Get Fancy at the Barristers Ball

Pick out your best duds (black tie optional) and get set to enjoy the legal gala of the year, the YLD’s annual Barristers Ball. It’s set for next month, March 6, at the W Hotel in Scottsdale. Plus, it’s all for a great cause—the Maricopa County Justice Museum & Learning Center Foundation.

Cocktails and silent auction begin at 6p.m. with dinner at 7:30 p.m. There’ll be music to dance to and an excellent dinner, all at the glittery W Hotel. You can register online at www.maricopabar.org, use the form on page 9 or call Laurie at (602) 257-4200. You may also use the registration form on page 7 of this issue. The registration deadline is Feb. 16.

Chief Justice to Address ‘State of the Courts’ at All-Membership Luncheon

The Chief Justice of the Arizona Supreme Court, the Honorable Rebecca White Berch, will headline the MCBA’s revival of the all-Membership Luncheon on Thursday, Feb. 18. Her topic, “The State of the Courts,” is particularly timely during this time of legal turmoil in Maricopa County.

Located at the downtown Hyatt Regency Phoenix, the luncheon begins with registration and networking at 11:30 a.m. Lunch and the address by Justice Berch begin at noon and the event is expected to adjourn by 1 p.m.

Both members and non-members are welcome to attend. The cost for the lunch and the available .75 hours of CLE credit is $35 for members, $45 for non-members.

Members may register online at www.maricopabar.org or call Laurie Williams at (602) 257-4200. You may also use the registration form on page 7 of this issue. The registration deadline is Feb. 16.

Arizona Court Doesn’t Duck the Issue, Warns Others Not to be Fooled by Initial Appearances

If it looks to the judge like a duck, smells like a duck, and quacks like a duck, it must be a duck, right? Maybe. Maybe not.

A panel of Division One of the Arizona Court of Appeals sent a message: Don’t be quick to conclude that a party is guilty of a waiver just because the facts initially suggest that the party has relinquished its rights; you need to hear from that party to determine whether there’s an alternative explanation.

This caution ruled the day even though the party accused of relinquishing a claim had actually filed a document canceling its claimed right to recover a debt owing to it. Amtrust Bank v. Fossett, No. 1 CA-CV 08-0840 (Ariz. App. Dec. 15, 2009).

The facts that Ricki and Diane Lynn Fossett took out in 2001 to buy a car was transferred to Amtrust Bank. The Fossetts made no payments after May 2002; the car was repossessed and sold in 2003, leaving a deficiency of nearly $20,000.

Two years later, the Fossetts received from Amtrust a Form 1099-C, a standard Internal Revenue Service form called a “Cancellation of Debt.” According to the form, Amtrust was writing off an amount of just under $18,000. As instructed, the Fossetts reported that amount as income in their income taxes for that year.

The Fossetts were later surprised when Amtrust sued them for the amount of the unpaid loan. They moved for summary judgment, arguing that Amtrust had canceled the debt, as the Form 1099-C showed. The superior court instead granted the bank’s cross-motion for summary judgment. The Fossetts were later surprised when Amtrust sued them for the amount of the unpaid loan. They moved for summary judgment, arguing that Amtrust had canceled the debt, as the Form 1099-C showed. The superior court instead granted the bank’s cross-motion for summary judgment. The Fossetts were later surprised when Amtrust sued them for the amount of the unpaid loan. They moved for summary judgment, arguing that Amtrust had canceled the debt, as the Form 1099-C showed. The superior court instead granted the bank’s cross-motion for summary judgment.

But—as is often that case—there was more to the story. The court did dig deeper and hear evidence from the party accused of waiver. Here, Amtrust had evidence, in the form of accounting regulations, tending to contradict the notion that it had relinquished the right to further pursue the debt.

Arizona law—section 3-604 of the Uniform Commercial Code—defines a debt discharge as occurring with “an intentional voluntary act” of surrendering, destroying, canceling, agreeing not to sue “or otherwise renouncing rights against the party.” Federal law requires lenders who discharge a debt to report that act to the IRS. They must also issue a Form 1099-C to the borrowers, informing them of the discharge.

See Arizona Court Doesn’t Duck the Issue, page 12
Help the Bar Preserve the Bars: Time for the Justice Museum

Because of Winnie Ruth Judd

Where else would we have the phrase “trunk murderer”? Winnie Ruth McKinnell Judd was convicted of killing Agnes LeRoi, one of her roommates, and was sentenced to death in 1932. The Phoenix newspaper received loads of publicity and sparked the debate over capital punishment.

Judd killed LeRoi and—cue the drama—allegedly another roommate after a fight over a man named Jack Halloran. Judd killed LeRoi with a .25 caliber handgun, and stuffed the body into a black shipping trunk. Judd allegedly killed the roommate, dismembered the woman’s body, and stuffed half of the roommates body into a suitcase and the other half into a harbor. The trunks were shipped by train from Phoenix to Los Angeles.

But wait, there’s more. Judd was tried and convicted in 1932 of the LeRoi murder. (LeRoi’s body was not dismembered). She was ordered to be hanged in 1933, and was sentenced to Arizona State Prison. Meanwhile, the death penalty was repealed, and she was sent to the Arizona State Mental Hospital in 1933. She escaped from the mental hospital seven times before she was released in 1971. Judd died in 1998 when she was 93 years old.

Because of Ernesto Miranda

It was 1963. Ernesto Miranda was arrested at his Phoenix home for robbery, and police took him into custody. He later confessed to raping an 18-year old woman a few days before. The police officers questioned Miranda at the police station. Miranda was not informed of his rights prior to questioning, including the right to speak with an attorney. After two hours, Miranda signed a written confession. At the top of the form, there was a typed paragraph stating that the confession was voluntary, that no threats were used, and that the confession was obtained without any promise of immunity.

The paragraph also indicated that the statement was made knowing it could be used against the defendant, and that it was made “with full knowledge of [his] legal rights.”

At the jury trial, prosecutors offered both Miranda’s confession and the victim’s identification of Miranda into evidence over the defense objection. The jury convicted him of rape and kidnapping, and he was sentenced to 20-30 years on each count, to be served concurrently. He appealed, and the Arizona Supreme Court upheld the decision, largely on the basis that Miranda never specifically requested counsel.

The case landed in the hands of the United States Supreme Court. The Supreme Court found that the defendant was never informed of his right to counsel prior to questioning, and that he was not warned of his right not to incriminate himself. The Supreme Court ruled that the confession obtained was inadmissible, and reversed the decision.

The Supreme Court explained that police officers must inform suspects of their rights prior to questioning, and the court specifically set forth how the rights must be communicated. And now our country can recite the Miranda warnings by heart (possibly due more to the effect of “Law & Order” as opposed to folks reading the Miranda decision, but we digress).

Because of Chief Justice William Rehnquist, because of his fine law school classmate and colleague, Justice Sandra Day O’Connor.

It’s time to let Arizonans know about Arizona’s contribution to the American legal system, and we have a rather appropriate place to tell our tale. You get the picture.

Thanks to the YLD Board for selecting the Justice Museum & Learning Center as its beneficiary. If you’d like to contribute to the Justice Museum & Learning Center by assisting us with the many tasks ahead, please visit the MCBA at www.maricopabar.org or call us at (602) 257-4200.

Green is an assistant U.S. attorney for the District of Arizona. The views expressed in this article do not necessarily reflect the views of the Department of Justice.

LETTERS TO THE EDITOR

Counterpoint: Arizona’s Anti-Deficiency Statutes Do Not Apply to Short Sales

By Kent S. Berk, Berk & Moskowitz, PC

I am writing regarding Mark Winsor’s opinion in the December 2009 Maricopa Lawyer. “Misconceptions of Foreclosure and Bankruptcy: Short Sales and Tall Tales Stretch the Truth?” In that article, Winsor states that “Arizona has two anti-deficiency statutes, but only one protects the property owner in a short sale process.” I believe that this is incorrect.

I believe that both of Arizona’s anti-deficiency statutes probably do not apply to short sales; thus, in the absence of an agreement to the contrary, a lender likely is entitled to pursue a claim for a deficiency resulting from a short sale, even if one of the anti-deficiency statutes would otherwise apply if the lender formally foreclosed by trustee’s sale or judicial foreclosure.

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Green is an assistant U.S. attorney for the District of Arizona. The views expressed in this article do not necessarily reflect the views of the Department of Justice.

Counterpoint Redux: Arizona’s Anti-Deficiency Statutes Do Apply to Short Sales

By Marc McCain, McCain & Burch, PLC

I am writing in response to the recent article by Mark Winsor in the December 2009 edition of Maricopa Lawyer and attorney Kent Berk’s subsequent letter to the editor, both of which explored the application of Arizona’s anti-deficiency laws to short sales.

The contrasting conclusions of these articles highlight the conflicting, confusing and sometimes incorrect information circulating regarding deficiency issues and short sales in Arizona. This letter is designed to clarify for consumers, real estate agents, lenders and attorneys when and how Arizona’s anti-deficiency laws apply to short sales and act to bar a lender from suing a borrower for a deficiency following a short sale.

In Winsor’s article, he concludes that Arizona’s anti-deficiency statutes apply to short sale transactions on certain residential property, namely purchase money loans on qualifying trust property. In Berk’s letter to the editor, he takes the position that neither of Arizona’s anti-deficiency statutes apply to a short sale because a short sale “is not a completed trustee’s sale or judicial foreclosure.”

See Counterpoint Redux: Arizona’s Anti-Deficiency Statutes Do Apply to Short Sales page 18
MCBA Appoints New Lawyer Referral Service Director

Donald M. Burns will serve as the new director of the MCBA Lawyer Referral Service, a public service of the Maricopa County Bar Association.

Burns, a recent graduate of the Phoenix School of Law, worked in the legal profession for almost 20 years prior to his law school graduation.

Before attending law school, Burns received his B.S. degree in justice studies from Arizona State University. He was previously employed by Phillips Goldstein in Prescott, Phillips Lyons in Phoenix, and Fields & Brown/Pistotnik Law Offices in the Kansas City area.

Burns will manage a service that handles over 100,000 calls each year from people seeking legal advice. The LRS seeks to match people with the right attorney for a nominal administrative fee, which also includes a free half-hour consultation with the attorney.

Established in 1964, LRS’s slogan is “The Right Lawyer. Right Now.” The service prides itself on immediate response to telephone or walk-in clients.

Social media is a phrase that has increasingly made its way into our nation’s vocabulary over the past few years.

Without my professing expertise in this area, it can be said generally that social media refers to technology-based communications and can incorporate sharing text, pictures, video and audio between electronic devices ranging from cell phones to computers, handheld devices to specially-equipped televisions and video gaming consoles.

This form of communication is called social because most services and products allow both public broadcast and individual interaction. They are called media in reference to more traditional methods of expression, such as letter writing, newspapers, radio, television and more recently, e-mail.

The Clerk’s Office and other government agencies are increasingly using social media to communicate news and events in a faster and more efficient way than using paper notices, mailings, website postings and even e-mails.

Social media can serve as the fastest way to get out a message or to direct clients and customers to a website, telephone number or other resource for more detailed information.

The Clerk’s Office currently posts information through the websites Twitter and Facebook. As an example of the usefulness of this technology, the Clerk’s Office recently posted through Twitter that court buildings were being evacuated, days the office would be closed and the day and time of scheduled website outages. Those who get the Clerk’s messages from Twitter sent directly to their phone were among the first to know about these important events.

Social media can be effective in answering frequently asked questions, illustrating difficult concepts, or spotlighting areas of the office, products or services that customers might not know about. While the Clerk’s Office posts training videos on its own website, some agencies use video-sharing websites—such as YouTube—to post “how-to” videos, messages from the elected or appointed official (or CEO, chairperson, etc.), or other graphics and video-based content.

Really Simple Syndication (RSS) is another technology tool gaining more use and recognition. The software involved is known as “aggregators,” “feed readers” or “RSS readers.” Using the settings in an internet browser, Google or a number of other websites, an RSS reader can be created to gather information in one place related to one agency or any number of agencies or on any number of topics.

This information-gather tool creates one place where the user can find all Clerk-related information, whether posted to the Clerk’s website, sent through Twitter or Facebook, or by any form of social media or communications system that is enabled to provide RSS feeds.

Social media can best be used when an account is created and customized to meet individual needs. However, information posted on the Clerk’s social media tools can be best read without creating an account or filling out any kind of registration. From the main page of the Clerk’s website, www.clerkofcourt.maricopa.gov, view the Newsflashes section, any of the related links on the page, or click on the icons for Twitter and Facebook.

There are many resources on the internet that further explain social media and how to establish and use an RSS Reader. People will continue creating innovative ways for government and private sector organizations to share their message.

In the spirit of customer service, the Clerk’s Office will continue looking at ways to better communicate with those who depend on the services of the courts.

Now, a banking program designed exclusively for you:

- A relationship manager who is your single point of contact.
- Our JURIS Rewards Visa Card® with 24/7 Concierge Service.
- Valuable banking tools to make your time and money even more productive.


Affiliate of Western Alliance Bancorporation
*Subject to credit approval. The Jurs Visa Card is issued by PartnersFirst Affinity Services, a division of Torrey Pines Bank which is an affiliate of Alliance Bank of Arizona. 09/08
This month is the year’s shortest, yet it somehow always proves to be its busiest. At least in this county we don’t have to worry about whether a groundhog finds its shadow.

The spring will be here soon enough and somehow always proves to be its busiest. At least in this county we don’t have to worry about whether or not a groundhog finds its shadow.

The spring will be here soon enough and somehow always proves to be its busiest. At least in this county we don’t have to worry about whether a groundhog finds its shadow.
What’s in a Name?

Knowing how to use a person’s name in legal writing is tricky, especially in court documents.

What if I spell the name wrong or use the wrong name? Do I use a name or a label if I am trying to be persuasive? How do I know if the client will be offended by the name or label I choose?

Following are some guidelines to help you choose how to discuss parties in a clear and consistent way.

1. Generally use each party’s legal status or role (uncapitalized) rather than the party’s name and use the definite article “the” (ex. “The owner” instead of “Mr. May” or “May”).

Expecting a busy reader, like a judge, to remember the individual names of all the actors in a case is unrealistic in complex cases. A reader will follow your story with greater ease if the story uses consistent labels for the various actors. There are two general exceptions to this guideline, however.

First, if there are several actors with the same legal status or role, then add the name to the legal status or role to keep the actors straight for the reader. In this instance, you can drop the article (ex. “buyer Lee,” “buyer Smith,” and “buyer Fox”).

Second, if you want to personalize an actor for persuasive purposes, then consider using the actor’s name or title. Many legal writers personalize their clients by using names (ex. “Mrs. Dwyer”), especially if the client is a child (ex. “Billy”). Using a person’s title is also a way of personalizing and showing respect (ex. “Dr. Tyler,” “Officer Cash”).

2. When discussing the litigants who are the subjects of the court document, use the labels “Plaintiff” and “Defendant,” following Bluebook Rule B10.6.2 and ALWD R. 3.3.

These rules require that you capitalize the terms and do not use the article “the” (ex. “Plaintiff alleges,” “Defendant admits”). This guideline is subject to the exception for personalizing discussed above.

3. When discussing the litigants in precedent cases, use each party’s legal status or role in the case (uncapitalized) and use the definite article “the” (ex. “the plaintiff argued,” “the defendant provided”).

These status labels are not capitalized because they are not the “stars” of the court document. As mentioned above, both Bluebook B10.6.2 and ALWD R. 3.3. explain when to capitalize these labels. Contrary to some writers’ beliefs, you do not capitalize these labels every time they appear in a document.

4. The key to both labeling and personalizing professionally is to avoid going overboard with adjectives.

In other words, (1) avoid the temptation to call someone names, such as “the scumbag driver” or “the incompetent excuse for a doctor,” and (2) avoid the temptation to flatter (ex. “the incredibly wronged and innocent Mrs. Gale”).

These over-the-top adjectives are not persuasive because they put the reader on alert that the facts of the story are weak; too many adjectives in an actor’s name or label are a sure sign that the writer does not have confidence in the story.

Legal Briefs

By Joan Dalton

Judicial Conference Okays Video Cameras in U.S. District Courts

The Judicial Conference of the Ninth Circuit has approved, on an experimental basis, the use of cameras in district courts within its circuit.

The use of cameras will consist of video recording proceedings in civil non-jury matters only. Specific cases to be considered for the experimental program will be selected by the chief judge of the district court in consultation with the chief circuit judge.

Arizona Chief Justice Appoints Retired Chief Justice as Special Master

Arizona Supreme Court Chief Justice Rebecca Berch has appointed retired Chief Justice Ruth V. McGregor special master to oversee the administration of cases between or among the Office of the Maricopa County Attorney, the Maricopa County Sheriff’s Office, the Maricopa County Board of Supervisors, and the Maricopa County Superior Court.

The action comes after the Maricopa County Attorney’s Office filed civil and criminal law suits naming various sitting and retired superior court judges as defendants, and took control of the computer system used to process court transactions. Conflicts of interest are alleged in some of the lawsuits.

Chief Justice Berch’s administrative order states that “[t]hese investigations, cases, motions, and allegations, particularly the allegations of conflict of interest and a conspiracy among the members of the Board of Supervisors and certain judges, including the presiding judge, have the potential to impair that court’s ability to carry out its responsibilities and threaten the perception of impartial justice.”

Admission on Motion Begins in Arizona

Applications licensed to practice law in a reciprocal jurisdiction and who meet the requirements of both Arizona Supreme Court Rule 38(h) and Administrative Order 2009-102 may now apply for admission to the Arizona Supreme Court on Motion. Currently, the reciprocal jurisdictions include:

- Alaska
- Colorado
- District of Columbia
- Georgia
- Idaho
- Iowa
- Illinois
- Indiana
- Kansas
- Kentucky
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Nebraska
- New Hampshire
- New York
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- South Dakota
- Tennessee
- Texas
- Utah
- Virginia
- Washington
- Wisconsin

The order goes on to state that a public safety emergency would arise if a true conflict is found to exist requiring the transfer of all criminal cases prosecuted by the Maricopa County Attorney’s Office to out-of-county judges.

The appointment of a special master is an attempt to ensure that the lawsuits and investigations do not impair the administration of justice in Maricopa County Superior Court or diminish public confidence in the justice system.

According to the order, Special Master McGregor will have “the power to appoint judges to hear cases, motions, and preliminary matters, and to reassign, expedite, or consolidate cases, or take such other actions as may be necessary or appropriate in these matters to ensure the swift, fair, and impartial administration of justice.”

2010 SALARY GUIDE

Dear Recruiters,

Robert Half Legal is pleased to present the 2010 Salary Guide, which provides salary information based on our proprietary research. Our team of legal recruiters looks forward to working with your organization to help you hire the best talent.

Best regards,

Robert Half Legal
INSIDE THE PARALEGAL DIVISION

Paralegal Division Supports Paralegal Students through Scholarships, Events and Networking

The MCBA Paralegal Division encourages and supports paralegal students each year by awarding scholarships to deserving students attending an ABA approved paralegal school. The MCBA Paralegal Division scholarships have been given out each year since 2001.

Through the years we have been able to increase the number and amount of the scholarships. The money for the scholarship is funded by the proceeds from the annual MCBA Paralegal Division Conference. By attending the annual conference each year you are helping paralegal students further their education. Please check the website for additional information on the 11th Annual MCBA Paralegal Division Conference.

It is once again the time of year when scholarship applications are being accepted and the deadline for the scholarship applications to be turned in is rapidly approaching. All applications must be received by Feb. 19 at 5 p.m. Paul Martin, CP, is serving as this year’s paralegal division’s scholarship chair. Please contact Martin at martinsmp@mcao.maricopa.gov if you need additional information on ABA-approved paralegal schools and/or the scholarship application.

Scholarship information has been distributed to the ABA approved paralegal schools and is available on our website. Paralegal students attending an ABA approved paralegal school are encouraged to apply. The applications do take some time to fill out, as you will need to write an essay and obtain letters of recommendation. The scholarships will be awarded at MCBA Paralegal Division’s Career Day on March 6.

Paralegal Career Day offers the opportunity for all paralegal students, individuals interested in becoming a paralegal, as well as the established paralegals, to gather and learn more about paralegal career opportunities. We will have various speakers to discuss the interviewing process and the current paralegal job market.

The event also includes a networking session where paralegals and paralegal administrators from various backgrounds are available for the attendees to make individual contacts. Many past attendees find this networking session to be extremely beneficial as they are able to ask questions on a variety of topics to people currently working in the paralegal field.

The Paralegal Career Day registration material is available on the MCBA website.

Calendar of Events

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<td>8</td>
<td>Monday Board of Directors Meeting</td>
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<td>Friday Deadline for Scholarship Applications</td>
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<td>6</td>
<td>Saturday Paralegal Career Day</td>
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<tr>
<td>8</td>
<td>Monday Board of Directors Meeting</td>
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<td>Tuesday Quarterly Division Meeting Time and Topic to be determined</td>
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<td>12</td>
<td>Monday Board of Directors Meeting</td>
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All Board of Director meetings are held at 12 p.m. unless otherwise specified.

All Board of Director, Conference Committee and Quarterly Division Meetings are held at the MCBA Offices unless otherwise specified.

For more information on Paralegal Division events, please visit our web site at www.maricopabas.org and click on the “For Paralegals” link.

GET ACTIVE in the Paralegal Division!

The Paralegal Division is one of the most active units of the MCBA. Among other activities, the Division offers quarterly meetings with substantive law presentations and the largest annual conference for paralegals in the state.

Engaging with your peers at MCBA’s formal and informal settings can be personally rewarding and career-enhancing.

Not to mention fun. MCBA is where the legal community connects—and that includes you!

December 29, 2009

Spell and Wilmer Up
C/O Stacy Palmer
400 E Van Buren
Phoenix, AZ 85004

Dear Maricopa County Bar Association Paralegal Division,

Thank you for taking the time and the challenge of organizing the “Gifts of Hope” Holiday Program. Your generosity helped contribute to a total of over 400 children and 136 families who received a gift of a happy holiday season! Because of your help we were able to once again meet our goal of giving away child welfare program receiving a special holiday. For many of these children your gifts were the only ones they received. “Gifts of Hope” was successful this year because of you and the dedication shown to the children and families of our community. For all of these accomplishments you should be proud. We thank you whole heartedly for your commitment to the children and families of Arizona.

“Gifts of Hope” Holiday Program would not have been a success without you! Learn how you can make an impact in our community throughout the year through one-time and ongoing volunteer opportunities for individuals and groups with Arizona’s Children Association at our website www.arizonachildren.org and click on ‘volunteer’ or feel free to contact me directly at 602.234.3733 x 111.

It was a pleasure to have had the opportunity to work with you. We hope you join us again next year to create another successful “Gifts of Hope” holiday. On behalf of all the staff at Arizona’s Children Association, thank you from the bottom of our hearts!

Have a Happy and Healthy New Year,

Leah Stageman
Volunteer Coordinator

Paralegal Division President
Stacy Palmer

ARIZONA CHILDREN’S ASSOCIATION
Promoting Children’s Rights Worldwide
Active America Since 1920

www.arizonachildren.org
ALL-MEMBERSHIP LUNCHEON
Thursday  ■  February 18 ■  2010

“STATE OF THE COURTS”
FEATURED SPEAKER
The Honorable Rebecca White Berch, Chief Justice, Arizona Supreme Court

Join us for this revival of the MCBA all-membership luncheon, kicking off with a distinguished jurist on a timely topic.

Location
Hyatt Regency Phoenix, 122 N. 2nd St. Phoenix

11:30 a.m Registration and Networking Time
12 Noon Lunch and Address by Chief Justice Berch
1:00 p.m. Adjourn

CLE credit: .75 hour of CLE included

Register online at www.maricopabar.org or use the form below.

REGISTRATION FORM

MCBA MEMBERSHIP LUNCHEON ■ FEB. 18, 2010 ■ Registration Deadline: Feb. 16

$35 per person (includes lunch and CLE)

I am registering ___________________ people
Name ____________________________
Firm _____________________________
Address __________________________
Email ___________________ Phone _______

NAMES OF OTHER REGISTRANTS
1. ___________________________ 4. ________________
2. ___________________________ 5. ________________
3. ___________________________ 6. ________________

☐ I am enclosing check in amount of $ __________________
Or: Charge my ☐ Visa ☐ MasterCard Total $ __________________
Card # ___________________ Exp Date ____________
Signature ___________________
Google Scholar: A New Way to Search for Cases and Related Legal Publications Online

By Courtney Minick and David Tsai

Many of us have taken advantage of Google’s free searches to find information on a potential client, an old friend, a restaurant, a news article, or even a book. As of Nov. 17, 2009, Google offers the ability to search for U.S. case law as part of its Google Scholar search.

You can now conduct free searches for full-text opinions of cases and legal journals in addition to general articles and patents, which were previously available on Google Scholar. Searches are conducted the same exact way you would conduct a search on Google.com. That is, there is no need for Boolean connectors anymore if you don’t want to use them, and you still might get the exact case you’re looking for.

This article gives an overview on the new features Google Scholar provides for the legal research market.

Coverage
Google Scholar now includes U.S. Supreme Court opinions since 1791 and U.S. federal district, appellate, tax and bankruptcy courts since 1923 in its database. The database also includes U.S. state appellate and supreme court cases since 1950.

Cases are cited in Bluebook format, include internal page numbers, and are cross-linked within the database. The service also crawls other case law providers and provides links to cases on these sites. In addition to case law, Google scholar provides links to secondary sources, such as law reviews and journals.

The cases themselves are displayed with characteristic Google simplicity. The search term that retrieved the case is highlighted throughout, and footnotes are hyperlinked to their location in the opinion. Because the cases appear in Google Scholar, there are no ads displayed on the page. Internal page numbers are highlighted to the left of the text, which many reviewers of the new offering have noted is less distracting than the starred page break notations used by commercial publishers.

How It Works
The search interface works much like its counterpart on Google.com. Users can search by case name, citation, lawyer name, or topic (i.e., “instant messaging”). The advanced search feature allows users to limit search results by state or jurisdiction, and provides guidance for conducting a Boolean search somewhat similar to those found on LexisNexis® or Westlaw®.

The “How Cited” tab displays results from a search for that case citation across the entire database. The results appear as quotes from the case, with the case citation in context. On the right side of the page, the “Cited By” box displays search results for cases, books, and secondary sources. Below that, Scholar returns a list of “Related Documents.” These appear to be generated by an algorithm designed to locate cases with similar fact patterns.

Is it Useful?
Google Scholar’s free search has drawn praise and criticism.

On the positive side, it employs the clean, simple, and fast user experience that Google is well known and admired for. The service does not require a login, allowing users to very quickly check a case name or cite.

The search engine works very fast—there is no perceptible delay or lag when returning search results. Results are posted in publicly accessible hyperlinks, making sharing cases very easy. Searches can be saved if the user logs in. And, of course, the price is right—users can search, view, and print these cases for free.

Most reviewers agree, however, that Google Scholar will not replace commercial legal publishers such as LexisNexis® or Westlaw® any time soon. The value in paid services lies mostly in the editorial work they provide on top of case law—e.g., headnotes and cite checking features.

While Google’s “How Cited” tool provides some interesting perspective on how the case has been cited and used, it is probably not a replacement for the Shepard’s or KeyCite system. Something else to keep in mind—Google Scholar is limited to case law, and does not include statutes or regulations (though those are available for free elsewhere on the Internet).

All together, many lawyers have concluded that Google Scholar is a great place to conduct preliminary research, or to review new cases that have not yet been affected by precedent. Using free services first can help narrow and focus your subsequent search in a commercial publisher, saving some money in search fees.

And because it’s Google, we should expect to see more features and coverage in the future.

Why it’s Important
For consumers, more information is always a good thing. In his announcement regarding the new Google Scholar features, Google engineer Anurag Acharya references the value of an informed citizenry, and access to the law in a democracy, starting his belief that “this addition to Google Scholar will empower the average citizen by helping everyone learn more about the laws that govern us all.”

At a time when the Obama administration has embraced government transparency, many believe that freeing the law from behind the Westlaw® and LexisNexis® paywall will help improve the health of our democracy.

For attorneys, Google’s entrance into the legal information market should help to drive down research costs. While it may not break up the LexisNexis® and Westlaw® duopoly right away, it does increase competition and foster innovation. As Google expands its offerings, watch for smaller players to enter the market with free or low cost add-ons to supplement Google’s work.

This healthy competition should encourage LexisNexis® and Westlaw® to improve their own products and price points, leading to more legal research options overall.

Check out Google Scholar’s newest legal search features at scholar.google.com.

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Google engineer Anurag Acharya refers to a potential client, an old friend, a restaurant, a news article, or even a book. As of Nov. 17, 2009, Google offers the ability to search for U.S. case law as part of its Google Scholar search. Searches are conducted the same way you would conduct a search on Google.com. That is, there is no need for Boolean connectors anymore if you don’t want to use them, and you still might get the exact case you’re looking for.

This article gives an overview on the new features Google Scholar provides for the legal research market.

Coverage
Google Scholar now includes U.S. Supreme Court opinions since 1791 and U.S. federal district, appellate, tax and bankruptcy courts since 1923 in its database. The database also includes U.S. state appellate and supreme court cases since 1950.

Cases are cited in Bluebook format, include internal page numbers, and are cross-linked within the database. The service also crawls other case law providers and provides links to cases on these sites. In addition to case law, Google scholar provides links to secondary sources, such as law reviews and journals.

The cases themselves are displayed with characteristic Google simplicity. The search term that retrieved the case is highlighted throughout, and footnotes are hyperlinked to their location in the opinion. Because the cases appear in Google Scholar, there are no ads displayed on the page. Internal page numbers are highlighted to the left of the text, which many reviewers of the new offering have noted is less distracting than the starred page break notations used by commercial publishers.

How It Works
The search interface works much like its counterpart on Google.com. Users can search by case name, citation, lawyer name, or topic (i.e., “instant messaging”). The advanced search feature allows users to limit search results by state or jurisdiction, and provides guidance for conducting a Boolean search somewhat similar to those found on LexisNexis® or Westlaw®.

The “How Cited” tab displays results from a search for that case citation across the entire database. The results appear as quotes from the case, with the case citation in context. On the right side of the page, the “Cited By” box displays search results for cases, books, and secondary sources. Below that, Scholar returns a list of “Related Documents.” These appear to be generated by an algorithm designed to locate cases with similar fact patterns.

Is it Useful?
Google Scholar’s free search has drawn praise and criticism.

On the positive side, it employs the clean, simple, and fast user experience that Google is well known and admired for. The service does not require a login, allowing users to very quickly check a case name or cite.

The search engine works very fast—there is no perceptible delay or lag when returning search results. Results are posted in publicly accessible hyperlinks, making sharing cases very easy. Searches can be saved if the user logs in. And, of course, the price is right—users can search, view, and print these cases for free.

Most reviewers agree, however, that Google Scholar will not replace commercial legal publishers such as LexisNexis® or Westlaw® any time soon. The value in paid services lies mostly in the editorial work they provide on top of case law—e.g., headnotes and cite checking features.

While Google’s “How Cited” tool provides some interesting perspective on how the case has been cited and used, it is probably not a replacement for the Shepard’s or KeyCite system. Something else to keep in mind—Google Scholar is limited to case law, and does not include statutes or regulations (though those are available for free elsewhere on the Internet).

All together, many lawyers have concluded that Google Scholar is a great place to conduct preliminary research, or to review new cases that have not yet been affected by precedent. Using free services first can help narrow and focus your subsequent search in a commercial publisher, saving some money in search fees.

And because it’s Google, we should expect to see more features and coverage in the future.

Why it’s Important
For consumers, more information is always a good thing. In his announcement regarding the new Google Scholar features, Google engineer Anurag Acharya references the value of an informed citizenry, and access to the law in a democracy, starting his belief that “this addition to Google Scholar will empower the average citizen by helping everyone learn more about the laws that govern us all.”

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This healthy competition should encourage LexisNexis® and Westlaw® to improve their own products and price points, leading to more legal research options overall.

Check out Google Scholar’s newest legal search features at scholar.google.com.
THE MCBA YOUNG LAWYERS DIVISION INVITES YOU TO THE

2010 Barristers Ball

BENEFITTING THE MARICOPA COUNTY JUSTICE MUSEUM & LEARNING CENTER FOUNDATION

The Maricopa County Justice Center and Museum educates children and adults about bedrock principles in the American criminal justice system. The Museum will restore the historic Old Courthouse’s sixth floor and preserve Arizona’s past in an interactive and vibrant way. The Justice Museum will offer visitors an opportunity to learn about Arizona’s significant contributions to the criminal justice system (e.g., Miranda rights) through interactive displays and knowledgeable tour guides. The Maricopa County Justice Center and Museum will be one more attraction that will help revitalize downtown Phoenix.

W Hotel
7277 East Camelback Road, Scottsdale, Arizona
6 p.m. Cocktails and Silent Auction
7:30 p.m. Dinner
Black Tie Optional

Cost
$125 per seat
$1,250 per table

Registration
PLEASE PRINT CLEARLY

Name: ____________________________ Firm: ____________________________

Please reserve seats for ____________________________ # of guests ________ Table host name*: ____________________________

Address: ____________________________

City: ____________________________ State: ________ Zip: ________ E-mail: ____________________________

* Table hosts are firms or individuals who sponsor a table of 10. Please provide guest list along with payment.

☐ Please place me/us at a no host Table ____________________________ ☐ Please seat me/us with ____________________________

TABLE GUESTS

1. ____________________________ 2. ____________________________ 3. ____________________________ 4. ____________________________ 5. ____________________________

6. ____________________________ 7. ____________________________ 8. ____________________________ 9. ____________________________ 10. ____________________________

Payment Information

PLEASE CHARGE MY: ☐ Visa ☐ MasterCard ☐ TOTAL CHARGE TO MY C.C. $ ____________ ☐ Enclosed is my check for $ ____________

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Please return form to MCBA, Attn: Laurie Williams, 2001 N. 3rd Street, Suite 204, Phoenix, AZ 85004-1439 or Fax to 602-682-8601. Thank You.
The MCBA Board of Directors held their annual retreat on Jan. 23 at the Desert Botanical Garden to set the course for the association in 2010 and beyond. Four new Board members, Roberta E. Berger, senior counsel at Wells Fargo Bank, and Cathy L. Knapp, Quarles & Brady, attended for the first time.

Jennifer Green assumed the presidency. The Board had previously elected new officers to serve in 2010. They are: David H. Benton, president-elect, Maricopa County; Jennifer A. Cranston, treasurer, Gallagher & Kennedy; and David Funkhouser III, secretary, Quarles & Brady. 2009 Board member Holly Davis, Lober, Greenfield and Polito, was elected to fill a vacant seat.

The full Board of Directors also includes:

DIRECTORS
Brian M. Bergin, Rose Law Group
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William Kastin, Snell & Wilmer
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Richard Siever, Young Lawyers Division
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Diana Rader, Scottsdale Bar Association, Sacks Tierney
Steven D. Keist, West Valley Bar Association, Steven D. Keist, PC

Jennifer Green makes remarks to the board about her priorities for the year. On either side of her are executive director, Allen Kimbrough (left), and David Benton, president-elect.

T.J. Ryan makes a point as David Funkhouser, Board secretary, takes notes on his laptop. Funkhouser is also co-chair of the Strategic Planning Committee along with Richard Siever (not pictured). At left is Naoma Gault.

Facilitator Colleen McManus asked members to pair off and discuss specific questions during a portion of the event. On a patio at Desert Botanical Gardens are, foreground, Comms. Benjamin Vatz (left) and Laurie Williams, MCBA’s director of CLE. Behind them are Richard Siever (left) and David Benton.

Bill Kastin’s remarks elicit smiles from new board members Cathy Knapp and Roberta Berger. At right is Jennifer Cranston and behind her, facilitator Colleen McManus.

Listening to discussion are (from left) Aaron Nash, Stacy Palmer, Richard Siever, and David Benton.
Elections Bring New Faces, Leadership in Section and Division

Stacy Velasquez Palmer, Snell & Wilmer, moved into the Paralegal Division president's position and elected two new officers: Kelly Gray, CP of Goldberg & Osborn was elected president-elect and Erica Warne of Snell & Wilmer won the treasurer's slot.

The division also elected three new board members: Felice Wortman, Gallagher & Kennedy; Julie Eslick, Snell & Wilmer; and Cami Barnella, Law Office of Phoebe Moffatt.

Richard Siever, Angel Medicaid, became president of the Young Lawyers Division. Four new board members were elected: Jen Rebolho, Burrell & Seletos; Casey Blais, Burch & Cracchiolo; Flynn Carey, Gallagher and Kennedy; and Jessica Jackson, Holm Write Hyde & Hays.

The 2010 Estate Planning, Probate and Trust chair is Mark Theut, of Theut, Theut & Theut. New to the board are Paula Burgess, Law Office of Paula O. Burgess; Michelle Goens, Rosepink & Estes; Cathy Knapp, Quarles & Brady; and Kelly Kral, Dyer & Ferris.

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**Lawyer Referral Service Needs You**

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**AMONG THE AREAS NEEDING COVERAGE ARE:**
- administrative law, SSI-SSD/Medicare law, workers’ compensation, and immigration.
- Spanish-speaking and West Valley attorneys are also needed.

It's easy to join! Call Don Burns at (602) 682-8590.

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**FEBRUARY 2010**

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<th>Date</th>
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<tr>
<td>1</td>
<td>Maricopa Lawyer Editorial Board 5:15 p.m.</td>
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<tr>
<td>2</td>
<td>CLE: Real Estate Litigation 101-Session I 12 p.m., Bench &amp; Bar Committee</td>
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<td>3</td>
<td>YLD Board 12 p.m.</td>
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<td>4</td>
<td>Construction Law Section 12 p.m.</td>
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<td>5</td>
<td>Estate Planning Probate &amp; Trust Section 7:30 a.m.</td>
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<td>6</td>
<td>Paralegal: CLA Review Course 8:30 a.m.</td>
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<td>7</td>
<td>Paralegal Division Board 12 p.m.</td>
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<td>8</td>
<td>CLE: Real Estate Litigation 101-Session II 11:30 a.m.</td>
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<td>9</td>
<td>Family Law Section 12 p.m.</td>
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<td>Public Lawyers Section 12 p.m.</td>
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<td>11</td>
<td>Environmental &amp; Natural Resources Section 12 p.m.</td>
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<td>12</td>
<td>Lincoln's Birthday MCBA closes at 12 p.m.</td>
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<td>13</td>
<td>Presidents’ Day MCBA office closed</td>
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<tr>
<td>16</td>
<td>CLE: Real Estate Litigation 101-Session III 11:30 a.m. – Check location</td>
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<td></td>
<td>Employment Law Section 12 p.m. – Check location</td>
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<td>Lawyer Referral Committee 12 p.m. – Check location</td>
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<td>18</td>
<td>All Membership Luncheon 11:30 a.m. – Hyatt Regency Downtown</td>
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<td>MCBA Board of Directors 4:30 p.m.</td>
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<td>19</td>
<td>MCB Foundation Board of Trustees 7:30 a.m.</td>
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<td>20</td>
<td>Paralegal: CLA Review Course 8:30 a.m.</td>
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<tr>
<td>23</td>
<td>CLE: Real Estate Litigation 101-Session III 11:30 a.m.</td>
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<tr>
<td>25</td>
<td>CLE: “Repeal” of the Federal Estate Tax in 2010: Advising Clients in Uncertain Times 7:30 a.m.</td>
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<tr>
<td>26</td>
<td>Public Lawyers Division Student Forum 11 a.m. – ASU College of Law</td>
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<tr>
<td>27</td>
<td>Paralegal: CLA Review Course 8:30 a.m.</td>
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*Please watch your MCBA E-News for updated information about meetings and events.*
INSIDE THE COURTS

Supreme Court Announces New County Presiding Judge

Arizona Supreme Court Chief Justice Rebecca White Berch announced the selection of Maricopa County Superior Court Judge Norman J. Davis as the new presiding judge of Arizona’s most populous county and the fifth largest superior court in the nation.

Judge Davis’ appointment becomes effective on July 1, when he assumes the responsibilities of current Presiding Judge Barbara Mundell, who has served in the leadership role since July 1, 2005. The presiding judge is appointed to a five-year term. Judge Davis serves currently with Judge Mundell as the associate presiding judge of the county.

“We are pleased that Judge Davis has accepted this important assignment,” Chief Justice Berch stated. “It was critical that we were able to appoint someone as the next presiding judge with extensive experience. Judge Davis is just the person for this position and will provide strong leadership going forward.”

Judge Davis became a Superior Court judge in family court in 1995. He has been instrumental in re-engineering the family court process now in place in Maricopa County. He has also served in the civil, criminal and juvenile divisions, as well as northwest presiding judge and family court presiding judge, before being named associate presiding judge for Maricopa County in 2008.

He has served on numerous committees, including the Arizona legislature child support committee, supreme court committee on superior court, superior court judicial executive committee, the Arizona Judges Association and served as chair of the superior court self service center advisory committee.

Superior Court Judicial Nominees Announced

The Maricopa County Commission on Trial Court Appointments has recommended five candidates to Gov. Jan Brewer for an opening on the Maricopa County Superior Court.

Nominees for the opening created by the retirement of Judge Robert C. Houser are Mark H. Brain, 46, Republican, of Phoenix, a commissioner for the Maricopa County Superior Court; Christopher A. Coury, 40, Republican, of Phoenix, a partner in the law firm of Ryley, Carlock & Applewhite; Douglas Gerlach, 59, Democrat, of Mesa, a partner in the law firm of Jennings Stross & Salmon, PLC; Daniel J. Kiley, 46, Republican, of Chandler, with the law firm of Sherman & Howard LLC; and, Joan M. Sinclair, 48, Democrat, of Scottsdale, a commissioner for the Maricopa County Superior Court.

Gov. Brewer will make the appointment.

Arizona Court Doesn’t Duck the Issue, Warns Others Not to be Fooled by Initial Appearances

continued from page 1

Federal tax law generally treats the discharged debt as income to the borrower.

The Fosserts argued that Amtrust had manifested its intent not to sue by filing the Form 1099-C. But Johnson noted other pertinent rules.

Standard accounting practice requires lenders to reclassify and write off loans that have been past due for a specific time. She also noted that federal regulations allow—and might require—lenders to issue a 1099-C for events other than cancellation of the debt. One of these events is the expiration of a period of time in which the borrower has made no payments.

Amtrust submitted the affidavit of its collection manager, averring that it had issued the 1099-C because of the period of nonpayment, not because the bank intended to forever relinquish the right to repayment. Amtrust issued the 1099-C, not because it was forever writing off the debt—he asserted—but because the accounting rules required it to do so.

However, these circumstances did not add up to summary judgment in the banks’ favor. Johnson ruled. Again, the issuance of a 1099-C was prima facie evidence of relinquishment. She also noted that Amtrust had not offered evidence of its debt-cancellation policies or practices.

More glaringly, Amtrust had issued the form after only 24 months of nonperformance which the federal regulations referred to a 36-month period. The evidence presented by both sides, she ruled, raised questions that the trier of fact must resolve at trial.

Johnson deemed the confusion that arose from the interplay of accounting rules and IRS rules and regulations. “By providing for issuance of a form called ‘Cancellation Of Debt’ even when a lender may not intend to release debt,” she wrote, the regulation “is all but certain to confuse borrowers who receive the form under those circumstances.”

She noted that the form 1099-C informed the taxpayer to include the amount as income, “without acknowledging that the amount stated on the form might not represent a debt actually forgiven.”

She called on lenders to explain what is going on when they issue Forms 1099-C but still intend to continue collection efforts. Joining her were Judges Maurice Portley and Daniel A. Barker.

No Emotional Damages for Loss of Pet

For Division One of the Arizona Court of Appeals has joined most other courts around the country in declining to recognize a cause of action for emotional-distress damages for loss of a pet. Kaufman v. Langhofer, No. 1 CA-CV 08-0055 (Ariz. App. Dec. 22, 2009).

David Kaufman sued veterinarian William Langhofer and the Scottsdale Veterinary Clinic for malpractice following the death of Salty, his scarlet macaw. Salty was affectionate, intelligent, and playful, and Kaufman considered her his companion. She accompanied him to work, interacted with his customers, and participated in family holidays.

Kaufman brought Salty to Langhofer after a breeder spotted a problem. Langhofer performed two operations; they fixed the original problem but caused another, from which Salty later died. Kaufman sued Langhofer and the clinic, alleging malpractice and wrongful death. He sought damages for destruction of personal property together with emotional pain and suffering.

The superior court dismissed the emotional-distress claims, holding that “Arizona law does not provide for the types of ‘loss of relationship’ damages Plaintiff seeks.”

Kaufman found no success when he appealed that ruling. Writing for the court, Judge Patricia Norris rejected his argument that Arizona law already recognized his claim.

She noted that the common law and the majority of American courts classify pets merely as personal property. In cases of negligent injury or death of a pet, they follow suit by limiting damages to the animal’s fair market value; no emotional-distress damages are allowed. Arizona law accords with the majority view, she noted, citing various cases and statutes.

Norris rejected Kaufman’s argument that previous cases had recognized his right to recover for emotional distress for the loss of personal

See Arizona Court Doesn’t Duck the Issue: page 14

Protestors Take to Superior Court

More than 250 people gathered on the steps of the Superior Court complex on Monday, Dec. 21, to protest Maricopa County Attorney Andrew Thomas’ and Sheriff Joe Arpaio’s ongoing legal battles with county officials. Chief among the group’s grievances was Thomas’ Dec. 18 filing of felony criminal charges against Superior Court Judge Gary Donahoe. The Arizona Supreme Court has delayed the prosecution of Judge Donahoe until at least March when it has decided on issues related to the case. Former Arizona Supreme Court Chief Justice Ruth V. McGregor has been appointed special master to oversee all aspects of the filings.
Managing the Stresses and Anxieties of Being a Lawyer

By Stanley Popovich

Everybody in law deals with anxiety and stress. However, some people have a hard time managing it. As a result, here is a brief list of techniques that a person in law can use to help manage their most persistent fears and everyday anxieties.

When facing a current or upcoming task that overwhelms you with a lot of anxiety, the first thing you can do is to divide the task into a series of smaller steps. Completing these smaller tasks one at a time will make the stress more manageable and increases your chances of success.

Sometimes we get stressed out when everything happens all at once. When this happens, a person should take a deep breath and try to find something to do for a few minutes to get their mind off of the problem. A person could get some fresh air, listen to some music, or do an activity that will give them a fresh perspective on things.

A person should visualize a red stop sign in their mind when they encounter a fear provoking thought. When the negative thought comes, a person should think of a red stop sign that serves as a reminder to stop focusing on that thought and to think of something else. A person can then try to think of something positive to replace the negative thought.

Another technique that is very helpful is to have a small notebook of positive statements that makes you feel good. Whenever you come across an affirmation that makes you feel good, write it down in a small notebook that you can carry around with you in your pocket. Whenever you feel depressed or frustrated, open up your small notebook and read those statements. This will help to manage your negative thinking.

Learn to take it one day at a time. Instead of worrying about how you will get through the rest of the week, try to focus on today. Each day can provide us with different opportunities to learn new things and that includes learning how to deal with your problems. You never know when the answers you are looking for will come around you.

Take advantage of the help that is available around you. It is possible to talk to a professional who can help you manage your depression and anxieties. They will be able to provide you with additional advice and insights on how to deal with your current problem. By talking to a professional, a person will be helping themselves in the long run because they will become better able to deal with their problems in the future. Remember that it never hurts to ask for help.

Dealing with our persistent fears is not easy. Remember that all you can do is to do your best each day, hope for the best, and take things in stride. Patience, persistence, education, and being committed in trying to solve your problem will go along way in fixing your problems.
Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following 29 attorneys and firms for agreeing to accept referrals from VLP during the past month.

VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBA for a CLE discount.

For information about cases and other ways to help, please contact Pat Gerrick at VLP at (602) 254-4714 or pgerrich@clsaz.org.

### ADOPTION
- Adam Reid Stephenson
- Booth Udall

### ASSISTANCE TO NON-PROFIT
- Shawn K. Aiken
- Aiken Schenk Hawkins & Ricciardi

### BANKRUPTCY
- Robert D. Beucler
- Keith Barton & Associates

### CHILDREN’S ISSUE-OTHER
- Jane A. Proctor
- Fennemore Craig

### CONSUMER ISSUES, CONT.
- J. Marc Hennessey
- Snell & Wilmer

### CONSUMER ISSUES
- Vincent M. Cota
- Hammerman & Hultgren

### GUARDIANSHIPS OF MINOR CHILDREN
- Amy S. Clarke
- Burguan Clarke Law Office

### GUARDIANSHIPS OF INCAPACITATED ADULTS
- Catherine J. Leas
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### GUARDIANSHIPS OF NON-PROFIT
- S ara Ransom
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### GUARDIAN AD LITEM/COURT ADVISOR FOR CHILDREN
- Elizabeth Feldman
- Bregman Burt Feldman

### HOME OWNERSHIP ISSUE
- Cory L. Braddock
- Snell & Wilmer

### LITEM/COURT ADVISOR
- Bryan Cave

### MINOR CHILDREN
- Nancy E. Tibbensen
- Arizona Board of Regents

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- Anthony Merrill Wade
- Bryan Cave

### PRO BONO NEED
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Arizona Court Doesn’t Duck the Issue, Warns Others Not to be Fooled by Initial Appearances

continued from page 12

property. In those cases, she pointed out, “the tortious act directly harmed the plaintiff and affected or burdened a personal, as opposed to an economic or other interest belonging to the plaintiff.”

“We acknowledge the emotional distress Kaufman suffered over Saly’s death,” Norris added. “But Dr. Langhofer’s negligence did not directly harm Kaufman in that it did not affect or burden a personal right or interest belonging to him.”

Norris then turned to Kaufman’s argument for an expansion of Arizona law. Kaufman argued that because “pets occupy a special place in the lives of many people and are frequently viewed as family members, ... human guardians’ should be able to recover emotional distress as well as loss of companionship damages that would mirror damages a human plaintiff could recover under a loss of consortium theory.” Norris noted that other courts had found many problems with this proposed cause of action.

Some believe that it would be difficult to impose boundaries on the proposed damages under any rationale rule. She noted that California and Wisconsin courts had recognized that, “[b]ecause humans are not related to pets, limits cannot be based on degree of consanguinity [and] it would be difficult to cogently identify the class of companion animals because the human capacity to form an emotional bond extends to an enormous array of living creatures.”

Other courts had pointed to the difficulty of quantifying the emotional value of a pet. This could lead to the risk that the defendant would be exposed to extraordinary and unrealistic claims.

But Norris did not rely on these perceived problems in rejecting Kaufman’s plea; she looked elsewhere. “Expanding Arizona common law to allow a pet owner to recover emotional distress or loss of companionship damages would be inappropriate,” she wrote, “as it would offer broader compensation for the loss of a pet than is currently available in this state for the loss of a person.”

Other instances in which Arizona law allows emotional-distress damages are limited to close relationships, she explained, noting the law on negligent infliction of emotional distress, loss of consortium, and wrongful death.

“We do not believe it reasonable to expand tort law to allow a pet owner to recover emotional distress or loss of companionship damages when such damages cannot be recovered for the injury to or loss of close human friends, siblings, and nonnuclear family members such as grandparents, grandchildren, nieces, nephews, aunts, and uncles.”

Joining Norris were Judges Sheldon H. Weisberg and Margaret H. Downie.
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Tuesdays, Feb. 2 through Feb. 23
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6 TOTAL CREDIT HOURS for all 4 programs. Lunch included.

Register for the four-session practice fundamentals luncheon series scheduled for the month of February. You save $55 by registering for all four programs.
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You may also register for individual programs
MCBA MEMBER: $62.50 ■ NON-MEMBER: $92.50 ■ STUDENT MEMBER: $10

SESSION I
TUESDAY, FEBRUARY 2
Real Estate Purchase Contract and Option Contract Disputes
This basic seminar will include topics such as enforceability of purchase contracts and option contracts and defense thereto, remedies, lis pendens, appraisal issues, broker issues, financing contingencies, disclosures, and other basic topics.
PRESENTERS: Kevin J. Parker Andrew Stone

SESSION II
TUESDAY, FEBRUARY 9
Title and Escrow Disputes
This basic seminar will address topics including quiet title actions and wrongful notarial counterclaims, interpleader actions, escrow liability actions, and typical title insurance claims such as easement disputes, adverse possession, constructive trusts, and lien priority and enforceability issues.
PRESENTERS: Matthew P. Fischer III Adam Lange

Registration available online at www.maricopabar.org or call Laurie at (602) 257-4200

BASKETBALL PLUS CLE!
TUESDAY, MARCH 16, 2010
CLE: 5:30-6:30 P.M.
PHOENIX SUNS V. MINNESOTA TIMBERWOLVES TO FOLLOW

Negotiating Sponsorship Deals in a Challenging Environment
In today’s challenging economic environment, sponsors and media buyers are closely examining returns on investment generated by marketing relationships with professional sports teams and athletes. This CLE program will provide an overview of the key points and strategies that corporate counsel, firm attorneys, sports lawyers, and agents need to be aware of when negotiating sponsorship deals for their clients.
PRESENTER: Jason Rowley, Senior Vice President & General Counsel of Suns Legacy Partners, LLC, the holding company for the Phoenix Suns NBA Team, Phoenix Mercury WNBA Team, and the US Airways Center

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INTRODUCTION
Learn the ins and outs of family law as members of the MCBA Family Law Section take you through the “Smith” family divorce. This series of CLEs will expose you to different topics that family law practitioners face every day. The goal is to familiarize new family law attorneys with issues common to family law cases and provide tips and guidance on how to handle a family law case from the beginning to the end. Join us for one session or them all!

SESSION I
TUESDAY, MARCH 2
Meeting the Client and Getting Started
This presentation will focus on the initial steps necessary to get the matter moving forward. We will start with the initial meeting with the client, cover some generic intake forms, highlight some of the basic family law issues that you will want to be alert for during the initial meeting, and end with a brief discussion on custody and parenting time issues.
PRESENTER: Rachel Cople, Masten, Weeks, McFetridge & Friedlander, PA

SESSION II
TUESDAY, MARCH 9
How the Court Determines Child Support and Spousal Maintenance?
Learn the factors that the court considers when calculating support and how to strengthen your client’s case. This session will focus on the Arizona Child Support Guidelines and statute and case law on spousal maintenance.
PRESENTER: Terri Harris, Jolyn Grant, PC

SESSION III
TUESDAY, MARCH 16
Identifying Property Types and How the Court Will View Each
Learn how to identify separate and community property and how the characterization affects your client and the division of property by the court. You’ll receive an overview of community property, cases you need to know, and discovery techniques pertaining to property vital to your clients.
PRESENTER: Larry Hirsch, Jaburg Wilk

SESSION IV
TUESDAY, MARCH 23
Dividing Community Property
This session will focus on more in-depth issues of dividing community property including real property, business interests, retirement accounts and pensions. Learn how the courts value and divide these different assets as well as identify when other experts should get involved such as business appraisers, real estate special masters and QDRO attorneys.
PRESENTER: Larry Hirsch, Jaburg Wilk

SESSION V
TUESDAY, MARCH 30
Ask the Experts
Get advice from family law attorneys and judicial officers on the practical aspects of family court. This Q&A session will allow you to get all the answers to your most pressing questions.
PANEL MEMBERS: Leslie Sutcliffe, Nirenstein Garnice Soderquist, PLC (moderator) Larry Hirsch, Jaburg Wilk Rebecca Owen, Rebecca L. Owen, PLLC Hon. Roger Hartsell, Maricopa County Superior Court, Family Court Hon. Edward Rastell, Maricopa County Superior Court, Family Court

All presenters are from Snell & Wilmer Real Estate Litigation Group
YOUR LIFE IN THE LAW: A PRIMER FOR NEW LAWYERS
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Paid registrants who cancel their registration at least 72 hours before the program will receive a full credit on their account; if fewer than 72 hours, a $25 administrative fee will be deducted. Paid registrants who do not cancel, yet fail to attend, forfeit their registration fee and will not receive the course materials. Materials will be available for purchase after the course.

HOW TO REGISTER
You may register for this program by filling out the form below or registering online at www.maricopabar.org. Send check or credit card info to CLE Department, Maricopa County Bar Association, 2001 N. 3rd Street, Suite 204, Phoenix 85004 (until March 1; after that to 303 E. Palm Lane).

THURSDAY — MARCH 25 — DAY ONE

8:15-9 a.m. REGISTRATION AND CONTINENTAL BREAKFAST

9-10:30 a.m. CANDID ADVICE FOR NEW LAWYERS
How do you achieve professional satisfaction and success in the practice of law? The answer to this question is as varied as the make-up of our bar. This panel will kick off our conference with a free-wheeling, wide-ranging discussion of how lawyers have built their careers over several decades of practice in Maricopa County. Our panel members are from diverse practice backgrounds, ranging from family law, environmental law, criminal defense, and big firm litigation practice to an appellate court judge. Expect to gain insights and advice that will work for you in any practice setting.

Speaker: Linda Shely, The Shely Law Firm

Moderator: Steven Hirsch, Bryan Cave
Panel Members: Dan Lowrance, Maricopa County Public Defenders Office; Kevin Quigley, Quigley & Brady; Barbara Rodriguez-Pashkowsk; Gust Rosenfield; Leslie Satterlee, Nirestein Gamicce Soderquist; Hon. Ann Timmer, Arizona Court of Appeals, Division One

10:45 a.m.-12 p.m. AVOIDING COMMON ETHICS PROBLEMS
During your career, you’ll often be placed in the positions of dealing with situations that involve ethical issues. In this program, ethics expert Linda Shely will tell you how to avoid some of the more common pitfalls new lawyers run into:

■ How do you deal with partners who ask you to do something that you don’t believe is ethical?
■ When is too much work ETHICALLY too much work?
■ Tips to communicate effectively with clients and others
■ Staying on top of deadlines and tips for getting help
■ Creating your own conflict checklist for all new matters

Speaker: Linda Shely, The Shely Law Firm

12-1 p.m. LUNCH — “THE JOYS OF PRO BONO”
Speaker: Pat Gerrich, Director, Volunteer Lawyers Program

1-2:15 p.m. DEPOSITION BASICS: DIRECT AND CROSS EXAMINATIONS
In this program you’ll learn about the basics and some key points of how to be successful in a deposition.

■ Fundamentals of direct examination
■ Strategies for effective direct exam
■ Fundamentals of cross examination
■ Strategies for effective cross exam
■ Tactics and practice pointers

Speaker: Patrick X. Fowler, Partner, Snell & Wilmer

2:30-4 p.m. NEGOTIATION AND SETTLEMENT SKILLS
What do you think about your negotiation skills? Whether you’re already pretty good or think you have a lot to learn, this program will help you improve. You’ll learn about:

■ The number one mistake lawyers make in negotiations
■ Steps to becoming a more effective negotiator
■ Traditional techniques
■ Negotiating with “pit bulls”
■ Anatomy of a negotiation

Speakers: Marc H. Lamber, Fennemore Craig; James Goodnow, Fennemore Craig; Andrew Clawsen, Fennemore Craig

4-5 p.m. NETWORKING PROFESSIONALLY
Networking is a skill all lawyers need in order grow their practices, reputations, and leadership opportunities. In this program you’ll learn the skills and techniques to make contact in a professional manner and get professional results.

Speaker: Jared Marks, Jared Marks & Associates

5-6:30 p.m. NETWORKING RECEPTION
What better time to practice your newly-polished social/professional networking skills than at this end-of-the-day reception? But don’t forget to relax and enjoy yourself!

FRIDAY — MARCH 26 — DAY TWO

8:30-9 a.m. CHECK-IN AND CONTINENTAL BREAKFAST

9-10 a.m. THE HONORABLE PROFESSION: MAKING AND PROTECTING YOUR REPUTATION
Your reputation is like a bank account—make daily deposits and very few withdrawals. Your reputation as an ethical, competent and professional lawyer is arguably the single best asset you can bring to bear in favor of your client. This program will suggest what is required to make and protect your reputation.

Speaker: Mark Harrison, Osborn Maledon

10:15-11:45 a.m. MANAGING STAFF AND WORKING WITH PARALEGALS
One of the most important elements of your practice will be to build an effective work team to serve clients in the best possible manner—and, of course, to generate profits. This program will provide you with strategies on how to manage and cultivate a positive working relationship with your staff and delegate appropriate tasks to improve efficiency.

A portion of this presentation will focus on how the proper use of paralegals will help you provide a higher level of client service, at a competitive cost, and allow you to concentrate on substantive legal matters and client development.

Speaker: Kathy Bunch, Fennemore Craig; Sheila Vogt, Snell & Wilmer; Maureen Zachow, Snell & Wilmer

12-1 p.m. LUNCH — “HOW TO FIND YOUR WORK-LIFE BALANCE”
Speaker: James A. Fassold, Fassold and Gray

1-2:45 p.m. THE BASICS OF DISCOVERY
In this program, you’ll learn about the essential features of pre-trial discovery, commencing with developing a theory of the case and providing the initial disclosure statement, through motion practice to facilitate discovery and test the sufficiency of the opposing party’s case.

Speaker: Larry L. Cohen, The Cohen Law Firm

3-4:30 p.m. YOUR DAY IN COURT: WHAT TO EXPECT AND WHAT JUDGES EXPECT FROM YOU
Hear it straight from the judges themselves. This panel discussion by five judges of the Maricopa County Superior Court will give you a sense of how to comport and prepare yourself for a court appearance. You’ll also hear about the varied expectations of the individual judges on this panel, and what others might expect.

Moderator: Hon. Glenn Davis
YOUR LIFE IN THE LAW: A PRIMER FOR NEW LAWYERS

HON. EDWARD P. BALLINGER, JR.
Judge Ballinger assumed his duties as a Maricopa County Superior Court judge in May 1998 and is currently assigned to the Juvenile Court.

KATHRYN BUNCH
Bunch is a senior paralegal in the Immigration Practice Group of Fenner Craig, PLC., processing resident applications for foreign national employees of corporate clients.

LARRY J. COHEN
At his firm, The Cohen Law Firm, Cohen is a certified specialist in injury and wrongful death litigation.

HON. GLENN DAYS
Judge Davis has been a special assignment commissioner and then judge of the Maricopa County Superior Court since 2004.

JAMES A. FASSOLD
Fassold is a partner with the Phoenix probate litigation firm of Gray & Fassold, P.C., and a co-founder of Gray Matters Seminars, a coaching and consulting firm.

PATRICK X. FOWLER
Fowler is a partner at Snell & Wilmer where his practice concentrates on complex litigation and trial work.

HON. PENDLETON GAINES
Judge Gaines was appointed to the Maricopa County Superior Court 1999 and currently serves in the Criminal Department.

PATRICIA J. GERRICH
Attorney Pat Gerrich has been the director of the Volunteer Lawyers Program since 1994.

JAMES GOODNOW
Goodnow, an associate at Fenner Craig, has been a member of trial teams that have secured some of the largest victories in Arizona history.

HON. ROBERT L. GOTTFIELD
Judge Gottfield has been on the Maricopa County Superior Court since 1981.

MARK H. LAMBER
Lamber focuses his practice in the area of plaintiffs personal injury litigation and insurance coverage and bad faith litigation at Fenner Craig.

DAN LOWRANCE
A deputy public defender with the Maricopa County Public Defender’s Office since 1994, Lowrance is currently training the director/attorney manager.

JARED MARKS
Jared Marks is the managing director of Jared Marks and Associates.

HON. ROSA MROZ
Judge Mroz has been a judge with the Maricopa County Superior Court since 2004, currently assigned to the Criminal Department.

BARBARA U. RODRIGUEZ-PASISKOWSKI
Rodriguez-Pasiskowski, Cost Rosenthal, focuses her practice on environmental law.

KEVIN D. QUIGLEY
Quigley is a partner at Quarles & Brady, where he practices in the area of commercial litigation and administrative and regulatory law.

LESLEY A. M. SATTERLEE
Satterlee is an attorney at Nirenstein Carneke Sederquast, PLC and practices family law.

LYNDA SHELY
Sheley opened The Sheley Firm, PC in 2003 after serving as the State Bar of Arizona’s director of lawyer ethics for ten years.

HON. ANN A. SCOTT TIMMER
Ann A. Scott Timmer was appointed to Division One of the Superior Court in 2008.

LYNDA SHELY
Sheley opened The Sheley Firm, PC in 2003 after serving as the State Bar of Arizona’s director of lawyer ethics for ten years.

SHEILA R. VOIGT
Voigt, a paralegal, is the manager of Legal Professional Services at eight of Snell & Wilmer’s offices in the south-west and Mexico.

JAMES A. FASSOLD
Fassold is a partner with the Phoenix probate litigation firm of Gray & Fassold, P.C., and a co-founder of Gray Matters Seminars, a coaching and consulting firm.

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MAUREEN LYNCH ZACHOW
Zachow has been with Snell & Wilmer LLP for 15 years, where she is a paralegal specializing in complex litigation.

JARED MARKS
Jared Marks is the managing director of Jared Marks and Associates.

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MAUREEN LYNCH ZACHOW
Zachow has been with Snell & Wilmer LLP for 15 years, where she is a paralegal specializing in complex litigation.
Counterpoint: Arizona’s Anti-Deficiency Statutes Do Not Apply to Short Sales

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family dwelling is sold pursuant to the trustee’s power of sale, no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses. Similarly, A.R.S. § 33-729(A) governs judicial foreclosure actions and provides that Except as provided in subsection B, if a mortgage is given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price, of a parcel of real property of two and one-half acres or less which is limited to and utilized for either a single family dwelling or single two-family dwelling, the lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the judgment debtor, not nor may general execution be issued against the judgment debtor to enforce such judgment, and if the proceeds of the mortgaged real property sold under special execution are insufficient to satisfy the judgment, the judgment may not otherwise be satisfied out of other property of the judgment debtor, notwithstanding any agreement to the contrary. Pursuant to A.R.S. § 33-807(B), a deed of trust may be foreclosed by judicial foreclosure, rather than trustee’s sale. As shown by the emphasized language of each statute, they contemplate a completed trustee’s sale or judicial foreclosure in order for the anti-deficiency protections to apply. Since a short sale is not a completed trustee’s sale or judicial foreclosure, it is very likely that the anti-deficiency protections would not apply to a short sale. The same is likely true for a deed in lieu of foreclosure.

There are some public policy reasons why short sales should be protected under the anti-deficiency statutes. For example, arguably, a cooperative borrower who facilitates a short sale should not be any worse off than an uncooperative one. But, the statutes do not appear to apply to short sales. So, what can a borrower/seller in a short sale do to protect himself/herself from the potential for a deficiency action after a short sale? No, if it’s a lender do to ensure that it can pursue a deficiency resulting from a short sale? Both should be aware that the debt (i.e., the obligation to pay money) and the collateral (the lien on the home) are legally separable. The mere fact that the lender releases the collateral so that the seller can transfer free and clear title to the buyer in a short sale does not necessarily mean that the lender is releasing the debt. Thus, if the seller/borrower wants to avoid the risk that the lender may pursue a deficiency resulting from a short sale, he/she should have the lender sign an agreement that the lender releases the collateral and cancels the debt in exchange for the agreed upon proceeds from the short sale. Of course, this may have tax and other implications. Anyone contemplating a short sale should consult his/her legal and tax advisors before entering the transaction. Similarly, although probably unnecessary, a lender desiring to preserve the right to pursue a deficiency after a short sale can have the borrower sign an acknowledgment to that effect.

Counterpoint Redux: Arizona’s Anti-Deficiency Statutes Do Apply to Short Sales

continued from page 2

sure” and thus, “a lender likely is entitled to pursue a claim for a deficiency resulting from a short sale even if one of the anti-deficiency statutes would otherwise apply if the lender formally foreclosed by trustee’s sale or judicial foreclosure.”

It is my opinion, supported by clear and long-standing Arizona case law interpreting Arizona’s anti-deficiency statutes, that Winsor is correct—Arizona’s anti-deficiency statutes apply to short sales of residential properties encumbered by a purchase money loan on qualifying property. Moreover, under Arizona law, the protections afforded by Arizona’s anti-deficiency statutes should also apply to most refinanced loans that combine clearly purchase money and clearly non-purchase money loans on qualifying property.

This letter addresses two separate issues raised in Berk’s letter to the editor: (1) whether Arizona law permits a lender to sue a borrower following a short sale on qualifying property, and (2) regardless of a lender’s legal right to sue a borrower following a short sale on qualifying property, whether it is likely a lender will attempt to do so, or at least pressure a borrower into paying money following a short sale.

On the first issue, Berk’s letter and conclusions then ignore the decision of Arizona’s Supreme Court in Baker v. Gardner. Moreover, contrary to Berk’s assertion, there is Arizona case law that addresses our anti-deficiency statutes in a short sale context.

In Baker, the holder of a purchase money, second position deed of trust lien against qualifying property attempted to sue the borrower on its promissory note after the senior lender noticed a trustee’s sale foreclosure under its deed of trust.

The lender’s theory in Baker was analogous to Berk’s theory in his letter to the editor—that is, that the lien of the deed of trust and the promise to pay under the promissory note are legally separate obligations and since the junior deed of trust holder did not conduct the foreclosure sale (i.e., there was no foreclosure sale as to the junior lender’s collateral), Arizona’s anti-deficiency statutes did not affect the borrower’s obligation under its promissory note or the lender’s right to sue the borrower under the note.

The Baker court stated the issue as whether Arizona’s anti-deficiency statute allows a lender to waive its security and bring an action against the borrower for the unpaid balance of the promissory note. The Baker court analyzed Arizona’s anti-deficiency statutes and concluded that the statutes were designed not merely as procedural laws, but were designed to destroy a lender’s right to a money judgment with respect to purchase money mortgages on qualifying property.

Said another way, the “legislature’s objective . . . was to abolish the personal liability of those who give trust deeds . . . for purchase money lenders on qualifying properties. Thus, with respect to a lender that has NOT conducted a foreclosure or trustee’s sale on qualifying property, the court concluded that if the loan was a purchase money loan, Arizona’s anti-deficiency laws don’t allow it to sue the borrower on the note. Only if the lender holds a non-purchase money loan on qualifying property may it elect to waive its security and sue the borrower on the note.

The court reasoned that if a lender were allowed to disregard its security (by waiving or releasing it) and sue a borrower on a note, the lender would be able to do an end-run around the legislative intent in enacting our anti-deficiency statutes. Simply put, a lender of a purchase money loan on qualifying property can’t obtain a result (a money judgment) that it would not be able to obtain had it actually conducted the foreclosure under either of our anti-deficiency statutes.

In a short sale transaction, a lender does not conduct a foreclosure. Rather, a lender waives (releases) its security to permit the short sale to close. If the lender in a short sale transaction holds a purchase money note on qualifying property, the Baker case clearly prohibits it from suing on its note and obtaining a money judgment against the borrower.

This should be true regardless of any agreement between the lender and borrower to the contrary because A.R.S. § 33-729(A) states expressly that the anti-deficiency protection applies “ . . . notwithstanding any agreement to the contrary.” In fact, in both the Beach et al. and Toucan Verde decisions, the lender had extracted certain waivers or agreements from the borrower in the workout note or short sale approval process that purported to acknowledge the lender’s right to a deficiency. Yet, in both cases, citing the Baker rational and Arizona’s anti-deficiency statutes, the lender was prohibited from using the borrower on its note.

As noted above, under the Beach et al. holding, even where a loan on qualifying property was refinanced to include a payoff of another loan or increase the loan amount, a borrower should be protected by Arizona’s anti-deficiency laws, notwithstanding any agreement extracted by the lender in a short sale approval. The Beach et al. decision is the only clear authority with respect to such a “combo” note on qualifying property and provides a borrower with all the ammunitions it should need to fend off a lender’s collection efforts, unless a lender wants to challenge Beach et al. and make case law in the process.

Moreover, given the Baker court’s broad proclamation that a borrower has no personal liability on a purchase money loan on qualifying property and the clear statutory language in A.R.S. § 33-729(A) that no agreement can change the anti-deficiency protection, a borrower can argue that any promissory note or agreement to be liable for a deficiency as part of a short sale approval is unenforceable.

However, cautionary legal counsel will generally advise a borrower to reject any lender short sale proposal on qualifying property and a purchase money note if the lender conditions approval on the borrower agreeing to remain liable for a deficiency or providing the lender an unsecured note. Why should a borrower agree to a deficiency where none exists under Arizona law?

Although a lender’s rights following a short sale of a purchase money loan on qualifying property are clearly restricted under well settled Arizona law, the second issue raised in Berk’s letter is not so clear.

As I remind clients frequently, although Arizona law is clear, there is no guaranty a lender won’t try to pursue a borrower for an alleged “deficiency” even though it has no right to do so. There are laws against stealing and assault, but these laws are violated quite frequently. People and companies oftentimes assert rights and take legal action where they have no right to do so.

In this vein, I am seeing and hearing of frequent lender attempts to collect on uncollectible, unenforceable debts and hearing of lawsuits on loans that are clearly protected by the Baker, Beach et al. and related authority.

Time and time again I have heard stories of lenders stating unequivocally that they are legally separate obligations and since the junior deed of trust holder did not conduct the foreclosure sale (i.e., there was no foreclosure sale as to the junior lender’s collateral), Arizona’s anti-deficiency statutes did not affect the borrower’s obligation under its promissory note or short sale approval process that purported to acknowledge the lender’s right to a deficiency. Yet, in both cases, citing the Baker rational and Arizona’s anti-deficiency statutes, the lender was prohibited from suing the borrower on its note. (See Counterpoint Redux: Arizona’s Anti-Deficiency Statutes Do Apply to Short Sales page 19)
THE BULLETIN BOARD
News from the legal community

The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos welcome.
Send your news via e-mail to maricopalawyer@maricopabar.org.

Moves, New Hires and Openings
Fisher & Phillips LLP, a national labor and employment law firm, announces its expansion into Phoenix. Attorneys Pavneet Singh Uppal and Chris M. Mason have joined Fisher & Phillips to open the new Arizona office.
Uppal will be the managing partner of the Phoenix office, and focuses much of his practice on labor and employment disputes. Mason represents companies in employment and labor litigation in federal and state courts as well as before administrative agencies.
The firm also announced that Shayna H. Balch has joined the Phoenix office as an associate. Balch represents employers in all aspects of employment law, including discrimination, sexual harassment, and restrictive covenants.

Jackson Lewis announced that six attorneys have joined the firm. Richard S. Cohen and Stephanie M. Cerasano have both joined the firm as partners, and Justin S. Pierce has joined the firm as of counsel. Also joining are associates Stephen B. Coleman, Sonya K. Boun, and Kylie Crawford Tenbrook.

Cohen is an AV rated attorney and brings his extensive experience in every facet of employment law at the administrative, trial and appellate levels. Cerasano’s practice focuses on the defense of employers with a particular focus in the areas of disability discrimination, the Family and Medical Leave Act, and wage and hour law. Pierce’s practice primarily involves representing employers in wrongful termination and discrimination claims before various government agencies charged with investigating and prosecuting employment claims.

Gallagher & Kennedy, PA, announced that Raymond K. Ramella, Donna H. Catalfo and Kelly C. Mooney were elected shareholders effective Jan. 1, 2010.

Ramella, formerly of counsel, practices general commercial litigation. Catalfo, previously an associate, practices in the area of intellectual property, specifically intellectual property litigation, patent prosecution and licensing/technology transfer. Mooney, formerly an associate, practices tax law, with an emphasis on federal taxation of individuals, corporations, partnerships, tax-exempt entities, and estates and trusts.
The firm also announced the addition of James G. Derouin to the firm’s environmental and natural resources department. Over his more than 40 year career, Derouin has represented private and public clients in numerous states and Environmental Protection Agency (EPA) regions on environmental and natural resource issues.

The national law firm of Quarles & Brady is pleased to announce that Marian Zapata-Ross has been elected to the Los Abogados Executive Committee. She will serve as treasurer for 2010. Zapata-Rossa practices in the area of labor and employment law.

The firm is also pleased to announce that four of its attorneys have been appointed by Mayor Phil Gordon to several Phoenix municipal commissions.

Amy Cotton, an attorney in the firm’s health law group, has been appointed to the Mayor’s Commission on Disability Issues. Cotton’s practice includes advising clients on state and federal regulatory issues and representing clients before state professional boards.

Michelle De Blasi, a partner in the firm’s environmental group, has been appointed to the South Mountain Village Planning Committee. De Blasi’s practice includes advising clients on renewable energy and sustainability projects, transmission line siting issues, federal and state water quality issues, the Endangered Species Act, natural resource damage issues, the Clean Air Act, and underground storage tank issues.

Cathy Knapp, of counsel in the firm’s trusts & estates group, has been appointed to the Phoenix Women’s Commission. Knapp practices in the areas of estate planning, planning for closely held businesses, tax-exempt organizations, and probate and trust administration.

Keeley Smith, an attorney with the firm’s commercial bankruptcy, restructuring & creditors’ rights group, has been appointed to the License Appeals Board. Smith focuses her practice on assisting lending institutions and banks in connection with loan workout strategies in various debt collection scenarios.

Polinelli Shughart, PC, announced that Nancy E. Pisaruk has joined the firm’s Phoenix office, of counsel, in the general corporate practice group. Pisaruk represents an array of clients in a variety of business transactions and corporate governance matters.
The firm also announced that attorney Scott K. Henderson has joined the firm’s Phoenix office as a shareholder. Henderson’s business practice is concentrated in real estate matters throughout the country but principally in the western U.S.

Chief Justice Rebecca White Berch entered Administrative Order 2009-110, announcing the appointment of Ed Novak to a seven-year term as a member of the Supreme Court’s Committee on Character and Fitness. Novak, who is the immediate past president of the Board of Governors of the State Bar of Arizona, is a shareholder with the law firm of Polinelli Shughart, PC, where he concentrates his practice on government investigations and white collar criminal defense.

Steph & Johnson, LLP, announced that Mark Freeze has been elected as of counsel. Freeze’s practice is based in the firm’s Phoenix office and encompasses environmental, toxic tort and complex civil litigation, environmental enforcement defense, and environmental counseling.

Christina Rubalcava, who formerly clerked with U.S. District Court Judge David Campbell, has joined Osborn Maledon, PA, as an associate. Her areas of practice include alternative dispute resolution, criminal law, employment law and litigation.

Mableson Law Group is pleased to announce that Rex M. Anderson has joined the firm as of counsel. His area of emphasis is estate planning for individuals and succession planning for small business owners.

The City Council of Phoenix has reappointed Richard D. Fincher to a third term as chairman of the Phoenix Employment Relations Board. The PERB is a city agency which administers the city labor-management ordinance. Fincher is an arbitrator and mediator of labor and employment litigation.

The law firm of DeConcini McDonald Verwin & Laszlo, PC, is pleased to announce that shareholder Shelton L. Freeman has opened a Scottsdale office for the firm. Freeman’s practice is concentrated in multiple areas of commercial litigation, general corporate matters, real estate, creditors’ rights and bankruptcy, and probate litigation.

Counterpoint Redux: Arizona’s Anti-Deficiency Statutes Do Apply to Short Sales
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collect on a purchase money loan on qualifying property after a short sale, a stern letter to the lender and its legal counsel explaining Arizona law and its applicability to a given loan, along with threat of legal action if such illegal collection efforts continue, should persuade the lender to pick another file to employ such unsavory tactics.

Unfortunately, many attorneys are providing lenders fuel to continue their Improper collection efforts and dampen borrowers’ leverage in short sale negotiations by clouding whether Arizona’s anti-deficiency laws apply to certain short sales. By not providing consumers and lenders clear direction on well settled Arizona law, the short sale process will continue to be fraught with unfair negotiating tactics and illegal collection efforts by lenders.

Of course, under Baker, in a short sale context, a clearly non-purchase loan on qualifying property is not covered by Arizona’s anti-deficiency laws, nor are loans on non-qualifying property (e.g., raw land and commercial properties) protected. Borrowers may also be liable for any voluntary waste of qualifying property, even if anti-deficiency rules apply.

Given the confusion in the marketplace and tactics being employed by lenders in short sale and distressed property negotiations, a wise borrower will consult with legal counsel to confirm its obligations, rights and leverage before agreeing to a workout or short sale.
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*Offer valid until 3/31/10 to new commercial subscribers of Cox Digital Telephone and Cox Business Internet in Arizona. Cox wired, serviceable locations. Minimum 1-year service contract required. Bundle is $80 per month and includes Cox Business Internet 2.0Mbps/384Kbps, 1 phone line, and 5 free calling features. Free calling features do not include Remote Call Forwarding, Voice Mail, and Distinctive Ringing. Offer includes waived activation fee, but installation may be extra. Additional costs for installation, construction, inside wiring and equipment may apply. Offer does not include usage, long distance, some calling features, applicable taxes, surcharges or fees. Discounts are not valid in combination with or in addition to other promotions, and cannot be applied to any other Cox account. Telephone modem equipment may be required. Modem uses electrical power to operate and has backup battery power provided by Cox if electricity is interrupted. Telephone service, including access to VoIP service, will not be available during an extended power outage or if modem is moved or inoperable. Cox cannot guarantee uninterrupted or error-free Internet service or the speed of your service. Rates and bandwidth options vary and are subject to change. All programming and pricing are subject to change. Programming may vary by location. Services not available in all areas. Other restrictions apply. Telephone services are provided by Cox Arizona Telcom, LLC. ©2010 CoxCom, Inc., d/b/a Cox Communications Arizona. All rights reserved.