

for The Defense

■ Training Newsletter of the Maricopa County Public Defender's Office ■

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Twelve Questions

"The Next Step" for Clients Sentenced to Probation?

By Alan Tavassoli, Defender Attorney

There is a hushed silence in the courtroom. You take a heavy breath and glance over at your client who stares back at the judge with a look of stunned anticipation on his or her face. The silence in the room is broken by the judge finally saying, "I find probation in this case to be appropriate, and sentence you to..." Relief fills your heart. Your client has avoided a lengthy prison sentence, and may or may not have incurred some jail time as a part of their probation. After the judge reminds your client of his post-conviction relief rights, you escort the client over to the bailiff, who presents him with a number of papers to sign. As your client signs the paperwork (which he does not really understand), a reflective pause is seen in your client's demeanor. The client turns to you and asks you a question about what happens next in the process. Being a responsible attorney, you try to mumble out an answer that may or may not satisfy him in the brief period of time that he is lead from the bailiff's table back to the chain or out the door. At that point, you will probably never see the client again.

For younger (and sometimes not so young) attorneys, some of the questions that a client may ask about the "next step" in the process, are not questions that they can adequately answer. This is because our experience with the client, as trial attorneys, often ends after sentence is pronounced. The fate of our clients, once we have done our job and got them placed on probation, is in the hands of the courts and the Adult Probation Department - until they receive their petition to revoke their probation.

In fact, the clients in probation violation court are in a very vulnerable position - once on probation, they do not enjoy the same "proof beyond a reasonable doubt" standard with violations that the rest of the public is entitled to prior to conviction. Therefore, it is important for criminal defense attorneys to become more aware of the "next step" in order to better counsel our clients regarding the prevention of probation violations due to ignorance of the law.



*Delivering
America's Promise
of Justice for All*

for The Defense

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As a trial attorney, I have been asked many questions at the bailiff's table. I have compiled a list that I think are the most commonly asked or are the most important regarding our clients' fate. The following are the twelve questions which I believe are the most valuable to our clients in their journey to successfully complete their probation (in no particular order):

1. What is the "ALPHA Program"?

The ALPHA Program is the Maricopa County Sheriff's Office in-jail substance abuse treatment program. To qualify for ALPHA, an inmate must be sentenced to at least six months in jail. They must enter the program voluntarily by submitting a tank order with the jail after the sentencing to be screened for ALPHA. The inmate is placed on a waiting list, and then screened for the program. Criteria for admittance into the ALPHA Program are based upon the inmate's classification and custody behavior, as well as motivation for recovery. The inmate cannot have any major disciplinary action reports involving escape, assault or the possession or introduction of weapons or drugs resulting in the imposition of disciplinary segregation in the five years preceding placement in ALPHA.

The ALPHA Program is a three-tiered program involving group motivation preparation, a six week intensive group treatment, and post-programming including life skills/employment

training, anger management, and cognitive restructuring. Inmates in ALPHA live in a designated area in the jail where they begin Level I treatment, designed to build self-esteem, motivation and addiction awareness. Random drug testing is done on a weekly basis. Level II begins the six-week intensive group treatment portion of the program. Participants attend two-hour group therapy sessions, four times a week, and spend an additional six hours a week completing out-of-class assignments, as well as a four-hour-a-week work assignment. Anger management, General Equivalency Diploma (GED), parenting classes, job readiness, and literacy are all addressed in this phase of treatment.

Upon completion of Level II, the inmate will remain with his/her ALPHA group, and begin the transitional phase into post-ALPHA housing. Random drug testing continues. Societal re-entry issues are addressed in this phase as well. Graduates of the program begin Cognitive Restructuring groups in this phase, which continue until released from custody.

2. I own a firearm. Can I keep it?

In order to own a firearm after being convicted of a felony, a person must have his or her civil rights restored. What civil rights does a felon lose? A person convicted of a felony loses the right:

1. To vote (A.R.S. §13-904(A)(1)).
2. To hold public office of trust or profit (A.R.S. §13-904(A)(2)).
3. To serve as a juror (A.R.S. §13-904(A)(3)).
4. During any period of imprisonment any other civil rights the suspension of which is reasonably necessary for the security of the institution in which the person sentenced is confined or for the reasonable protection of the public (A.R.S. §13-904(A)(4)).
5. To possess a gun or a firearm (A.R.S. §13-904(A)(5)).

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The restoration of civil rights is left to the discretion of the Superior Court Judge who sentenced the defendant, or his successor in office (A.R.S. §13-908). This applies if the defendant has more than one felony conviction. If this is the first felony conviction of the defendant, restoration of civil rights is automatic if:

1. The defendant has completed their probation or receives an absolute discharge from imprisonment, (A.R.S. §13-912(A)(1)) and
2. All fines or restitution has been paid (A.R.S. §13-912(A)(2)).

This does not apply if the conviction was for a dangerous offense under A.R.S. §13-604, a serious offense under A.R.S. §13-604, if the person was convicted of two or more felonies, or convicted under A.R.S. Chapter 31 (Offenses involving Weapons and Explosives).

If a defendant is convicted of two or more offenses, a serious or dangerous offense, or an offense involving a weapon or an explosive, he must apply to have his rights restored. The application process is addressed in Arizona Rule of Criminal Procedure 29, and there is no application fee. A hearing date is set within thirty (30) days of filing the application, and the prosecutor has ten days prior to the hearing to file a written response.

The application for a felon convicted of two or more felonies can be filed no sooner than two years from the date of their absolute discharge from imprisonment, and the application must be accompanied by a certificate of absolute discharge from the Department of Corrections (A.R.S. §13-906(B)). If the person was convicted of a dangerous offense under A.R.S. §13-604, the person may not file for the restoration of his or her right

to own a firearm. If the person was convicted of a serious offense as defined by A.R.S. §13-604, the person may not apply for restoration of civil rights for ten years from the date of his or her absolute discharge from imprisonment (A.R.S. §13-906(C)). Also, be aware that, under certain circumstances, probationers who are placed on probation for misdemeanors may not keep, own or possess a firearm.

3. If I pay all my fines, and perform my community service hours, do I have to stay on probation?

Yes. Your client is placed on probation for the amount of time ordered at the sentencing. He may be terminated early from probation if he does everything that is expected of him. The general policy of the Adult Probation

Department is to request early termination if one-half of the probation period has been completed without violation. It is up to the probation officer to petition the courts for early termination, but an attorney may make the petition to the courts as well.

If the probation officer does petition the court for early termination of probation and the person has been convicted of a class 6 undesignated felony, it is important that he has the offense designated a misdemeanor upon successful completion. This it is not automatic, even if it is part of the plea agreement.

4. I live out of state. May I get my probation transferred to that state?

According to the Interstate Compact Act, every state has the right to investigate a potential probationer and approve or deny the request to supervise the probationer prior to a move to the receiving state. Per case law, a

If the person was convicted of a serious offense as defined by A.R.S. §13-604, the person may not apply for restoration of civil rights for ten years from the date of his or her absolute discharge.

probationer does not have a right to transfer, it is a privilege restricted by federal criteria which can be denied if that criteria is not met. A probationer may only proceed to another state if that state has provided reporting instructions. Requests for reporting are processed through the Administrative Office of the Courts. The probationer will usually be charged the transfer costs if accepted into Interstate Compact.

5. What is the difference between work furlough and work release?

The difference is that work release is unsupervised release. The inmate simply has to report back at a time specified in the order. Work release is usually only ordered for those inmates who have very little jail time imposed; but the courts usually do not impose work release for less than ten days of jail. Work release can be done on the weekends as well, and so as not affect a person's employment.

Work furlough also is a court-ordered work program. In contrast, it is supervised release. Inmates must notify their employer that they are participating in the program, and are monitored. An inmate that commits an infraction of the rules during work furlough may be "rolled up," but can request an evidentiary hearing to counter any charges made against him or her. The inmate is not entitled to an attorney for these proceedings. The inmates have to sign a copy of the rules to be allowed to participate in work furlough, and can be denied the privilege of work furlough if they have committed a violent offense, or simply refused to follow the rules of the Maricopa County jail system.

6. What is "Two-for-one," and am I eligible?

A.R.S. §31-144 allows an inmate who has been named a "trustee" to earn double time for work done inside or outside the jail. The "trustee" earns credit of two days for every one day served. If the inmate breaches the

trust placed in him or her, the two-for-one early release credit may be revoked by the sheriff or chief of police. It is important to note that, if a release date is set by a judge in a case, the inmate will be ineligible to receive the two-for-one credit, as the jail will assume that the judge wanted that person incarcerated for the entire time imposed.

7. Do I get credit for the time that I have already served in jail?

If a client is sentenced to time in the Department of Corrections, he receives credit for every day that he was incarcerated in the county jail toward his sentence for the offense that he is being held on (A.R.S. §13-709). If he is being held on multiple offenses, and he is released on one but is being held on a separate charge, he will not get credit for time on the former charge.

If an inmate is being held out of state, and there is a hold placed on him or her by Maricopa County, then he or she should receive credit for the time served out of state if certain conditions are met. A defendant serving time out of state who wants to have his charges heard in Arizona has a right to be transported to Arizona within ninety days of service of a request from the defendant. The State has a further ninety days to bring the defendant to trial once he or she is has been transported and arraigned (Arizona Rules of Criminal Procedure 8.3(a)).

If a defendant is sentenced to jail, it is within the judge's discretion to determine how much jail that person receives, and if they are entitled to any credit for time served. For a felony, a defendant can be sentenced up to one year in the county jail. This sentence, called "Term 21" time, is different from the total amount that can be spent in jail. For example, a person who waits 120 days for his or her case to be resolved, but has received no jail time as a part of their sentence, may still be sentenced to up to 365 days in jail as a term of probation. If that person was

sentenced to 365 days in jail, and his probation was revoked, he would be credited with 485 days toward his sentence in the Department of Corrections.

8. How much time will I have to do if I go to prison on this charge?

A person sentenced to DOC must serve 85% percent of the time that the judge imposed, unless the offense is one for which he must do “flat” time, or 100% of the sentence imposed. According to the Information Guidebook for Family Members and Friends of Inmates, and pursuant to A.R.S. §41-1604.07(K), the director of the Department of Corrections may authorize, based upon the inmate’s institutional behavior, a temporary release of up to ninety (90) days prior to the inmate’s designated release date. Please note that this is only the earliest possible time that the defendant may be released; if that inmate has any disciplinary problems while serving their sentence, they may be excluded from early kick-out eligibility. If computation is an issue, attorneys may contact the Time Computation Unit at the Department of Corrections at (602) 542-5586, or obtain information available on the Arizona Department of Corrections website at the following address: www.adc.state.az.us.

If an inmate has any disciplinary problems while serving their sentence, they may be excluded from early kick-out eligibility.

9. I received prison time on one count, and probation on another. Can I do it at the same time?

Judges are generally running these terms consecutive to one another. However, an argument can be made based on the case law, that the sentences can and should run concurrently with one another. Take for example, a case in which a client may be

facing prison in more than one case before the court. If the client was previously on probation, and the judge decides to reinstate that client’s probation, and impose a term in the Department of Corrections on new charges, the running of the probation in the first case cannot be interrupted due to a prison term on the new charges, because there is no statutory language to exclude time served in the Department of Corrections included in A.R.S. §13-903. In *State v. Wilson*, 122 Ariz. 244, 594 P.2d 110 (1979), the court declared that the courts are required to reinstate probation from the original sentence date, and not from the date of any

reinstatement (if a client faces multiple charges on a single indictment). If a term in the Department of Corrections is imposed in one case, and probation is set to start upon release from the Department of Corrections, this will more often than not exceed the statutory excludable time that is allowed under the statute. Since probation is entirely governed by the

statutes creating it (See *State v. Woodruff*, 196 Ariz. 359, 997 P.2d 544 (App. 2000)), and probation is not a sentence in itself, but a feature of the suspension of sentence (See *State v. Risher*, 117 Ariz. 587, 574 P.2d 453 (1978), and the statute does not designate a period of incarceration as a period of excludable time under A.R.S. §13-903, then probation must run concurrent to the time in Department of Corrections if it exceeds the maximum allowable time allowed for that felony under the statute.

For example, for a class 6 felony, the maximum time that one can be on probation is three (3) years. If the client has been sentenced to the Department of Corrections for the presumptive term on a class 3 felony (3.5 years), and is placed back on probation for the class 6 felony for three years, as a probation tail, the time for the suspension of

the imposition of sentence is exceeded under the statute. A.R.S. §§13-903(B) and (C) only allows for excludable time between absconding from probation and reinstatement, and (C) also allows for an extension of probation for the purpose of paying restitution only for a second period of three years. A.R.S. §13-903(E) also allows for the imposition of an entirely new term of probation upon order of probation revocation, but not for a reinstatement of probation, as the judge has full authority to impose consecutive sentences.

In other words, it is possible for the judge to revoke probation in accordance with A.R.S. §13-603(E), and sentence that client to an entirely new term of probation, not to begin until completion of a term in the Department of Corrections on the new charges. This becomes a tricky proposition, particularly in light of Proposition 200 cases and certain lifetime probation grants, which do not allow probationers to reject probation or have their probation revoked.

This area of the law is by no means settled, and there are arguments to be made for concurrent sentences of probation and prison even if new sentences are imposed in two cases at the same time. In fact, if an attorney does not advocate for concurrent sentences, this could set up a claim for ineffective assistance of counsel, depending upon the circumstances in the case.

10. The victim in my case is a family member. Can I talk to that person after the case is over?

If a client has been placed on probation, they must carefully check to see which terms the judge ordered them to follow. Term seventeen provides that the client should not have contact with the victim, unless approved in writing by the probation officer. If that box is checked, the client will need to see his probation officer about receiving permission to have contact with the victim prior to any

contact. It does not matter whether the client is married to the victim or if he or she is a family member. The client needs to follow the terms of probation strictly, or he or she may end up back in DOC for violating his or her probation for the underlying offense.

11. Can I have this felony taken off my record?

Generally, a felony stays on a person's record for the rest of their life. If a client wishes to challenge a sentence, he must file a petition with the Arizona Board of Executive Clemency. There are three forms of clemency: pardons, commutations of sentence, and reprieves. An application for clemency must be filed pursuant to A.R.S. §31-441 et seq. A pardon acts to erase all of the consequences of the conviction. Commutation reduces a sentence when the court makes a special finding that the sentence was clearly excessive, or when the sentence imposed was excessive and there is a substantial probability that the offender will comply with the law. A reprieve acts to suspend imposition of sentence for a period of time.

12. Where can I get information about residential treatment facilities?

The jail can provide clients with a list of residential treatment facilities. The client should put in a "tank order", which is a form that is filled out requesting the list, and the jail will provide it at no expense. The "list" includes much more than just treatment facilities. It is comprehensive and may aid any inmate in finding and locating jobs, halfway houses and other services.



Defender Loan Forgiveness and Innocence Protection Act - Together Again?

By Scott Wallace, Counsel, NLADA Defender Legal Services

Editors' Note: This update originally ran in the Winter 2004 edition of The Cornerstone, the NLADA's Quarterly Newsletter, and is being reprinted with the NLADA's permission. Jim Haas, along with a number of other directors of public defender offices from around the country, will be traveling to Washington, D.C. in April in an effort to gain additional support for this legislation.

Reminiscent of developments in the Summer of 2002, it now appears likely that legislation authorizing loan repayment assistance for public defenders will be attached to a larger bill focused on DNA testing and the quality of counsel in capital cases.

The loan forgiveness bill, S.1091 by Senator Richard Durbin (D-Ill.), has been steadily gaining momentum in the Senate since its introduction in the Summer of 2003. Due to intensive contacts by the defender community (and prosecutors as well, who are equally covered by the legislation), the bill is now cosponsored by a fifth of the Senate.

In September, a major criminal justice bill which many had thought dead was resurrected. The Innocence Protection Act, or IPA, providing for post-conviction access to DNA testing and funding for competent trial counsel in state capital cases, had advanced strongly in the last session of Congress. It had gained approval by the Senate Judiciary Committee in July 2002 – with Durbin's defender/prosecutor loan-repayment provisions attached – and attracted 250 cosponsors in the House. But it was blocked by Republican House Judiciary Committee Chairman James Sensenbrenner (Wis.), and all hopes were dashed when the Republicans took over the Senate in 2003, ousting the bill's

biggest champion, Judiciary Committee Chair Patrick Leahy (D-Vt.).

But then the Bush administration proposed a billion-dollar initiative to catch more criminals through DNA testing. Sensenbrenner, still aware of the IPA's majority support in the House, decided that the best way to get the Bush bill passed would be to join forces with those 250 IPA cosponsors.

Sensenbrenner convinced Senate Judiciary Chairman Orrin Hatch (R-Utah) to join in negotiations with IPA proponents, to make the IPA more palatable to the nation's prosecutors, so that it could be married up with the Bush bill. After months of negotiations, a compromise IPA emerged. The major changes: 1) it's all carrot and no stick – that is, grants to states for post-conviction DNA testing and competent counsel, but no punishment if they don't comply (earlier drafts would have barred states from asserting procedural default or other protections in habeas review); and 2) prosecutors demanded dollar-for-dollar grant parity with defenders – \$50 million per year for each side.

Many defenders saw the prosecutors' demand for equal funding as a poison pill, fearing it could fund capital prosecutions which might otherwise not be brought. The solution was to prohibit either side, prosecution or defense, from using the grant funds for representation in individual capital cases. The money can only be used to improve *systems* – e.g., establishing an entity to write standards, assess attorney qualifications, monitor performance, conduct training, and administer appointment and funding.

NLADA saw the prosecutors' insistence on parity as an opening to codify the principle permanently, applicable to all federal grant streams and programs. This effort was not successful, though an agreement was reached to separately direct a study by the General Accounting Office of the notion of parity and how to calculate it in state, local and federal jurisdictions.

The bill's mandate for the elements of a system of competent defense counsel is quite comprehensive, and was written with much defender input. All elements are mandatory upon any state accepting the grant funds, and congressional and state officials predict that the amount of grant funds is large enough that all death penalty states will take the money – with the strings attached.

The "Advancing Justice Through DNA Technology Act," H.R. 3214, containing the IPA, quickly attracted 250 cosponsors and was passed by the House.

At this point, the Senate champions of loan-repayment assistance for defenders and prosecutors recognized the opportunity to reattach it to a criminal justice bill with strong bipartisan momentum. The case for joining loan forgiveness and the IPA had already been persuasively made, and accepted, in the previous Congress (the Senate Judiciary Committee's comprehensive report language, drafted with NLADA assistance, is accessible on the NLADA Defender Resources web page, through the loan repayment assistance item in the "Of Interest" box). A plan was developed to amend the Durbin bill to the IPA and push the House to accept it in conference.

But hopes for quick Senate action wilted in the closing hours of the 2003 legislative session. Though the bill had strong bipartisan support, including Judiciary Committee Chair Hatch, six right-wing senators declared their adamant opposition to the IPA components, and introduced a version containing only the White House's DNA proposals.

In introducing his bill, Arizona Senator Jon Kyl read a letter from the National District Attorneys Association (NLADA's strongest ally on the loan forgiveness bill), condemning the IPA as an effort to resurrect the 20 death penalty resource centers defunded by Congress in 1996. The letter complained that the resource centers had been staffed by death penalty opponents "dedicated to the disruption of the criminal justice system by whatever means available, ethical or otherwise." Kyl said he feared "litigation abuse" by these "hard-core" "anti-death penalty partisans," and saw "no reason why states cannot or should not fund their own indigent-defender systems."

Kyl's bill, S.1828, was cosponsored by Senators Jon Cornyn of Texas (who as attorney general had passionately defended the right of his state to execute a man whose lawyer had slept through portions of his trial), Jeff Sessions of Alabama (the IPA's most determined foe, who argues that no truly innocent person has ever been sentenced to death), Saxby Chambliss of Georgia, Larry Craig of Idaho, and Don Nickles of Oklahoma.

But their opposition to the IPA need not constitute more than a temporary setback for the IPA and the loan-forgiveness provisions. Though a handful of determined senators can block anything when time is short at the end of the year, they cannot win an up-or-down vote when both parties' leaders – in this case, Leahy and Hatch – are arrayed against them.

The upshot is that the prospects for the IPA are good for early 2004. Continuing outreach to senators who have not yet cosponsored the Durbin bill remains extremely important, to refresh all senators' awareness of the crippling effects of student loan burdens on the recruitment and retention of competent public defenders, and of the need to include the Durbin provisions in the IPA.



Summary of S. 1091, the Prosecutors and Defenders Incentive Act

This bill, if enacted, would authorize loan repayment assistance for both defenders and prosecutors, for both major types of federally funded student loans: Stafford and Perkins loans. Specifics:

- ◆ “Public defender” is defined to include full-time attorneys in a nonprofit defender organization operating under a contract with a state or local jurisdiction, as well as federal public and community defenders.
- ◆ For Stafford loans, an attorney who commits to serve at least three years as a public defender may receive up to \$6,000 per year in forgiveness, up to a total of \$40,000 per attorney. This is patterned on the forgiveness program currently available to federal workers and congressional staff. [The federal cap has just been raised to \$60,000, and it is likely that the Durbin provisions would be similarly amended before enactment.]
- ◆ The Stafford forgiveness program is subject to congressional appropriations. Thus, even if the bill passes, an additional legislative step is required – the inclusion of funding in an appropriations bill – and if funding is enacted but is inadequate to cover all attorneys who qualify, the benefit received by each qualifying attorney may be reduced pro rata.
- ◆ For Perkins loans, the bill would equalize public defenders (defined the same as for Stafford loans) with the forgiveness benefit already available to prosecutors and law enforcement personnel – i.e., 100 percent repayment in return for five years of service.
- ◆ Appropriations for Stafford loan repayment are capped at \$20 million in the first year, because of concern about the bill’s cost and the Congressional Budget Office’s inability to estimate with any reliability the number of eligible full-time defenders in the nation. There is no cap in subsequent years, or on the Perkins repayment program.

Practice Pointer - Indigency Screening

Rule 6.2, Arizona Rules of Criminal Procedure, requires the presiding judge of each county to establish a procedure for appointment of counsel to indigent individuals. Rule 6.4 defines the term “indigent” as “a person who is not financially able to employ counsel”. The rule further requires that “a defendant desiring to proceed as an indigent shall complete under oath a questionnaire...” and “shall be examined under oath.... by the judge, magistrate, or court commissioner responsible for determining indigency.”

Unfortunately, many courts fail to follow this procedure, resulting in our office becoming “lawyers of convenience” for individuals who have sufficient financial resources to retain counsel on their own. In addition to being contrary to the law, representation of people who are not indigent dilutes our office’s ability to focus on one of our core goals — to provide quality legal representation to those in our community who lack the financial resources to retain private counsel.

The following is a sample motion that you can file if you believe that a defendant has sufficient resources to retain counsel and the court has failed to engage in an appropriate financial review prior to the appointment of our office. A copy of this motion is also available on the public defender’s shared drive.

SAMPLE

MOTION FOR RECONSIDERATION OF INDIGENCY (Expedited Hearing Requested)

Pursuant to Rule 6.4, Arizona Rules of Criminal Procedure, the Maricopa County Public Defender requests a determination or reconsideration of indigency in this matter. As discussed below, based on information currently before the court, the client is not entitled to court-appointed counsel in this case.

Pertinent Facts

(Summarize the court’s financial review of the client and attach as exhibits court documents pertaining to our office’s appointment. Provide financial information that is not obtained through attorney client communications that demonstrates the client’s financial resources. In addition, emphasize if, as is frequently the case, the financial statement obtained by the court is incomplete and there is no record of the court questioning the client under oath about indigent status).

Legal Discussion

The sole issue before this court is whether the client is actually indigent. Rule 6.4, Arizona Rules of Criminal Procedure, provides that “[t]he term ‘indigent’ as used in these rules means a person who is not financially able to employ counsel.”

Factors to be considered in determining indigency for purposes of receiving court-appointed counsel are ready availability of (1) real or personal property owned; (2) employment benefits; (3) pensions, annuities, social security and unemployment compensation; (4) inheritances; (5)

number of dependents; (6) outstanding debts; (7) seriousness of the charge; and (8) any other valuable resources not previously mentioned. Morger v. Superior Court In and For Pima County 130 Ariz. 508, 637 P.2d 310 (App. Div.2 1981).

If a defendant is not indigent, court appointed counsel should not be made available, even if a contribution is ordered. Rule 6.7(d), entitled "Contribution by the Defendant" states:

If in determining that a person is indigent under Rule 6.4(a), the court finds that such person has financial resources which enable him or her to offset in part the costs of the legal services to be provided, ***the court shall order him or her to pay*** to the appointed attorney or the county, through the clerk of the court, such amount as it finds he or she is able to pay without incurring substantial hardship to himself or herself or to his or her family. (Emphasis added).

In other words, the Court may only require a contribution of *indigent* persons unable to pay without incurring substantial hardship. The rule does not allow for the appointment of court-appointed counsel for non-indigent persons, whether or not a contribution or "offset" is ordered. In order to receive court-appointed counsel there must be a specific finding of indigency.

Conclusion

The Office of the Public Defender requests this Court to review the financial status of [Name of Client] and make a specific finding of indigency or non-indigency. Should he be found to be ineligible for court appointed counsel, the Maricopa County Public Defender's Office should be withdrawn as counsel and [Name of Client] should be given a reasonable time to retain private counsel pursuant to Rule 6.4(d). Should [Name of Client] be found indigent, we urge the Court to make a Rule 6.7(d) determination and fix an appropriate amount of contribution.

RESPECTFULLY SUBMITTED this ____ of ____, 2004.



New Attorney Class of Spring 2004



First row bottom: Bill Fischer, Stewart Bergman, Christopher Johns, Training Director, Lorenzo Jones

Second row: AngeLee Van Horn, Rennie Reeb, and Jim McNallen

Top row: Karen Mais, Wendy Reasons, and Milo Iniguez

Arizona Public Defender Association

**2ND ANNUAL
STATEWIDE CONFERENCE
June 23 - 25, 2004**

**Set aside these days on your calendar now for
another opportunity to meet and learn from your
colleagues across Arizona and beyond!**

Tempe Mission Palms Resort

Further information coming soon.

Jury and Bench Trial Results

January 2004

Due to conversion problems, the Trial Results for this issue are not included in this electronic version. If you would like to view the Trial Results for this issue of *for The Defense*, please contact the Public Defender Training Division.

Arizona Advance Reports

Our regular column will return next month.



Mitigation for Lawyers & Other Professionals Brown Bagger Attended by Over 50 Defender Practitioners



On February 20, 2004, the Maricopa County Public Defender's Office (MCPD) hosted another successful "Brown Bagger" seminar over the lunch hour. Linda Shaw (pictured above), MCPD Mitigation Specialist and Shelley Davis, Trial Group Supervisor, explained to over 50 defender attorneys and support staff information about tools that can be used for effective sentencing advocacy. Please contact Shelley or Linda if you were unable to attend and would like to receive copies of the materials handed out at the seminar. Certificates of attendance were awarded for MCLE. The MCPD training division coordinated the program. Future programs will focus on jury selection and making the record.

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for The Defense

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