

UTAH BAR JOURNAL

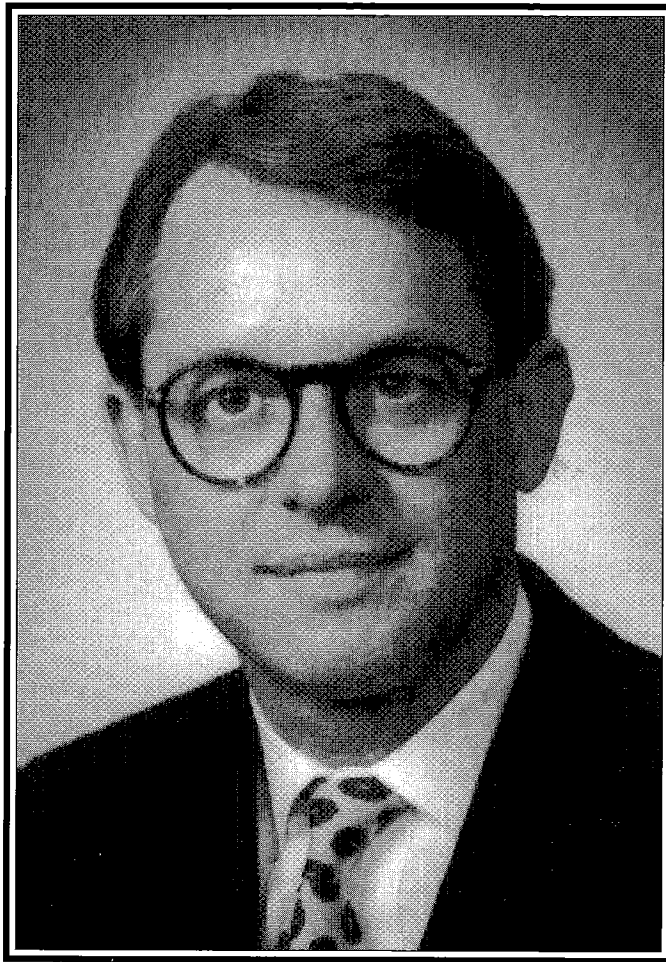
Vol. 6 No. 3

March 1993



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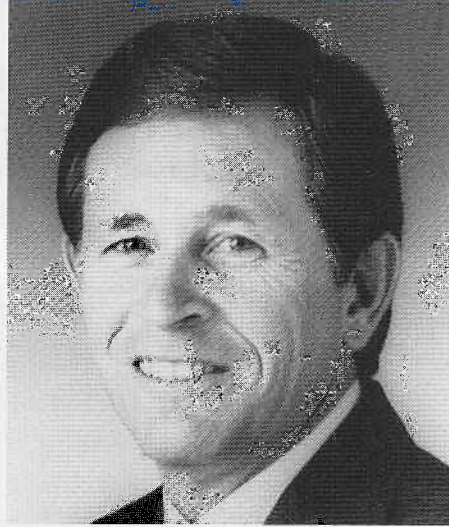
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COVER: Slickrock Ice, San Rafael Reef, Utah, taken by Chris Wangsgard, Esq., a shareholder in Parsons Behle & Latimer.

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The State of Attorney Discipline in Utah — Too Harsh, Too Lenient or Just Right?

By Randy L. Dryer

The propriety of attorneys policing themselves will always be the subject of heated debate, as will the concomitant issue of whether attorneys are too harsh or too soft in disciplining one another. Members of the public who have been victimized by unethical lawyers often feel the system is too lenient, too time consuming and overly protective. Conversely, many lawyers have commented to me that our disciplinary system is too respectful of citizen complaints (many of which are groundless) and requires the accused lawyer to spend inordinate time and energy responding to even frivolous complaints which are nothing more than a client's sour grapes over an unwanted legal result. Moreover, many bar members wonder whether the Office of Bar Counsel ("OBC") is more interested in putting another notch on the prosecutorial belt than disciplining the truly errant lawyer. In short, we have a classic "lose-lose" system where the likelihood of dissatisfaction by all participants is high. Where is the reality in Utah? Like so many things, I suppose it depends on one's perspective. From my viewpoint, however, having been on the inside of the process for sev-

eral years as a bar commissioner hearing appeals, I believe the current OBC has struck the appropriate balance between zealous protection of the public and compassion for the membership. This enlightened view, with an emphasis on prevention and rehabilitation rather than punishment, when coupled with adoption of the structural changes being recommended by the Supreme Court's Advisory Committee on Discipline, will significantly improve Utah's disciplinary system.

THE OFFICE OF BAR COUNSEL — ITS APPROACH TO DISCIPLINE

For the first time since 1989, there was no staff turnover in the office. Moreover, the current Chief Bar Counsel, Steve Trost, has been in that position since February of 1990. This continuity has enabled a consistent prosecutorial tone to be developed.

Since the OBC operates independently of the Commission, the tone and attitude is set by the Chief Bar Counsel. From my perspective, Steve Trost has not fostered an overly zealous, "hang'em high" attitude in the office. Rather, Steve has emphasized appropriate deferral of disciplinary matters into alternative rehabilitative programs,

such as drug counseling, stress management programs, mentoring etc., whenever possible. These programs are a less restrictive alternative to "yanking someone's ticket" and yet still serve to protect the public. Steve has implemented a number of new programs, including the establishment of a supervising attorney's panel where less serious offenders are placed on supervised probation and receive the benefit of a mentoring relationship with a more experienced member of the bar. Steve has recently proposed an "ethics school," modeled after a program in California which offers yet another preventative and less restrictive alternative to suspension or disbarment. The California ethics school has enjoyed great success. In the three years of its existence, 300 persons have been required to attend the school. Only one "graduate" has been charged with a subsequent ethical violation. The school is the most appropriate in complaints involving neglect, failure to communicate and other practice management areas. The OBC has also conducted a series of half-day ethics seminars throughout the state this year which are designed to identify those areas of most frequent concern for

