1994 under the code name "Mozilla." My academic complaint was thus answered by a fellow named Bill Gates who had just decided that the Internet was the real deal and who brought to the fight the resources of the Microsoft steamroller.

Thus began a decade of rapid and dramatic technological change that created many new millionaires and billionaires and forever transformed the world economy. Almost all of that revolutionary development depended upon the communication technology introduced to the world by the Internet browsers that allowed ordinary folks like us to forgo the "the text-based protocols of the Internet [that] made access highly difficult." Using a mouse click to take a quick trip to the Louvre was the key to the revolution, and the world took to it with astounding speed.

One of the defining characteristics of the ensuing years was the development of many competitive software programs that were distributed free over the Internet in the hope that users would provide the developers with feedback and suggestions for improvement. That synergistic linking of developers and users propelled the advancement of information technology at a prodigious rate. A good part of the reason for that was the emerging "geek nation" whose Internet addiction fueled the flames of innovation. It seemed in those days that new and productive software programs appeared on a weekly basis. Geeks were able to produce a myriad of small programs that would perform mundane tasks with magical speed and accuracy. No sooner did a program appear than a competitor would respond and, after a few years, all were combined into a mature technology which was then purchased by Microsoft or one of the few other large software companies.

That process produced the Information Age and it continues today. But with it has come the three scourges that now threaten to profoundly impair if not destroy much of the usefulness of the Internet. Those three scourges are, of course, viruses, spam and spyware. But in the true tradition of the Internet, the geek nation has responded and there are now emerging powerful tools for correcting the imbalance that has occurred. Most of them are free or very inexpensive. Here are a few of them.

Everybody ought to have a virus program by now. I use the McAffee (http://us.mcafee.com/) program but others such as Symantec http://www.symantec.com) and Sophos (www.sophos.com) are available for a reasonable fee. I particularly like the McAfee product because of the way it automatically updates itself. With new viruses coming in a torrent, the automatic update is a critical function of any modern anti-virus software. But the anti-virus software only focuses on viruses. Other kinds of "malware" require other solutions.

Qurb is a program that I have talked about before. While it does not solve the spam problem it can reduce the amount of spam you receive by 80 or 90 percent. Unlike many of the other spam protectors, Qurb never prevents an email communication from reaching you without telling you precisely what it has done. I could not live without it and you can get a free trial copy at www.Qurb.com.

One good thing about spam is that at least you know when you get it. But there are other hidden programs that come to you in a variety of ways when you browse the Internet. Most of them are focused on providing a purveyor of something with information about you— information like your browsing habits, your email address, your computer's IP address, and other such information. Even legitimate and prestigious publications such as the Wall Street Journal collect that kind of information from you without warning.

Many of you will not care that such information is collected but many ardent libertarians object as a matter of principle. And even the most sanguine among us will object to secret collection of information such as your credit card or social security number. But since such information gathering is not revealed to you when it occurs, it is hard to eradicate. Moreover, the secret tools that are planted on your computer's hard drive are not obvious even when you look. Fortunately, geeks have come to the rescue.

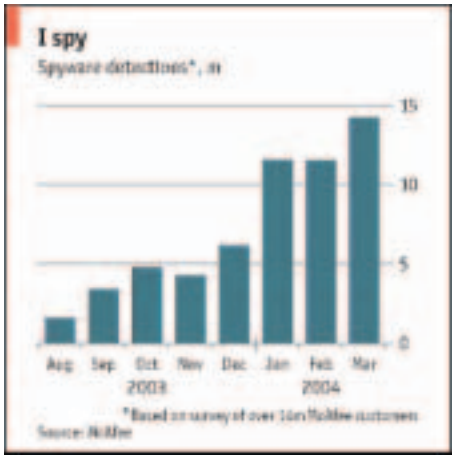
A free program called **Ad-aware** can be downloaded from www.lavasoftusa.com. Every Internet user should have Ad-aware on their computer. Even casual Internet users should run the program on a regular basis. Ad-aware will search your hard drive for those hidden programs and allow you to eradicate them with a mouse click. You will be amazed at how many of them you collect over short period of time. Ad-aware is very fast and the price (free) is right.

Some of these programs called spyware do not just passively collect information but in fact spy upon your computer use and proactively transfer that information to the collection source. Such surveillance tools allow a collector to monitor all kinds of activity on a computer, ranging from keystroke capture, snapshots, email logging, chat logging and virtually anything else that piques the interest of the collector. Another free program called **SpyBot** is designed to ferret out those spies. It is free and can be downloaded from www.safer-networking.org. I have found that Spybot and Ad-aware find different hidden programs and so I run them both about once a week. If you want to know more read Steve Gibson's seven point Code of Backchannel Conduct at grc.com/oo/cbc.htm for the gory information.

Much of the spyware and adware comes when one of those annoying pop-up ads attracts enough attention that you actually succumb and click on it. If you cannot control the temptation, the best thing to do is to stop the pop-ups. The best thing I have found is the **Google Toolbar** popup tool which is available free from www.google.com.

I have found that if I am attentive about running these tools on a regular basis that in addition to protecting my privacy and lowering the level of my annoyance, my computer runs much smoother and faster. Moreover, I take great personal pleasure at finding and destroying these outrageous programs. It is really fun and takes but a moment of your time. Go forth and destroy evil — get the geeks' revenge!

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



Phoenix Municipal Court

"Justice Through Excellence"

Notice: Mandatory Use of New Court Forms
Effective July 1, 2004

In response to Maricopa County Superior Court Administrative Order 2003-038, Phoenix Municipal Court has promulgated the use of the following forms whenever a criminal case is being set to trial.

Motion to Set & Trial Date Notice
This form is required for all cases set to Jury and Non-Jury Trials. One form is required per case and each party is required to complete their respective portion of the form **before** the case may be set for a trial date.

Certificate of Readiness
This form is required for all Jury Trials. Two forms are required per case, with each party completing a separate form. Appearance at Calendar Call by both parties shall be deemed mandatory. However, the appearance of either party may be waived if Courtroom 607 has received a completed Certificate of Readiness before 2:30 p.m. on the day of the scheduled Calendar Call. A Certificate of Readiness received after 2:30 p.m. shall be deemed untimely and the court may take other appropriate action without further notice.

Motions to continue must be filed prior to 2:30 p.m. on the scheduled Calendar Call date. The position of the opposing counsel is required, unopposed motions **will not** be automatically granted.

The above referenced forms will be available in all courtrooms July 1, 2004.

Paralegal Division's softball tournament a big hit

By Tricia A. Kramer
Special to Maricopa Lawyer

The MCBA Paralegal Division held its second annual co-ed Charity Softball Tournament on Saturday, May 15. Teams and fans representing local law firms, businesses and paralegal schools came out to Kleinman Park in Mesa to have fun and show their support for the Paralegal Division. The tournament began at 8 a.m., and the games continued into the afternoon until the top spots were claimed.

This year's first place team was sponsored by Advanced Litigation Resources. The team set the standard for both fun and competition all day long. This included staying undefeated throughout the tournament.

Along with their first place trophy, Advanced Litigation Resources received an unexpected bonus prize. On June 18, the team members will be watching the Phoenix Mercury play the Los Angeles Sparks at America West Arena. Quarles & Brady Streich Lang generously donated the use of its firm suite to the winning team for the upcoming WNBA game.

Snell & Wilmer — last year's tournament winners — played hard, as expected, and took home the 2nd place trophy. They lost to Advanced Litigation Resources by only one run (16-15) in the final game for the championship. Snell & Wilmer was followed by the 3rd place Coldwell Banker Exito Realty. Lamson College's team of paralegal students made a good showing and finished in 4th place.

The MCBA Paralegal Division wishes to thank all of the teams, fans, sponsors and organizers who helped to make this year's co-ed softball tournament a success. All proceeds from the event will benefit the Paralegal Division's Scholarship Fund, which traditionally awards four $1,000 scholarships to qualified applicants enrolled in ABA-approved paralegal programs. The scholarships will be presented at the Nov. 8 Arizona Paralegal Conference, to be held at the Arizona Historical Society Museum in Tempe.

➤ *Tricia Kramer is a paralegal at the firm of Michael L. McAllister. She is president-elect of the MCBA Paralegal Division.* ■

The Paralegal Division's Charity Softball Tournament winning team (above right) was sponsored by Advanced Litigation Resources. Paralegal Division President Clare Pendleton is at left, and Immediate Past President Garth Harris is at right.

The softball team sponsored by the firm of Snell & Wilmer (right) took home the second place trophy.

Wiley Jones and the 80 Percent Law put Arizona in legal spotlight

Arizona's colorful characters — and their sometimes unusual legislative undertakings — have been fertile ground for development of distinguished careers for Maricopa County lawyers, and for establishment of Arizona as a source of cutting edge legal precedent through the years. Soon after the Maricopa County Bar was established in June 1914, an election set forces in motion that would be the genesis of this tradition.

The wild and contentious election of 1914 was memorable for many reasons. Democrats, Republicans and Socialists all received significant and enthusiastic support. It was reported that the ballot for Maricopa County was over six feet long. The editors of the *Arizona Gazette* complained that "[t]he ballots of this county alone . . . will be sufficient to paper all the houses in Phoenix and have enough left over to take care of Prescott, including the new court house." Besides presenting a full slate of local, county and statewide offices, including the opportunity to re-elect the legendary Gov. George W. P. Hunt and Rep. Carl Hayden, as well as to elect the state's second attorney general, the ballot included at least nineteen initiatives and referenda. The higher profile initiatives included prohibition of the sale of alcoholic beverages (passed in Maricopa County, failed in Pima County, passed statewide), a statute supported by Hunt forbidding capital punishment (defeated) and the secession of Miami and other mining communities from Gila County (defeated).

There were no hanging chads, but the ballot was far from a model of simplicity. Election procedures were not efficient. Each of the propositions were assigned two numbers, one odd and one even — an X in the box next to the even number was a "yes" and an X in the box next to the odd number was a "no." Because of the length and complexity of the ballot, election returns were exceptionally slow in being tabulated. It was reported that "never in the history of the state, and perhaps never in the history of the country has there been anything approaching the delays in connection with the counting of the votes on the constitutional amendments." Returns were still trickling in a week after the Nov. 3 election.

When the 1914 election dust had settled, Wiley Jones had been elected the new attorney general and voters had approved an initiative, supported by Hunt and the state's labor unions, called the "80 Percent Law." The law restricting employment of immigrant workers had been aggressively opposed by railroad and mining interests. Then, as now, immigration issues were of great concern to the people of Arizona. Proximity to the Mexican border, an abundance of unskilled laborer work in the mines and railroads, liberal federal immigration standards and a strong labor movement combined to strain relations between workers who considered themselves "Americans" and newer immigrants more willing to cross union lines, work for lower wages and tolerate dangerous and difficult working conditions. The 80 Percent Law (on the ballot as No. 318 for yes and No. 319 for no) was an initiative requiring "that in every establishment, shop, place of business or home where more than five persons are employed, eighty percent of those employed shall be qualified electors or native born citizens of the United States or some subdivision thereof."

Attorney General Jones, a popular and well connected politician, had been elected by a nearly two to one margin. He moved into his commodious offices on the 4th floor of the Goodrich Building at 14 N. Central Avenue in Phoenix, the first week in December, 1914. He and his legal team of Leslie Hardy and George Harben (all three attorneys lived within a few blocks of each other on North Second Avenue near Filmore Street) had probably not even unpacked their law books before Jones was served with a lawsuit filed in Federal District Court on December 15, 1914.

The lawsuit was filed by Mike Raich, an Austrian native, employed as a cook at the English Kitchen restaurant on Main Street in Bisbee. Raich complained that under the 80 Percent Law, his boss William Truax Sr. would be forced to fire him. Unfortunately for Raich, the English Kitchen had nine employees, seven of whom were neither "native born citizens" nor "qualified electors." After the passage of the 80 Percent Law, Truax had allegedly informed his employees that because of the fear of penalties for violation of the Act, Raich would be discharged.

Raich's lawsuit challenged the constitutionality of the new law and sought an injunction preventing the state from prosecuting Truax under the new statute. The case would become Arizona's first "landmark" U.S. Supreme Court decision and would establish civil rights and immigration law precedent that is still relied on by the courts and has been cited as recently as January, 2004.

Raich sought and was granted a temporary restraining order from the district court preventing enforcement of the Act and protecting his job. He then sought and was granted an interlocutory injunction from a panel of three federal judges in San Francisco. The defendants, including the Cochise County Attorney, the restaurant owner and Attorney General Jones, appealed directly to the U.S. Supreme Court. The legal team for the defense included the Attorney General's office, and two other Arizona lawyers — J. Addison Hicks and W.B. Cleary. None had ever appeared before the Supreme Court.

Wiley Jones became a Maricopa County lawyer when he was appointed Assistant U.S. Attorney in Phoenix in March 1914. An Illinois native and longtime politician, Jones had served in the Illinois legislature and in 1889 had been the Democratic nominee for Speaker of the Illinois House. Prior to his arrival in Maricopa County, he was District Attorney for Graham County in eastern Arizona for several years. He was a well known stump campaigner in the state and was active in several lodges and fraternal organizations. He was Past Sachem of the Improved Order of Red Men of Arizona. Jones had no college education and had only briefly attended high school. After a four-year apprenticeship he was admitted to practice law in Illinois with "high honors."

W. B. Cleary, better known as "Windy Bill," was one of the more colorful members of the defense team. Cleary had formerly lived in Phoenix, but in 1914 was an attorney for the Western Federation of Miners in Bisbee. He was an outspoken advocate for workers and would attain a measure of immortality a few years later. In 1917, Cleary was included in the roundup of more than 1,000 alleged members of the Industrial Workers of the World (a radical union nicknamed the Wobblies) by 2,000 rifle and machine gun toting citizens of Bisbee, known as the Citizen's Protective League. Cleary and the others rounded up were detained in the city baseball park and then were herded into 27 cattle and box cars and shipped off to Columbus, New Mexico — the infamous Bisbee Deportation. Reportedly, "[t]he only time the crowd stopped jeering as the men were loaded on the train was while W.B. Cleary, a Bisbee attorney, marched into a car."

Meanwhile, Mike Raich, the lowly immigrant cook who filed the case, was represented on appeal by the influential Washington, D.C., lawyers Alexander Britton, Evans Browne and Francis Clement. Over the years, these attorneys had represented big mining and railroad interests before the U.S. Supreme Court in over a dozen cases. (The Santa Fe Railroad recognized its close relationship with the Britton firm by arranging for the town of Britton, Oklahoma to be named in honor of Mr. Britton's father. Britton Road in Oklahoma City continues to honor the faithful and resourceful services of the Britton law firm to its politically and financially powerful clients.)

Just as W. B. Cleary's inclusion on the defense team was an indication that union resources along with state funds were being committed to support the openly discriminatory 80 Percent Law, the make-up of the legal team for Raich suggests that his case was being bankrolled by the mining and railroad companies that opposed the law to protect their access to low-cost labor.

Attorney General Jones left Phoenix the last week of September, 1915, and began a trek to the Supreme Court oral argument in Washington, D.C. He would not return to Phoenix until Oct. 31. En route, he stopped off in Clifton where the governor was meeting with strikers and owners in an effort to defuse a lengthy and violent strike at the area copper mines. While there,. Jones, whose sympathies, like those of Hunt, were with labor, offered the strikers encouragement and was quoted as telling them that his mission to the Supreme Court, like their strike, was "for the cause of Almighty God."

Unfortunately for Jones, the high court disagreed. *Raich v. Truax* , 239 U.S. 33 (1915), was argued on Oct. 15, 1915 and the court issued its decision two weeks later on Nov. 1, the day after Jones returned from Washington. The court struck down the 80 Percent Law in an opinion delivered by Justice Charles Evans Hughes. (Shortly thereafter, Hughes resigned to run as the 1916 Republican nominee for President and was narrowly defeated by Woodrow Wilson). The *Raich* opinion established that the equal protection guaranteed by the Fourteenth Amendment protects the right of an individual to work in his/her chosen profession and that the authority to control immigration is vested solely in the federal government.

Mike Raich kept his job, but in a twist of judicial fate, William Truax and the English Kitchen were back before the Supreme Court

– See ***History & Hearsay*** on page 11

MCBA CALENDAR

This calendar includes all CLE seminars presented by MCBA as well as MCBA meetings, luncheons and events and those of other voluntary bar associations and law-related organizations. The divisions, sections and committees listed here are those of the MCBA, unless noted otherwise. Everything takes place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix; Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, Bank One Building, 201 N. Central, Phoenix. For information about MCBA events or to register for any of the MCBA seminars, contact the MCBA at 602-257-4200 or visit www.maricopabar.org.

JULY 2004

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

JULY 2004

July 5
- Independence Day Holiday, MCBA office closed

July 10
- CLA Review Course, 9 a.m.

July 12
- Young Lawyers Division, noon
- *Maricopa Lawyer* editorial board, 5:15 p.m.

July 13
- VLP Advisory Committee, noon
- Hayzel B. Daniels Bar Association, 5:30 p.m.

July 14
- MBCA Executive Committee, 7:30 a.m.

July 15
- MCBA board of directors, 4:30 p.m.

July 16
- Maricopa County Bar Foundation board of trustees, 7:30 a.m.

July 17
- CLA Review Course, 9 a.m.

July 19
- Paralegal Division board, 5:30 p.m.

July 21
- Lawyer Referral Service Committee, noon
- Bench Bar Committee, 12:15 p.m., Central Courthouse

Davis heads new MCBA focus on building strong leaders

MEMBER PROFILE

By Kathleen Brieske
Maricopa Lawyer

Glenn Davis is an interesting person to meet. From his work as a sole practitioner, to Arizona Senate counsel, to his upcoming role as a Maricopa County Superior Court commissioner, Davis' legal background brings a wealth of insight. Belonging to the MCBA since his admission to practice in Arizona 25 years ago, and currently serving as member of the board of directors, he also possesses a valuable grasp on the organization.

Growing up in Yuma, Davis was fortunate to have high school teachers who sparked his interest in government and the law. After receiving a pre-law undergraduate degree from Northern Arizona University, he attended law school at California Western University in San Diego. Though he passed the California bar exam and considered remaining to make a life for himself there, he missed Arizona and moved back to practice law.

Davis brings a wide range of legal experience to his leadership role at the MCBA. In 1979, he started out in private practice as an associate and then a partner in a small firm. He also served in the Arizona State House of Representatives from 1981 to 1984, while also continuing to practice full time. He then started his own firm as a sole practitioner, focusing on litigation, family law and juvenile law.

Davis has been counsel for the Arizona Senate for ten years while also maintaining a limited private practice. However, that will soon change. This month, he is being appointed a Superior Court commissioner.

The transition from the senate to the Superior Court will not be too big of a challenge for Davis as he has served as a judge pro tem and commissioner pro tem over the last 13 years.

What will be the difference between his old and new positions?

"The role of counsel at the senate deals with fairly broad legal and policy issues, and the process is immersed in politics," Davis explained. "A good part of the time you do not see direct and tangible results and resolution on issues. As a judicial officer, you deal with issues and matters one case and one person at a time. You are distanced from partisan politics, and you get to see resolution in many of the matters you handle."

In his new role as judicial officer, Davis will bring the same professional experience, judgment, and legal analytical skills he used as a senate advisor. Those skills are a result of his combined professional experiences in private and public practice.

Davis

When asked what he will miss most when he changes roles, Davis mentioned the pro bono opportunities he has had. "I have found great enjoyment and satisfaction in serving the Volunteer Lawyer Program over the years." He hopes to further the work of the MCBA's Volunteer Lawyers Program and other legal services program in his role as MCBA board member.

Davis also is focused on promoting the concept of leadership training. He is currently helping to create an MCBA leadership training program aimed at members who are interested in assuming leadership roles in sections, divisions and programs. While the training will be primarily designed to develop leaders for the MCBA, it will also be beneficial to lawyers wanting to serve outside the legal community.

According to Davis, community and professional organization leadership skills are different from the skills attorneys develop for practicing law or even for running a firm. "Moving a group of people, most of whom are volunteers, to accomplish a common goal requires special planning, strategic, motivational and communication skills not taught in law school," Davis said. The MCBA training would bring together professionals and leaders to educate attorneys on those necessary leadership skills.

When asked how participation in the MCBA benefits attorneys, Davis said that "beyond the personal and professional opportunities, the most important benefit of supporting the MCBA is the positive image the organization provides for the legal profession, through its public education and service programs."

Davis stressed that during this time of "constant lawyer-bashing and threats from politicians against the legal and justice system, public appreciation and support is more crucial than ever." He believes that the positive work the MCBA and its members do enhances public support in the local community.

And how does a strong leadership program fit into that belief?

Davis hopes that the MCBA will continue to communicate to the public the significant contributions that lawyers make every day as leaders in the community. Building strong leaders throughout the organization will allow this to happen.

As an afterthought, Davis said he would like to see more veteran attorneys accept leadership roles in the MCBA.

"By leaving younger attorneys to carry the load, the organization misses out on the wisdom and experience of these seasoned attorneys," he said.

"Likewise, the attorneys miss out on the fulfillment and rewards that come from taking the lead to improve the profession ... It is never too late to grow in the profession." ■

Write a letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. *Maricopa Lawyer* reserves the right to edit all letters for length. Letters to the editor can be e-mailed to maricopalawyer@mcbabar.org or mailed to: Editor, *Maricopa Lawyer,* Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.

LEGAL MOVES

■ **Robert J. Hackett**, a corporate, securities and banking attorney, has joined Jennings Strouss & Salmon as partner. Hackett (J.D. 1967, Duke University) was previously a director with Fennemore Craig and brings with him 30 years experience in public securities offerings, private placements, mergers and acquisitions and corporate finance.

■ **Mark H. Wagner** (J.D. 2003, University of San Diego) recently joined Lewis and Roca as an associate in the firm's personal injury and wrongful death practice group.

■ **Adam L. Stroud** has joined Brown & Bain as an associate in the firm's litigation department. Stroud (J.D., University of Texas) is registered to practice before the Patent and Trademark Office.

■ **Anoma Phanthourath** and **Michelle Ghiggia** have joined Shughart Thomson & Kilroy as associates. Phanthourath (J.D., UA), formerly an associate with Squire Sanders & Dempsey, will concentrate her practice in commercial and civil litigation, particularly in the areas of real estate litigation, business contract disputes and business torts. Ghiggia (J.D., ASU) will focus her practice in general civil litigation. ■


Ghiggia


Hackett


Phanthourath


Stroud


Wagner

Legal marketing through the Lawyer Referral Service

By Kathleen Brieske
Maricopa Lawyer

Over the years, attorneys have come to realize the power of marketing when looking to build their client base. Like other businesses, attorneys are selling a service and need to market that service effectively. For attorneys, the art of selling can be a challenging one, due not only to the enormous amount of competition, but also to how relationship-based the legal profession can be. Add in the fact that some attorneys are natural sellers while others are not and one can see why choosing an effective marketing method is not a one-size- fits-all scenario.

Common legal marketing methods include advertising, multiple-industry referral groups, peer-to-peer networking and lawyer referral services. For those who want marketing that is results-driven, lawyer referral service programs are a surefire way to build clientele because they help locate people with existing legal problems.

Such a program is the Maricopa County Bar Association's Lawyer Referral Service (LRS) program. LRS currently has 260 participating attorneys. One of those attorneys is Michael Fuller, who has been a panelist on and off since 1988. Following four years working in large law firms, Fuller decided to go back to being a sole practitioner. After making the decision, the first thing he did was fill out an LRS application in order to identify people needing legal advice and build a client base.

Like every other form of marketing, lawyer referral service programs produce results, but not 100 percent of the time. However, Fuller believes strategies can be implemented to produce better results. An LRS case can be either hit or miss, but by treating each potential client with a high level of respect and a willingness to work together, Fuller walks away successful more often than not, even if means helping someone one time. He holds to the belief that even if clients do not end up hiring him, at the end of the day, he has helped people. This attitude makes his efforts genuine, which can be the most important tool in securing clients.

Fuller finds great value in belonging to the Lawyer Referral Service. When asked about LRS cases that have turned into clients, Fuller mentions a small business that came to him for help in collecting a debt. Fuller won the case for them, and that business has become one of his regular clients, using him for more than a dozen matters since that initial case.

The marketing advantages of LRS is perhaps not as obvious as other marketing methods because when success does occur, it resonates with extra meaning — aside from the financial gain there also comes a feeling of fulfillment. As Fuller says, he is "alleviating stress and anxiety for his clients." This is a reward beyond how many referrals an attorney can accumulate in a week or a month. Ultimately, being part of LRS is a chance to give back to the community *and* take advantage of an effective marketing tool. ■

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History & Hearsay...

Continued from page 9

five years later. This time, Arizona law led to a dispute over the right of striking employees to picket the English Kitchen restaurant and interfere with Truax's business. Chief Justice William Howard Taft's opinion in this second case relied on the prior *Raich v. Truax* case to affirm Truax's right under the Fourteenth Amendment to carry on his business without illegal interference by the union. *Truax v. Corrigan*, 257 U.S. 312 (1921). Truax likely considered himself a winner in both cases — he could hire employees, regardless of national origin, and the union could not unlawfully interfere with his business.

The two teams of litigators who had battled in the *Raich v. Truax* case were soon pitted against one another again in the U.S. Supreme Court. In the rematch, the Arizona lawyers won their professional revenge against the Washington firm. In *Phoenix Railway Co. v. Geary,* 239 U.S. 277 (1915), the Arizona attorneys successfully defended the Arizona Corporation Commission's authority to issue an order compelling the Phoenix Railway Co. to install a second track in its service from downtown to the state capitol building. Of course, the personal interest of the attorney general's office in commuting to and from the capitol from downtown may have contributed to the fervor of their argument.

Wiley Jones was elected to three terms as attorney general and went on to appear in a total of six cases before the U.S. Supreme Court. When asked about rumors that he might be interested in running for governor, Jones replied in lawyerly fashion, that "while he had not started or heard any such talk, he, like the striking miners, was on the look out for more pay." Like many Maricopa County lawyers who would follow, Wiley Jones helped establish Arizona as a fertile ground for cases of national significance — cases that would profoundly influence the civil rights of Americans in the 20th century. ■

Legislative...

Continued from page 1

owed to an owner-occupant by governmental entities involved in eminent domain proceedings and expands the basis for awarding attorney fees in eminent domain matters. Specifically, Chapter 239 adds A.R.S. § 12-1130 which:

➤ Allows an owner-occupant disputing a governmental entity's offer and appraisal in a proposed condemnation action to obtain a second appraisal from a list of appraisers maintained by the governmental entity, and requires the governmental entity to pay for the second appraisal;

➤ Requires the governmental entity to provide the owner-occupant with all appraisals of the property that the governmental entity obtains before filing an eminent domain action;

➤ Requires the governmental entity to provide the owner-occupant with relocation benefits that allow the property owner to purchase a comparable replacement dwelling;

➤ Allows a court to award attorney fees and expenses to any party in an owner-occupied residential condemnation action with the exception of a governmental entity;

➤ Allows courts to award the reasonable expenses of expert witnesses, and the reasonable costs of any study, analysis, engineering report, test or project that the court finds to be directly related to and necessary for the presentation of the party's case;

➤ Allows a court to consider the difference between the final offer and the compensation awarded, the percentage of the difference between the final offer and the award, and any other factors the court deems appropriate in making an award determination; and,

➤ Exempts the section from applying to actions for acquisition of property for public safety, transportation, flood control or utility purposes.

2004 Ariz. Sess. Laws, Ch. 153 (HB 2609)

Jury duty; lengthy trial fund

Chapter 153 amends A.R.S. § 21-222 to allow unemployed jurors who serve for more than ten days to receive $40 per day from the Arizona Lengthy Trial Fund, even if they receive income in the form of spousal maintenance, pensions, retirement, unemployment compensation, disability income or other similar income. Similarly, A.R.S. § 21-336 is amended to allow a prospective juror to postpone jury service if the prospective juror has not been granted two prior postponements, and authorizes the jury commissioner to determine the time period for the postponement. The measure also makes technical and conforming changes to A.R.S. § 21-202. Chapter 153 contains an emergency clause, which made the new law effective immediately upon signing by the governor.

2004 Ariz. Sess. Laws, Ch. 131 (SB 1222)

Victims' rights; statement by judge

While Rule 39 of the Arizona Rules of Criminal Procedure currently requires prosecutors to inform victims of their rights, Chapter 131 adds A.R.S. § 13-4438, which requires superior court judges to read the following statement concerning victims' rights at the daily commencement of criminal proceedings.

> If you are the victim of a crime with a case pending before this court, you are advised that you have rights under Arizona law that, among others, include the right to be treated with fairness, respect, and dignity, to a speedy trial, to be present at court proceedings, to choose whether or not to be interviewed by the defendant or the defendant's attorney, to be heard before the court makes a decision on release, negotiation of a plea, scheduling and sentencing and to receive restitution from a person who is convicted of causing your loss. If you have not already been provided with a written statement of all victims' rights, please contact the victim services division of the prosecutor's office.

Senate Concurrent Resolution 1009

Proposing an amendment to Arizona Constitution Article VI, § 31, relating to the judicial department.

2004 Ariz. Sess. Laws, Ch. 80 (SB 1076)

Justices of the Peace; *pro tempore* qualifications

Senate Concurrent Resolution 1009 refers to voters a proposed amendment to Article VI, section 31 of the Arizona Constitution. The amendment would clarify that although justices of the peace *pro tempore* may be non-lawyers (as justices of the peace may be), justices of the peace *pro tempore* are not required to reside in the same precinct in which they are appointed to serve. Should SCR 1009 be approved by voters, Chapter 80 would amend A.R.S. § 22-122 to conform the justice of the peace *pro tempore* qualifications made by the amendment to Article VI, section 31.

The general effective date for laws enacted this session is August 25, 2004. ■

PEOPLE IN LAW

■ Sacks Tierney attorney **Mark Dillon** has been invited by the honorary German Consul to participate in a two-week conference in Germany on the legal framework for free trade within the European Union and with the United States. Dillon, only one of 18 U.S. and Canadian citizens selected to participate, speaks fluent German. The conference is sponsored by the German Academic Exchange Service and the University of Bonn.

■ The Arizona Foundation for Legal Services & Education announced that **Paul Eckstein** is the recipient of this year's Walter E. Craig Distinguished Services award. The award is given annually to an attorney manifesting adherence to the highest principles and traditions of the legal profession and services to the public. Eckstein is a partner with Brown & Bain and has been the chairman for the firm since 2000.

■ **Jodi Knobel Feuerhelm** has been elected to the board of directors of the Arizona Center for Disability Law. A not-for-profit public interest law firm, the center's mission is to protect the rights of disabled individual. It responds to 3,500 calls annually to provide legal advice and referrals. Feuerhelm, a member of Brown & Bain, concentrates her practice in business litigation.

Dillon

Eckstein

Feuerhelm

■ The Arizona Friends of Foster Children Foundation honored **Thomas Jacobs**, a retired Maricopa County Superior Court commissioner, with its J. Robert Pierson Memorial "Friend of Foster Children" Award. Jacobs was commended for unflagging judicial commitment and devotion to children shown by his work on adoptions, delinquencies and dependencies in the juvenile court system.

■ Shughart Thomson & Kilroy attorney **Kelly Flood** has been appointed president of the Sandra Day O'Connor American Inn of Court (AIC), one of six Inns in Arizona. AICs are designed to improve the skills, professionalism and ethics of the bench and bar. Each Inn meets once a month to "break bread" and to hold programs and discussions on civil and criminal litigation issues. ■

Attorneys needed to serve on Community Legal Services board

As a not-for-profit, civil law firm since 1952, Community Legal Services (CLS) provides legal advice, assistance and representation to low-income Arizona residents in Maricopa, Mohave, Yavapai, Yuma and La Paz counties.

The CLS governing body is comprised of "attorney and client-eligible representatives of the geographical areas served by the program." The Maricopa County Bar Association is one of the appointing attorney organizations with responsibility for 5-7 appointees to the CLS board of directors. The CLS board currently has two open positions to be filled by MCBA appointees.

The MCBA board of directors has voted to offer this opportunity to all MCBA members. Each opening consists of a three-year term. Appointees may serve up to two consecutive three-year terms. The appointments are non-compensated; however, all CLS business-related travel is reimbursable.

Interested candidates should contact Leandra Lewis, executive director of the MCBA, at (602) 257-4394. ■

ADR office thanks attorneys

The Alternative Dispute Resolution Office of the Maricopa County Superior Court extends its gratitude and thanks to all civil and family court judges pro tem.

Over the past fiscal year, volunteer attorneys provided over 2,500 settlement conferences for the court in civil and family court cases. The time and effort helped the court resolve a large number of cases thanks to an overall agreement rate of 58 percent. In addition to conducting settlement conferences, civil department judges pro tem also conducted more than 50 short trials.

The court and ADR Office appreciate the dedication and service to the court which reflects an invaluable commitment from the Maricopa County legal community to the settlement conference program. ■

Classifieds

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POSITIONS

CONSTRUCTION ASSOCIATE, Fennemore Craig is seeking an associate with 2-4 years commercial litigation experience to join its expanding construction litigation practice. Excellent professional credentials required, including demonstrated skills in writing and analysis, attention to detail and excellent client relations. Arizona Bar membership preferred. Additional information can be found at www.fennemorecraig.com. Please reply in confidence to: Laura Zilmer, Fennemore Craig, 3003 N. Central Avenue, Suite 2600, Phoenix, AZ 85012; fax 602-916-5957; lzilmer@fclaw.com.

FAMILY LAW/ESTATE PLANNING ATTORNEY — NRG — Nirenstein, Ruotolo & Gonzalez, P.L.C., a Scottsdale firm exclusively dedicated to the practice of family law is seeking an experienced divorce and family law attorney with practical experience in drafting wills and representing clients in estate planning matters. Qualified candidates should submit a resume and writing sample via fax at 602-485-0600 or e-mail at a.nirenstein@nrglaw.net.

KUTAK ROCK'S SCOTTSDALE OFFICE seeks attorneys with the highest personal and professional credentials to assist in the firm's expanding regional and national practice. The firm is seeking practitioners with 8 or more years experience in the following areas: commercial real estate, commercial leasing, real estate construction and development, public finance, institutional lending, commercial employment litigation and bankruptcy. Kutak Rock was founded in 1965 and has 15 offices nationally. The Scottsdale office has more than 25 of the firm's 325 attorneys. The firm has earned widespread recognition for finding creative solutions to problems and for excellence of service in addressing the legal needs of a clientele that is international in scope. The firm is rated "AV" by Martindale-Hubbell—the highest rating that independent organization confers upon law firms. Interested individuals may contact Tony Giancana at 480-429-5000 or by email at anthony.giancana@kutakrock.com

LITIGATION ASSOCIATE, Fennemore Craig is seeking an attorney with 2 to 4 years of experience in medical negligence, products liability and other personal injury and business tort areas to join its Phoenix office. Candidate should have excellent professional credentials, including demonstrated skills in writing and analysis, attention to detail and excellent client relations.

THE LAW FIRM OF HYMSON & GOLDSTEIN, P.C., the oldest and largest firm in North Scottsdale, is seeking to expand its litigation department. We are looking for two litigators, one with five-plus years experience and an existing client base and another with two-plus years experience to join a group of 13 attorneys and three paralegals devoted to their clients and their work. Our entire team of skilled professionals maintains a "whatever it takes" attitude in servicing the needs of our clients; going above and beyond is our norm. We conduct ourselves within a work ethic designed to restore the image of the lawyer as the trusted family and business advisor. If you desire to build lasting relationships with clients and peers as we do, contact Kevin Newell at KJN@legalcounselors.com or fax 480-443-8854.

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Volunteer Lawyers Program Thanks Attorneys

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

Adoption:
Janet Story, Sole Practitioner

Bankruptcy:
Robert D. Beucler, Phillips & Associates
Jeffrey L. Phillips, Phillips & Associates

Consumer:
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Neal H. Bookspan, Hahn Howard & Green
Frank W. Busch III , First National Bank of Arizona
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Gregory J. Marshall, Snell & Wilmer
Howard C. Meyers, Burch & Cracchiolo
Elan Mizrahi, Jennings Haug & Cunningham
John J. Nicgorski, Mohr Hackett Pederson Blakley & Randolph
Ian Pryor, Krohn & Moss
Kenneth G. Royer, Sole Practitioner
Mark D. Samson, Keller Rohrback

Employment:
David C. Kresin, Steptoe & Johnson

Family Law/Domestic Violence:
Bruce Brown, Sole Practitioner
Roger K. Gilbert, Warner Angle Roper & Hallam
George Griffeth, Sole Practitioner
Teressa Marie Sanzio, Sole Practitioner
Linda D. Skon, Franks and Park

Guardians Ad Litem for Children in Family Court:
William A Hicks III, Snell & Wilmer
Donna R. Rohwer, Graham & Associates

Guardianships of Minor Children:
Hector Diaz, Quarles & Brady Streich Lang
William F. Doran, Sole Practitioner
Elizabeth Farhart, Snell & Wilmer
Christy Jensen, Snell & Wilmer
Clarence Matherson, Quarles & Brady Streich Lang
Ivan Moss, Quarles & Brady Streich Lang
Rich Ruffatto, Bryan Cave
Jennifer Ryan-Touhill, Sole Practitioner
Nancy Tribbensee, ASU Office of General Counsel

Guardianships of Incapacitated Adults:
Alisa Gray, Gray & Fassold
Christine Pesticci-Asimou, Sole Practitioner
Eric Van Buskirk, Sole Practitioner

Home Ownership:
Shawn K. Aiken, Hebert Schenk
Mark Barker, Jennings Haug & Cunningham
Ernest Modzelewski, Sole Practitioner
Scott A. Rose, The Cavanagh Law Firm
Joyce Kline Wright, Snell & Wilmer

Non-Profit Group Transactional Assistance:
Thomas D. Proffitt, Gunderson Denton & Proffitt
Philip J. Shea, Williams and Works

Tenants' Rights:
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M. Scott McCoy, Jennings Strouss & Salmon
Katherine McLeod, Sole Practitioner
Harry Norman Stone, Sole Practitioner
Kathryn Van Etten, Sole Practitioner

Attorneys find satisfaction in helping people keep homes

By Lina Alvarez
Special to Maricopa Lawyer

The Volunteer Lawyers Program (VLP) recently honored Kim Vandenberg and Natasha M. Crawford as Attorneys of the Month for their work in the Landlord Tenant Clinic.

"Each has been an outstanding participant in our legal advice clinic for tenants," said Peggi Cornelius, VLP's programs coordinator.


Crawford

"What's so significant about the clinic is the people seeking help are in disputes with someone who has power over the place and conditions in which they live," she added. "Often, they are in jeopardy of losing their homes. It takes a special kind of volunteer to work with people in these circumstances. . . as they are under tremendous stress."

Vandenberg, who specializes in after-market avionics contracts for Honeywell, began volunteering for VLP about three years ago. She easily could have been satisfied with the life she had; great job, traveling all over the world and passionate about photography and sailing. Yet although she felt lucky to have a law degree and a great life, she decided she needed "to give something back."

Vandenberg chose the landlord-tenant clinic because of the contrast to her normal work.

"Helping individuals with immediate needs is quite different than working for a big corporation where you don't feel as much of a personal connection," she said. Although the landlord-tenant clinic offers a limited amount of time with each client, Vandenberg can offer advice and/or referrals, and know the client is leaving more knowledgeable and, perhaps, more comfortable about the situation.

Vandenberg, who holds a marketing degree from ASU and worked in the retail and banking industries before attending law school, initially felt out of her element when she started with VLP. Even though she specializes in contracts, she knew little about landlord tenant law. Vandenberg started doing intake interviews and attended several CLEs offered by VLP. Vandenberg also drew on the experience of the staff at Community Legal Services like Maria Fulgencio.

"Although the statutes are a fairly compact body of law, Maria helps with the little twists and turns that always come up," Vandenberg said. Fulgencio said Vandenberg is a faithful volunteer who has rarely misses her commitment even though Vandenberg has to travel from 19th Avenue and Deer Valley to downtown on her assigned evenings.

Although VLP is honoring her, Vandenberg is the one who sounds grateful for the experience. "You get to learn a different area of the law, the time commitment is really only a few hours and there is so much need," she said. "Lawyers live in a fairly rarefied environment and it is good to get out and experience other things. I feel like my life has been enriched."

Natasha Crawford knew from a very early age that she wanted to be a lawyer. Growing up in Lincoln, Nebraska, Crawford heard from her mother of abuse and injustice by authorities. Her mother, a Mexican-American woman, grew up in Laredo, Texas and had seen harassment by the Border Patrol and discriminatory employer practices.

In Nebraska, her mother was unfairly targeted as a thief due to racial profiling. Crawford then experienced injustice firsthand when her elementary school teacher wrongly accused her of stealing and searched her.

"My parents were at the school the next day, with a lawyer, and all of a sudden, I was getting apologies. I thought lawyers could fix everything and that I could change every injustice by becoming one," said Crawford.

Crawford may not be able to fix every injustice, but she is doing her share. After graduating from the University of Texas with a degree in government and armed with a law degree from UC-Berkeley, Crawford worked for Legal Aid of Alameda County in California in the landlord/tenant division. She then moved to Arizona and, although not working as a full time lawyer, has always accepted pro bono cases, mostly focusing on landlord/tenant and consumer law.

"Housing is so central to our lives. There are too many people taken advantage of by their landlords who can't effectively assert their rights because of limited financial resources," said Crawford.

Crawford jumped in and started accepting cases right away. "It's a great experience and doesn't require an exceptional amount of time," she explained. "There is a need for help on so many different levels. You can do intake interviews or litigate or negotiate. You take on what you are comfortable accepting and there is training available. . . The CLS/VLP staff is wonderful and the clients truly appreciate the assistance."

Crawford, who currently works in a non-law related area at Rio Salado College considered changing careers for a time before volunteering at VLP. "Once I started volunteering, I remembered how much I love being able to help and being an advocate for someone. It makes me want to go back to a full-time practice again," she said.

"The clients are so grateful for the help even when there may be no solution," Cornelius added. "Often, there may not be a legal remedy or we may not be able to intervene quickly enough. One thing we hope to achieve is providing information and advice, which may keep people out of similar circumstances in the future."

To find out how you or members of your firm can benefit from pro bono opportunities through the Volunteer Lawyers Program, please contact director Patricia Gerrich at (602) 258-3434.

➤ *Lina Alvarez is an attorney and VLP volunteer.* ■

OPINION

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

Disclosure rules interfering with efficient justice

By Jack Levine
Maricopa Lawyer

I am thinking of moving my office for the second time in less than a year. Too much rent? Too much commuting time? No! Too many disclosure statements. I simply don't have any more room in my present office for all of the documents and files that our disclosure rules generate.

I recall former Arizona Supreme Court Justice Tom Zlaket, the moving force behind Rule 26.1, extolling the virtues of mandatory disclosure whose purpose was "to make the judicial system in Arizona more efficient, more expeditious, less expensive, and more accessible to the people." These lofty goals were to be accomplished by mandating disclosure of (1) the factual basis of each claim or defense; (2) the legal theory utilized; (3) the substance of each witness' testimony; (4) identity of all other persons having information; (5) identity of those giving statements; (6) identity and expected testimony of expert witnesses; (7) details on damages claimed; (8) relevant documents planned to be used at trial and (9) other relevant documents.

Almost with the same breath used to extol the virtues of the new disclosure rules, Zlaket railed against the $200 per hour fees that lawyers were charging at that time, which he said made it impossible for all but the very wealthy to participate in our legal system.

Now that the "Zlaket Rules" have been in effect for nearly twelve years, it is time to examine the premise which led to their passage to see whether their noble purposes have been achieved.

Our present disclosure rules grew out of the work of a special State Bar committee in 1990 and 1991. The committee's goal was to study civil litigation abuse, costs and delay. However, as civil litigation has evolved since the enactment of the disclosure rules, it appears that in many cases litigation has become far *more* expensive for litigants under the Zlaket Rules than in previous times.

Before the adoption of the Zlaket Rules, few attorneys handling small cases gave much thought to witnesses and exhibits until the filing of a required pretrial statement, thirty days before the scheduled trial date. For the most part, the parties relied on discovery for essential information and the attorney normally would obtain only the names of witnesses and exhibits that each party actually intended to use at trial. Because disclosure was not required until discovery was almost complete, both sides became thoroughly knowledgeable at that point about all of the details of their case. Under the present system, disclosure is required at the very outset of a case (40 days after the responsive pleading) with discovery occurring thereafter.

It is only when your opponent's messenger arrives at your office with their disclosure exhibits on a hand truck and asks, "Where can I drop this?" that one can truly appreciate what the Zlaket Rules have done to our civil justice system.

Unlike many lawyers, I rarely am involved in multimillion dollar lawsuits where my clients can afford to spend a few hundred thousand dollars in legal fees. Most of my cases are in the $10,000 to $50,000 range which, before the Zlaket Rules, could, absent a trial, normally be inexpensively handled with a minimum of time. This is no longer true. Depending on the nature of the case, one will often receive documents measuring anywhere between six inches to six feet thick and, because the disclosure comes so early in the case, one normally doesn't have a clue as to whether the documents are *really* important or not. I have the nagging suspicion that "document dumping" frequently takes place under our current rules with the specific purpose of confusing and cluttering the other side's files, and causing the opponent to suffer an exhaustion of energy and resources. All of this adds enormously to the cost of litigation, not to mention the depletion of the world's remaining forests.

Before the adoption of the Zlaket Rules many smaller cases often would settle early in the process, usually soon after the depositions of the parties. This involved relatively little expense to the litigants. The Zlaket ideal is to disclose everything early in the case with the expectation that if both sides had all of the exhibits and witnesses at the outset, they could more easily evaluate their respective positions and make judgments concerning settlement. This has not worked for several reasons.

First, in most cases, one often does not have a clear picture of either the legal or factual issues until a case is relatively mature. This usually does not occur until discovery is nearly completed. Second, because of the large investment of time and money that our disclosure rules require, parties are frequently reluctant to walk away from their "investment" without achieving 100 percent of their goal, which can almost never be achieved in a settlement. Before the adoption of the Zlaket Rules, when the parties were pretty much in the dark, the uncertainty of not knowing what evidence or legal theories the other side had, was a powerful incentive for settling the case early, before a lot of time and money was poured into a "black hole."

Third, because of the extra stress that our disclosure rules place on lawyers, and despite the required "professionalism" course that we have all taken, the "hostile, unprofessional and unnecessarily adversarial conduct on the part of counsel" that the Zlaket Rules were also designed to address, have, if anything, been exacerbated.

I long for the good old days where one prepared a case for trial by deciding which witness and exhibits you wanted to use thirty days before the scheduled trial date. Normally, there were few surprises because witnesses and exhibits had to be listed in the pretrial statement and one prepared for trial under the old-fashioned method of anticipating "the worst case scenario" and planning for cross-examination accordingly. On those rare occasions when a previously unanticipated witness would appear on the pretrial statement, you could depose the witness up to ten days before the trial. Even in those cases where a party sought to call a witness who was *not* listed on the pretrial statement and where the judge was inclined to permit it, you would often be allowed to depose the witness over the lunch hour and the trial proceeded as scheduled. Such an occurrence was looked upon as an "oversight" rather than as an "ambush." Either way, the system worked reasonably well in most cases.

I have the nagging suspicion that "document dumping" frequently takes place under our current rules with the specific purpose of confusing and cluttering the other side's files, and causing the opponent to suffer an exhaustion of energy and resources.

The worst part of the Zlaket Rules is preparing for trial and having to deal with five or six file boxes of exhibits that have been disclosed by the other side. Although you know that 98 percent of these exhibits will never be used, or, if used, will never be read by the jury, you really don't have any way of knowing which two percent is really important, so you must review all of them and be prepared to counter them with five or six file boxes of your own.

When one multiplies $200 to $300 per hour, where most legal fees are today, by the number of *extra* hours made necessary by the requirements of the Zlaket Rules, Zlaket's lofty goals have become seriously undermined. It seems clear that litigation has been made significantly *more* expensive by the Zlaket Rules and far fewer cases are being settled now than before.

The Zlaket Rules may be of some benefit in the larger cases (above $100,000) which tend not to settle early and where one can justify the expense of dealing with the huge amount of paper generated by the rules. However, in the smaller cases, lawyers and their clients should not have to contend with a system where one's opponent can dictate which documents will be arriving at your doorstep via a hand truck, rather than you designating, by modest discovery requests, the small handful of documents that you really want.

As for myself, I know that my disposition will improve if I don't have to keep looking for larger offices every few months, and I will treat my fellow lawyers with newfound kindness and respect. I promise.

➤ *Jack Levine is a sole practitioner in the areas of personal injury, employment law and family law. He is a past president of the Arizona Trial Lawyers Association and a past chairman of the State Bar's Trial Practice Section.* ■

Pets need 'shared parenting plan' too

LETTER TO THE EDITOR

Dear Editor:

Brenda Warneka's article in the June issue of *Maricopa Lawyer* was informative and fun to read. It reminded me of a childless couple with whom I mediated a couple of years ago. They had spent many happy years locating antiques and refinishing them. Unlike many folks, they'd behaved respectfully – until we got to a marbletop table. The table became the symbol for all their repressed, raging emotions. They agreed to sell it and divide the proceeds; and upon my suggestion, donate the proceeds to a local domestic violence shelter.

Once we got past that sticking point, we got to the Australian Shepherd dog. "Oh, why couldn't they have had two?" I thought. After I refereed several painful discussions, as the owner of five dogs I drafted a "shared parenting plan" for the Shepherd, which – with tweaks from them – was satisfactory.

Yours in the continuing belief that mental health is catching,

Joy B. Borum
Family Mediation Center ■

Write a Letter!

Hot under the collar about a current legal issue? Want to respond to an article or letter you recently read in *Maricopa Lawyer?*

We welcome letters to the editor.

Letters generally should be no more than 300 words long. *Maricopa Lawyer* reserves the right to edit all letters for length.

Letters to the editor should be sent to Teena Booth, Editor, *Maricopa Lawyer,* Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004 or send by e-mail to maricopalawyer@mcbabar.org. ■

Attorney successfully balances career and family

By Mark Winsor
Maricopa Lawyer

One of the most important decisions I make for the Winsor Law Firm is the decision to hire a new attorney. I strongly believe the greatest asset to a business is the people working for that business. A single bad apple can, however, cause tremendous challenges, which is why I also believe an employee or business associate also can be a liability.

When I decided last year to expand and grow our law firm, I determined to spend a substantial amount of time and effort recruiting, interviewing and hiring additional attorneys. Not only did I want to avoid a bad apple, I wanted to attract golden apples to work with. The screening process proved arduous and time consuming but was, of course, worth the effort. One of the golden apples from my careful harvest was Susan Court.

Court has a unique legal background. She became an attorney in 1978 but made a decision to put her career on hold to raise a family. Twenty-six years later, having practiced law mostly part time, her youngest child was preparing to leave the nest and she was ready to achieve new heights in her legal career.

I first met with Court after my brother referred me to her. He knew her quite well from his church and convinced me that it was worth my time to interview her. When I first reviewed her résumé, I noticed that although she had taken a break from full time legal practice, she had continued to develop her knowledge and skills, and continued contributing to the legal profession. She taught business law at Mesa Community College, ASU and Chandler Community College. She helped her husband establish and run a business. She practiced part time from her home helping people with simple wills, probate and family law matters. She volunteered in various school, community and church activities. All in all, her résumé was a shining example of a mother's ability to balance raising children and developing legal knowledge and skill.

My interview with Court was very interesting. I could sense her professionalism. I was impressed with her personality and attitude. I had that gut feeling that she was one of the golden apples I was looking for. Time has proven her to be an even better addition to our firm than I had hoped.

Court's life experiences as a full time mother combined with her part time involvement in the legal profession and local community prepared her to take a leading role in our growing firm. During her time at "home," she stayed involved in activities that allowed her to meet and develop friendships with her colleagues in the legal profession. She joined some of the local bar associations and sections. She befriended other attorneys in her church and neighborhood. She developed relationships with people from all walks of life, including leaders in the community. Her relationships with so many people proved invaluable to our firm. Though she did not have a book of business to bring with her, her affiliation with our firm has turned out to be a magnet for clients. People trust her and like her. Attorneys quickly began referring work. Her friends spread the word that Susan was now with a firm practicing full time. Her break from full time practice, which some may view as a cloud on a career, is now producing much appreciated rain.

There is no doubt that decisions on how to balance a legal career and a family are very personal, and I am sure Court felt that her decision to postpone her legal career for her children would put her behind her colleagues. Although I am not advocating a particular opinion on that sensitive issue, I want to offer encouragement to those who make the personal choice to focus on raising children. If a decision is made to take a break from a full time practice, the result does not necessarily mean lagging behind in the legal profession. Court's life is, at least in my view, evidence the break can actually enhance the attorney's career and even become a valuable asset to one's career when the time is right to re-enter the profession as a full time attorney. ■

Gold E. Locks up to old tricks

Fifth graders at Augustus H. Shaw Elementary School participated in "Gold E. Locks and the Three Bears," an interactive mock trial presented by Snell & Wilmer along with the Maricopa County Bar Association. Attorneys and legal staff from Snell & Wilmer acted as the judge, bears and Gold E. Locks, while the fifth graders served as jury for the trial.

MCBA presents Business Management for Law Firms

The Maricopa County Bar Association will present its first in an ongoing series of CLE seminars focusing on business management for small to mid-sized law firms. The series reflects the MCBA's commitment to the success of small to mid-sized firms in Maricopa County.

"Health Savings Accounts: Changing the Way Small Businesses and Individuals Buy Health Insurance" will take place on Wedsnesday, July 21, at noon at the ASU-Downtown Center. The seminar will be taught by Patrick Bertenshaw, CFP, president of Kennon Bertenshaw, Inc., a financial services firm that specializes in providing comprehensive, customized financial and investment planning solutions to fiduciaries and nonprofit organizations.

According to Bertenshaw, "employer health insurance costs are expected to double in the next five years." In an effort to manage the rising costs, Congress passed the Medicare Reform Act in December 2003. The Act created Health Savings Accounts (HSAs). Bertenshaw will discuss what Health Savings Accounts are and how they reduce the cost of health insurance as well as the tax benefits of HSAs and who is eligible to participate in the program.

For more information on this seminar or to sign up, contact Geoff Cummings at (602) 257-4200 ext. 107. ■

Summer social draws crowd of 80 law students

The MCBA's Task Force on the Recruitment and Retention of Woman and Minority Attorneys hosted its annual Summer Social on June 17. The event was sponsored by Snell & Wilmer, Bryan Cave, The Cavanagh Law Firm, Lewis and Roca, Quarles & Brady Streich Lang, Gammage & Burnham, Fennemore Craig, Gust Rosenfeld, Greenberg Traurig, Meyer Hendricks& Bivens and the Arizona Women Lawyers Association.

Eighty people were in attendance, including attorneys, summer associates, and Arizona State University students from the Council on Legal Education Opportunity (CLEO) program. Task Force Chair Court of Appeals Judge Ann Timmer was present, along with Arizona Supreme Court Justice Michael Ryan and Intellectual Property and Commercial Litigation Attorney George Chen, who practices with Bryan Cave. ■