TRIAL PRACTICE

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inside this issue…

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STATE BAR OF ARIZONA

A Note from the Chair

Dev Sethi

Welcome to 2008! I hope that you have survived a healthy and peaceful – and not too stressful – holiday season. Along with the turning of the calendar comes some new developments in the practice, and I hope that our newsletter, the first in far too long, updates you, informs you, and gives you a few new ideas.

Amy Hernandez, of Tucson's Piccarreta and Davis, deserves thanks and kudos for putting together this excellent newsletter. Thanks also go to our many contributors who took time out of their practice to write and comment on issues of interest to all of us.

We anticipate publishing two newsletters each year, and I hope that you will submit your articles (in the 400 word range) for publication. If you would like to submit something, or get involved with the newsletter in another way, please get in touch with Amy at Ahernandez@pd-law.com.

We have some exciting things planned for the Section in the next few months. From CLE's, to marquee speakers at both the State Bar Convention and CLE By The Sea, along with ever-popular, successful and meaningful Arizona Trial College, our calendar is full. As a member of the Trial Practice Section, you get benefits such as deeply discounted CLE opportunities, and I hope that you take advantage of the programming we put together. As always, I, and the rest of the Executive Council, want to hear from you with ideas on how to make our Section better. Please let us know what you want to see.

Till then, all the best in 2008.

Dev Sethi
Kinerk, Beal, Schmidt, Dyer & Sethi, P.C.
Tucson, AZ

Filling The Gap With Written Depositions

Thomas J. Cesta

As paid advocates, we must balance between exploring every avenue, and living within the client's ability to pay. Frequently our client's finances limit us to deposing only the most critical witnesses. Even contingent fee clients pay costs, so their expected recovery bars deposing everyone. Additionally, the cost to depose out of state witnesses, minor eye-witnesses and key custodians of record can be prohibitive. However, with Rule 31 Depositions you can save money, while obtaining every deposition.

benefits

1. Cost

The greatest benefit to written depositions is cost. They are much less expensive. You do not need a court reporter. You do not have to spend the time in deposition. A stamp costs much less than gas, and far less than a plane ticket. However, cost is not the only benefit. Testimony is far easier to get into evidence than a statement to an investigator. And your adversary is more likely to stipulate your point into evidence when you have testimony.

2. Valuable Exercise

In addition, the exercise of preparing every deposition as if it will be held in writing, helps you craft better questions for depositions and trial; and the activity is a great way to evaluate whether you need a traditional deposition. If not, then you can spend the time developing other litigation strategies. If you still decide to conduct a formal deposition, you will be better prepared having written a script, whether or not you use it.

3. Unavailable Witnesses

There are times when you simply cannot conduct a traditional deposition. For example, witnesses out of the jurisdiction of the court cannot be compelled to come to you. Often, you must go to them. Considerations of time, money, and the law of diminishing returns can make this impractical. This frequently occurs with prior treating physicians. Still, calling the witness without first learning what the witness will say risks surprises that can hurt you immensely. Instead of hiring an investigator to get a statement, use Rule 31, save money and get actual testimony.

4. Foundation and Authentication

In addition, Rule 31 depositions can be used for authentication and foundation for records. If a custodian's affidavit does not meet the Business Records exception to the hearsay rule, *see Rule 803(6)*, A.R.C.P., your adversary probably won't stipulate the records into evidence. You can make a Request for Admissions, but getting the deposition testimony makes it much more likely that your adversary will drop unjustified defiance, especially when the judge is asking whether the trial will go to the jury by Thursday afternoon.

conclusion

Rule 31 Depositions can resolve the conflict between needing to save money, and giving good representation. Drafting every deposition as if it will be delivered in writing is a great way to evaluate the purpose of the deposition, and to prepare even for traditional depositions. Furthermore, written depositions can go where you cannot. And with written depositions you may always have the testimony you need.

Thomas Cesta is a member the Arizona State Bar Association. He is also a member of the Ohio State Bar Association, inactive. He is an associate in the law firm of David Bell and Associates, PLLC, in Phoenix, Arizona. Mr. Cesta practices insurance defense tort litigation, including personal injury and wrongful death, products liability, and construction defect. Mr. Cesta is also a member of the Fee Arbitration Committee of the Arizona State Bar Association.

Five Things Every Plaintiff's Attorney Should Know About the Taxation of Damage Awards

Kelly C. Mooney, J.D., L.L.M. and Timothy D. Brown, J.D.

The tax treatment of a settlement or judgment in litigation can have a significant economic impact on the parties. For obvious reasons, if a recovery is excludible from income or treated as a tax free recovery of capital, the economic consequences of litigation may be far easier for a client to bear. On the other hand, if a recovery is fully taxable or the client's attorneys' fees are not fully deductible, an otherwise successful outcome may be less than desirable. Unfortunately, plaintiffs' lawyers often overlook the tax consequences of litigation and, as a result, fail to engage in timely and meaningful tax planning. In order to bridge the gap, this article offers several tips for plaintiffs' attorneys regarding the taxation of damages awards.

1. ***Get Educated – Failure to advise clients about the tax consequences of litigation creates malpractice liability exposure.*** The tax consequences of a settlement or judgment are relevant in almost every case. Consequently, it is not surprising that malpractice claims often arise from the alleged failure of an attorney to advise his or her clients about the tax consequences of litigation. *See*, *e.g.*, *Graham v. Harlin, Parker & Rudloff*, 664 S.W.2d 945 (Ky. Ct. App. 1983); *Phillips v. Giles*, 620 S.W.2d 750 (Tex. Civ. App. 1981); and *Jamison, Money, Farmer & Co. v. Standeffer*, 678 So. 2d 1061 (S.Ct. Ala. 1996). In a recent California case, a jury found a litigator liable for malpractice as a result of erroneously advising his client about the tax consequences of certain recovered attorney's fees. *Jalai v. Root*, 109 Cal. App. 4th 1768, 1 Cal. Rptr. 3d 689 (2003). Although the judgment in *Jalai* was reversed on appeal, the case illustrates the fact that the failure to properly advise clients about the tax consequences of litigation can expose litigation attorneys to malpractice claims.

2. ***Plan Early – Tax planning should begin before the complaint is filed.*** One of the foremost principles in the taxation of damages is the "origin of the claim" doctrine. Under the origin of the claim doctrine, the origin or source of a party's claims controls the tax treatment of any recovery. As a result, the manner in which a party's claims are characterized has a direct impact on the tax consequences of any recovery. For these purposes, the IRS considers the complaint the single most important document for determining the tax consequences of a recovery. Revenue Ruling ("*Rev. Rul.*") 85-98, 1985-2 C.B. 51. If a practitioner fails to consider the tax consequences of litigation until after the complaint is filed, he or she will have missed the best opportunity to substantiate the tax characterization of any future recovery.

3. ***Don't Overreach – The IRS narrowly construes the exclusion from income for personal injury awards.*** A common misunderstanding among litigators is that damage awards or settlement proceeds received in personal injury cases are always excludible from income under Section 104(a)(2) of the Internal Revenue Code. In general, Section 104(a)(2) excludes from gross income the amount of any non-punitive damages received on account of personal physical injuries or physical sickness. However, the IRS narrowly

construes the meaning of "physical injury" and "physical sickness" for tax purposes under its restrictive "bruising and bleeding" ruling. *See* Private Letter Ruling ("*PLR*") 200041022. In PLR 200041022, the IRS concluded that, unless a plaintiff's injuries result in "observable bodily harm" (i.e., bruises, cuts, swelling, and bleeding) a recovery is not excludible from income under Section 104(a)(2). As a result, damages recovered in cases involving sexual abuse or other physical injuries not resulting in bruising, bleeding, etc., may be subject to tax unless the plaintiff can establish "observable bodily harm." Consequently, unless a practitioner is absolutely certain that a recovery is excludible under Section 104(a)(2), the client should be advised that any recovery may be subject to tax.

4. ***Rates Matter – The distinction between ordinary income and capital gain is important to almost all taxpayers.*** In cases in which a plaintiff recovers damages for harm to a capital asset, the recovery is treated as a nontaxable return of capital to the extent of the taxpayer's basis in the asset. If the amount of the recovery exceeds the taxpayer's basis, the excess is treated as capital gain and taxed at the preferential long-term capital gains rates if the capital asset was held for more than a year. Given the tax benefits of characterizing a recovery as capital in nature, it is not surprising that the taxpayer bears the burden of proof with respect to any such characterization. *See Milenbach*, 318 F.3d 924 (9th Cir. 2003) This burden often is a difficult one to satisfy due to the fact that the IRS generally treats all recoveries as a recovery of lost profits (taxable as ordinary income), unless the taxpayer clearly demonstrates harm to a capital asset. *See*, *e.g.*, TAM 8504004. Likewise, if a taxpayer cannot establish the cost (i.e., basis) of the capital asset alleged to have been harmed, the entire recovery likely will be included in income. *See Cullins v. Comm'r*, 24 T.C. 322. As a result of these potential hurdles, litigation attorneys should conduct any necessary capital gain tax planning as early in the litigation process as possible.

5. ***Be Thorough – Don't overlook advising your client about the tax treatment of your legal fees.*** Attorneys often forget to advise their clients about the tax treatment of legal fees incurred throughout the litigation process. In general, if a taxpayer receives a taxable recovery, any attorney's fees paid by the taxpayer are not "netted" against the amount of the recovery. Rather, the taxpayer must include the entire recovery in income and then deduct the attorney's fees under an applicable provision of the Code. While legal fees incurred in connection with the taxpayer's trade or business typically are fully deductible,

legal fees incurred as a result of litigation over a capital asset may be required to the capitalized and recovered over time. In addition, legal fees incurred in connection with the production of income and personal legal fees, such as fees incurred as part of a defamation action, must be deducted as a miscellaneous itemized deduction subject to the 2% floor and such fees are not deductible for AMT purposes. Consequently, any tax advice given to a client also should include a frank discussion of the likely tax treatment of the client's legal fees.

In conclusion, a myriad of tax consequences, both expected and unexpected, can result from litigation. Conducting tax planning as early in the process as possible, and preferably even before sending a demand letter, can significantly reduce the economic impact of litigation on the client and the attorney's exposure to malpractice liability.

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Rule 68 Offers of Judgment: From Futility to Utility

Jill L. Ripke

A new version of Arizona Rule of Civil Procedure 68 – Offers of Judgment – will take effect on January 1, 2008. An offer of judgment is essentially a settlement offer that provides an incentive on the part of the offeror to make the offer and the offeree to accept the offer. This incentive comes in the form of a sanction to a party who declines an offer – if an offer of judgment is rejected, and the offeree does not obtain a more favorable result at trial, then the offeree must pay the offeror's expert witness fees and twice the other costs incurred after the offer. The new rule addresses many of the concerns with the previous version of Rule 68 while maintaining the foundation for the rule, sanctions for a declining party who does not do better at trail.

This rule was designed as a strong tool to promote settlement of cases prior to the expenses of trial. Arizona practitioners, however, have essentially ignored this rule in their practice because of uncertainties and confusion in the rule's practical application. The current revisions to Rule 68 address three concerns regarding Rule 68 and should make the new Rule 68 a powerful and predicable tool in litigation.

First, the prior Rule 68 allowed partial acceptance of an offer of judgment. When the party partially accepted an offer of judgment, the offeror could face future litigation over claims for attorneys' fees. Because partial acceptances limited the finality of an offer, the rule's usefulness as a tool of settlement was limited. The new Rule 68 defines an offer as including consideration for attorneys' fees unless otherwise stated. This encourages settlement by allowing for finality upon acceptance of an offer of judgment.

Second, the new Rule 68 addresses, for the first time, the offeror in a multi-party case. In such cases, the offeror can make an offer apportioned to each opposing party and can condition acceptance of the offer upon acceptance by all offerees or expressly allow individual acceptances. Only offerees who reject the apportioned offer and fail to obtain a better result at trial are subject to sanctions.

Third, the prior Rule 68 did not address procedural objections to an offer of judgment. The new Rule 68 requires the offeree to serve written notice of objections to the validity of the offer within ten days after service of the offer. This encourages parties to make offers, knowing that subsequent litigation should not ensue at the conclusion of the case regarding alleged defects in the offer. If the offeree has a concern about the offer, the offerre must provide written notice of such objections, thereby giving the offeror a chance to correct any alleged defect.

The new rule, however, did not adopt one of the changes that the committee recommended. Currently, under the Rule 68, an accepted an offer of judgment could arguably have collateral estoppel effect in other litigation. Because of this concern, litigants may be hesitant to make an offer of judgment for fear that they may be unable to contest subsequent claims. The proposed change to Rule 68 eliminated this fear by clarifying that a judgment entered under Rule 68 does not have collateral estoppel effect. This amendment was not adopted, however, and as such this uncertainty still exists.

With these three changes to Arizona's offer of judgment rule, an offer of judgment should now be a more useful and predictable tool to encourage settlement of a case before the costs of trial by eliminating many of the concerns about the rule's usefulness. Practitioners should still be aware of the potential for collateral estoppel effect in future litigation and weigh that concern with the potential for sanctions if the offeree does not accept the offer.

Jill Ripke is an associate at Perkins Coie Brown & Bain, her practice is in commercial litigation. She is a graduate of the University of Iowa College of Law, J.D., with distinction, in 2006, and was the Note and Comment Editor for the *Journal of Corporation Law*. She also attended Wartburg College, B.A., Business Administration and Economics, summa cum laude, 2003.

Judicial Corner:

A profile of The Honorable Christopher Whitten of the Maricopa County Superior Court

Dominic Gomez

Judge Whitten is a third-generation Arizonan. He grew up in Phoenix and attended Brophy High School. Judge Whitten attended college at the University of Arizona and law school at the University of San Diego School of Law.

After law school, Judge Whitten clerked for the Honorable John L. Claborne of the Arizona Court of Appeals for two years. Then, Judge Whitten worked as a Deputy County Attorney for the Maricopa County Attorney's Office. At the County Attorney's Office, Judge Whitten worked in the family violence group and tried approximately 50 cases. After serving as a prosecutor, Judge Whitten joined the insurance defense law firm of Holloway, Odegard & Sweeney in 1996 and worked there for approximately three years. While at that law firm, Judge Whitten's professional development was influenced significantly by Paul W. Holloway, currently a named partner with the law firm of Holloway Odegard Forest & Kelly.

In 1999, Judge Whitten teamed with Christopher J. Berry to start the law firm of Whitten Berry. That law firm's work consisted of half commercial litigation and half personal injury/wrongful death cases. Judge Whitten's practice focused on personal injury/wrongful death cases; he represented an even mix of plaintiffs and defendants. Judge Whitten became certified by the State Bar of Arizona as a specialist in the area of personal injury and wrongful death. Whitten Berry operated for approximately seven years until Judge Whitten's appointment to the bench by Governor Janet Napolitano in the fall of 2006.

Judge Whitten has been on civil calendar since his appointment; although, he fills in on overflow criminal and juvenile cases. Judge Whitten's active caseload is 450 cases. Judge Whitten estimates that his caseload consists 50 percent of motor vehicle accident cases, 25 percent of business litigation cases, and 25 percent of miscellaneous litigation cases such as property or homeowners' association disputes. Thus far, Judge Whitten has sat as the trial

judge on 12 to 15 trials. One of Judge Whitten's favorite types of cases is a wrongful death case involving high-quality trial lawyers.

Judge Whitten appreciates when litigants write succinctly; act professionally and show courtesy toward their opponents; and know and execute the fundamental rules of trial advocacy (i.e., where to stand, no open-ended questions on cross-examination).

Judge Whitten is open to giving feedback to attorneys about their trial performance if both sides are amenable and the time for appeal has run. Judge Whitten also recommends that trial attorneys hone their trial advocacy skills in programs and seminars such as those put on by the National Institute for Trial Advocacy (NITA). In October 2007, Judge Whitten returned to his law school, the University of San Diego Law School, and served on the faculty at a weeklong NITA seminar.

Judge Whitten cites his father, Robert Whitten, who was a general practitioner, and family friend, The Honorable Thomas C. Kleinschmidt, formerly of the Arizona Court of Appeals, as his biggest influences in entering the legal profession. If Judge Whitten had not entered the legal profession, he most likely would have worked in advertising or marketing; he earned his undergraduate degree in Business Marketing.

Judge Whitten currently resides in Phoenix with his wife and two children. His hobbies include snow-skiing and coaching children's sports.

Dominic Gomez is the Member Attorney for Dominic Gomez, PLLC in Phoenix, Arizona. He practices in business, real estate, sports and entertainment, and appellate law.

Ants, Elephants, and Justice Courts: An Opportunity to Help Plaintiffs and Gain Jury Trial Experience

Carlos J. Betancourt

Once upon a time in a forest lived an ant colony. Everyday the ants would work all day building their anthill only to have it knocked down by an elephant that ran right over it. Everyday the ants would rebuild the anthill and everyday the elephant would knock it down.

This continued for some time until the ants devised a plan to attack the elephant. The plan was to have all the ants of the colony gather on the branches of a tree and jump on the elephant as it came over the anthill.

As the ants jumped on him, the elephant shook the ants off his body. Other ants were swatted away by the elephant's trunk. Only one ant remained hanging from the elephant's neck as the other ants shouted: Strangle him! Strangle him!

This is how plaintiffs that have been injured by the negligence of large corporations can feel at the time of litigation. Large corporations like insurance companies and department stores have access to millions of dollars and the best experts money can buy.

Additionally, when the damages in the case are less than $10,000 it is difficult for a plaintiff to find an attorney willing to take their case where the defendant denies liability. Every year hundreds of claims do not see the inside of a courtroom because the economics of the case simply do not work.

This article offers an alternative for plaintiffs and civil litigators. The Courts of Limited Jurisdiction, or Justice Courts, have jurisdiction over civil cases of less than $10,000 in dispute . In some of these cases, the judges will entertain the plaintiff's right to a jury trial .

This alternative is particularly attractive to young civil litigators and associates looking for real courtroom experience. With fewer and fewer jury trials being litigated in Arizona the value of this type of experience is at a premium.

The typical cases involve contract disputes and personal injuries such as slip and falls and small automobile accidents. Disclosure and discovery are usually simplified and after depositions the cases are scheduled for trial.

Last May, I represented a client that slipped and fell in a supermarket. Although she was taken to the hospital at the suggestion of the store manager and later had significant bills, the corporation's risk management executive denied liability and refused to pay her medical bills.

At trial, I directed my client's examination and cross-examined the store manager. The court found Defendant 100% liable and ordered all of my client's damages paid including court costs. My client, a retired teacher in the State of Sonora, Mexico, who was here on vacation, was happy to get her day in court.

After the trial I told her, "You deserve your award, I am happy to have been able to help you, and congratulations on strangling that elephant."

ENDNOTES

1. A.R.S. § 22-201 (B).

2. The right to a jury trial in criminal misdemeanor cases has been litigated all the way up to the Arizona Supreme. The leading case on the matter is *Rothweiler v. Superior Court of Pima County*, 100 Ariz. 37, 41, 410, P.2d 479, 482 (1966). However, in most civil cases in Justice Court, all that is required is a timely motion. A.R.S. § 22-102.

Carlos J. Betancourt is a solo practitioner in Tucson, Arizona. He founded The Carlos J. Betancourt Morales Office of Law in 2006. After graduating from the James E. Rogers College of Law he became a prosecutor at the Pima County Attorney's Office. In two years he tried 32 jury trials including 7 felony cases.

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Selection and Retention of Experts

Richard A. Alcorn

The role of trial lawyers as gatekeepers, charged with enhanced responsibilities to facilitate the reliability of evidence adduced in adjudicative proceedings, triggers ethical and professionalism requirements in the selection of experts and the offering of expert witness testimony.

A trial lawyer must competently and diligently determine whether expert testimony is necessary or desirable given the matters at issue (ER 1.1 and 1.3). If so, diligence and competence also must be exercised in selecting an appropriately-qualified expert. Negligence or lack of diligence in retaining expert witnesses is an acknowledged basis for potential civil malpractice liability, in addition to a recurrent allegation in criminal appeals based on ineffective assistance of counsel. *See, e.g., Rino v. Mead,* 55 P.3d 13 (Wyo. 2002) (failure to retain and prepare accounting expert).

> "The lawyer should be carefully prequalifying the expert to withstand the adversary's challenge under the pertinent admissibility standards."

Timing is of critical importance. Delaying the retention of an expert witness in the hope a case will settle, thus avoiding substantial expense, is a frequent mistake. Experts usually require substantial lead time to adequately investigate, research and formulate opinions. They also almost invariably assist in developing discovery requests and strategies, as well as in formulating potential legal theories and strategies to investigate. Additionally, inordinate delay in hiring an expert could seriously undercut the credibility of the expert because the adversary will reveal and will attack the compressed time frame in which the expert's opinion was formulated.

Litigators in modern litigation must evaluate and select testifying experts based not only on the "courtroom demeanor" and presentation skills of the expert, but also based primarily on the perception of their objectivity, reliability and technical competence. The likelihood of a pretrial challenge to expert testimony in the form of a *Daubert/Joiner/Kuhmo* hearing in federal cases, or *Frye/Logerquist* hearing in cases pending in the state courts, and potential exclusion or limitation of the expert's testimony, many times can be avoided through a careful, competent and thorough screening and selection process, as ethically required by ER 1.1 and ER 1.3.

Another advocate for your client is not needed. Rather, a qualified expert witness who can educate the trier of fact should be sought. The expert's research and investigation methods must be carefully assessed as part of the selection process to attempt to determine whether

they will withstand judicial scrutiny under applicable legal tests regarding admissibility of expert evidence. The lawyer should be carefully prequalifying the expert to withstand the adversary's challenge under the pertinent admissibility standards.

Finally, during the selection and retention process the trial lawyer must be careful not to exert undue intellectual or economic pressure that might shade the expert's investigation and opinions. *See* Thomas G. Guthiel *et al., Withholding, Seducing and Threatening: A Pilot Study of Further Attorney Pressures on Expert Witnesses,* 29 J.Am.Acad. Psychiatry Law 336 (2001). Selection and retention must be undertaken with an eye toward the obligations imposed on lawyers pursuant to ER 3.3 (candor to the court) and ER 3.4(b) (precluding false evidence or assisting a witness to testify falsely).

In selecting an expert, the trial lawyer must refrain from in any manner pressuring or offering economic incentives to the potential expert to render biased or partisan opinions, or to formulate favorable opinions clearly beyond the expertise of the witness or beyond the empirical and conceptual limitations of the industry or profession. Additionally, a trial lawyer's recurrent use of the same expert or "stable" of experts, coupled with payment of substantial expert witness fees, will not only support claims of partisanship and bias, but also in the extreme case could implicate ER 3.3 and/or ER 3.4(b).

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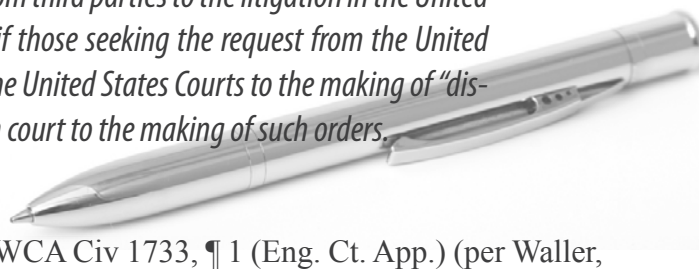
Connecting The Other Dot: Coss-Border Discovery Pitfalls

Asa Markel, Attorney & Solicitor

Whether you represent a plaintiff in a products liability case, or a defendant pressing indemnity claims against a supplier, in today's global economy, the buck often stops somewhere outside of Arizona. Fortunately, Arizona courts will issue letters rogatory to enable you to conduct discovery in other jurisdictions. *See* Ariz. R. Civ. P. 28(b). These are called "letters of request" in federal court. Fed. R. Civ. P. 28(b). In the context of discovery, a letter rogatory is a request from an Arizona court to an out-of-state court, to compel testimony or the production of tangible evidence. Where compulsion from the foreign court is not necessary, the Arizona court will issue a "commission" for the taking of discovery outside the state. Most American litigators will have some experience seeking compulsion of evidence from other states. Cross-border discovery is often a simple matter within the United States, where states have very similar laws on discovery.

The same may not be true where the party or witness you seek to depose resides outside the country. After expending the effort of obtaining a letter rogatory and laboriously processing it through U.S. and foreign governmental authorities, the last thing an Arizona attorney wants to see is a foreign appellate decision concerning his or her letter rogatory that begins with:

> *Once again time and money is being spent in the English courts over Letters Rogatory requesting the English court to order the production of documents and oral depositions from third parties to the litigation in the United States of America. That time and money would be unnecessary, if those seeking the request from the United States Court appreciated the differences between the attitude of the United States Courts to the making of "discovery" orders against non-parties, and the attitude of the English court to the making of such orders.*



Genira Trade & Fin. Inc. v. Refco Capital Markets Ltd., [2001] EWCA Civ 1733, ¶ 1 (Eng. Ct. App.) (per Waller, L.J.). The situation could, of course, turn out even worse, particularly where the deposition you intend to take will be in a country with a so-called "blocking statute." In such a country, the taking of a deposition under threat of compulsion from a foreign court may be a criminal offense.

It is important to consult the law of the jurisdiction in which you want to conduct discovery for your Arizona case, before embarking on serious discovery efforts. Many lawyers seem to ignore this simple notion to their peril. For example, in the service of process stage, a U.S. court could approve of the means of overseas service and allow litigation to go forward, even though the form of service may not be permissible under the law of the jurisdiction where service occurred. *E.g. Power Integrations, Inc. v. System Gen. Corp.*, 2004 WL 2806168, *3 (N.D. Cal.) (discussing service on a Taiwanese entity). This should present no problem for the litigants until they seek to enforce the U.S. judgment in the opposing party's home country, where the judgment is likely unenforceable

due to the failure to properly effect service. In other words, in the area of discovery, while an Arizona court may approve of the form and contents of your letter rogatory, the receiving court overseas may not.

When contemplating overseas discovery, you will also need to determine if a U.S. treaty applies. Even if the treaty in question is not mentioned in the Arizona Rules of Civil Procedure, it will trump Arizona procedures. *Kadota v. Hosogai*, 125 Ariz. 131, 134, 608 P.2d 68, 71 (App. 1980) (Hague Convention superseded former Arizona rule on service abroad).

As a general matter, with the proliferation of cross-border litigation and treaties designed to accommodate such litigation, getting the evidence from abroad that you need for your Arizona case, should not pose an insurmountable goal. However, to be successful in your discovery efforts, you will need to make certain that your compliance with Arizona procedures squares with any applicable treaty, and with the standards of the receiving jurisdiction.

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Top 5 Things to Know about Your Maricopa County Superior Court Law Library

Jennifer S. Murray

The Maricopa County Superior Court Law Library strives to fulfill the legal research needs of the Court, Arizona bar, and public. If you think you know what we offer, take a look at this list of our top 5 library services. It just might surprise you!

5. Suggestion Box

Do you have an idea about how we can better serve you? Go to our Web site (**www.superiorcourt.maricopa.gov/lawlibrary**) and use our online suggestion box. We are always looking for new innovative ways to expand our service.

4. Research Guides and Bibliographies

The Law Library makes available compiled legal research information in the form of research guides and bibliographies. The bibliographies function as a repository for previously compiled research based upon requests from court administration. The research guides offer assistance to attorneys and members of the public regarding where to start research on common legal issues.

3. Document Delivery and Inter-library Loan

Even if we don't have the book or article you need, we can still get it for you. That is the beauty of a library! Through our inter-library loan service, we have the literary world at our fingertips. As long as you have a citation, we can request it on your behalf.

We also offer a terrific document delivery service. We are able to deliver any of our library's print items by mail or fax for a small fee. We are also able to email any electronically available documents, such as cases, at no cost. The only restriction on email document delivery is a ten (10) item limit per day per person.

2. Databases

We offer a wide variety of research databases for use in conducting legal research. One of the most popular databases we offer is Westlaw Patron Access. It is available for on-site use in the Courts only. While it is somewhat limited in content compared with traditional Westlaw, Westlaw Patron Access does offer all Arizona-specific legal research materials regularly available on Westlaw. It also includes KeyCite.

But our databases don't just stop at Westlaw. We offer many others that can prove just as useful. HeinOnline offers a wealth of information for historical legal research purposes including older issues of almost all law reviews. And, other databases, such as ABI/Inform and WorldCat, provide a gateway to general research for topics such as business or criminal justice.

If you need help with a research project, any of our reference librarians would be happy to assist you in determining which database is right for you.

1. Reference Librarians

Speaking of reference librarians, it takes a special person to be a reference librarian. You have to love helping people, be inquisitive by nature, and communicate effectively. And it takes a very special person to be a ***legal*** reference librarian. Legal research is as complicated as research gets.

Our Reference and Information Services librarians and library staff take great pride in offering a high level of service. We are here to help all the Court customers: attorneys, members of the public, or Court staff. So don't hesitate to direct anyone with a legal research need to our reference librarians!

For more information on any of these services, please contact the Law Library at 602-506-3461, or **services@scll.maricopa.gov**. Our mission is to provide you with timely, efficient, and reliable access to legal information! We welcome the opportunity to help you with your legal information needs.

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