

**EVIDENCE — Rule 404(b) — Proof of "Common Scheme or Plan" —
Revised 3/2010**

Rule 13.3(a)(3), Ariz. R. Crim. P., provides that offenses may be joined if they are "alleged to have been a part of a common scheme or plan." In *State v. Ives*, 187 Ariz. 102, 109, 927 P.2d 762, 769 (1996), the Arizona Supreme Court held that the definition of "common scheme or plan" under Criminal Rule 13.3 and the definition of "plan" in Evidence Rule 404(b) are coextensive. In *Ives*, the defendant was charged with child molestation on three victims. The State argued that the offenses were properly joined under Rule 13.3(a)(3) because they were part of a "common scheme or plan" to molest children. The Court held that the State may not join similar offenses on the theory that they are part of a "common scheme or plan" unless the offenses are part of a specific plan embracing the charged crime, not just proof of a general tendency to commit that kind of crime. The Court held that the charges should have been severed because they were not "part of an over-arching criminal plan," *Id.*, but were merely similar. The lesson of *Ives* in the Rule 404(b) context is that to bring in other acts evidence of a "plan," the State must show that the defendant had an "over-arching criminal plan," not just a tendency to commit similar crimes whenever the opportunity arose.