

Foundation unveils new logo

The Maricopa County Bar Foundation has created a new look, launched a website and developed a new mission statement. **Page 6**

Paralegals and document preparers play different roles

By Joan Dalton
Maricopa Lawyer

In January, the Arizona Supreme Court adopted a regulatory scheme for document preparers. Through this certification program, document preparers must meet certain education and experience requirements.

Many document preparers are former legal secretaries, while some have worked as paralegals and legal assistants. This mix of designations can be a source of confusion for both legal service providers and legal consumers. What exactly is a document preparer, and how do they differ from paralegals?

In other regions of the United States the term "document preparer" is synonymous with the terms "legal scrivener," "legal document technician" or "legal technician." Although not defined by the court's rule, the authorized roles and responsibilities of document preparers are provided in the Arizona Code of Judicial Administration. They include: 1) preparing or providing legal documents; 2) providing "general," rather than "specific," legal advice; 3) providing general factual information pertaining to legal rights, procedures, or options available; 4) making legal forms and documents available; and 5) filing and arranging for service of legal forms and documents.

Document preparers may provide these services directly to a client; however, they must refrain from providing clients with specific legal advice, opinions, or recommendations pertaining to their client's possible legal rights, remedies, defenses, options or strategies.

In contrast, the role of paralegals and legal assistants as defined by Arizona

— See **Preparers** on page 13

Survey shows most attorneys have 'no problem' with mandatory CLE

But one-third report difficulty in meeting state requirement

By Teena Booth
Maricopa Lawyer

With the June 30 mandatory continuing legal education (MCLE) deadline just around the corner, many Maricopa County attorneys are looking at the calendar and counting up their credits. Last month, the MCBA surveyed 60 area attorneys on their opinions about CLE and most said they "have no problem" with either the deadline or the requirement.

A 62 percent majority of respondents agreed the 15 credit hours of CLE required by the state was "the right amount." Arizona's CLE requirement closely follows the American Bar Association's model rule for CLE and is similar to rules in the 39 other states across the nation that mandate CLE for attorneys. However, a sizable 37 percent minority of survey respondents expressed dissatisfaction with the rule.

About 24 percent of attorneys surveyed said fewer credit hours should be required, while another 13 percent said CLE should not be required at all. Of those who gave reasons for their opinion, one said the requirement was particularly "burdensome on solo practitioners," while another wished for more flexibility in the requirement, such as hours being spread over two or three years as in some states.

"From the feedback we generally get, most attorneys either strongly support the CLE

requirement or they're strongly opposed to it. There's not too many in between," said MCBA CLE Director Mona Fontes. "We want to make it easy for both camps to get the credits they need, but more than that, we want them to feel that the time they invest in earning those credits is time well-spent."

The MCBA survey indicates most attorneys

feel they are presented with adequate credit earning opportunities. Even those who expressed a negative opinion about the rule often joined the 67 percent who said they "have no problem" earning the required credits. In fact, according to the State Bar's MCLE administrator, Marnie Leinberger, random

— See **CLE** on page 7

Take Your Child to Work Day



Take Your Child to Work Day, April 24, was also trial day at Fennemore Craig, where children of employees sat as jurors in the curious case of *State v. Jack B. Stalk*. Jack was charged with criminal trespass and burglary. Pictured from left: Loretta Starck (a.k.a. Lucy Goose) gives testimony, Amy Abdo acts as judge, Patrick Black plays prosecutor, Dominica Minore serves as defense counsel, and Josh Forest (a.k.a. Jack B. Stalk) sits accused.

Prosecutors may not amend criminal charges mid-trial

By Daniel P. Schaack
Maricopa Lawyer

A mid-trial amendment to criminal charges sparked fireworks not only in the trial court but also in Division One of the Arizona Court of Appeals in *State v. Sanders*, No. 1 CA-CR 00-0326 (Ariz. App. May 13, 2003). The dispute centered on whether the prosecution's decision to amend charges in the midst of a trial was unconstitutional.

The Sixth Amendment secures the defendant's right to notice of the charges: "In all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusation." In the case of *State v. Sanders*, a prosecution for assault on a police officer, defense counsel argued the state had violated Sanders' Sixth Amendment right.

In the early morning of Nov. 14, 1999, Phoenix Police Officer Vincent Bingaman saw John Sanders run a red light and followed Sanders home. As Bingaman approached Sanders in his driveway, Sanders walked quickly toward the officer, asking what he had done and whether there was a problem, then refused Bingaman's several

requests to produce his driver's license.

Bingaman then announced that Sanders was under arrest and attempted to grab Sanders' arm. Sanders, who outweighed Bingaman by 85 pounds, spun and struck the officer's forearm with his own arm, and a struggle ensued. Bingaman then summoned his canine partner, and the dog subdued Sanders by mauling his leg. When backup officers arrived, Sanders was taken into custody.

At a preliminary hearing, Bingaman testified about Sanders' striking him. The prosecutor did not ask him whether he perceived any further threat from Sanders, and the magistrate did not allow Sanders' attorney to ask Bingaman whether Sanders had threatened him or used any verbal threats, sustaining the prosecutor's hearsay objection.

Following the preliminary hearing, the state filed an information

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ADR Week

Napolitano makes ADR Week official. **Page 3**

The e-future is here

Court of Appeals, Division 2 has e-filed its way into a more efficient future. **Page 5**

COMMENTARY

Growing up and making a difference

"So what do you want to be when you grow up?"

The question came from five-year-old Ms. J. as she was gathering rocks in the yard for a rock garden. She was also gathering seeds that had fallen from a nearby bush.

I had to stop and think for a minute. What did I want to be when I was growing up? Was I doing the job I'd always intended to do?

I finally told Ms. J. that what I really wanted was to "make a difference." She, however, had already moved on to explaining her rock garden and how the seeds she planted would make large trees.

Out of the mouths of babes...

Like many of my classmates at Arizona State University College of Law class of 1984, I do not practice law, at least not in the traditional sense of the word. You know, litigation, clients and all that. Some of my classmates settled on their non-practice goals long before the graduation march began, but many of us with litigation ambitions thought

Yvonne R.
HUNTER
MCBA
PRESIDENT



these folks were missing the whole point of law school.

Litigation did start out as great fun, and as a trial attorney, I lived for the opportunity to present my case to a jury. I learned the rules of evidence because I LIVED the rules of evidence. Rules of procedure were newly defined as I wound my way through each case. But I also discovered that expert witnesses rarely testify with the clarity and conciseness as depicted on television and the movies. And judges really do yell at attorneys. And witnesses can and do change their stories. And jurors tend to be distracted by interesting little things...

After a long career of litigation, I eventu-

Paralegals have a reason to be proud

Networking allows individuals in a profession to get to know each other, not only for their own professional growth, but to aid the growth of the profession. We have seen this firsthand here at the MCBA. Several years ago, paralegals represented a small percentage of the MCBA membership. This small group networked its way from a committee to a continually growing division of the MCBA. As a division, we paralegals have become an intricate part of the MCBA's future.

Another reason we network is to better serve the community. Every member of a professional association is also a member of the community in which they live and work. By giving something back in service, we strengthen the community that sustains us. That is one reason Paralegal Division members volunteer thousands of hours each year toward charitable causes.

For the last three years, the division has given a \$1,000 scholarship to each of the area's four ABA-approved paralegal programs. On May 3, the division sponsored a one-day, double elimination, co-ed softball tournament, the first in what we hope will become an annual event. The tournament was developed to accomplish two goals: as a means to raise money for the Paralegal Scholarship Program; and to create a fun-filled event

Garth
HARRIS
PARALEGAL DIV.
PRESIDENT



everyone would enjoy. Seven teams made up of division members, law firm employees and friends vied for the privilege of taking home a trophy. About \$1,200 was raised for the scholarship program, but more importantly, the players enjoyed a day of camaraderie and good old-fashioned fun.

Beyond funding the scholarship program, the division also donates funds to other charitable programs, including the William K. Eaton School for troubled teenagers. Money donated to the school is given to the teachers to purchase classroom items they would otherwise have to do without.

These are only a few of the many activities that allow the Paralegal Division to give something back to the community. Any professional association that does not serve the community will ultimately fail. By getting involved in our profession and our community, we are assured of a successful association and a division in which we can all take pride. ■

ally joined the society of non-litigators. Many of our fellow MCBA members also are "not practicing." They are judges, justices, business leaders, community organizers and teachers. I don't know how many of these lawyers planned their careers from the beginning, or whether they made the choice well after becoming lawyers. But I find it significant how a law school education translates into such a variety of positions.

Are these lawyers better educators, administrators, legislators and business leaders because of law school? I think they probably are. I also think they bring a unique perspective to their jobs. Their education brings valuable analytical skills to the mix.

So if by chance you catch yourself thinking about what you want to be when you grow up, you still have the opportunity to "make a difference." Many of us who volunteer at the MCBA fall within this category. Stepping up to serve allows us to take our education, our experience, and our unique perspective and apply them to a new arena.

Many community organizations could use someone with your experience and perspective. Consider stepping up to the challenge. Maybe you will become a better person for the change, and maybe you will change the organization with your experience.

And maybe you will grow a tree in a rock garden. ■

Three steps to finding a mentor

Lori A.
HIGUERA
MCBA/YLD
PRESIDENT



The learning curve for lawyers is steep. Young lawyers are expected to master the substantive and technical content of the law, adjust to a professional work environment and still find time to enjoy a personal life. The process of gathering information to manage these demands during the early years of legal practice is analogous to drinking water from a fire hose.

During this time, it is helpful to know that lawyers before us have faced the same hurdles. Many of our colleagues have masterfully managed these challenges and, in the process, have built prosperous and rewarding careers. Solutions to the challenges faced by young lawyers can be found by following their example. Through the use of mentoring, we can tap into the knowledge gained by those who have come before us and, hopefully, avoid some common pitfalls and achieve similar successes.

How do you pick a mentor? At many places of employment, young lawyers are assigned a mentor upon arrival. Although this pre-arranged relationship can be beneficial, it also is helpful to step outside this formal process and surround yourself with a circle of "informal" mentors. Three simple steps can help you build a network of mentors.

First, consider all the different aspects of your professional life you would like to develop. Think broadly. Are you interested in boosting your trial experience, improving your general litigation skills or getting involved in community service activities? Would it help you to learn how to expertly navigate office politics? Are you in need of

strategies to balance home and career?

Next, take the time to put your thoughts into writing. This simple step will crystallize the entire process for you and increase the likelihood you will follow through with your plan. It is more likely that you will find a meaningful mentor relationship when you can identify the type of expertise that you are seeking. Once you have determined the challenges before you, create a list of potential mentors by identifying people whom you believe have overcome these challenges.

Finally, and most importantly, approach your potential mentors. It is important to respect busy schedules, but try to find an opportunity to speak with your potential mentor in private and schedule a meeting. The meeting can take place at the office, during lunch or over a cup of coffee. Fellow professionals generally will be receptive to your inquiries and willing to share their personal experiences with you.

The simple strategy for building a network of mentors is not innovative advice. The career-altering part is doing it. Do not spend too much time in being overwhelmed by everything there is to learn and accomplish. Mentors can help you maximize your years as a young lawyer. ■

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ADR Week now official

By Teena Booth
Maricopa Lawyer

In an effort to stress the importance of alternative dispute resolution (ADR) to Arizona's courts, Gov. Janet Napolitano last month signed a proclamation declaring May 12-16 as ADR Week.

With her signature, Napolitano affirmed the growing awareness within the legal community of the value of ADR. According to the

proclamation, "Disputes that are resolved through alternative dispute resolution processes result in solutions that can be qualitatively better than court-ordered resolutions; and...[ADR] processes are less time-consuming and less costly than litigation and ease the workload of an overburdened court system."

To observe ADR week, the Maricopa County Superior Court sponsored an "ADR marathon" at which judge pro tems and vol-

unteer mediators held 80 settlement conferences primarily with family law disputants. Meanwhile, representatives of Maricopa Alternative Dispute Resolution Association (MADRA) and the State Bar of Arizona appeared on "Horizon" on Channel 8, as well as KJZZ radio, to inform the public about ADR.

"Establishing an ADR Week will hopefully raise awareness about ADR for the public, but also for attorneys," said Amy Lieberman, incoming chair of the State Bar's ADR Section. "Litigation often takes years and can leave both attorneys and their clients unsatisfied. In many cases, ADR is simply the best way to resolve the problem."

In the past, MADRA had sponsored a "Mediation Week" to educate the public about the mediation process. This year the name was changed to ADR Week to reflect the emphasis being placed on ADR by courts at all levels.

According to Lieberman, ADR includes not only mediation, but arbitration, early neutral evaluation, short trials, settlement conferences, summary jury trials, mock juries and any other creative forms of dispute resolution on which parties can agree.

Last year, the Arizona Supreme Court adopted Ariz.R.Civ.P. Rule 16(g)(2), which requires all parties in civil cases to file joint ADR statements with the court within 90 days of the answer being filed to verify they have consulted with their clients about ADR options. If they choose not to use ADR, they must provide a compelling reason for their choice.



PHOTO BY TEENA BOOTH

Amy Lieberman, incoming State Bar ADR Section Chair and a judge pro tem, reviews the case file before a settlement conference during May's "ADR marathon."

"With the emphasis on ADR by the courts and other public policymakers, we're beginning to see more attorneys considering mediation at different stages," Lieberman added. "And when attorneys do take advantage of ADR — and save their clients thousands of dollars in legal fees — they find they have much happier clients who are more likely to use their services in the future."

For more information on ADR options and resources, call the ADR office of the Superior Court at 602-506-3956, or contact Amy Lieberman at 602-404-6544 or amy@insightemployment.com. ■

Summer brings judicial rotations to Superior Court

By J.W. Brown
Maricopa Lawyer

The annual judicial rotation is poised to begin for Maricopa County Superior Court judges. Reassignments will become official during the statewide judicial conference in June, and will be in effect on June 23. In total, 22 changes will be made.

The Criminal Department is the only department due for changes to presiding judge positions. Judges Thomas O'Toole and Edward Ballinger will trade leadership roles. Ballinger will be the department's presiding judge and O'Toole the associate presiding judge.

Also in the Criminal Department, five new judges will take the place of judges rotated to other courts. Downtown, Judge Gary Donahoe will leave the Civil Court to assume Judge Ruth Hilliard's calendar, and Judge Karen O'Connor will move from Family Court to take Judge Jonathan Schwartz's calendar. At the Southeast Court Facility in Mesa, Judge Brian Ishikawa will switch from Family Court to Judge Linda Akers calendar. Judge David Talamante, also from Family Court, will assume Judge Barbara Jarrett's calendar, and Judge Dennis Dairman will rotate from Juvenile Court to Judge Penny Willrich's calendar.

Five judges and one hearing officer will take Civil Court assignments. Judge Thomas Dunevant will leave Juvenile Court to take Donahoe's calendar. Hilliard will assume the calendar Judge Michael Wilkinson handled after Judge Roger Kaufman's retirement. Wilkinson will return to his special-assignment criminal calendar. Schwartz will take over Judge Mark Santana's civil cases. Judge Robert Gottsfeld will rotate to Judge Cari Harrison's calendar, and, at the Southeast Facility, Judge Barbara Jarrett will assume Judge Robert Gottsfeld's calendar. Newly appointed Hearing Officer David Sands takes the calendar previously handled downtown by Toby Gerst, who retired.

The Family Court will have three new

judges downtown and three new judges in the Southeast Facility. Harrison will move from a Civil Court assignment to assume the calendar of Judge Connie Contes, who is moving to Judge Maria del mar Verdin's cases. Santana will move from Civil Court to take Judge Maurice Portley's calendar, while newly appointed Judge Larry Grant will assume Judge Karen O'Connor's calendar. Akers will be assigned to Ishikawa's calendar while Willrich will take Judge David Talamante's caseload.

The changes in Juvenile Court are minimal with Judge Dave Cole moving from the Northwest Regional Center in Surprise to take Dunevant's calendar at the Durango Juvenile Court Center, and Verdin moving to Dairman's cases.

The one change at the four-judge Northwest Regional Center assigns former Superior Court Commissioner and newly-appointed Judge Harriett Chavez to Cole's calendar.

There are no changes planned for the Probate/Mental Health Department.

One Civil Court assignment and one Family Court assignment, vacancies created by Kaufman's retirement and Portley's appointment to the Court of Appeals, are expected to be filled by Gov. Janet Napolitano.

Reassignments currently scheduled are subject to change.

► J.W. Brown in communications director for Trial Courts in Maricopa County. ■

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Courtwatch...

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charging Sanders with aggravated assault under A.R.S. § 13-1204(A)(5), which occurs when a simple assault under § 13-1203 is committed on a peace officer. The information charged that Sanders "knowingly touched Vincent Bingaman, with the intent to injure, insult or provoke him," as defined in subsection (3) of A.R.S. § 13-1203(A), which encompasses the old common-law *battery*.

Included in A.R.S. § 13-1203(A) are three ways of committing simple assault, and one of these would later figure into this case. Subsection (2) describes old common-law assault: "A person commits assault by... [i]ntentionally placing another person in reasonable apprehension of imminent physical injury."

Trial began with the jury being informed that Sanders was charged with striking Bingaman. Just as at the preliminary hearing, the prosecutor did not question the officer about any fear he might have had that Sanders would physically harm him.

On cross-examination, Officer Bingaman confirmed that "[w]hen he struck my arm breaking the grip that I had on his left arm, that's the assault."

At the close of her case-in-chief, the prosecutor asked to amend the information. She sought to supplant the charge of knowing touching with a charge of assault imposing a reasonable apprehension of imminent injury. The defense attorney objected that this prejudiced her case. She had planned to argue self defense, but that obviously wouldn't fly against the new charge. As counsel argued, "[h]ow can I have a self-defense argument to

an officer's reasonable apprehension of physical injury?"

The court nonetheless allowed the amendment. The judge ruled that the facts of the case should have put counsel on notice that the prosecutor might pursue the new theory at trial. The defense still requested a self-defense instruction, but the court refused. The jury convicted.

On appeal, the mid-trial amendment resulted in an unusually long opinion from Division One. The majority opinion, penned by Judge James B. Sult and joined by Judge Noel Fidel, covered 37 pages. Judge Daniel A. Barker's dissent spread over 17 pages.

Sult held that the trial court violated the Sixth Amendment's notice requirement by permitting the state to amend the assault charge after the close of its case-in-chief. He began by noting that the Sixth Amendment requires the indictment or information to "describe the offense with sufficient specificity so as to enable the accused to prepare a defense and to permit him to avail himself of the protection against double jeopardy." Any amendment must do the same.

"A fair trial," Sult wrote, quoting the Supreme Court, is "one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding." An amendment to the indictment or information is only permitted if it neither changes the nature of the offense charged nor prejudices the defendant. Sult held that the amendment changed the nature of the charged offense.

The elements of the original charge, Sult wrote, required the state to prove that Sanders knew that he touched Bingaman and did so with the intent to injure, insult, or provoke him. He noted this does not require the state to prove Bingaman's state of mind. By contrast, the amended charge required showing that Sanders created in Bingaman a fear of injury: "the state must prove the officer reasonably apprehended imminent injury, an element irrelevant to a 'knowing touching' assault," Sult wrote.

To Sult, the analysis should end there. "Further extended analysis is not necessary to demonstrate that these two types of assault are in fact distinctly different crimes," he opined. "Knowing touching" is what was traditionally known at common law as 'battery,' while 'reasonable apprehension' was the traditional crime of assault. "[N]ot only are these offenses distinct," he continued, "neither is a lesser-included offense of the other because each offense has elements that the other does not."

In Sult's view, because the amendment changed the nature of the charge, it presumptively caused prejudice and a separate inquiry into prejudice was unnecessary. "An error that implicates a constitutional right that is 'basic to a fair trial,'" he wrote, quoting the Supreme Court, "can never be treated as harmless." A trial cannot be fair, he asserted, if the charges are not adequately communicated to the defendant in a timely fashion.

In Sult's view, because the amendment changed the nature of the charge, it presumptively caused prejudice and a separate inquiry into prejudice was unnecessary.

In dissent, Barker took issue with Sult's analysis and conclusion. "The majority effectively holds that a criminal defendant's entitlement to notice of the charged crime necessarily includes a right to pretrial notice of the precise theory upon which the state will rely at trial." He opined that this is contrary to well-established law.

Barker differed with Sult's analysis of the charge against Sanders. "Before [the charge] was amended at the conclusion of the state's case-in-chief, defendant was charged with committing aggravated assault on Officer Bingaman on November 14, 1999, a class six felony, in violation of A.R.S. § 13-1204(A)(5)," he wrote. "After the amendment," he continued, "defendant was still charged with committing aggravated assault on Officer Bingaman on November 14, 1999, a class six felony, in violation of § 13-1204(A)(5)."

He disagreed with the majority's "mistaken belief" that an assault based on knowingly striking a police officer is a different offense than an assault based on putting the officer in reasonable apprehension. "As defined in the statute, an aggravated assault on a particular peace officer is a single offense, regardless of the manner in which the assault occurs." He therefore believed the information would have been sufficient had it simply accused Sanders of assaulting Bingaman in violation of § 13-1204(A)(5) without specifying a particular subsection of § 13-1203.

In his view, assault in its several guises is a unitary offense. Barker pointed to *State v. Winter*, 146 Ariz. 461, 706 P.2d 1228 (App. 1985), where Division One had held that the different subsections of A.R.S. § 13-1802 "simply set forth alternative means of committing the unitary offense of theft."

"My colleagues," Barker asserted, "break with settled precedent by asserting that ... 'the state must tell a defendant in advance under which of the two [subsections] he is being prosecuted.'" He accused the majority of ignoring a "long line of Arizona cases that have interpreted analogous statutes as simply enumerating alternative means of satisfying one element of a single offense." He also pointed to *Schad v. Arizona*, 501 U.S. 624, 111 S.Ct. 2491 (1991), which held that in a first-degree murder case the jury need not be unanimous in finding which type of killing occurred, premeditated or felony murder.

"Thus," he concluded, "the issue on appeal should be whether defendant was actually prejudiced." On this issue, he inquired whether Sanders was in danger of

double jeopardy and whether he was surprised by the amendment. He found neither.

"The Achilles' heel of the majority's approach," according to Barker, "is exposed by its corollary assertion that the double jeopardy clause does not bar the state from retrying a defendant multiple times for the crime of aggravated assault on a police officer." He asserted that the majority's approach would leave a defendant open to three possible prosecutions for aggravated assault under the three subsections of § 13-1203.

By contrast, "if I am correct that § 13-1203(A)(1)-(3) merely provides the state alternative means to prove the same element of 'assault' in a prosecution for aggravated assault pursuant to § 13-1204(A)(5)," he wrote, "a defendant who is acquitted of the charge of aggravated assault on a peace officer may not be retried on that 'same offense.'"

Barker also agreed with the trial judge that Sanders was not surprised by the amendment, and should have anticipated the change in theory.

He pointed to several facts known to the defense, including the fact that Sanders substantially outweighed Bingaman and he advanced quickly and acted belligerently toward the officer, from which he concluded that defense counsel should have anticipated the change in theory.

He also dismissed defense counsel's claim that the change was what precluded her from making a self-defense argument. Barker believed that self defense was not viable, agreeing with the trial judge that Sanders' assault on the officer was completed before any justification might have arisen because of the alleged use of excessive force.

Sult's opinion contained 12 pages devoted to refuting what he called Barker's "seriously flawed" dissent. He argued that its analysis of the prejudice issue was based on a record that was "tainted" because the lack of prior notice precluded defense counsel from developing defenses to the theory the state ultimately pled.

Sult dismissed the dissent's assertion that defense counsel should have been able to anticipate from the facts that a reasonable-apprehension theory might appear at trial. He pointed out that "the prosecutor had this same information but chose not to include a 'reasonable apprehension' charge, either factually or by legal reference, in the formal charging document until trial was halfway over."

If knowledge of the facts amounted to notice of the charges the state would bring, Sult wondered, what purpose would notice requirement of the Sixth Amendment serve and which party had the burden of giving notice. "We understand it to be the job of the prosecutor to select the offense or offenses that should be prosecuted and notify a defendant of that choice through a formal charge."

He also took to task the dissent's assertion that defense counsel's failure to further cross-examine the officer or seek a continuance demonstrated the lack of surprise. "This shifting of responsibility to defense counsel for the prejudice that resulted to her client not only misidentifies the actual source of the prejudice," he wrote, "it clashes with our traditional notions of trial advocacy and undermines the constitutional right to effective assistance of counsel."

Sult equated the prosecutor's decision to abandon the "knowing touching" allegation to a dismissal for insufficient evidence and held that double jeopardy barred its retrial. The "reasonable apprehension" charge, by con-

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When I did my taxes this year, my accountant suggested we file electronically and I decided to give it a try. It was the most stressless tax day of my life. The return was filed in Adobe Acrobat Portable Document Format (pdf) and it was very easy to review. I won't go back again to the paper form. I already buy my postage online and my trips to the post office are few and far between. That is how it should be!

Several years ago, I was critical of the pdf format because the software was costly and cumbersome to use. Now, both Word and WordPerfect provide the ability to write to pdf, and a number of inexpensive programs on the market will convert different file types to pdf. Adobe Acrobat has carried the day and is now the standard document format for all types of electronic filing.

Speaking of e-filing, I recently spoke with Arizona Court of Appeals Division Two Chief Judge Philip Espinosa about the new remote electronic filing program that is rapidly becoming the method of choice for filing documents with the court in Tucson. In the past, the courts were generally bastions of tradition and not on the forefront of change, especially when it came to technology. Today, a number of courts are leading the way for the legal profession in the adoption of new technology.

Under both the previous and current Arizona Supreme Court strategic agendas for the state's courts, *Justice 2002* and *Justice for a Better Arizona*, one of the court's objectives was to develop a "substantially paperless environment" in order to improve efficiency, provide better service, improve access to the public, and reduce the cost of justice. Under Espinosa's direction, Division Two has been taking innovative and important steps in that direction.

First and foremost, Division Two has adopted a comprehensive electronic document management system (EDMS) integrated with other court information systems to allow court personnel (i.e., judges, staff attorneys, law clerks, secretaries, and clerk's office staff) to work with all documents in a case electronically, regardless of their source. The documents can be viewed at multiple locations simultaneously and printed out if desired. In another year, the majority of all case documents at the court will likely be electronic.

A number of related projects have been



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undertaken and completed at Division Two over the last three years to effectively utilize the system. They include:

► **Imaging.** Documents that come to the court in traditional hard copy media are routinely scanned, converted to electronic format, and stored in the EDMS.

► **e-filing.** Litigants can transmit their filings to the court over the Internet, saving them time and money, and allowing the court to more efficiently docket, store, manage, and process the documents. **e-filer** is an application developed at Division Two and is completely integrated with both the EDMS and case management systems.

► **ECMS.** The Electronic Case Management System tracks, produces, and maintains all case "documents." The legacy system used for many years (ODS) lacked flexibility and extended capacity. **ODSPlus**, a document-based ECMS with a user friendly "browser" interface, was developed at Division Two and is integrated with both **e-filer** and the electronic data management system.

► **Electronic Blueback Inter-Court Data Transfer.** This system of data transfer allows the Superior Court to index and transmit the trial court record electronically to other courts in lieu of transporting large and voluminous paper records. In Pima County, **Electronic Blueback** data transfer is being used by the court for all criminal cases, and civil cases will be included soon.

► **E-Distribution.** Orders, notices and decisions are now efficiently and "paperlessly" delivered via the Internet not only to litigants but to all on the case distribution list. This results in substantial savings of time, labor, and money by eliminating the need to print, copy, collate, stuff envelopes, affix labels, and pay postage. It also reduces delay, improves communication between the court and public, and enhances the efficiency of court operations.

► **Public Access.** In January, Division Two brought **ODSPlus WebDocs** online. This application allows attorneys to view their case documents and portions of the trial court record via the Internet. It also greatly benefits the court's judges, staff attorneys and law clerks, allowing them to quickly and easily view indexes and documents via "hotlinks" on their desktop PCs. As electronic access rules are promulgated by the courts, **WebDocs** will provide Internet access to case documents in accordance with those rules.

► **e-PR.** Since December 2002, when petitions for Supreme Court review of criminal cases are filed in Division Two, the petitions and the entire record on appeal are now provided to the court via secure Internet access. A special notice and "hotlink" are electronically transmitted to the court clerk, who then distributes the link to justices and staff attorneys, enabling them to instantly access all case documents at any time on their desktop PCs.

On March 4, Espinosa issued a groundbreaking administrative order directing Division Two to electronically transmit all decisions, notices and orders to litigants and others, and no longer provide them in paper except by special arrangement. The substantial savings in clerk time and labor as a result of the order are obvious. What is not as obvious are the advantages to lawyers and their clients in receiving official communications from the court immediately and securely, wherever they may be. Out-of-county counsel will particularly benefit and no longer suffer disadvantage from waiting longer on mailed documents than their Tucson counterparts.

Electronic filing clearly is the gold standard for court automation. Over the past

three years, Division Two's **e-filer** application has been fine tuned and is now a robust and user friendly gateway for the filing of any type of case or pleading. Any Arizona attorney can access and use the system, with no special software or training. And, after an attorney e-files, he or she not only has direct, real-time access to the court's online docket information, but can view all electronic filings in that case from the convenience of any PC with Internet access. Since September 2001 when the system was opened to all Arizona attorneys, registrations and e-filings have multiplied by leaps and bounds. To date, 485 attorneys have signed up to use the system. So far this year, Division Two has received about 140 e-filings every month and the number continues to grow.

The e-PR project also promises to gain widespread acceptance. As one Supreme Court staff attorney has commented, it is remarkable to no longer have to go to the clerk's office with a rolling cart and check out a stack of files and folders, lug them back to his office, spread them out on his desk, and start thumbing through hundreds (sometimes thousands) of pages of pleadings, minute entries and transcripts. Instead, a single hot link in an ordinary e-mail instantly brings up an index of all documents in the case. Another click takes him directly to any document he selects, which is then available for viewing, forwarding, or printing if a hard copy is desired. Any number of staff attorneys, law clerks or justices can do the same from any location and at the same time. Such instant access to the record at this early stage of the PR process benefits not only the court, but the lawyers seeking review, their clients

- See **Computing** on page 14

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Maricopa County Bar Foundation Mission Statement

"The Mission of the Maricopa County Bar Foundation is to raise and distribute funds to enhance the rule of law and the system of justice in Arizona, with a focus on programs that relate to the administration of justice; ethics in the legal profession; legal assistance for the needy; the encouragement of legal research, publications and forums; and the education of the public."



Foundation creates new logo, declares new mission

In an effort to bring focus to its new goals, the Maricopa County Bar Foundation board of trustees has unveiled a new logo, created a new website and developed a new mission statement.

"Previously, the foundation worked from a purpose statement that was very broad," said Foundation Director Shane Clays. "The board felt it was time to focus on specific goals, and develop a more visible identity that will help people in the community get to know who we are and what we do."

The foundation is the charitable arm of the Maricopa County Bar Association (MCBA), a 501(c)(3) non-profit organization created by, but separate from, the MCBA. Each year the foundation gives thousands of dollars in grants to worthy organizations in the Valley, including Volunteer Lawyers Programs.

The foundation's new mission statement (see box at left) was written to serve as a clear guideline for the foundation's future giving.

"We believe the legal community supports many of the same goals and causes the foundation supports," Clays added. "And with a more clearly defined mission, we think we'll be able to be more efficient, and certainly more effective, in reaching those goals."

Another shift in focus for the foundation

will be a greater effort toward fundraising. The bulk of the foundation's grant funds have always come from MCBA members through the \$10 dues check-off on member applications, or through donated arbitration fees from the Maricopa County Superior Court. In 2003, the board hopes to create more opportunities for Maricopa County attorneys to support the foundation's mission.

One of the foundation's signature fundraising events is the annual Pro Bono Golf Classic, scheduled this year for Sept. 13 at the Westin Kierland Resort & Spa. Last year, the tournament brought in more than \$10,000. This year, the board hopes to raise at least \$15,000 through sponsorships, player receipts and a raffle.

"This is probably our most visible event each year, the most common way people hear about us," Clays said. "We encourage everyone to take part, golfers and non-golfers alike, lawyers and non-lawyers. Not only is it a great way to have fun for a good cause, it also provides a positive image for the legal profession."

For more information on how you can support the foundation, or for details on the golf tournament, visit the foundation's new website at www.maricopabar.org/foundation, or call Clays at 602-257-4200. ■

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PHOTO BY TERESA BOOTH

MCBA CLE Program Coordinator Geoff Cummings registers Phoenix attorneys Jim Wees and Susan Wees for a May seminar.

CLE...

Continued from page 1

audits of CLE affidavits reveal that most Arizona attorneys earn an average of 22 to 25 credit hours per year.

Although one-third of attorneys reported some level of "difficulty" in meeting the requirement, only 10 percent noted a problem locating CLE seminars that match their area of interest. A more common problem was finding time to fit CLE into their schedule (15 percent). Others reported difficulty in finding seminars that match their skill level (10 percent) or difficulty fitting seminar costs into their budget (8 percent).

Most CLE providers are aware of the problems faced by some attorneys and have responded with a number of creative solutions. In addition to the traditional video replay series sponsored by the State Bar, and five video replay "Film Festivals" around the Valley sponsored by the MCBA, both providers also offer CLE opportunities outside the Phoenix area. The State Bar annually offers the July "CLE by the Sea" in San Diego, while the MCBA is offering "CLE by the Rim" in Payson in June. Each of these vacation-themed events allow attorneys to earn all their required credits at once.

"We know attorneys are busy people, and many do wait until the last minute," said Fontes. "We do everything we can to make MCBA CLE available at different times and places and formats so they can meet their deadline with as little stress as possible."

About 30 percent of survey respondents admit they have attended a seminar "because the CLE deadline is near." According to Leinberger, between 600 and 700 attorneys pay fees for late compliance each year. Typically, about 60 attorneys are suspended each year for failing to meet the requirement, "which is actually a small amount considering the size of the bar," Leinberger said.

"Most of those who file late are dealing with some kind of extenuating circumstances," she added. "We are happy to work with attorneys and grant extensions to those who need extra time."

While most CLE providers have been quick

to make online CLE seminars available, most survey respondents preferred live seminars to other options. Only 18 percent said they had registered for an online seminar in the past year, while a scant 10 percent said they had purchased self-study materials. In the words of one respondent, "seminars are more interesting than self-study," while another valued "the ability to ask questions of a live person."

Fontes also noted the importance of having knowledgeable speakers available to for questions.

"At the MCBA we always try to get 'new' faces out there to give a fresh perspective on topics. We look for speakers who are specialists, or well-known in a particular area of law," Fontes said. "I think that's one reason why our evaluations almost always come back with above average to excellent marks."

While many survey respondents had ideas on seminars they'd like to see in the future, on the whole, Maricopa County attorneys appear to be satisfied with the CLE options available to them and generally attend more seminars than required by the rule. As one respondent commented, "I am 73 years of age and understand I no longer have an annual CLE requirement. However, I do like to keep current." ■

Napolitano fills two appellate vacancies

Two more trial openings in process

Gov. Janet Napolitano filled two Arizona Court of Appeals vacancies in May with the appointments of two seasoned attorneys.

Phoenix attorney Donn Kessler, a partner with Jones, Skelton & Hochuli, was appointed to the Division One vacancy created when Judge Edward Voss retired in March. Kessler served two years as staff attorney at the Arizona Supreme Court, and has more than 20 years experience in private practice.

Napolitano chose Tucson lawyer Peter Eckerstrom to fill the Division Two vacancy created by Judge William Druke's retirement. Eckerstrom, an adjunct professor of law at the University of Arizona, has served as a prosecutor in the U.S. Attorney's Office and as a Pima County public defender in addition to nine years of private practice.

The Maricopa County Commission on Trial Court Appointments accepted applications through May 16 for vacancies created by the retirement of Judge Roger Kaufman and the appointment of Judge Maurice Portley to the Court of Appeals. The public was invited to comment on 45 applicants through May 27.

The applicants are Judith E. Abramsohn,

Aimee L. Anderson, Elizabeth P. Arriola, Arthur C. Atonna, Edward W. Bassett, Robert L. Baumann, James P. Beene, LaTasha L. Berard, Nancy R. Bodinet, James L. Burke, Carl W. Eckhardt Jr., James W. Evans, Jeffrey R. Finley, George H. Foster Jr., Richard W. Garnett III, Jo Lynn Gentry-Lewis, Gerald R. Grant, Barbara A. Hamner, Kristin C. Hoffman, Steven K. Holding, Roy E. Horton, Marc Kalish, Steven D. Keist, Michael W. Kemp, Christopher C. Kempley, Mitchell J. Klein, Steven A. LaMar, Raymond P. Lee, Andrew F. Marshall, Charles E. Martinez, C. Steven McMurry, Terrance C. Mead, Robert E. Miles, Wesley E. Peterson, John C. Rea, Jeffrey W. Sandler, Craig W. Soland, Peter B. Swann, Elliot C. Talenfeld, Andrew B. Turk, J. Wayne Turley, Benjamin E. Vatz, Michael A. Vincent, Robert V. Ward and Robert J. Weber.

A meeting was to be held May 30 to choose the applicants to be interviewed. The selected applicants will be interviewed on June 11, and three nominees for each vacancy will be recommended to Napolitano, who will appoint the new judges. ■

To place a **classified ad**, call the MCBA, 602-257-4200

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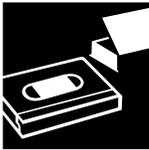
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June 2-7 Early Bird Week

Monday, June 2

9a-12p Conducting a Successful & Ethical Law Practice (3 hrs ethics)
1:30-4:30p Practice Essentials (3 hrs including 2 hrs ethics)

Tuesday, June 3

9a-12p Interactive Ethics for the Estate Planning & Probate Practitioner (3 hrs ethics)
1:30-4:30p Pre-Nuptial Agreements, Powers of Attorney & Reviewing Estate Planning Documents (3 hrs)

Wednesday, June 4

9a-12p Creating the In-Control, Grade "A" Witness (3 hrs)
1:30-4:30p Examining Expert Witnesses (3 hrs)

Thursday, June 5

9a-12p Voir Dire & Opening Statements (3 hrs)
1:30-4:30p HIPAA & Health Care Update (3 hrs)

Friday, June 6

9a-12p Valley of the Sun Growing Pains: Building from the Ground Up (3 hrs including .5 hrs ethics)
1:30-3:30p Punitive Damages (2 hrs)

Saturday, June 7

9a-12p Building a Product Liability Case (3 hrs)
1:30-4:30p Fee & Fee Agreements (3 hrs ethics)

Valley Film Fest - June 10 & 12

June 10 East Valley Film Fest

Dobson Ranch Library, 2425 S. Dobson Road, Mesa

10:30a-12:30p Employment & Labor Law Checklist for Small Business (2 hrs)
2:00p-4p Nuts & Bolts of Criminal Law (2 hrs ethics)
4:15p-6:45p Spousal Maintenance (2.5 hrs)

June 12 Scottsdale Film Fest

Mustang Library, 10101 N. 90th Street, Scottsdale

9:30a-12:30p Ethics & Settlement Agreements (3 hrs ethics)
2:00p-5p Handling a Motor Vehicle Accident (3 hrs)

June 12 West Valley Film Fest

Glendale Muni Airport, 6801 N. Glen Harbor Blvd., Glendale

9:30a-12:30p Current Issues in Guardianship/Conservatorship Issues (3 hrs)
2p-5p Bankruptcy & Divorce (3 hrs)

June 21-30 Film Fest

Saturday, June 21

9a-12p Bankruptcy & Divorce (3 hrs incl. 1 hr ethics)
9a-12p The Sale of Our Business (3 hrs incl. .5 hr ethics)
1:15-4:15p Building a Product Liability Case (3 hrs)
1:15-4:15p Chapter 13: A Trustee's Point of View (3 hrs)

Monday, June 23

9a-12p Ethics & Settlement Agreements (3 hrs ethics)
1:15-4:15p Closing Arguments (3 hrs)
4:30-6:30p The Great Affirmative Action Debate (2 hrs)

Tuesday, June 24

9a-12p Medical Evidence Made Simple (3 hrs)
9a-12p Direct & Cross Examinations (3 hrs)
1:15-4:15p Handling a Motor Vehicle Accident (3 hrs)
1:15-2:45p Model ADR Practices: Procedural & Ethical (1.5 hrs)
3-6p Conducting a Successful & Ethical Practice (3 hrs ethics)
4:30-6:30p Ethics & Advertising (3 hrs ethics)

Wednesday, June 25

9a-12p ADR Alternatives to Litigation in Family Court (3 hrs ethics)
9a-12p Bankruptcy Law: The Big Picture (3 hrs incl. .5 ethics)
1:15-4:15p Choices of Business Entities (3 hrs incl. .5 ethics)
1:15-4:15p Punitive Damages (3 hrs ethics)
4:30-6:30p Nuts & Bolts of Criminal Law (2 hrs ethics)

Thursday, June 26

9a-12p Current Issues in Guardianship/Conservatorship (3 hrs)
9a-12p Recent Developments in Arizona Water Law (3 hrs)
1:15-3:45p Spousal Maintenance (2.5 hrs)
1:15-4:30p Mold: Legal, Enviro & Geotechnical Issues (2.5 hrs)
4:45-5:45p Cases Every Family Law Attorney Should Know (1 hr)

Friday, June 27

9a-12p Is Your Client's Wealth Safe (Estate Planning) (3 hrs)
9-10a Cases That Every Family Attorney Should Know (1 hr)
10:15a-12:15p Overview of the Divorce Process (2 hrs)
1:15-4:15p Delivering WOW : Marketing You Firm (3 hrs)
1:30-3:30p Property Valuation Issues (2 hrs)
3:30-5:30p Child Support, Spousal Support & Tax Issues (2 hrs)
4:30-5:30p Specialty Courts: How to Navigate the Waters (1 hr)

Saturday, June 28

8-10a Nuts and Bolts of Custody Issues (2 hrs)
9a-12p Employment Law Basics (3 hrs incl. .5 ethics)
10a-12p International Custody Issues (2 hrs)
1:15-4:15p Developments in Labor & Employment Law (3 hrs)
1:15-3:15p Interstate Custody Issues (2 hrs)
3:30-5:30p Grandparents Rights (2 hrs)
4:30-6:30p Employ & Labor Checklist for Small Business (2 hrs)

Monday, June 30

9a-12p Fee & Fee Agreements under E.R. 1.5 (3 hrs ethics)
9a-12p Electronic Discovery & Electronic Evaluation (3 hrs)
1-4p Nuts & Bolts of Evidence (3 hrs incl. 1.5 ethics)
1:15-3:45p Discovery & Deposition (2.5 hrs)
4-7p ADR for Motor Vehicle Accidents (3 hrs)
4:15-7:15p Practice Essentials (3 hrs incl. 2 ethics)

Check appropriate box(es).

June 2-7 Early Bird Week

	<u>MCBA Member</u>	<u>Non-Member</u>
June 2		
<input type="checkbox"/> 9a-12p Conducting a Successful & Ethical Law Practice (3 hrs ethics)	\$75	\$105
<input type="checkbox"/> 1:30-4:30p Practice Essentials (3 hrs including 2 hrs ethics)	\$75	\$105
June 3		
<input type="checkbox"/> 9a-12p Interactive Ethics for the Estate Planning & Probate Practitioner (3 hrs ethics)	\$75	\$105
<input type="checkbox"/> 1:30-4:30p Pre-Nuptial Agrmts, Powers of Atty & Reviewing Estate Planning Docs (3 hrs)	\$75	\$105
June 4		
<input type="checkbox"/> 9a-12p Creating the In-Control, Grade "A" Witness (3 hrs)	\$75	\$105
<input type="checkbox"/> 1:30-4:30p Examining Expert Witnesses (3 hrs)	\$75	\$105
June 5		
<input type="checkbox"/> 9a-12p Voir Dire & Opening Statements (3 hrs)	\$75	\$105
<input type="checkbox"/> 1:30-4:30p HIPAA & Health Care Update (3 hrs)	\$75	\$105
June 6		
<input type="checkbox"/> 9a-12p Building from the Ground Up: Construction Law (3 hrs including .5 hrs ethics)	\$75	\$105
<input type="checkbox"/> 1:30-3:30p Punitive Damages (2 hrs)	\$75	\$105
June 7		
<input type="checkbox"/> 9a-12p Building a Product Liability Case (3 hrs)	\$75	\$105
<input type="checkbox"/> 1:30-4:30p Fee & Fee Agreements (3 hrs ethics)	\$75	\$105

June 10 East Valley Film Fest-Dobson Ranch Library, 2425 S. Dobson Road, Mesa

<input type="checkbox"/> 10:30a-12:30p Employment & Labor Law Checklist for Small Business (2 hrs)	\$50	\$70
<input type="checkbox"/> 2:00p-4p Nuts & Bolts of Criminal Law (2 hrs ethics)	\$50	\$70
<input type="checkbox"/> 4:15p-6:45p Spousal Maintenance (2.5 hrs)	\$65	\$90

June 12 Scottsdale Film Fest-Mustang Library, 10101 N. 90th Street, Scottsdale

<input type="checkbox"/> 9:30a-12:30p Ethics & Settlement Agreements (3 hrs ethics)	\$75	\$105
<input type="checkbox"/> 2:00p-5p Handling a Motor Vehicle Accident (3 hrs)	\$75	\$105

June 12 West Valley Film Fest-Glendale Muni Airport, 6801 N. Glen Harbor Blvd., Glendale

<input type="checkbox"/> 9:30a-12:30p Current Issues in Guardianship/Conservatorship Issues (3 hrs)	\$75	\$105
<input type="checkbox"/> 2p-5p Bankruptcy & Divorce (3 hrs)	\$75	\$105

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<input type="checkbox"/> 1:15-2:45p Model ADR Practices: Procedural & Ethical (1.5 hrs)	\$40	\$55
<input type="checkbox"/> 3-6p Conducting a Successful & Ethical Practice (3 hrs ethics)	\$75	\$105
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<input type="checkbox"/> 4:30-6:30p Nuts & Bolts of Criminal Law (2 hrs ethics)	\$50	\$70
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<input type="checkbox"/> 1:15-4:30p Mold: Legal, Enviro & Geotechnical Issues (2.5 hrs)	\$65	\$90
<input type="checkbox"/> 4:45-5:45p Cases Every Family Law Attorney Should Know (1 hr)	\$25	\$35
June 27		
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<input type="checkbox"/> 3:30-5:30p Child Support, Spousal Support & Tax Issues (2 hrs)	\$50	\$70
<input type="checkbox"/> 4:30-5:30p Specialty Courts: How to Navigate the Waters (1 hr)	\$25	\$35
June 28		
<input type="checkbox"/> 8-10a Nuts and Bolts of Custody Issues (2 hrs)	\$50	\$70
<input type="checkbox"/> 9a-12p Employment Law Basics (3 hrs incl. .5 ethics)	\$75	\$105
<input type="checkbox"/> 10a-12p International Custody Issues (2 hrs)	\$50	\$70
<input type="checkbox"/> 1:15-4:15p Developments in Labor & Employment Law (3 hrs)	\$75	\$105
<input type="checkbox"/> 1:15-3:15p Interstate Custody Issues (2 hrs)	\$50	\$70
<input type="checkbox"/> 3:30-5:30p Grandparents Rights (2 hrs)	\$50	\$70
<input type="checkbox"/> 4:30-6:30p Employ & Labor Checklist for Small Business (2 hrs)	\$50	\$70
June 30		
<input type="checkbox"/> 9a-12p Fee & Fee Agreements under E.R. 1.5 (3 hrs ethics)	\$75	\$105
<input type="checkbox"/> 9a-12p Electronic Discovery & Electronic Evaluation (3 hrs)	\$75	\$105
<input type="checkbox"/> 1-4p Nuts & Bolts of Evidence (3 hrs incl. 1.5 ethics)	\$75	\$105
<input type="checkbox"/> 1:15-3:45p Discovery & Deposition (2.5 hrs)	\$65	\$90
<input type="checkbox"/> 4-7p ADR for Motor Vehicle Accidents (3 hrs)	\$75	\$105
<input type="checkbox"/> 4:15-7:15p Practice Essentials (3 hrs incl. 2 ethics)	\$75	\$105

Registration Form - Film Fest 2003

Please be sure to check boxes for video replays you wish to attend! Thank you!

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AZ Bar No. _____

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REGISTRATION: Mail registration with payment or phone/fax/e-mail with credit card information. An additional \$15 fee will be added to all walk-up registrations. If space is available, you may register at the door. If you do not register two business days in advance, we cannot guarantee space or materials.

CANCELLATIONS: Refunds, less a \$10 fee, will be issued only if the CLE Dept. receives your cancellation in writing two business days prior to the Film Festival date.

If you have a disability, please call ahead so we may accommodate your needs.

To Register:

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 303 E. Palm Lane,
 Phoenix, AZ 85004
 Or Call 602-257-4200 ext. 131
 Or Fax 602-257-0522



Paralegals score big for scholarship fund



The MCBA Paralegal Division team takes a break between innings during the division's softball tournament on May 3. From left to right: Tommy Norris, Becky Norris, Ben Jemsek, Tony Kramer, Tricia Kramer, Amy Davis, Danny Mendez, Doug Herschell, Kelly Larson, and Jeremy Harris.

By Amy S. Davis
Special to Maricopa Lawyer

The MCBA Paralegal Division held its first co-ed softball tournament on May 3 and raised over \$1,200 for the division's scholarship fund. Each year the division awards four \$1,000 scholarships to paralegal students at its annual conference.

Seven teams participated in the tournament, held at Snedigar Recreational Park in Chandler. The Snell & Wilmer team swept the event, winning every game it played and earning the first place trophy. The Capitol Reprographics team lost only one game and finished in second place. The Advanced Litigation Resources team earned third place.

All other teams, including those sponsored by Littler Mendelson, IKON, the State Bar of

Arizona and the Paralegal Division, made a respectable showing and had a lot of fun.

The division board thanks IKON for advertising the event, and for the score board. David Fox, Sharon Frye and Elizabeth McAlister also deserve special thanks for working diligently to put the event together.

The division board is especially grateful to all the teams who showed their support. We congratulate the winners and look forward to seeing them again in next year's tournament.

For tournament highlights, including team photos, visit the Paralegal Division website at www.maricopaparalegals.org.

► Amy Davis, a paralegal with Rake and Catanese, is a Paralegal Division board member and co-captained the division's team. ■

Paralegal Conference to look toward the future

"Where do we go from here? Looking towards the future" will be the theme of the 2003 Arizona Paralegal Conference, scheduled for Sept. 19 at the Pointe Hilton at Squaw Peak. Sponsored by the MCBA Paralegal Division, the annual conference is the premier event for paralegals around the state and offers opportunities to network, meet vendors and earn six hours of continuing legal education credit (one hour ethics).

Topics will include:

► *The Virtual Practice of Law*

Presented by Derek Miller and Alex Goth of inData Litigation Services along with Bert Binder, president of Advanced Litigation Resources. A multi-media presentation will take attendees into a virtual courtroom to witness a fictional, and paperless, mini-trial. Discussions on other uses of electronics will follow.

Reach thousands of Maricopa County attorneys with an ad in *Maricopa Lawyer*, call the MCBA at 602-257-4200

► *Paralegals: Their Role in Intellectual Property Law*

Presented by: George Chen, Bryan Cave associate. This seminar will focus on paralegals involved in licensing, patent and trademark work.

► *Ethics in the Electronic Age*

Presented by Gail H. Thackeray, Arizona Attorney General's Office. Computer crimes, proper use of email communications and the ethical obligations of paralegals will be covered.

Registration fees are \$150 for MCBA Paralegal Division members, \$175 for non-members and \$50 for students. An additional \$25 will be added to all registrations received after Aug. 1 (students exempted).

For additional details and registration information, visit the Paralegal Division website at www.maricopaparalegals.org/Conference3.htm, call the MCBA CLE Department at 602-257-4200, ext. 131, or see the insert in this issue of *Maricopa Lawyer*. ■

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JUNE

June 2

- Task Force for Recruitment and Retention of Minority Attorneys, noon
- Paralegal Division executive committee, noon, conference call
- *Maricopa Lawyer* editorial board, 5 p.m.

June 4

- Family Law Section, 5:15 p.m., University Club

June 5

- Construction Law Section, noon, Koeller, Nebeker, Carlson & Haluck, 3200 N. Central Ave., Suite 2300, Phoenix

June 9

- YLD board, noon
- Paralegal Division board, 5:30 p.m.

June 10

- VLP Advisory Committee, noon
- Scottsdale Bar Association lunch meeting, noon, Scottsdale Athletic Club, 8225 E. Indian Bend Rd., Scottsdale. Speaker: Jan Brewer, Arizona Secretary of State. Cost: \$15 with advance payment (send checks payable to Scottsdale Bar Association to P.O. Box 2087, Scottsdale, 85252-2087); \$18 at the door. Information/reservations: Jill Miller, 480-481-3047.

■ *Banking Issues Related to Lending on Reservations*
Noon to 1 p.m.
Knowing how to overcome cultural differences is essential to successful business practice. Rand Haddock outlines lending on reservations, including issues such as sound fundamental credit writing, collateral and limited recourse, plus mitigating risks and benefits. Cost: Member attorneys, \$25; member paralegals and public lawyers, \$20; non-member attorneys, \$35; non-member paralegals and public lawyers, \$25; same-day registration, \$15 additional. CLE: 1 hour

June 11

- MCBA executive committee, 7:15 a.m.
- Environmental Law Section, noon.
- Hayzel B. Daniels Bar Association, 5:30 p.m.
- Personal Injury/Negligence Section, noon, Edythe Kelly & Associates, 1501 W. Fountainhead Pkwy, Tempe.

June 16

- Membership Communications Committee, noon.
- YLD Domestic Violence Committee, noon.

June 17

- Estate Planning & Probate Section executive committee, 7:30 a.m., The Cavanaugh Law Firm, 1850 N. Central, 24th Floor.
- PLD CLE lunch, noon, Board of Supervisors conference room

- Labor & Employment Law Section, 12:30 p.m.
- PLD board, 1:30 p.m.
- Bankruptcy Section, 5 p.m.

June 18

- Litigation Section, 7:30 a.m.
- Sole Practitioners Section, 11:30 a.m.

■ *Managing & Preparing Employment Law Cases Through Summary Judgment*

1 p.m. to 4:30 p.m., ASUD
A panel of U.S. District Court judges and employment attorneys will discuss case management, discovery and summary judgment of employment law cases. Cost: Member attorneys, \$75; member paralegals and public lawyers, \$55; member self-study, \$75; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; non-member self-study, \$105; same-day registration, \$15 additional. CLE: 3 hours

■ *Right, Left, Straight Ahead? More Than One Way to Settle Your Motor Vehicle Accident Case*

2 p.m. to 4 p.m., ASUD
Looking for a way to resolve MVA cases outside of court? Our panel will discuss ADR options from a number of different perspectives (plaintiff's counsel, defense counsel, mediator) and provide effective strategies for utilizing ADR to resolve even the most challenging MVA cases. Cost: Member attorneys, \$75; member paralegals and public lawyers, \$55; member self-study, \$75; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; non-member self-study, \$105; same-day registration, \$15 additional. CLE: 2 hours

June 19

- Technology Section, 7:30 a.m.
- MCBA board of directors, 4:30 p.m.

June 20

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

■ *2003 Family Law Case Law & Legislative Update*

1:30 p.m. to 5 p.m., ASUD
This annual advanced level program qualifies for family law specialization credit and will include a summary of family law-related cases as well as statutory changes and practice tips. Cost: Member attorneys, \$75; member paralegals and public lawyers, \$55; member self-study, \$75; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; non-member self-study, \$105; same-day registration, \$15 additional. CLE: 3 hours

June 24

- Juvenile Practice Section, noon, southeast court facility, Mesa
- Corporate Counsel Division board, 4:30 p.m., SRP Conference Room, 1521 N. Project Dr., Tempe

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.

JUNE 2003	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					

June 25

- *International Collections: Are your Clients Protected?*
Noon to 1 p.m., Arizona Club, Bank One Building, 201 N Central Ave, 38th floor
Dale Furnish and panel present an advanced level seminar on the steps you need to take to protect a client engaged in international transactions. You will learn how to structure the deal and how to conduct international civil litigation, bankruptcies, alternative dispute resolution, final judgments, as well as methods of enforcing judicial judgments and arbitration awards abroad. Cost: MCBA and SBA International Section members, \$25 including lunch; non-section members, \$35; same-day registration, \$15 additional. CLE: 1 hour

■ *Arizona Women Lawyers Association*

lunch meeting, noon, Arizona Club. Speaker: TBD. Program begins at 12:30 p.m. Cost: AWLA members, \$15; non-members, \$20. Reservations (required): 602-863-7678 or reservations@awla-maricopa.org by noon June 23.

June 26

- Los Abogados Bar Association, noon, Matador Restaurant, First Street and Adams, Phoenix

■ *Is Your Client's Wealth Safe? Estate Planning for Wealth Preservation*

1 p.m. to 4:30 p.m., ASUD
Our panel will compare various devices estate planners should utilize in estate plans, including conventional trusts, Alaska and other self-settled trusts, family limited partnerships and foreign trusts. Topics to be covered include assets exempt from creditors, fraudulent transfers, gifts and post-nuptial agreements. Cost: Member attorneys, \$75; member paralegals and public lawyers, \$55; member self-study, \$75; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; non-member self-study, \$105; same-day registration, \$15 additional. CLE: 3 hours

June 27

- *Technology/IP Issues for Non-Technology Companies*
Corporate Counsel Division lunch CLE
11:45 a.m. to 1 p.m., University Club
Speaker: Paul Burns, Steptoe & Johnson
Cost: CCD members, \$22.50; non-members, \$32.50. CLE: 1 hour

■ *State Bar of Arizona's Course on Professionalism*

12:30 p.m. to 5 p.m., ASUD
Take advantage of this opportunity to complete the professionalism requirement before the CLE deadline June 30. Cost: Member attorneys, \$90; member paralegals and public lawyers, \$75; non-member attorneys, \$120; non-member paralegals and public lawyers, \$105; same-day registration, \$15 additional. CLE: 4.25 hours

The 2003 Bench Bar Committee would like to thank the following
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Pro bono work offers an education along with challenge

By **Peggy Cornelius**
Special to Maricopa Lawyer

Ask Hershel Ber, Volunteer Lawyers Program Attorney of the Month, why he takes pro bono work at the Family Lawyers Assistance Project (FLAP), and he describes the challenge of learning while helping people represent themselves in complex cases.

"Advising people with diverse legal issues at half-hour intervals is like taking a quiz on

family law, something akin to the game show *Who Wants to be a Millionaire?*" he said.

Ber's sense of humor and desire for knowledge have served him well over the last six years in the fast-paced atmosphere of the advice clinic.

"I'd accepted a pro bono case from the Community Legal Service office in Prescott in 1995," Ber said, "but I formally joined VLP in Phoenix during 1997." He had moved to



Ber

Phoenix to set up an office as a sole practitioner and had expected his practice to be based in his criminal and insurance defense experience. But he found he was more often approached for help in domestic matters.

"My first family law case seemed imposing because of court procedures and the volume of paperwork required," Ber said. Yet the compelling need of many people seeking advice at FLAP is a powerful force, and Ber has never resisted when he's heard the call to go beyond advising to providing pro bono representation.

"Over the years I've accepted pro bono cases involving domestic violence and custody issues. It's sometimes been a lesson in patience and understanding," Ber recalled a case in which a client who had been horribly abused withdrew the petition for dissolution to reconcile with the abuser. Although he knew something of the psychology of abuse, it frustrated him that he could not help his client break the cycle.

"Fortunately," he added, "I was able to help some months later."

The path to his career in law wasn't a straight one for Ber. He obtained an undergraduate degree in science and engineering from ASU and began working as a mechanical engineer. A later desire to study patent law led him to Los Angeles where he graduated from Whittier Law School. Yet after arriving in Arizona, he found opportunities for patent lawyers limited and changed his focus yet again.

Like many outstanding volunteers, Ber comes from a family in which community service is a part of daily life.

"Both my father and brother are doctors, and my father's philanthropic footprint is one that's hard to fill," Ber said. "My fiancé has also chosen a service profession, working as a public lobbyist for the Department of Economic Security. I just contribute in my way."

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

The Maricopa County Bar Foundation would like to thank ALL of those who donated arbitration fees to the MCBF in April, 2003!

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Leslie Kresin
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Raymond Heyman
Robert Crawford
Samuel Cullan
Thomas Hoecker
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VLP thanks attorneys who accepted cases

The Volunteer Lawyers Program, co-sponsored by Community Legal Services and the Maricopa County Bar Association, thanks the following attorneys and firms in Maricopa County who agreed recently to assist low-income clients with these civil legal needs. Each volunteer attorney receives a discount CLE certificate from the MCBA.

Bankruptcy

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

Consumer

Timothy H. Barnes, Barnes Lassiter & Killough (2 cases)
Redfield T. Baum, Bonnett Fairbourn Friedman & Balint
Jason J. Bliss, Doyle Berman & Boyack
Mia R. Brodsky, Gust Rosenfeld
Frank W. Busch III, Snell & Wilmer
Kenneth M. Frakes, Holden Bradman
Ray Hayes, Sole Practitioner
Alec R. Hillbo, Fennemore Craig
Marnie L. Hodahkwen, Quarles & Brady Streich Lang
Eida E. Orduno, Lewin & Schneider
Kerry K. Patterson, Quarles & Brady Streich Lang
Thomas M. Quigley, Mohr Hackett Pederson
Blakley & Randolph
Jay A. Zweig, Gallagher & Kennedy

Family Law/Domestic Violence

Bonnie L. Booden, Sole Practitioner
Glenn M. Davis, State Senate
Christina S. Hamilton, The Cavanagh Law Firm

Guardians Ad Litem

for Children in Family Court

Irene Boland, Aris Gallios & Associates
Annette T. Burns, Sole Practitioner
Helen R. Davis, The Cavanagh Law Firm
Jennifer G. Gadow, Cohen & Fromm
Clarence E. Matherson, Jr., Quarles & Brady Streich Lang

Guardianship of Incapacitated Adults

Kevin J. Parker, Snell & Wilmer

Guardianship of Minors

David T. Barton, Quarles & Brady Streich Lang
Catherine E. Brixen, Quarles & Brady Streich Lang
Otilia M. Diaz, Sole Practitioner
Tanya Miller, Steptoe & Johnson
Chad B. Sampson, Quarles & Brady Streich Lang (2 cases)
Laura Sawicki, Quarles & Brady Streich Lang
Misty Light Walker, Quarles & Brady Streich Lang

Home Ownership

Robert W. Blesch, Sole Practitioner
John M. McVey, Stinson Morrison Hecker

Non-Profit Organization Assistance

Brian K. Moll, Bryan Cave

Tax

John A. Beaver, Moore & Benham
Brad S. Ostroff, Burch & Cracchiolo

Tenant's Rights

Casey William Cullings, Brown & Bain
Nicole Perrault, Kutak Rock
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Preparers...

Continued from page 1

Supreme Court Rule 31(a)4, includes the performance of "substantive legal work" under the supervision of an attorney licensed to practice in Arizona. However, in 1997, the American Bar Association removed language which required legal assistants to work "under the ultimate direction and supervision of an attorney." The removal of this language allowed legal assistants and paralegals to work with more autonomy and better reflected how paralegals are being utilized.

In *Paralegal Utilization*, 551 PLI/Lit 183, 189 (October 1996), L. Roselle explained that the general education and training that paralegals and legal assistants receive provide them with knowledge of legal theory in practice areas such as estates, trusts and wills, corporate, real estate, criminal, and civil litigation, as well as familiarity with legal research methods, terminology and court system functions. This training allows paralegals to prepare useful summaries, indices, developments of fact, and analyses of documents and testimony. Moreover, analytical ability supported by paralegal education and training enables them to perform work that could otherwise only be performed by an attorney.

According to Roselle, other paralegal responsibilities performed during trial-level litigation can include:

- Drafting (not simply typing) complaints and answers, preparing or responding to interrogatories, requests for the produc-

tion of documents and requests for admissions, reviewing documents to determine responsiveness, confidentiality, privilege and sensitivity.

- Drafting questions for depositions, attending document productions, depositions, indexing and summarizing depositions, interviewing clients, preparing witness books.

- Supplying fact statements for motions, briefs, pretrial orders, etc.

- Preparing affidavits, exhibits, extensions of time, removal of documents, demand letters and subpoenas.

- Identifying and preparing potential and expert witnesses.

- Drafting a list of documents and testimony for use in impeaching the opposition's witnesses.

- Maintaining lists of defendant/plaintiff exhibits as they are mentioned, offered as evidence and admitted or objected to.

- Preparing settlement calculations.

- Preparing comparative analyses of terms of potential settlement agreements.

- Drafting settlement documents including releases and dismissals.

Due to the nature of client fee agreements, neither paralegals nor attorneys may bill clients for clerical work they've performed. As a general rule, proper utilization of paralegals does not include clerical work, which is a law office overhead expense that cannot be billed to a client. Accordingly, courts will disallow requests for attorneys fee recovery when paralegals have performed clerical work.

The role of a paralegal is much more complex than that of a document preparer. While nearly all paralegals will qualify in terms of

and awarded class counsel \$7.4 million.

ASRS objected, arguing that the court should apply the lodestar approach, not the common-fund doctrine. It noted that hours class counsel asserted its attorneys spent on the case in its billing statements, multiplied by their usual billing rates, would have resulted in a request of some \$550,000. The court's award, by contrast, amounted to the equivalent of a \$2,600 hourly rate. The trial court was only partially persuaded. It did not change its view that the common-fund doctrine applied, but it did cut the award by half to \$3.7 million. ASRS appealed.

The Court of Appeals reversed the decision. Writing for an unanimous panel, Judge Philip G. Espinosa first explained that the common-fund doctrine allows the court to award fees "to counsel for the prevailing side whose efforts in litigation create or preserve a common fund from which others who have undertaken no risk or cost will nevertheless benefit." By contrast, under the lodestar method, the court awards an amount based on the reasonable number of hours counsel expended on the suit multiplied by a reasonable hourly rate.

The twofold purpose of the common-fund doctrine, Espinosa wrote, is to compensate counsel for their efforts and to prevent the unjust enrichment of the benefiting class. The doctrine is applicable only if the court is able to apportion the fee with some exactitude among the beneficiaries.

Espinosa agreed with ASRS that shifting the fees to it — the losing party — did not apportion the fees among the beneficiary class. "The common fund doctrine," he wrote, "is based on an equitable principle of allocating counsel's fees among the benefited class members, not shifting them to the losing party." It is, he wrote, a fee-spreading mechanism, not a fee-shifting one.

— See *Courtwatch* on page 15

education and experience for the role of document preparer, the reverse is not true. The educational requirement for a document preparer may be as little as the completion of a high school equivalency exam. Paralegals, on the other hand, now find that most law firms want them to have some form of college degree. Increasingly, that degree must be a bachelor's degree.

In terms of their roles and responsibilities,

paralegals and document preparers differ appreciably as well. While document preparers may provide clients with documents and procedural information in simple legal matters in which the client is likely to appear as a pro per, paralegals assume the more complicated substantive legal work involved in complex legal matters that require attorney representation. ■

YLD's Law Week volunteers offer advice, discover writers

The Young Lawyers Division celebrated Law Week with a community law fair at Metrocenter on April 29, a two-day Phone-A-Lawyer event the following week, and a special Law Week ceremony on May 2 in which essay contest winners were recognized by Arizona Court of Appeals Judge Patrick Irvine.

Nearly 200 people received free legal advice from YLD volunteers at the Law Fair and Phone-A-Lawyer events, while 40 young lawyers attended a Law Week CLE and happy hour held May 1. YLD Law Week Committee Chair Maxine Polomski organized YLD volunteers staffing the events, as well as the 35 volunteers who graded essays submitted to the Law Week contest.

Middle-school students from all over Maricopa County were invited to participate in the contest, and more than 140 entered essays on a hypothetical legal issue facing an imaginary judge in the imaginary town of Tiny, Arizona.

After the accidental gun death of a hunter in Tiny, Arizona (population, 50), the townspeople pressured the town council into passing a law pro-

hibiting gun possession of any kind in the Town of Tiny. A group that believed the "No Guns In Tiny" law violated the Second Amendment of the United States Constitution brought a lawsuit challenging the law. The case will be decided by Judge Lone Lee, and Tiny residents are already picketing outside the courtroom everyday urging him to dismiss the lawsuit. What should Judge Lee do?

YLD volunteers graded the essays based on spelling and grammar, identification of issues and facts relevant to each issue, and analysis of the facts and law. The top three scores in each grade level were declared the winning essays. [See accompanying box for winners.]

Irvine presented winners with medals and gifts along with advice to keep honing their writing skills.

"Many of your essays displayed better writing than some of the briefs I see from actual lawyers," Irvine said. "But it doesn't matter which field you choose to pursue in the future, writing will be important to your success." ■

Courtwatch...

Continued from page 4

trast, was infected only with trial error and therefore could be retried, consistent with the double jeopardy clause. He therefore held that the state could refile that charge upon remand.

When attorneys in a class action obtain excellent results for the plaintiff class by reaching a settlement with the defendant, what methodology should the court use to determine the amount of their fees? Division Two faced this question in *Burke v. Arizona State Retirement Sys.*, No. 2 CA-CV 2002-0035 (Apr. 29, 2003), and its answer made a \$3 million dollar difference.

James Burke, formerly a professor at the University of Arizona, challenged a decision of the Arizona State Retirement System (ASRS) by asserting that his rights to retirement benefits should not have been adversely affected when ASRS changed from a defined-contribution plan to a defined-benefit plan. He sued for himself and a class of similarly situated state employees.

Burke won summary judgment on his individual claim, and the court awarded him attorneys' fees. The parties then filed cross-motions for summary judgment on the class claims. While these motions were pending, the parties settled. The agreement provided that each class member's retirement account would be completely refunded. ASRS also agreed to pay the plaintiffs' reasonable attorneys' fees, reserving the right to challenge class counsel's fee application.

Touting their complete and total victory, class counsel requested an award of \$9.5 million, arguing that the court should determine the award under the common-fund doctrine. The trial court agreed the doctrine applied

Essay Contest Winners

Grade	Place	Name	School
7th	1st	Rachael Prokes	AZ School for the Arts
7th	2nd	Kelsey Price	Aprende Middle School
7th	3rd	Carly D'Andrea	Desert Valley Elementary School
8th	1st	Emily Campbell	Desert Valley Elementary School
8th	2nd	Kennedy Ruf	Shepard Junior High School
8th	3rd	Bobby Cottam	Shepherd Junior High
9th	1st	Daniela Lauderdale	Tempe Preparatory Academy
9th	2nd	John Thorpe	Tempe Preparatory Academy
9th	3rd	Jinnae Morgan	Tempe Preparatory Academy

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PEOPLE IN LAW



Anderson



Calderón



McNulty



Stagg

■ Ernest Calderón, a partner with Jennings, Strouss & Salmon and president of the State Bar of Arizona, was honored with the Arizona Alumni Association's Distinguished Citizen Award. The award was given in recognition of Calderón's volunteer service.

■ The Arizona Supreme Court has announced the following appointments: Andrew M. Federhar has been appointed to serve as chairperson of the Complex Civil Litigation Court Evaluation Committee; Arizona Court of Appeals Judge Murray G.

Snow has been appointed to the City of Mesa Judicial Advisory Board; Arizona Court of Appeals Judge Patrick G. Irvine has been appointed to the City of Phoenix Judicial Selection Advisory Board; Tempe Municipal Court Judge Mary Anne Majestic, Arizona Court of Appeals Judge Sheldon H. Weisberg and David Damron have been appointed to the Judicial Ethics Advisory Committee.

■ Gov. Janet Napolitano has appointed Michael McNulty, a partner with Lewis and Roca, to serve as an Arizona representative for the Western States Water Council. The council, consisting of representatives of 18 western states, exists to accomplish effective cooperation among western states in the conservation, development and management of water resources.

■ Reese Anderson, a real estate, construction and land use attorney with Snell & Wilmer, has been appointed to the Arizona State Registrar of Contractors Advisory Committee. Anderson is currently the only attorney to serve on the committee, which is part of comprehensive effort to improve the responsiveness, efficiency and productivity of the Registrar of Contractors.

■ Enterprise Network Inc., a non-profit organization established to promote and support entrepreneurship in Arizona, recently named Snell & Wilmer partner Richard Stagg to its board of directors for a one-year term. Stagg will be responsible for promoting the organization's mission.

■ The American College of Trial Lawyers presented William R. Jones Jr. with its Samuel E. Gates Litigation Award in recognition of his significant contribution to improving litigation training, the litigation process and the general administration of justice.

Jones is a founding member of Jones Skelton & Hochuli.

■ The Arizona Supreme Court has appointed the following individuals to serve on the board of governors of the State Bar of Arizona for two-year terms: Donald W. Carson, a retired University of Arizona professor; Paul W. Ahler, Maricopa County Attorney's Office chief deputy; and David K.

Byers, Arizona Supreme Court administrative director.

■ The Arizona Supreme Court announced six reappointments to the Arizona Judicial Council. William B. Sutton Jr. has been reappointed as Justice of the Peace. Jones Osborn, Jack Pfister, Susan Edwards, William Mangold, and Miguel Montiel were reappointed as public members. ■

LEGAL MOVES

■ Lucius Lockwood and Sheila Heidmiller have joined Lewis and Roca as associates. Lockwood (J.D. 2001, ASU) will concentrate his practice on patent prosecution licensing and litigation support. Heidmiller (J.D. 2001, Seattle University) will specialize in the area of website compliance. Both previously practiced in Seattle.

■ Ken Van Winkle has been elected managing partner of Lewis and Roca. Van Winkle (J.D., University of Cincinnati) has practiced with Lewis and Roca for 17 years in the firm's real estate finance group. During his four-year term, he will be responsible for the strategic direction, management and administration of the firm.

■ Tom Gilson and Jennifer Murray have joined Lewis and Roca. Gilson (J.D. 1993, Northwestern University) will concentrate his practice on commercial litigation. Prior to joining the firm, he practiced in Washington, D.C. Murray (J.D. 2000, University of Virginia) will be an associate with the firm's corporate group and will practice in real estate. He previously practiced in New York City.

■ Bowman and Brooke has announced the addition of 10 new attorneys to its Phoenix office. Neil C. Alden, Negatu Molla, Vincent J.



Gilson



Heidmiller



Lockwood



Murray

Montell and Raj S. Sivanathan have joined the firm as partners. Curtis M. Bergen, Tracy L. Carlson, Dustin A. Christner, James C. Goodwin and Sonia I. Krainz will practice as associates. Barry C. Toone also has joined the firm. ■



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Computing...

Continued from page 5

and, ultimately, the public. And that, after all, is what it's all about.

Division Two has a number of additional projects in the works, including online financial transactions and LegalXML, an evolving national standard being developed for electronic transmission of legal documents nationwide. It is hoped other courts around the state will benefit from Division Two's many successful projects. In the meantime, if

appellate work is any part of your Southern Arizona practice, it would behoove you to register with e-filer and see what it can do for you and your clients.

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



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BOWMAN & BROOKE LLP is a national litigation firm with offices in Minneapolis, Phoenix, Detroit, San Jose, Los Angeles and Richmond. Established in 1985, the Phoenix office has focused its practice in complex civil litigation, with an emphasis on product liability defense. We recently expanded our practice to include employment law and medical malpractice defense. The Phoenix office seeks an attorney with excellent academic credentials and one to four years litigation experience. Please send or fax your resume to Lori Zirkle, Bowman & Brooke LLP, 2929 N. Central Avenue, Suite 1700, Phoenix, AZ, 85012, facsimile (602) 248-0947.

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POSITION VACANCY ANNOUNCEMENT - FEDERAL PUBLIC DEFENDER - DISTRICT OF ARIZONA - The United States Court of Appeals for the Ninth Circuit invites applications from all qualified persons for the position of Federal Public Defender for the District of Arizona. The FPD office is currently headquartered in Tucson, Arizona, with a second office in Phoenix. The office is the third largest in the country, consisting of about 49 lawyers and a total staff of about 118. The term of appointment is four years, renewable upon demonstration of highly satisfactory performance in office. The current authorized annual salary is \$134,000. The office of the Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. An applicant must satisfy the following conditions: (1) be admitted to practice before the highest court of at least one state; (2) be a member in good standing of every other state Bar of which he/she is a member; (3) have a minimum of 5 years criminal practice, preferably with significant federal criminal trial experience; (4) possess administrative expertise; (5) have a reputation for integrity; and (6) be committed to the representation of those unable to afford counsel. A Local Screening Committee will review all applications and conduct interviews of the most qualified candidates. The screening committee will refer the most qualified candidates to a committee composed of

circuit judges who will refer the most qualified candidate to the Court of Appeals for a final decision and appointment. Requests for application forms may be obtained by writing, calling or faxing to: **Office of the Circuit Executive - Ninth Circuit, P.O. Box 193939, San Francisco, CA 94119-3939 (U.S. Mail), OR 95 Seventh Street, Suite 429, San Francisco, CA 94103-1526 (Express Delivery), Attn: FPD Recruitment - District of Arizona, Phone: (415) 556-6158; Fax: (415) 556-6179**

Any letters of reference and supporting documents must accompany the completed application. Completed applications must be sent to the above address and must be received no later than the **close of business on June 30, 2003**. THE UNITED STATES COURTS IS AN EQUAL OPPORTUNITY EMPLOYER

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Courtwatch...

Continued from page 13

Espinosa noted that the common-fund doctrine is an equitable exception to the American Rule, it does not apply when a statute does apply. He held, over class counsel's objection, that A.R.S. § 12-341.01(A) applied to the case. This statute allows an award of fees to the successful party in an action arising out of contract. Here, the class members' suit arose from their employment contracts with the state, and therefore § 12-341.01(A) applied.

Espinosa disagreed with class counsel's argument that A.R.S. § 12-341.01(A) does not apply when the contract at issue contains its own attorneys' fees provision. Class counsel argued that the settlement agreement's provision that ASRS would pay reasonable fees trumped the statute. Espinosa rejected that argument, holding that the plaintiffs' causes of action arose out of their individual employment contracts, and there was no evidence that any of them had fee provisions. "Furthermore," he noted, "the settlement agreement reflected the parties' agreement to disagree about the proper basis for awarding fees."

The court vacated the award and remanded to the trial court to determine fees under the lodestar method. Joining Espinosa's decision were Judges John Pelander and William E. Druke.

Editor's note: Daniel P. Schaack is an assistant Arizona attorney general and in that capacity represented the state in Burke v. ASRS before the Court of Appeals. ■

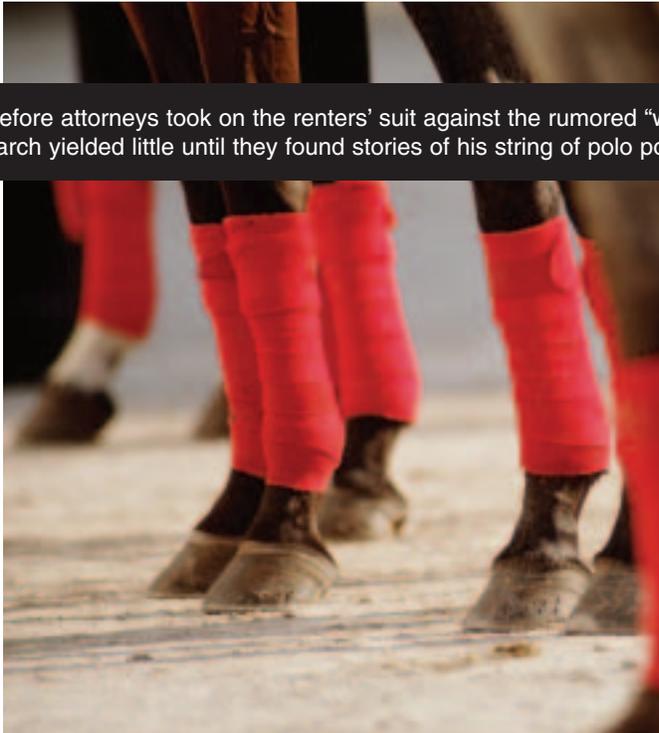
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