

# UTAH BAR JOURNAL

Vol. 1, No. 1

August/September, 1988



## REFORMING THE REFORMATION:

A "CPS" Amendment to Our New  
Administrative Procedures Act

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Family Law Update, 1988

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Utah Real Property Act Amendments

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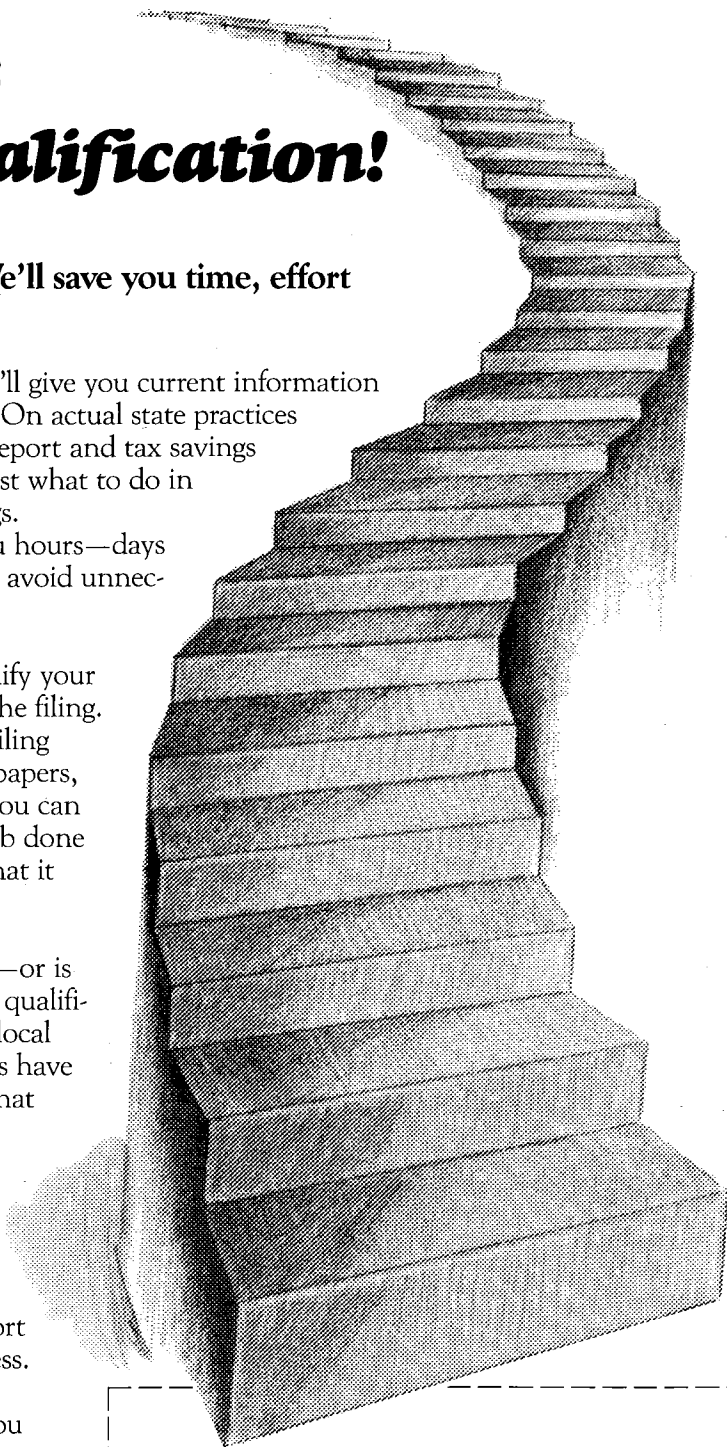


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**Published by  
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Salt Lake City, Utah 84111  
Telephone (801) 531-9077

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**Cover:** Photograph of the Law and Justice Center by Chris P. Wangsgard, a partner in the firm of VanCott, Bagley, Cornwall & McCarthy

The Utah Bar Journal is published monthly, except July and August, by the Utah State Bar. One copy of each issue is furnished to members as part of their State Bar dues. Subscription price to others, \$20; Single copies, \$2.50; second-class postage paid at Salt Lake City, Utah. For information on advertising rates and space reservation, call or write Utah State Bar offices.

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# EDITOR'S NOTE

## Introduction

The new *Utah Bar Journal* consolidates in one publication the Utah Bar Letter, Utah Bar CLE, the old Utah Bar Journal and the Young Lawyers Section's Barrister, all previously published separately. The *Journal* thus becomes the communications vehicle of the State Bar, designed to:

- present practical, informative articles on the law, legal history and people;
- advise of rule changes, legislation of interest to lawyers and recent court decisions;
- apprise of general State Bar happenings and section and committee news and reports; and
- provide a forum for exchange of opinions and discussion of views.

## Request for Articles

Although it may sound magniloquently hyperbolic, the success and worth of the *Journal* will depend in large part on the quality and diversity of legal articles appearing therein. For this reason, contributions of articles for publication are encouraged, but the Bar Journal Committee reserves the right to select the material to be published. Articles will be selected with the intent of providing variety and balance in the legal topics covered. Submissions should be made to the *Utah Bar Journal*, State Bar offices.

## Bar Journal Cover

The Bar Journal Committee is also interested in featuring on each cover of the *Journal* works of art by Utah Lawyers. Submissions should consist of photographs or sketches of the Utah landscape, or other scenes or objects representative of the State or a law-related subject. Interested lawyers should contact Randall L. Romrell, 4910 Amelia Earhart Drive, Salt Lake City, Utah 84116-2837, telephone 355-6000, ext. 208.

## Letters to the Editor

A policy regarding publication of "letters to the editor" has recently been adopted by the Board of Bar Commissioners, and is presented in its entirety below.

It is the policy of the Utah State Bar, as set forth in the Rules for Integration and Management of the Utah State Bar, to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform. In furtherance of this policy, one page of each issue of the *Utah Bar Journal*

shall be set aside for the purpose of publishing "letters to the editor" submitted by members of the Bar. Letters shall be accepted for publication under the following guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 200 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) which violates the Code of Professional Conduct or (c) which 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 pub-

lication of letters to the editor shall be made without regard to the content of the letter or to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar.

8. The executive director, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected and shall set forth the reasons for the rejection.

It is also contemplated that questions or issues of interest to lawyers will be posed from time to time in the "letters to the editor" section, with a cross-section of responses being published in subsequent issues of the *Journal*.

The inaugural "letter to the editor" appears below.

## Lawyer Announcements and Ads

In addition to the usual bar journal features, the *Utah Bar Journal* will make space available for lawyer and law firm announcements and ads—personnel changes, office relocations and availability of specialty legal services. This should prove to be an attractive lower cost alternative to currently used announcement cards. For information about charges, announcement format, deadlines for submission, etc., please contact Paige Holtry at the State Bar offices.

The Bar Journal Committee is excited about the new *Bar Journal* and its prospects for success, and invites you to participate in making it a worthy and lasting publication.

## EDITOR:

The Commission must be complimented on the recent Litigation Report in the *Bar Letter* detailing pending actions. The Commission must be responsive and responsible to Bar members. Members have a right to know what the Commission is doing for the benefit of its members and how members' dues are spent. That report is a step in the right direction.

The report seemed incomplete. Why does the Commission not want the Bar to be determined to be a "state agency?" Most people view the Bar as a "state agency" performing governmental functions in licensing and disciplining attorneys. Why are the Commissioners offended by that suggestion? As a state agency and subject to appropriate state laws, the Bar will be more responsible and accountable. Are the Commissioners opposed to that?

Members should be informed about litigation resolved within the last three years, detailing the thousands of dollars in fees paid to successful litigants against the Bar. How much was paid to defend lawsuits that the Bar lost?

When the Bar Commission begins to view itself as directly responsible and answerable to all members, and openly and publically reports and justifies its actions, then litigation against the Commission might be unnecessary.

BRIAN M. BARNARD  
Attorney at Law

## PRESIDENT'S MESSAGE

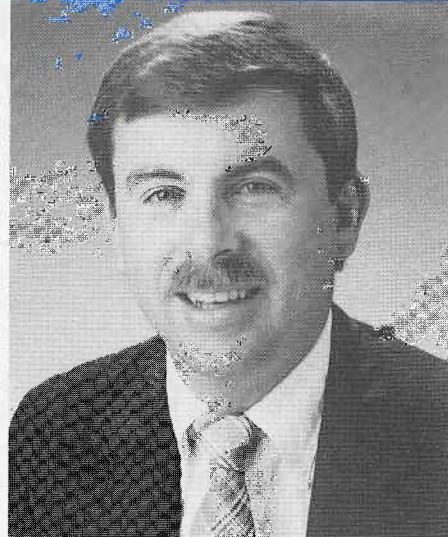
Well, I'm a month into my year as President of the Utah State Bar. The first month has already been exciting and challenging, and I look forward to serving as your president, as best I am able, for the next 11 months. Since this is my first President's Message, I thought it might be appropriate to share with you some of the things I would like to accomplish and focus on in the upcoming year; namely, the Law and Justice Center and the public's perception of lawyers and judges.

### The Law And Justice Center

The dream envisioned and embarked upon by Steve Anderson five years ago is now a reality. The Law and Justice Center will be dedicated on September 7. Alternative dispute programs will begin immediately. If you have any doubts that the facility is not a credit to our profession, drive by. Or, better yet, stop in and take a look around (645 S. 200 E.). It is a center for lawyers, for judges, for paralegals and, most importantly, for citizens. One of my major challenges and goals this year is to get the Center operational, performing the functions that it was designed to perform and to let you, as members of our Association, and the citizenry of Utah know that the building is there to use—to serve as a facility to allow disputes to be resolved inexpensively, expeditiously and fairly. Past President Reed Martineau has gone above and beyond the call of duty by saying "yes" to my request that he continue overseeing the project, concluding all of the final construction, coordinating the move, and supervising start-up of operations at the Center. I would hope that by the end of my term, the Law and Justice Center will be serving the public and lawyers and judges.

### The Public's Perception of Lawyers and Judges

My second major goal deals with improving our image. To me, professionalism and how the public perceives lawyers, judges and the legal system go hand in hand. This year, I want to continuously remind Utah lawyers and judges that we are all members of a special fellowship—an honorable profession. Sometimes we forget just what it means to be a member of the legal profession. Think about what the New York Court of Appeals said in *Estate of Freeman*, 311 N.E. 2d 480, 483 (1974), when it described what it thought a profession to be:



Kent Kasting

A profession is not a business. It is distinguished by the requirements of extensive formal training and learning, admission to practice by a licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility and notably, an obligation on its members, even in non-professional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation. These qualities distinguish professionals from others whose limitations on conduct are largely prescribed only by general legal standards and sanctions, whether civil or criminal. (\*\*\*) Intertwined with professional standards, of course, is pursuit of the idea that the profession not be debased by lesser commercial standards.

Yes, we in Utah are members of an honorable profession. We fall squarely within the description found in *Freeman*. As lawyers and judges, we give of our time freely, we engage in public service, we volunteer our talents in an attempt to improve our community, our state and our country. In a nutshell, my experience with Utah lawyers and judges reveals them to be hardworking, concerned, decent people engaged in an honorable profession.

In the upcoming year, I am going to strive to get that message to the public. I want to tell them the good things about lawyers—the positive side of our profession and of the

judicial system—and why it is that were it not for lawyers, our nation and our society would never have become as strong and free as they are today. So, if you know of anyone who wants to hear a speech that "tells the rest of the story" about lawyers and judges, have them give me a call and I'll be there to speak as your president, on behalf of each of you as members of "an honorable profession."

While the Law and Justice Center and the public's perception of lawyers and judges are special projects to me, I also look forward to reporting back to you at the end of my term in June 1989, that all of the other activities and services provided by your Bar Association have been maintained and improved.

Last, but by no means least, I want to say something about your Bar Commission and your Bar staff. I don't know that I have ever had the privilege of associating with a more concerned, qualified, unselfish group of people. I can say without qualification that each of them is dedicated to improving your Association and the legal profession, and to providing each of you, as members of the Utah State Bar, the services and benefits of a bar association that is recognized nationally as one of the best. The number of voluntary hours that Commissioners spend each month on Bar business is staggering. They do it without pay, and I'm convinced they do it because each is firmly committed to maintaining the high standards of competence and integrity that are implicit in and essential to our profession.

Likewise, your Bar staff is always working hard, assisting the Commission and Bar members with the logistics of committee and section work, providing Continuing Legal Education, admitting new lawyers and making it all happen. With these individuals working for us and with us, success is our only option.

Finally, thanks to each of you for the support and commitment you give to our profession and Association. It is due to you that the Utah State Bar is the strong, dynamic and well-respected Bar Association that it is.

I look forward to working with you and serving as your president in 1988-89, and welcome your comments, suggestions and criticisms.

■  
KENT M. KASTING

