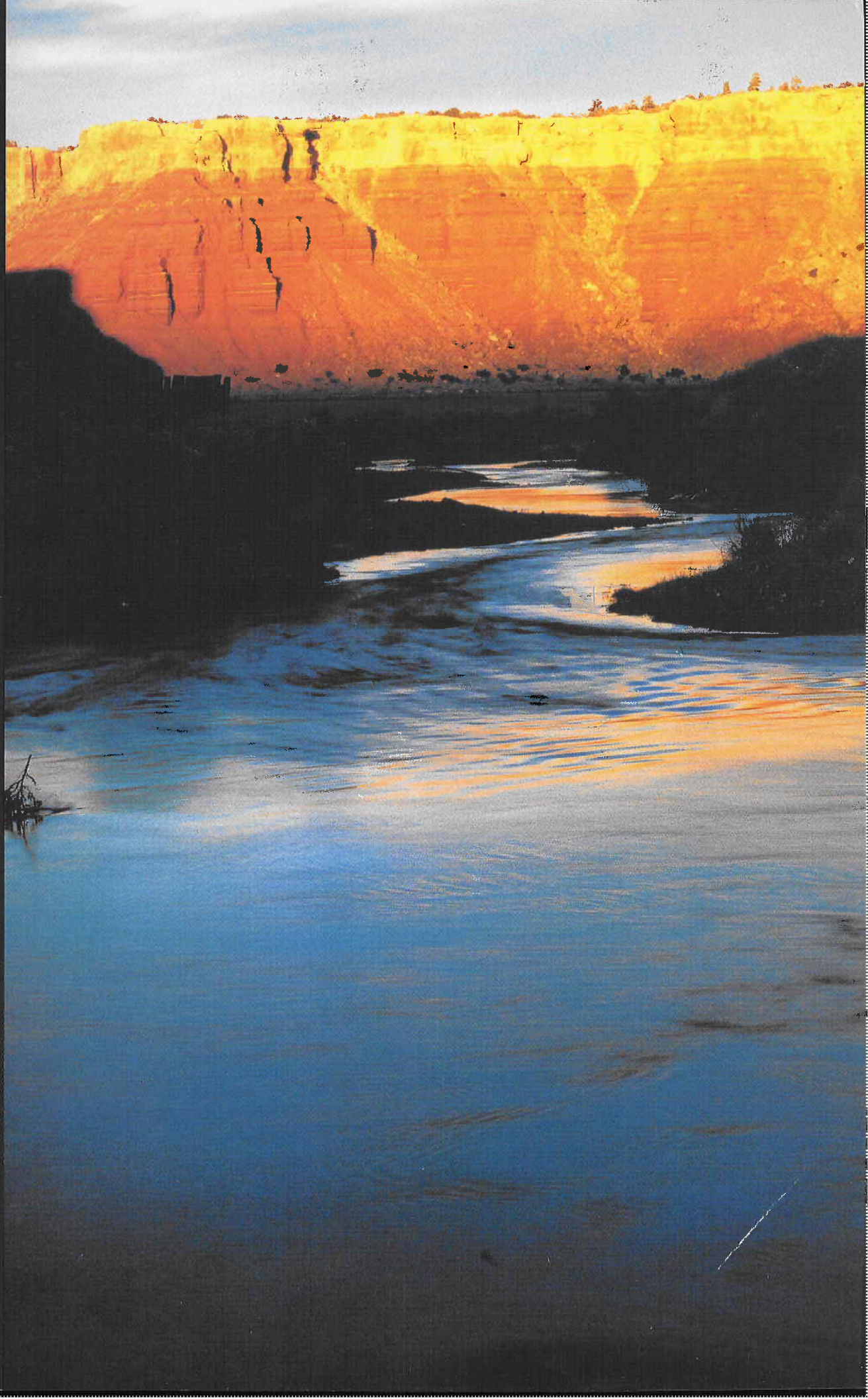
Utah Bar JOURNAL



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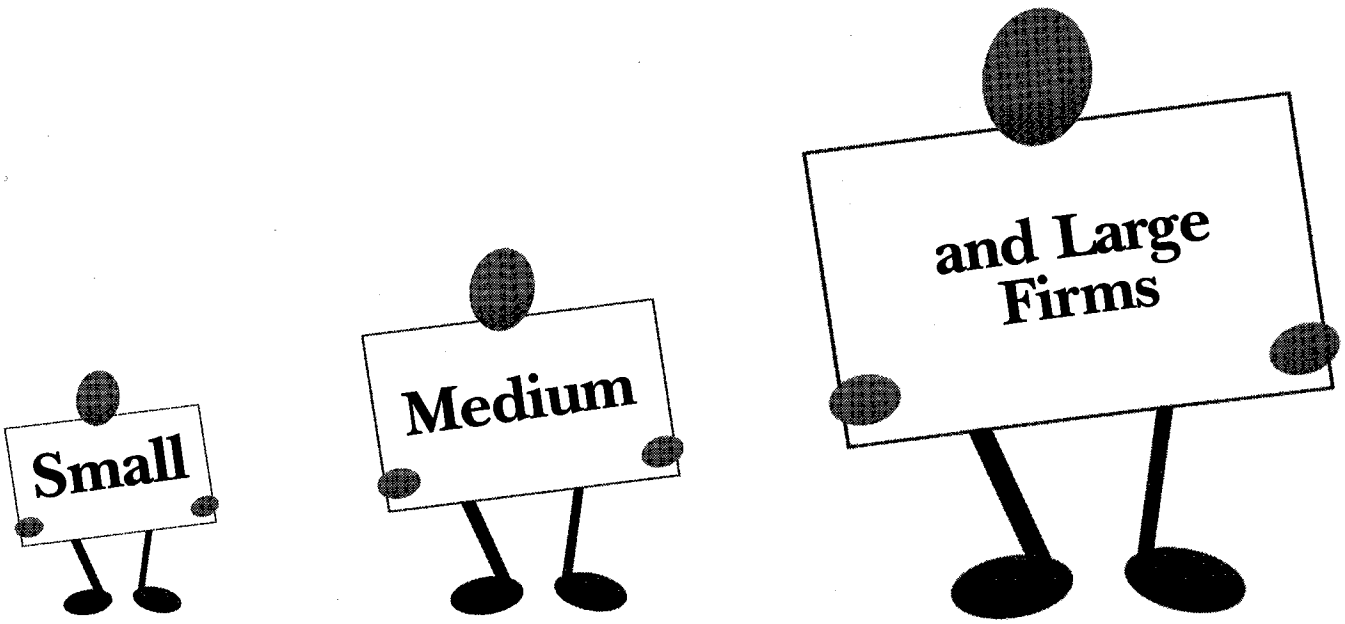

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Table of Contents

Letters 4

President's Message
Unexpected Rewards
by James C. Jenkins 6

Abusive Deposition Objections and Tactics
– In Search of a Standing Order
by Robert B. Sykes 8

Tribal Courts – Justice on Utah's Reservations
by Christopher B. Chaney 26

State Bar News 34

The Young Lawyer 43

Views From the Bench
The Source of Funds Rule –
Equitably Classifying Separate and Marital Property
by Honorable Michael D. Lyon 45

Judicial Profile: Hans Q. Chamberlain 50

Book Review 52

Case Summaries 54

Utah Bar Foundation 56

CLE Calendar 57

Classified Ads 58

VISION OF THE BAR: *To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.*

MISSION OF THE BAR: *To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of, the law.*

COVER: Freemont River's "Golden Glow" near Bicknell, Wayne County, Utah, by Kent M. Barry.

Members of the Utah Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Randle, Deamer, Zarr, Romrell & Lee, P.C., 139 East South Temple, Suite 330, Salt Lake City, UT, 84111-1169, 531-0441. Send a print, transparency or slide of each scene you want to be considered.

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Letters to the Editor

Dear Editor:

The Law of Summary Judgment discussed by Messrs. Sykes and Kramer in the June 1998 *Utah Bar Journal* though purporting to be an objective evaluation of the law is quite one-sided. The discussion fails to recognize several valid objectives served by summary judgment including the three discussed here.

First, as recently recognized by Justice Russon in *Morton v. Continental Baking Co.*, 938 P.2d 271, 275 (Utah 1997), there are two sides to every action and defendants as well as plaintiffs are entitled to fair treatment.

Second, summary judgment is not a procedural shortcut but a proper means of resolving issues, permitting the trial court to "isolate and dispose of factually unsupported claims or defenses." *Celotex Corporation v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2458, 2555, 91 L.Ed.2d 265 (1986). Fairness dictates that if a party's pre-complaint investigation and pre-trial discovery fail to reveal facts which establish the elements of its claim, summary judgment is appropriate and should be entered.

Third, facts related to summary judgment must be material. It is common among parties objecting to summary judgment to generate a smokescreen of "facts" with the objective of persuading the trial judge to believe that where there is smoke there must be fire. To be material, a fact must affect the outcome of the suit under the governing law. *State v. Schreuder*, 712 P.2d 264, 275 (Utah 1985); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 1986. If the facts which are material to a party's case do not support its claims, summary judgment is clearly appropriate.

It is unfortunate that *Utah Bar Journal* articles are not subjected to some peer review to assure that the information provided is even-handed and a fair reflection of the law.

L. Paul Palmer

Dear Editor:

Rule 6.1 should be retained in its present form. The proposed amendment to Rule 6.1 is too narrow and will have the effect of discouraging free services now provided by attorneys.

For example:

a. Serving as pro tem judges in small claims court,
b. Legal assistance to public service organizations in areas unrelated to persons of limited means,
c. Pro bono service to cities and counties,
d. Assistance to persons who, though not defined as "persons of limited means," can ill afford an attorney, and
e. Pro Bono assistance to the Office of Professional Conduct.

The proposal fixates on services to people of "limited means." Pro Bono service is broader than that.

The reporting requirements appear to be superfluous. The information is a waste of money and resources, unless the information gathered requires specific action. This proposal has no action requirement. The information will not be accurate because attorneys may report zero if they feel charitable work

should be kept private. Rules of professional conduct should not be changed for mere public relations purposes.

Although we have been assured by the bar leadership that the mandatory reporting requirement will never evolve into mandatory service, we have little faith in such promises. The parable of the camel who only wanted his nose in the tent applies. We remember too well the "non-mandatory" CLE's suggested by the bar only a few years ago.

The proposed option of "buying out" of pro bono service by paying money to the Bar is inappropriate. Bar members must be free to decide where their charitable contributions go.

Such fundamental changes ought to be voted upon. While a vote would not be binding on the Supreme Court, it would provide a better indication of member convictions.

Michael W. Crippon
Larry L. Whyte
Todd D. Gardner
Russell A. Cline
Chris L. Schmutz
Bryan A. Geurts

To whom it may concern:

Enclosed please find my certificates of CLE attendance and your financial exactions. I am sending these because you have threatened my right to earn a livelihood. I desire, however, to complain.

I object to this requirement for the following reasons:

1. The CLE requirement is based upon the presumption that merely attending a time-consuming, expensive and frequently boring presentation dealing with some dark corner of the law will magically make attorneys more competent. I reject this presumption.
2. The CLE requirement serves no purpose except Public Relations for the Bar and the creation and maintenance of an industry the sole purpose of which is to put on CLE presentations.
3. The CLE requirement discriminates against members who practice in rural areas, since nearly all of the programs offered are in urbanized areas. The necessity of hours of travel, and sometimes lodging, adds to the required expenditure in time and money for such members, and thus imposes an unfair penalty upon them for choosing to live and work where they do.
4. The CLE requirement perpetuates the myth that lawyers can or should know All of the Law, All of the Time. This is manifestly impossible and ignores the fact that we spend vast amounts of time and money to build libraries and to do research to determine the state of the law applicable to the cases we work on. CLE does not reduce the need for these things.
5. For me personally, this requirement is a nuisance. I have rheumatoid arthritis which is aggravated by driving long distances and changes in altitude and weather. This is one occasion for pain and exhaustion I could easily do without.

For an organization which pays so much lip service to the availability of legal services to demand that its members take time away from their practices and pay exorbitant fees for the privilege, is, in my humble opinion, hypocritical and short-sighted.

Allen S. Thorpe

Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.

2. No one person shall have more than one letter to the editor published every six months.

3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.

4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.

5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Code of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.

7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.

8. The Editor, or his or her designee, shall promptly notify the author or each letter if and when a letter is rejected.

Unexpected Rewards

by James C. Jenkins

Most of us entered our profession anticipating better-than-average working conditions and income. Some of us sought the benefits of independence and others the opportunity to engage in social change. I feel very fortunate. Over the years I have enjoyed all the rewards I expected would come from practicing law. However, it is the unexpected experiences which have truly enriched my career.

Several years ago I was assigned to prosecute a very difficult and ugly criminal case. The defendant, a very selfish and abusive man, had sexually assaulted his step-daughter over a number of years since she was about 9 years old. When I first met this young victim, she was broken and reclusive, overwhelmed by embarrassment, degradation and confusion. Each time we met thereafter to discuss the procedure of litigation or review her sad testimony, she would conclude by saying, "I'm so sorry." She had concluded that the sexual abuse and her mother's resulting divorce and the criminal prosecution was her fault. She desperately needed someone to assure her that it was not her fault. I determined that I would be the one who would work to build her confidence and self-esteem. The case took several months to conclude and while maintaining the duty and position I held as prosecutor, I also took the opportunity to encourage and strengthen her delicate self-worth. We talked about her performance at school, about her friends, and other things that she had accomplished. Time passed and I would sometimes think of my little friend. Then recently I saw her at a church function. As I watched her walk across the room to greet me, I knew she was a changed person. I was so pleased to learn that she was enrolled in college, she had a part-time job to help her pay for her education, she had definite plans for her future, good friends, activity in church, and a special boyfriend. She was a different person. I take no credit for her transformation. It was simply my fortune to witness it.

Not too long ago, a client scheduled an appointment to discuss a confidential matter. When we met he explained that he knew of a couple who lived in an adjoining community. He told me that they had taken several children into their home because the children had nowhere else to go. The mother of the children had been killed by their father in a domestic altercation and the father was now in prison. He said, "They are good people and I know they could use some help, but they also have their dignity, and I am afraid if they knew who was helping they might not accept." He then handed me $5,000.00 and instructed me to deliver the money to this couple without disclosing the source of the assistance. That evening I went to the modest home of that family and presented my client's gift. They did not know me, and I only knew them from my client. They sat together on the living room couch and opened the envelope containing the money. Their eyes filled with tears as they simply asked me to express their gratitude to their anonymous benefactor. My role in this sweet experience was minimal, the reward far exceeded any contribution on my part.

Occasionally I read reports that some attorneys would leave their profession if they could. For some reason they have become disillusioned. But I for one know there are more than enough opportunities to be successful and fulfilled in this profession, and every once in a while you enjoy the bonus of an unexpected reward.