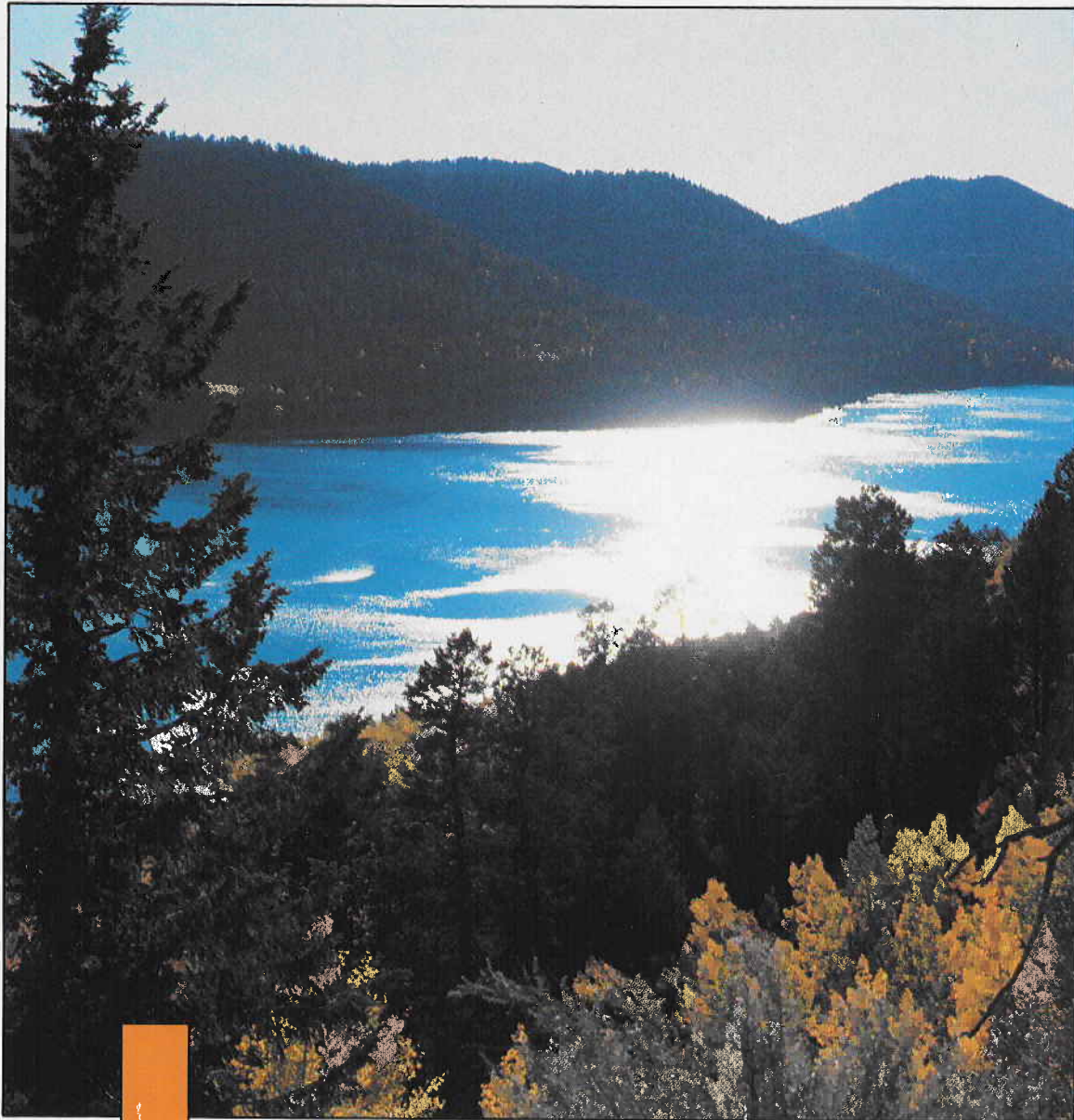


UTAH BAR JOURNAL

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Investigatory Stops: Exploring the Dimensions of the "Reasonable Suspicion" Standard

Negligent Hiring: The Dual Sting of Pre-Employment Investigation

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LETTERS

Editor's Note Reminder:

One objective of the *Utah Bar Journal* is to provide a forum for the free expression and exchange of ideas. To facilitate this, members of the Utah State Bar are invited and encouraged to submit articles, artwork, letters to the Editor and advertising for publication in the *Bar Journal*.

Article topics are not limited to specific areas of the law and all articles of general interest will be considered for publication. Bar members are also encouraged to submit photographs and drawings for the *Bar Journal's* cover art.

Readers are also welcome to submit letters to the Editor. However, letters which are published may not be obscene, defamatory, advocate or oppose a candidate for office, solicit business or subject the Bar to civil or criminal liability.

Finally, readers are invited to use the *Utah Bar Journal* as a medium for advertising. Law firm announcements, display and classified ads, etc., may be placed at reasonable rates.

The *Bar Journal* Editorial Board feels that article quality and general content of the *Bar Journal* has improved dramatically in the past year. Its present and future success is dependent upon reader participation.

Appearing for the first time in this issue of the *Bar Journal* is a cartoon by Denver C. Snuffer of the firm of Maddox, Nelson and Snuffer. His work will also appear from time to time in future issues.

Editor:

The legal profession as a self-regulating profession in Utah will end not because of lawyers in general, but because of the actions and attitudes of Bar Commissioners and Bar Counsel.

In a pending action, Bar Counsel serves as defense counsel for the Commissioners. Simultaneously, she appears before her clients, as prosecutrix in quasi-judicial Bar disciplinary matters. Thus, as an advocate she convinces her clients, the impartial Commissioners, of the strength of her case and the guilt of offending attorney. Bar Counsel also recently testified in a contested case wherein she served as defense counsel.

A judge, serving as Bar Commissioner, helps determine what proposed laws the Utah State Bar shall lobby for or against and how much to spend for lobbying. She often hears confidential information regarding Bar applicants and confidential information about attorneys subject to disciplinary action. Might such action and information influence when favored legislation or a malfearing attorney later comes before the judge?

These actions create an appearance of impropriety and/or are prohibited by *Utah Rules of Professional Conduct*; however, the Commissioners and Counsel refuse to critically examine their conduct and are accountable to nothing except their myopic concept of "the good of the profession."

Brian M. Barnard
Attorney at Law

Dear Editor:

In response to the above letter from Brian Barnard, I offer the following comments:

The propriety of an attorney serving in multiple roles occasionally raises questions of conflict of interest or undue influence. The mere fact of multiple roles or facets of a relationship between an attorney and a client or group, however, does not itself establish any impropriety.

At all levels of government, state and federal, and within virtually all State Bar associations, attorneys serve multiple roles. Some responsibilities are advisory, some representative and some include advocacy before a board, commission or council. The Attorney General, county and city attorneys, Bar Counsel and others have always had such multiple roles and have carefully balanced their duties and loyalties to avoid improprieties. Hence, it would seem to be no more conflict for Bar Counsel to also serve as general counsel to the Bar than for the County Attorney to simultaneously serve as counsel to the County Commission and also prosecutor of various matters before the same commission.

While an individual instance of impropriety could arise and must be avoided, it is my belief that attorneys serving in these capacities are well aware of the ethical constraints. I have not been aware of any improper conduct by attorneys serving in these roles. It is, therefore, incorrect and unfair to suggest the existence of improper actions by Bar Commissioners and Bar Counsel simply by reference to a very common structure. During my many years as a Bar Commissioner and President of the Bar, I can say that the various Bar Counsel and commissioners have always understood the responsibilities of the multiple roles and conducted themselves accordingly.

The comments regarding the judge relate to the subject of a petition Mr. Barnard has filed before the Supreme Court and are more appropriately resolved in the Court than in the press. Suffice it to say, I could not disagree more strongly with either the premise or innuendo.

Brian Florence

