UTAH BAR JOURNAL

Vol. 11 No. 3 April 1998

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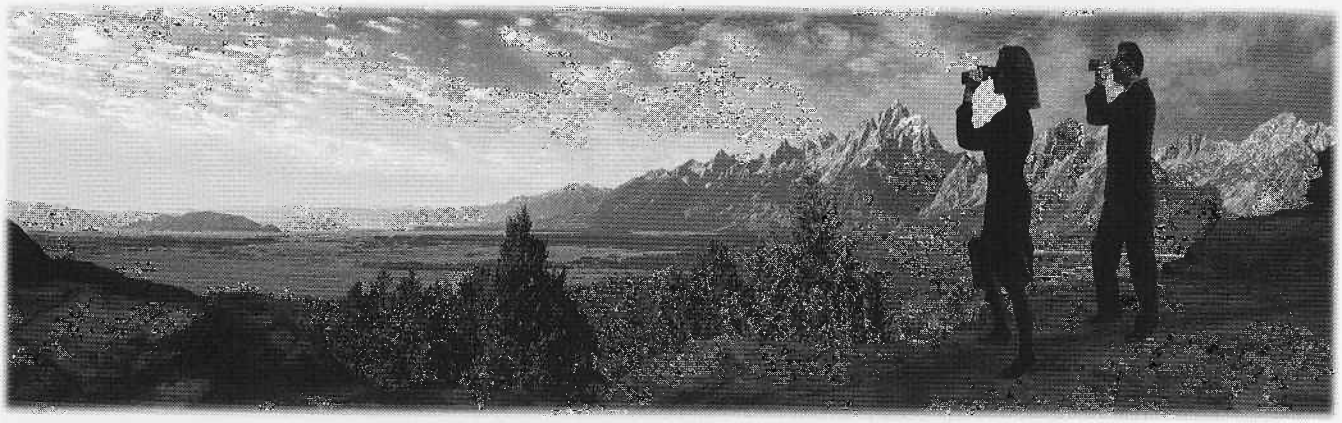

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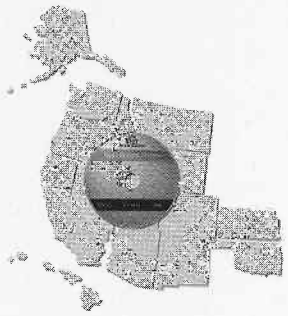

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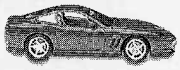

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UTAH BAR JOURNAL

Vol. 11 No. 3 April 1998

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: Sego Lilies at Zions National Park by first-time contributor, Norman K. Johnson.

CORRECTED FIRST HUNDRED COVER ISSUES AVAILABLE

The title to the photograph of Utah's First Hundred on the cover of the March edition of the *Utah Bar Journal* contained a grammatical error. For those who may wish to have a copy of this very important photograph and issue celebrating the First Hundred, the Bar has reprinted a limited number of additional copies with corrected covers. These collector's editions will be available for pick up at the Bar offices in the Utah Law and Justice Center. We apologize for this inconvenience.

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 slide, transparency or print of each scene you want to be considered.

The *Utah Bar Journal* is published monthly, 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, $40; single copies, $4.00. For information on advertising rates and space reservation, call or write Utah State Bar offices.

LETTERS

Dear Editor:

The following poem expresses the view of many of our members about the current proposal for mandatory reporting of pro-bono work.

WHAT ONCE WAS NOBLE, PRIVATE CAUSE

Pro-bono work the Bar promotes.
"Mandate reports," some agitate.
That starts to crowd out volunteers.
"But mandating makes numbers great."

It's a disease most widely spread:
"We bar members are not well liked.
We've got to spruce our image up.
Pro-bono numbers must be hiked."

"They can't be hiked without reports."
The Bar office must thus expand.
What once was noble, private cause,
we'll tabulate, broadcast, grandstand.

Why don't we let members alone?
The quality of good you do,
and services you give for free,
still do and can speak well for you.

If truth were known about the case
What's freely given does more good
than tabulated pro bono
has ever done or ever could.

He who pro-bono's slothfully,
or gives because reports are due,
It is not counted good to him,
and little public good will do.

Answer: "But poor folk get left out."
And richer folk advantage gain.
They do sometimes, without a doubt.
You'll stop that when you stop the rain.

Yet each should help out where he can,
with that but few of us contend.
But form new Bar bureaucracy?
Heaven protect us and forfend!

"It's only voluntary though."
"We'll discard those reports you do."
Buy that, the Brooklyn Bridge is next.
What foolishness! What ingenue!

Edwin H. Beus

Dear Editor:

Several years ago bar dues were raised substantially to pay the mortgage on the Bar Office Building. After the mortgage was paid, dues were not reduced.

In 1997, the Bar Commission found three-quarters of a million dollars in SURPLUS money in Bar accounts. A quarter of a million dollars was pledged to the new courthouse. A half million dollars was set aside in a "working capital reserve" account. None was used to reduce bar member dues.

Commissioners, please reduce our dues.

Brian M. Barnard

Dear Editor:

I think I speak for most members of the bar in stating that the new state Courts building in Salt Lake City appears to be a very attractive and functional edifice. I look forward to practicing there.

However, try as I might it is difficult to imagine why it is necessary to leave virtually every light in the building turned on all night every night, when the building is not even in use yet. I doubt there is a surplus of money with which to do this, and if there were it would still be worth while to conserve energy. I write this letter in the hope that someone with the power to do something about it will either put a stop to the practice of leaving all of the lights on or, if there is some good reason for doing so enlighten me.

Mitchell R. Barker

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.

Interested in Writing an Article for the *Bar Journal*?

The editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine.

If you have an article idea or would be interested in writing on a particular topic, contact the editor at 566-6633 or write, *Utah Bar Journal*, 645 South 200 East, Salt Lake City, Utah 84111.

Bar Commission Adopts Long Range Plan

by Charlotte L. Miller

At its commission meeting on March 5, 1998, the Utah State Bar Commission completed its adoption of a Long Range Plan. The Long Range Planning Committee has been writing and revising the Long Range Plan for one year and the Bar Commission has been reviewing and discussing the Long Range Plan for several months. All of the objectives have been unanimously approved by the Bar Commissioners. The Plan is now published on the Web at http:\\www.utahbar.org\LRP\long.htm. A printed copy of the Plan may be obtained from the Bar offices (531-9077).

On April 17 and on May 15, the Bar Commission will discuss and determine priorities and budgeting of resources for the objectives in the Long Range Plan. Please review the objectives, and provide comments to the Commissioners so that we have the benefit of those comments prior to those meetings. Comments regarding the Plan and its implementation will be assimilated by John Baldwin who can be reached at jbaldwin@utahbar.org. If you are too busy to bring yourself to provide comments, I ask that you at least let us know which three objectives should be at the top of the priority list.

The following is an overview of the Plan objectives. The Plan also contains significant context materials giving Bar history and future projections.

Management with a long range view. The Plan commits the Bar for a five year period. Short-term projects will be avoided in favor of long term commitments. Success in implementing the Long Range Plan will be measured by a "report card" included in the Plan.

Objective 5 – The Bar will administer consistent with the Long Range Plan.

Budget Cycles. Budgets will not only be annual but multi-year budget periods will also be used. Margins for bar operations have decreased until the last two years budgets have projected no excess revenues. The Bar has not had a dues increase since 1990. The plan suggests that dues increases not occur every year but at the beginning of a multi-year cycle. A surplus would be reserved at the inception of the multi-year cycle, just after an increase. There would be no surplus in mid-cycle years and end of cycle deficits would be funded by the initial year reserve.

Objective 6 – The Bar will refine its accounting systems and policies.

Sections, Committees and Local Bars should be a principal means of delivering services to Bar members. The Bar needs to devote more of its resources to enabling these groups, which are proximate to members, to provide services. The Bar's information, staff and internet resources will be made available to these groups.

Objective 2 – The Bar will empower, emphasize and serve through sections, committees and local bar associations.

Member Services should be a major focus for the Bar. The Supreme Court's 1990 Order severely restricted member services. The Bar has been able to make many of its member services self sustaining. With this record, the Bar needs to provide more self-sustaining member services. Bar information and technology resources can be used to enable members to adapt to changing legal markets, develop management expertise and improve their professional work.

Objective 4 – The Bar will focus on the needs of new lawyers.

Objective 9 – The Bar will emphasize and monitor the relative amount of resources that is devoted to Member Services.

Objective 10 – The Bar will serve the needs of its changing membership.

Objective 11 – The Bar will provide assistance programs to members in law office management areas.

Objective 12 – The Bar will prepare members in markets which will be impacted by future developments.

Objective 15 – The Bar will embrace and lead with technology.

Objective 16 – The Bar will lead in managing and providing information.

The Bar will exercise more leadership in state government by taking a more active role in legislative advocacy and communicating with the executive and judicial branches. The Bar can represent lawyers effectively and can avoid legislative, judicial and executive action inconsistent with lawyers' needs and the efficient administration of justice.

Objective 7 – The Bar will become more involved in State government.

Legal assistants will be licensed and regulated by the Bar. The market will drive the availability of legal services from non-lawyers. The Bar's position is that these services should be provided under the supervision of attorneys and that the new emerging profession of legal assistants should be regulated and licensed by the Bar.

Objective 8 – The Bar will administer and regulate legal assistants.

The Bar mission statement will be revised to show the dichotomy of its roles. On the one hand, the Bar regulates lawyers through admission and discipline. This role of regulation is actually adverse to individual attorneys. On the other hand, the Bar is a membership organization for lawyers. A membership organization advocates for and serves members. Revising the Bar's mission statement to reflect this dual role will make the Bar more conscious of the basis for its actions.

Objective 1 – The Bar Mission Statement will be revised to clearly reflect the Bar's regulatory function.

Other Long Range Planning will occur. Consistent with the emphasis on continuity, a long range plan will be developed for the Office of Professional Conduct and the Utah Law and Justice Center.

Objective 3 – The Bar will develop a Long Range Plan for the Office of Professional Conduct.

Objective 17 – The Bar will create a Long Range Plan for the Utah Law & Justice Center.

This Plan will be the guide for future Bar Commissions and Bar Presidents. Commitment to the Plan will provide a structure that will allow us to build on each year's accomplishments so that we can work toward greater success and a bright future for the legal system.

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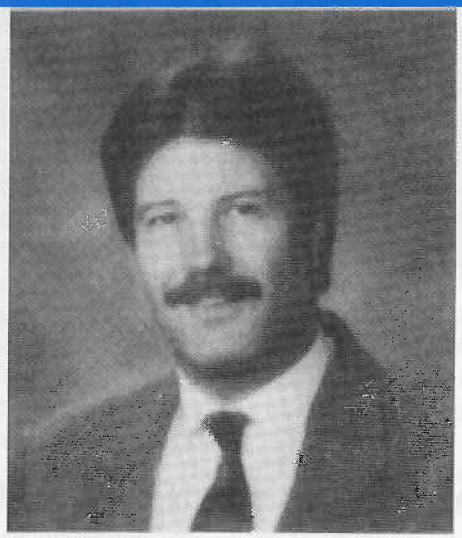


Newcomer's View of the Bar Commission

by Randy S. Kester

This being my first "opportunity" to contribute to the *Bar Journal*, I have done so with some degree of hesitancy. Those who have been "subjected" to my writing skills know precisely why. While I typically dread my "creations" being scrutinized by the Judge and opposing counsel, it is particularly intimidating to have one's thoughts and grammar exposed to the entire practicing Bar. Who knows, maybe this will be my introduction *and* my swan song.

First and foremost, I want to thank my colleagues in the Fourth District for the privilege of practicing and associating with each of them. It truly is an enjoyable experience each day, whether in Heber City, Manti, Fillmore, Nephi, Provo, or just on the telephone. I am fortunate to be counted amongst this group of judges and lawyers and am indeed honored to be their voice at the Bar Commission. I value their help and input to ensure that indeed all of our views are heard – not just mine.

While I still feel like a fledgling commissioner, I wanted to offer my views of those who are actively engaged on the present commission. For those of you who may have misconceptions about the nature of the Bar Commission, I invite you to sit through just one of the monthly Commission meetings. Any sense that the Commission is nothing more than a group of "stuffed shirts" or "good ole boys" will soon be dispelled. It was the privilege of a lifetime to listen to the members of the Bar and judiciary debate implementation of the Access to Justice task force report and more particularly the discussion about the Bar's role in providing pro bono services. Without exception, every member of the Commission, including the non-voting members, is dedicated to doing what he or she thinks best, not for personal interests, but for the public and our Utah Bar in general. There is great diversity on some issues. Frankness, candor, wisdom and a sense of humor pervade the discussions. Some of the issues are perfunctory and some are profound. There is an awareness amongst the Commissioners that every decision made impacts each of us, because each new policy or rule passed applies to all of us, including the individual Commissioners.

It has been refreshing and rewarding to discover that the Commission is not some aristocratic body whose hidden agenda is to make life difficult, miserable and complicated for the members or to use the Bar members as guinea pigs for experimenting with new programs or ideas. My observation has been that exactly the opposite is true. It is not an "us" vs. "them" scenario. Your Commission is nothing more than a group of people just like you, the Reader, trying to exercise their collective wisdom to make good choices and policy. If you choose to acquaint yourself with the complex and varied issues facing the Utah Bar, and come to be acquainted with the Commission members, you will also come to respect and appreciate them as I have. Society in general, and we, as members of the Bar, in particular, are indeed the fortunate beneficiaries of their volunteer labors.

My purpose in relating this to you is not to seek for the Commission members a "pat on the back," nor your adoration. It is quite simply to let you know that your concerns about the practice and issues facing all of us as judges and lawyers, are the same issues facing the Commission. For the Commission, however, it encompasses a much broader scope. The Commission has no monopoly on the right or best answers. The issues and needs are many, challenging and far reaching and include finances, logistics and philosophy. Write, call, or corner your Commissioner at the courthouse or office. I, for one, appreciate being educated about members' ideas and thoughts; sharing them benefits all of us, not only in making the Bar more effective, but in providing cohesiveness amongst our members.

One of the areas in which the Commission now finds controversy is the formulation and implementation of policies relative to

Access to Justice. Most particularly, the discussions and concerns regarding providing and reporting pro bono services of the Bar.

That is a significant topic deserving of more time than I can give it in this writing. Each of us has strong opinions on it. My analysis begins with the fact that I take pride in being a lawyer. Our role in perpetuating our form of government and a free society is often and vastly underrated and misunderstood. It is our commitment to the unfettered exchange of ideas and protection of each individual's rights to pursue those ideas (be it religious, philosophical, capitalistic or other) that sustains and strengthens our country.

The American public seems to think that our lawyerly concerns and focus are simply and primarily monetary. "How was copper wire invented? Two lawyers fighting over the last penny!" Heard that one?

This grand misconception can only be corrected through education. There are many avenues available. For example, the first hundred women lawyers celebration was an exceptional tool to provide the public with some insight into the goodness, contributions and dedication of women lawyers. Each time any of us are asked to speak on any topic, whether it be for church, social, school or even family functions, we should tell each group of our pride in the profession and its role in securing society's wealth of freedoms and privileges. When my children ask what lawyers do, I tell them "we help people." Just as a doctor heals the wounds of a body and a software engineer develops programs, so do lawyers help people heal their personal and business wounds and create road maps and programs to avoid future impediments, misunderstandings and litigation. Our role is and always will be that of the peacemaker. The process may be ugly and tumultuous, but in the end, whether through negotiation or the adversarial give and take of the courtroom, there is eventually always synthesis and resolution.

Without lawyers, the system would disintegrate. Without lawyers, it would deteriorate into "might makes right," and mob rule. The weak and needy would be abused and lost. We should all dedicate ourselves to ensuring such a scenario never occurs. We need only read of the random mass killing of villagers in South America and African countries to rededicate our efforts to ensuring that the rule of law prevails.

We are all better served when the helpless and needy are assisted. We are all better served by an educated public. Having an inside track about constitutional principles and the functions of the legal profession, those roles of assistance and education fall primarily upon our shoulders. Benevolence should extend from all who have the privilege of practicing law.

It has been said, "to whom much is given, much is expected." We have all worked hard to become lawyers. We should take pride in our achievements, enjoy the privilege of associating with such delightful and dedicated colleagues and nurture the significant role of our profession in society. In the same breath, we should renew our commitments to the needy and take every opportunity to educate the public about the importance of the judicial branch of government and the *vital* role of lawyers in fostering, maintaining and shaping our freedoms.

I am hopeful that I can make a contribution to the access to justice issues and that I will recognize and continue to take every opportunity to educate the public about the good and beneficial role of lawyers in our free society. I am privileged to have learned a great deal in my first six months on the Commission and hope that as my term progresses, I will reach a point where I can more meaningfully contribute to these Bar responsibilities.

With Liberty and Justice For All

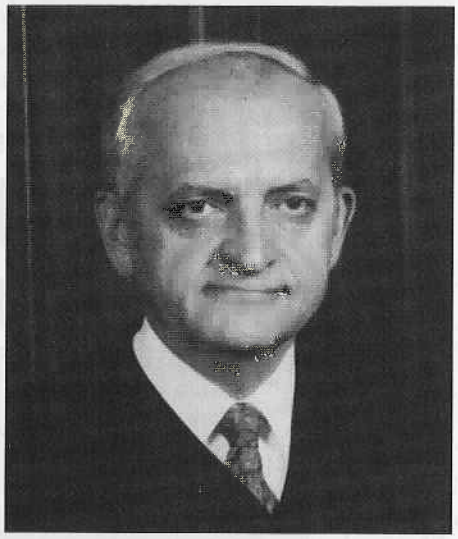
Address by Chief Judge David Sam
U.S. District Court
At the Opening Session of the Utah State Bar Mid-Year Convention

Editorial Note: Chief Judge David Sam graciously agreed to give the opening address at the Utah State Mid-Year Convention in St. George on March 6, 1998, and to lead all in attendance in the Pledge of Allegiance to the flag of the United States of America. It is hoped that Chief Judge Sam will have initiated a tradition which will continue at future Bar conventions and gatherings.

President Miller, Bar Officers, colleagues of the State and Federal Judiciary, members of the Bar, and distinguished guests, I appreciate the invitation to participate with you at the mid-year convention of the Utah State Bar. I would like to introduce my remarks by referring to a statement in the writing of the ancients which reads: "To everything there is a season and a time to every purpose under the heaven." (Ecclesiastes 3:1). Let me suggest, as we come to the close of the 20th century and prepare for the 21st century, that this is the season for us, as a profession, to reflect, evaluate and recommit ourselves to those fundamental principles that have made our nation, our judiciary and our rule of law the light of the world.

I am pleased to be a member of a profession that played such a vital role in the deliberation and work of the founders of our great nation. Their efforts brought forth a marvelous work which included the Declaration of Independence, the Constitution and the Bill of Rights. These documents embodied the promise and fulfillment of their commitment to clearly identify and protect our unalienable rights, among which are life, liberty and the pursuit of happiness.

However, to secure the blessing of liberty and freedom for generations to follow, our forefathers understood that freedom is not free but requires continual vigilance,



sacrifice and giving from all who benefit from it. In July 1776, fifty-six brave men, twenty-four of whom were lawyers and jurists, left us a constant reminder of what they were willing to sacrifice for the cause of freedom and liberty. They declared: "And in support of this Declaration, with a firm reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our fortunes and our sacred honor." History reflects that many of the fifty-six lost their lives and fortunes, but there can be no question that love of God, love of country, and their placing of duty to God and country above self, preserved forever in the annals of history their sacred honor.

By way of reflection and evaluation, let me refer to George Mason, one of the fifty-five who met in Philadelphia during the summer of 1787 for the Constitutional Convention. He had already drafted the Virginia Bill of Rights. Article 15 of the Virginia Bill, adopted on June 12, 1776, reads as follows: "No free government or the blessings of liberty can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue and by a frequent recurrence to fundamental principles." (Our Sacred Honor, William J. Bennett, pp. 319-321).

I ask, by way of self-evaluation, how we, as members of the legal profession, are measuring up in our obligation and commitment to the oath taken when we became members of the Bar. Are we doing justice, practicing moderation, civility, frugality and virtue? We must frequently remind ourselves of these fundamental principles which are necessary to preserve our free government and the blessing of liberty.

The words of Thomas Jefferson underscore the necessity of our continued vigilance and sacrifice:

> We owe every other sacrifice to ourselves, to our federal brethren, and to the world at large to pursue with temper and perseverance the great experiment which shall prove that man is capable of being in [a] society governing itself by laws self-imposed, and securing to its members the enjoyment of life, liberty, property, and peace; and further, to show that even when the government of its choice shall manifest a tendency to degeneracy, we are not at once to despair, but that the will and the watch-fullness of its sounder parts will reform its aberrations, recall it to original and legitimate principles, and restrain it within the rightful limits of self-government.

(The Writings of Thomas Jefferson, Albert Ellery Berg, V, 17 p. 445).

Let me suggest that, at a time when there are appearances of degeneracy, as Jefferson forewarned, those disciplined in fundamental principles of justice, moderation, temperance, frugality and virtue will have the influence and power to protect and perpetuate our society governing itself by laws self-imposed. And, in the words of Jefferson, secure to us the continued enjoy-

ment of life, liberty, property and peace. If we, as a nation, are to continue to prosper, I expect the legal profession, as it did when our nation was founded, to play a major role in this process.

I add, in closing, the following remarks from a speech given by the Honorable Kenneth W. Starr, then Solicitor General of the United States, to the J. Reuben Clark Law School on April 27, 1990. He stated:

> Not long ago I had the privilege of addressing the nation's oldest organized bar, the Philadelphia Bar Association. That bar has many traditions but one of the proudest is to give the leader of the bar, upon his or her retirement as Chancellor of the Bar, a small gold box. The box is a replica of one given two and a half centuries ago to the greatest of Philadelphia lawyers, Andrew Hamilton. It was given to Mr. Hamilton for his remarkable defense of freedom of the press in the immortal trial of John Peter Singer. The little gold box used in bygone years as a snuff box bears a wonderful inscription which captures that which is highest and noblest in our profession, "acquired not by money, but by character."

As we prepare for the 21st century, may we strive to embody in all that we do that which is highest and noblest in our profession. Let us now join in a pledge of allegiance to the flag of our great nation.

Pro Bono – For the Good

by James C. Jenkins

The Bible instructs: "Be not weary in well doing."

In 1995, the Board of Bar Commissioners recognized a growing need to provide legal services to the poor and disadvantaged residents of Utah. In June 1996, the Utah Supreme Court approved the Bar's petition to authorize the creation of a task force to study the problem and identify solutions. The State Wide Access to Justice Task Force, consisting of 22 individuals from throughout the state representing a variety of disciplines and interests, met regularly from July 1996 until September 1997. The final report of the Task Force, a 51-page document outlining seven specific recommendations to promote pro bono services, was approved by the Board of Bar Commissioners on September 19, 1997. A copy of the report was mailed to every member of the Bar.

Recommendation No. 2 of the Report states:

> "The Bar should petition the Supreme Court to amend the Rule of Professional Conduct to implement mandatory reporting of pro bono services of Bar members. Such reporting of pro bono services should include an optional contribution. *Under this system, pro bono service and financial contributions should remain aspirational. Only the reporting of these items should be mandatory.* A similar rule in Florida has produced increases in funding for legal services and pro bono participation." (Emphasis added.)

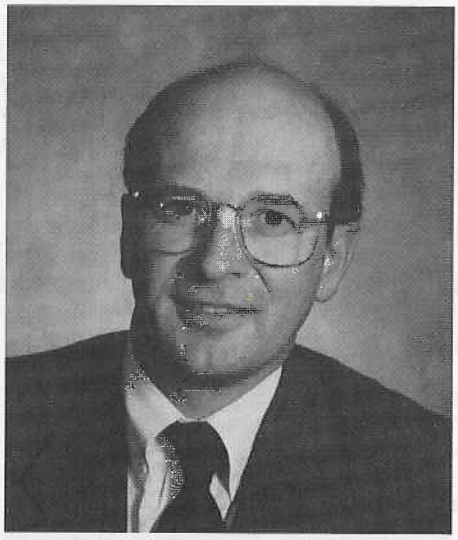
On February 6, 1998, the Bar filed a Petition with the Supreme Court to amend Rule 6.1 of the Rules of Professional Conduct. The Petition outlines the history of the Task Force, its recommendations and the purpose and justification for amending the rule. The proposed amendment retains the principal element of the present rule: "A lawyer should render public interest legal service." The proposed rule then sets forth three components:

a. It makes clear that the professional responsibility of providing pro bono services is aspirational and not mandatory;
b. It provides guidelines for what may constitute pro bono service, rather than defining pro bono service, recognizing that all pro bono service is valuable; and
c. It requires all active members to report the hours and any funds contributed toward pro bono services.

The rule specifies a simplified reporting form to be incorporated with the annual licensing statement and contemplates a procedure to maintain confidentially of member identity and protection from inappropriate disclosure of information.

It is anticipated that the Supreme Court will soon publish the proposed rule for comment. In response to the Bar's efforts to solicit comments regarding the Task Force report, some members have criticized the recommendation to amend Rule 6.1. Much of that criticism, however, has centered upon a fundamental misunderstanding of the rule's purpose and an unwarranted suspicion that the rule will be burdensome and oppressive. Despite all the rhetoric, the best way to evaluate the proposed rule is to read it. The proposed rule and a copy of the petition to adopt the rule was disseminated at the March mid-year meeting in St. George. The rule is printed in this edition of the *Bar Journal* and a copy is available at the Bar offices or can be mailed to you upon request. Not only should we understand what the rule says, but it is also important to understand what the proposed rule does not require. There is no requirement that a lawyer do a specific kind of pro bono service or that a lawyer provide a certain number of hours of service or a specific amount of monetary contribution. In fact, there is no requirement that a lawyer provide pro bono service. The proposed rule merely requires that all active lawyers report the hours or contributions they have provided during the past year. No more detail than the number of hours or the amount of contribution is necessary. It is simple and easy and it is the right thing to do.

This is not an untried proposal. Significantly, the Florida Bar and the Florida Supreme Court adopted in 1994 a similar



JAMES C. JENKINS is a shareholder in the law firm of Olson & Hoggan, P.C. His practice is primarily devoted to matters of litigation.

Mr. Jenkins holds a Bachelor of Arts degree in finance from the University of Utah and a Juris Doctor from Gonzaga University Law School. He is the past chairman of the Utah Judicial Conduct Commission, and a former member of the Litigation Section Executive Committee of the Utah State Bar. Currently he is a member of the Judicial Council Committee to Improve Jury Service, a member of the Utah Judicial Council, and is President-elect of the Utah State Bar.

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rule requiring annual reporting of pro bono service and, despite considerable opposition to mandatory reporting, Florida has witnessed more than an 33% increase in the number of volunteer attorneys, more than 18% increase in legal service hours, and more than 60% increase in monetary contributions.

"The information obtained through mandatory reporting would be used to provide the public with concrete statistics about the voluntary effort of the Bar. It will serve as a means to recruit additional attorneys willing to volunteer their services to meet the needs of the poor, to commend communities and lawyers for outstanding efforts, and to better evaluate the extent of unmet legal needs. It will remind lawyers of their special responsibility to provide pro bono service, and it will assist the Bar and the Utah Supreme Court in evaluating the effectiveness of pro bono services provided by Bar members. Finally, the information will demonstrate lawyers' commitment to access to justice. This commitment can then be used to develop broader community and governmental support for access to justice." (Final Report of the Utah Access to Justice Task Force.)

Voluntary reporting ends up being incomplete reporting. We need everyone to report. Required reporting will enhance the Bar's ability to provide access to justice. It will provide a means of measuring pro bono service in an easy and equitable way. It will support our call for support and resources from those outside the profession. It is the right thing to do, it is a good thing to do.

I know of no profession that is more generous in providing service than ours. It is an honor to be a lawyer. We need not fear doing that which is good. We ought not reject good faith efforts to improve our ability to do good.

To those who question or criticize this proposal, I urge you to read the proposed rule and the petition to adopt it, and I invite you to call or write me with your concerns. While it may require some sacrifice and we may disagree upon the approach or methods, we must always remember that we are all engaged in the effort to do good. We ought not be weary in well doing.

Balancing Family Life with the Practice of Law

by Mark L. Fishbein

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Recently I was in a meeting with five clients who were directors and principals of a major computer software company when I noticed my staff members looking in through the glass doors and laughing.

I didn't understand what they were laughing about until I looked down into my arms and realized that I was standing in front of my clients with my six-month-old son in my arms!

You may think that this scene is unusual for a law office, if not impossible. After all, clients have certain expectations of how their lawyer should appear and act. Not so at our law firm. It does not have to be all or nothing. There are alternative choices between family and the practice of law.

Certainly, the practice of law is demanding requiring long, grueling hours and stressful situations. But you need not compromise your family life. In fact, maintaining strong family support and contact with your loved ones has helped us become more efficient, capable and competent attorneys.

This is not a dream, but a very real situation in our law office, and one that is possible for all attorneys, with just simple adjustments in your state of mind, self-confidence and faith in your practice. We have found that our clients appreciate our work efforts and will remain clients because of our abilities and accomplishments. In addition, our clients have expressed their admiration and support for our family priorities!

Here are some examples of our office policies and procedures which we strongly recommend as guidelines for successfully merging family life with the practice of law:

1. Integrate the family into the practice.

Last year, my wife and two staff persons in my office were either pregnant or had spouses who were pregnant. In an effort to allow all of us to share in the beautiful experience of newborn children, we modified one office (with privacy) into a nursery. We placed two baby rockers, a changing table and a comfortable chair in the room so that the women of our law firm family could nurse their newborns when necessary. This allowed for a more consistent and productive work environment. We all chipped in and assisted in the chores of a newborn. Yes, even I changed diapers! Our new mothers were able to work productive days. All the staff and clients appreciated this.

2. Always welcome the children of your office staff and clients with a friendly and comfortable atmosphere.

We always keep coloring books and markers in the waiting area for children to play with and occupy their time while their parents (staff or clients) are involved with legal matters. We strongly recommend that you use washable markers to keep repainting costs to a minimum! We even have a television and videocassette recorder in the conference room.

3. Explain your priorities to your clients and have confidence in your reputation and abilities.

This was extremely difficult for me personally to accept. But after explaining to my clients exactly what our priorities were, balancing family needs with the demands of our legal practice, and after proving to our clients that we were always capable of providing the same high standards of legal work, our clients gained respect, loyalty and support for our efforts. We have received praise for our efforts and even numerous new client referrals. You will be pleasantly surprised by the support your clients will give you for such a new and refreshing atmosphere in your law office.

4. Allow casual dress days for office staff.

Whenever we have a light client-calendar day, or on days before holidays, we often decide as a group to have a casual dress day. Appropriate but casual dress is not offensive to clients, and the staff really enjoys the break from suits and ties, skirts and dresses. I am always amazed at how productive we are as a group when we are comfortable in our surroundings, including clothing. Of course, we need to maintain a reasonable standard of dress code and choice of days to be "casual". However, we have received only positive feedback for this policy. As a side note, I personally find it extremely rewarding that I invested in purchasing nice polo shirts with our law firm name and logo embroidered on each shirt. Most of our staff members wear our law firm shirts on these casual days. This illustrates the loyalty of our staff and reflects the teamwork atmosphere of our office. Clients really appreciate this. They feel they are part of a winning team. This type of attitude makes clients want to come back. Most people hate seeing their attorneys, possibly worse than having a root canal at the dentist! From the feedback we receive from our clients, this is not the case at our law office.

5. Don't allow those late-night hours to take time away from the family.

I often hear advice from friends to spend as much time as possible with my family now because the children grow up so fast. It is so important for the family, as well as for my own mental well-being, to spend some quality time each day with the family. But, there are days that we are required to work later than 6 p.m. We have an office policy that when we are required to work overtime, we will get together as a group and pick the most convenient day of

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the week (if possible) to put in those extra hours to get an emergency project completed. Then we will leave the office that day at 6 p.m. as usual, go home, have dinner and spend some quality time with the family, then return to the office at 9 p.m. and work to midnight. This may sound impractical, but it really works. We are more effective and refreshed, having spent time with the family. We very often can get the work done quicker because of this. If we are a little tired the next morning, it was well worth it because we were able to get the emergency project completed without losing time with the family. At first I did not believe this policy would work, but I strongly recommend that parent/attorneys, especially single parent/attorneys, try this approach. For me, spending time with my wife and children each day is critical to balancing my life and defining my success.

6. Schedule annual office events.

July 4th parties, Christmas hayrides and year-end parties allow all staff, family and friends to spend relaxed off-hours together enjoying each others company. Keep the tradition going, possibly rotating the location each year to another person's home. These gatherings build unity and strong working relationships that help us all through the stressful, long hours we endure in our practice.

7. Allow for summer "short days."

Our office as a group will choose one Friday each month during the months of June, July and August in which we close the office early (2 p.m.) to allow all of us to enjoy some extra quality time over the weekend. It is amazing how valuable this is. It almost makes for a long weekend, and everyone returns Monday morning a little more refreshed and efficient in their work. This policy pays huge dividends to adding to a better practice of law in our office, and the output does not suffer, it actually increases! One caveat though: we don't allow anyone to leave early unless we all can leave early as a group. Therefore, we all pitch in and assist those with more work on their desks.

8. Have confidence in your staff's abilities and dedication to their job responsibilities.

This was difficult for me at first, but now I realize that most people are loyal and committed to doing the very best they can in their jobs. I try to allow my staff the "space" they need to "do their thing." I give each staff person the right to balance their work responsibilities with their personal needs. This results in a happier, more efficient and better work environment.

I hope this article may help some of you balance your personal life with the practice of law. Hopefully, you will then find more enjoyment and fulfillment, not only in your family lives, but also in your legal practice.

The Conundrum of Gifted, Inherited and Premarital Property in Divorce

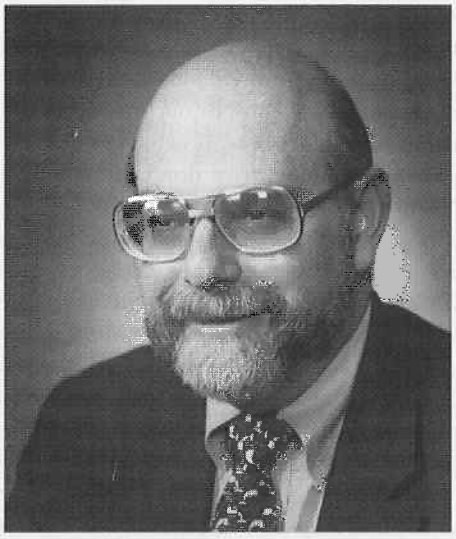
by David S. Dolowitz

On August 16, 1988, the Utah Supreme Court issued its opinion in *Mortensen v. Mortensen*, 760 P.2d 304 (Utah 1988), apparently to serve as the seminal opinion in resolving conflicting decisions regarding award of gifted, inherited and premarital property in a divorce proceeding. Justice Howe, speaking for the majority, reviewed virtually all prior Utah Supreme Court decisions on this subject and, after observing that these decisions were inconsistent, declared:

> [The decisions] can be reconciled because of the effort made by the nondonee or nonheir spouse to preserve or augment the asset, *Dubois v. Dubois, supra*, or because of the lack of such effort, *Burke v. Burke, supra.* Also, in *Weaver v. Weaver, supra,* the award to the wife of part of the assets given to the husband during the marriage by his family was in lieu of alimony and attorney fees. Significantly, no case has been found where this Court has reversed a trial court's disposition of gifts or inherited property received by one party during the marriage. In almost every case, we have emphasized the wide discretion trial courts have in property division and have refrained from laying down any general rules for the disposition of gifts and inherited property.

760 P.2d at 306-07. Then, after reviewing decisions from other jurisdictions, the Court articulated what was to be the prospective rule in Utah:

> We conclude that in Utah, trial courts making 'equitable' property division pursuant to section 30-3-5 should, in accordance with the rule prevailing in most other jurisdictions and with the division made in many of our own cases, generally award property acquired by one spouse by gift and inheritance during the marriage (or property acquired in exchange thereof) to that spouse, together with any appreciation or enhancement of its value, unless (1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, *Dubois v. Dubois, supra,* or (2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse. *Cf. Jesperson v. Jesperson*, 610 P.2d 326 (Utah 1980). An exception to this rule would be where part or all of the gift or inheritance is awarded to the nondonee or nonheir spouse in lieu of alimony as was done in *Weaver v. Weaver, supra.* The remaining property should be divided equitably between the parties as in other divorce cases, but not necessarily with strict mathematical equality. *Teece v. Teece,* 715 P.2d 106 (Utah 1986). However, in making that division, the donee or heir spouse should not lose the benefit of his or her gift or inheritance by the trial court's automatically or arbitrarily awarding the other spouse an equal amount of the remaining property which was acquired by their joint effort to offset the gifts or inheritance. Any significant disparity in the division of the remaining property should be based on an equitable rationale other than on the sole fact that one spouse is awarded his or her gifts or inheritance. The fact that one spouse has inherited or donated property, particularly if it is income-producing, may properly be considered as eliminating or reducing the need for alimony by that spouse or as a source of income for the payment of child support or alimony (where awarded) by that spouse. Such property might also be utilized to provide housing for minor children or utilized in other extraordinary situations where equity so demands. These rules will preserve and give effect to the right that mar-



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ried persons have always had in this state to separately own and enjoy property. It also accords with the normal intent of donors or deceased persons that their gifts and inheritances should be kept within their family and succession should not be diverted because of divorce.

760 P.2d at 308-09.

In concurring with this general rule, Justice Zimmerman, speaking for himself and Justice Durham, stated:

> As I read the majority opinion, the rules articulated today require only that in the *usual* case not fitting within one of the exceptions spelled out by Justice Howe, property acquired by one spouse during the marriage through gift or inheritance should be awarded to that spouse upon divorce. I take this to be nothing more than a variation on the analogous rule applicable to property brought into the marriage by one party: in the usual case, that property is returned to that party at divorce, absent exigent circumstances. *Preston v Preston,* 646 P.2d 705, 706 (Utah 1982).

760 P.2d at 310.

Factually, Mr. Mortensen's parents had organized a corporation and conveyed the family farm to it. They gave 50% of the stock to themselves and divided 50% among their five children, one of whom was Mr. Mortensen. A stock certificate, bearing his name alone, was issued to him for 10% of the outstanding shares. Mrs. Mortensen was not involved with the corporation except for some minor secretarial duties. The issue that came before the trial court was whether that gifted stock was part of the marital estate. The trial court ruled that the stock was property of the marriage and should be taken into consideration in dividing the marital property. The stock thereafter was awarded to the defendant and Mrs. Mortensen was awarded about two-thirds of the value of the remaining property. This was done by stipulation reserving the issue presented to the Supreme Court in the appeal as to whether or not the stock should have been considered marital property or outside the marital estate.

After making the clear articulation of the rule governing an award of gifted, premarital or inherited property quoted above, the court promptly proceeded to violate this articulated rule, application of which would have excluded the stock from the marital estate and any adjusting property award because the stock belonged to Mr. Mortensen. The court based its decisions on the equitable factors that the parties had married at a young age, that the defendant had continued his education and obtained a Ph.D., taught and was teaching at a private university while the plaintiff, after the last of their four children was born, went back to school and obtained a bachelors degree and teaching certificate, that the defendant was earning approximately twice what the plaintiff earned each month, yet agreed to the receipt of no alimony and child support for the three minor children in her custody and that while there was no evidence in the record regarding the retirement benefits to which the parties may have become entitled, the Court thought the defendant's benefits would have been greater because of his higher salary and longer years of employment. The Court ruled:

"The stock thereafter was awarded to the defendant and Mrs. Mortensen was awarded about two-thirds of the value of the remaining property. This was done by stipulation reserving the issue presented to the Supreme Court in the appeal as to whether or not the stock should have been considered marital property or outside the marital estate."

> In view of these factors, it would not have been inequitable for the trial court to award plaintiff two-thirds of the remaining property and defendant one-third, giving no weight at all to the fact that he received his shares of stock.

760 P.2d at 309. Thus, while the Supreme Court had articulated a seminal rule, it did not apply the rule just articulated to the facts before it nor did it explain that it was applying the articulated rule yet accepting the decision of the trial court.

The *Mortensen* ruling affirming an unequal distribution of marital property was fully in accord with precedent, e.g., *Pope v. Pope*, 589 P.2d 752, 753 (Utah 1978), *Kerr v. Kerr*, 610 P.2d 1380, 1382-1383 (Utah 1980) and *Henderson v. Henderson*, 576 P.2d 1289, 1290 (Utah 1978), but the failure of the Court to describe why the just articulated rule was not being applied continued the confusion the decision was to end. Had the Court gone on to explain why it was not applying the just articulated principle and the exception being utilized rather than presuming that everyone would understand it, the rule could have been established and applied, not ignored. The governing principle articulated by Justice Howe for the Court could have been applied in the fashion that Justices Zimmerman and Durham anticipated. However, rather than either explaining or articulating why the Court varied from its just articulated rule, it simply made the declaration quoted above. 760 P.2d at 309. By doing so, the Court in reality turned back to its prior decision of one year earlier, *Burke v. Burke*, 733 P.2d 133 (Utah 1987).

In *Burke*, the Court ruled that any appreciation during the marriage of the value of the property which the wife had inherited did not become part of the marital estate in which the husband was entitled to share based upon equitable principles. The specific facts in *Burke* were that three-and-a-half acres of unimproved land were inherited by the wife in 1979. No improvements were made on the property and the parties did nothing to enhance its value. At the time of its inheritance, the land had a value of $5,000.00. By the time of the divorce, it had appreciated to $35,000.00 an acre due solely to inflation in real estate values in the area. Dealing with the specific issue we are now examining, the Supreme Court explained:

> Defendant first contends that while it was proper for the court to preserve the plaintiff's ownership of the property she inherited, any appreciation in its value during the marriage became a part of the marital estate in which he is entitled to share. The version of the statute governing the disposition of property at the time of the divorce decree was couched in broad general terms without limitation: [*'Englert v. Englert,*576 P.2d 1274, 1276 (Utah 1978)] when the decree was entered, U.C.A., 1953, §30-3-5(1) (2d Repl. Vol. 3, 1976

ed., Supp. 1983) (amended 1984 & 1985) provided that "when a decree of divorce is made, the court may make such orders in relation to the . . . property . . . of the parties . . . as may be equitable." This Court has followed that statutory mandate on numerous occasions and has consistently concluded that it conferred broad discretion upon trial courts in the division of property, regardless of its source or time of acquisition. [2*Englert,* 576 P.2d at 1275-76 (retirement benefits); *Searle v. Searle*, 522 P.2d 697, 700 (Utah 1974) (marital and premarital realty and personalty); *Weaver v. Weaver,* 21 Utah 2d 166, 168, 442 P.2d 928, 929 (1968) (stock acquired by purchase and gift); *see Savage v. Savage*, 658 P.2d 1201, 1203 (Utah 1983) (premarital stock interests in family corporation); *Workman v. Workman*, 652 P.2d 931, 933 (Utah 1982) (assuming premarital gift of realty); *Bushell v. Bushell*, 649 P.2d 85, 87 (Utah 1982) (premarital farm land); *Jesperson v. Jesperson*, 610 P.2d 326, 328-29 (Utah 1980) (premarital personalty); *Dubois v. Dubois*, 29 Utah 2d 75, 76-77, 504 P.2d 1380, 1381 (1973) (monetary gifts from wife's relatives)].

In the exercise of their discretion, trial courts need be guided by the general purpose to be achieved by a property division, which is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives. [3*Read v. Read,* 594 P.2d 871, 872 (Utah 1979)].

733 P.2d at 134-35. After articulating these general principles and discussing the cases effecting these general equitable principles, the Court declared the generalized ruling set out below. It should be noted that the cases discussed by the Court in footnote 2, inserted at the end of the first full paragraph quoted above, are the same cases which were discussed by the Utah Supreme Court, speaking through Justice Howe in the *Mortensen* decision, which included the *Burke* decision itself. In contrast to the apparent seminal rule articulated in *Mortensen*, the Court in *Burke* stated:

Premarital property, gifts and inheritances may be viewed as separate property, and in appropriate circumstances, equity will require that each party retain the separate property brought to the marriage. [4*Preston v. Preston,* 646 P.2d 705, 706 (Utah 1982)] However, the rule is not invariable. [5*Workman,* 652 P.2d at 933] In fashioning an equitable property division, trial courts need consider all of the pertinent circumstances. [6*Englert,* 576 P.2d at 1276] The factors generally to be considered are the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties' standard of living, respective financial conditions, needs and earning capacity; the duration of the marriage; the children of the marriage; the parties' ages at time of marriage and divorce; what the parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony and child support to be awarded. [7*Searle,* 522 P.2d at 698; *MacDonald v. MacDonald*, 120 Utah 573, 581-82, 236 P.2d 1066, 1070 (1951); *Pinion v. Pinion*, 92 Utah 255, 259-60, 67 P.2d 265, 267 (1937)] Of particular concern in a case such as this is whether one spouse has made any contribution toward the growth of the separate assets of the other spouse [8*See Dubois,* 29 Utah 2d at 76, 504 P.2d at 1381] and whether the assets were accumulated or enhanced by the joint efforts of the parties. [9*Preston,* 646 P.2d at 706; *Jesperson*, 610 P.2d at 328; *see Bushell*, 649 P.2d at 86-87]

733 P.2d at 135. After completing this discussion, the Utah Supreme Court in *Burke* concluded that the trial court did not abuse its discretion in awarding the appreciation in the inherited property solely to Mrs. Burke.

In examining the two decisions, *Burke* and *Mortensen*, as thus set out, it appears that the Utah Supreme Court attempted to state a hard and fast rule in *Mortensen* to differentiate it from *Burke*. The actual ruling in *Mortensen* could simply have been effected by applying the *Burke* test to the decision of the trial court. By not applying the rule articulated in *Mortensen* to the facts of that case or articulating precisely how the rule so carefully enunciated was to be applied to differentiate it from *Burke*, the actual results demonstrated that there are two rules in existence in Utah, the *Burke* rule, which is an equitable division rule, and the *Mortensen* rule, which provides that gifted, inherited and premarital property return to the donee, legatee or premarital owner including appreciation in value unless one of the exceptions applies.

As will become apparent in examination of the decisions of the Utah Court of Appeals after the *Mortensen* ruling, the Utah courts have continued to apply *Burke* and, with two exceptions, follow *Mortensen* only in name. In taking this action, without articulating what is transpiring, the Utah Court of Appeals follows and applies *Burke* and ignores *Mortensen.* Thus, the practitioner who is confronted with a case which should be governed by *Mortensen*, frequently finds himself/herself telling a client *Mortensen* exists, presenting the client with the *Mortensen* rule, only to be confronted in court by decisions following *Burke*. For whatever reason, the Utah Supreme Court has not granted certiorari to advise the Court of Appeals and the trial courts, let alone the practitioners in Utah who are trying to advise their clients, which rule is to be applied, *Burke* or *Mortensen*. This has led to conflicting decisions and a general miasma which makes it very difficult to resolve cases without trying and appealing them if a settlement cannot be reached.

While the Supreme Court apparently felt that its articulation of these rules should govern the division of premarital, gifted and inherited property, the Court of Appeals has had numerous opportunities to review trial court decisions which seem just as conflicting as those the Supreme Court reviewed in *Burke* and *Mortensen*. It has continued to effect conflicting rulings. The one principle that does seem to arise from application of *Mortensen* by the Utah Court of Appeals is that when the courts find it equitable, *Mortensen* is applied. When they find it equitable to do otherwise, *Burke* is utilized. This presents a conundrum for both counsel trying to advise clients and trial courts hearing cases.

In a sense, it is that much more disappointing that the *Mortensen* court did not adhere to its own newly established rule (which could have ended the confusion), when one considers the prologue delivered by Justice Howe. This prologue recognized

that equity and discretion should not take the place of consistency and predictability:

> UCA Sec. 30-3-5 tersely provides "When a decree of divorce is rendered, the court may include in it equitable orders relating to . . . property . . . ." [In Weaver, we rejected that a gift should be kept separate from marital estate.] . . . We did so without any analysis of the issue and based our decision on the oft-repeated rule that under section 30-3-5, there is no fixed rule or formula for the division of property, the trial court has wide discretion in property division, and its judgment will not be disturbed on appeal unless an abuse of discretion can be demonstrated.

Mortensen, 760 P.2d at 305-06. Despite this clear pronouncement, the Court nevertheless accepted the application of equitable principles to adjust the distribution of property. It is therefore unsurprising that many later Court of Appeals cases still use the very same logic questioned above to justify an award of separate property as an "equitable" distribution. This assures that predictability will receive little weight in distribution proceedings, while proliferating the very instability *Mortensen* said would be erased.

In the first decision after *Mortensen*, the Utah Court of Appeals ruled in *Osguthorpe v. Osguthorpe,* 804 P.2d 530 (Utah App. 1990), that while *Mortensen* applied generally, the evidence justified the trial court's finding that the gift was not to one spouse, but to both spouses. Consequently, the determination not to award the gifted property to the alleged donee spouse (even though his father testified that the gift was only to his son) was affirmed. In this respect, *Mortensen*, though stated to be the general rule, was ruled inapplicable.

Indeed, the *Osguthorpe* Court never really gave *Mortensen* a chance. Though the basic rule set out in *Mortensen* is stated, the Court immediately qualified the rule:

> However, in making equitable orders pursuant to section 30-3-5, the court has consistently concluded that the trial court is given broad discretion in dividing property, regardless of its source or time of acquisition.

804 P.2d at 535, citing *Burke*. This is not the rule of *Mortensen*, nor does it fit either of the exceptions *Mortensen* allowed for deviations from the general rule. Instead, the *Osguthorpe* Court, like many Court of Appeals decisions to follow, seems to establish a hybrid rule unintended by the *Mortensen* Court. This hybrid appears to add a third exception to *Mortensen*, derived from *Burke*, which allows for deviation from the basic rules if equitable principles so require. This hybrid rule allows Courts ostensibly to follow UCA 30-3-5, *Burke* and *Mortensen* all at once. However, this approach sacrifices the predictability intended by *Mortensen*. As noted below, some decisions have ignored *Mortensen* entirely.

"Consequently, even an asset that is left completely alone is to some extent maintained by both parties during the marriage in the overwhelming majority of cases."

In the second case, *Moon v. Moon*, 790 P.2d 52 (Utah App. 1990), the Court of Appeals affirmed a trial court's division of the equity in a marital home after return to the husband of the value of land gifted to him prior to marriage. While the husband built the home on land gifted to him prior to marriage, the court found that the loan incurred to build the home was paid off during the marriage. Thus, the increase in value beyond the value of the gifted land was ruled marital. The Court of Appeals did not discuss application of *Mortensen* in its ruling. It turned to the decisions of *Noble v. Noble*, 761 P.2d 1369 (1988), published shortly before *Mortensen*, and *Burke v. Burke*, 733 P.2d 133 (Utah 1987), as authority for affirming the trial court. The theoretical guidance of *Mortensen* that the appreciation of the value in premarital or gifted property should be awarded to the donee was ignored and the practical problems which must be addressed by counsel and the trial courts were glossed over.

There are two aspects to a potential increase in the value in premarital, gifted or inherited property. The first arises from an increase in equity due to the payment during the marriage of any obligation on the property, such as a mortgage. Each dollar of the mortgage which is paid during the marriage from funds earned during the marriage which would be, in most cases, marital funds, increases the equity by decreasing the debt. There is, however, a second component to the increase in value, that is the increase in market value that occurs either from inflation or increased market demand. Neither the trial court nor the appellate court paid any attention to this difference, yet it is a problem that exists in virtually every case where this issue is presented.

An additional real economic consideration that is ignored by the Court in *Moon* is that if Mr. Moon had invested the money value of his land by simply placing it in a bank account or buying stock or bonds, he would have earned interest and possible appreciation in the value of his principal. While the value of the premarital gift was returned to him, no interest on his money or increase in the land value was attributed or awarded to him. The *Mortensen* language regarding appreciation should, logically, when applied to this situation, result in at least an award of attributed interest and/or increase in value of the original gift to him, a concept never discussed by any court in any of the decisions dealing with premarital, gifted or inherited property.

Analyzing this issue and turning back to the facts of the *Burke* case, there is no question that taxes were paid on the raw land during the time it was held by the parties after it was inherited by Mrs. Burke. Neither the trial court nor the appellate court, so far as one can tell from the decision, confronted, discussed or dealt at all with the problem that presented. Marital funds were used to pay those taxes, yet it was presumed that neither party did anything to develop the land. Had the taxes not been paid, a tax sale would have resulted. Consequently, even an asset that is left completely alone is to some extent maintained by both parties during the marriage in the overwhelming majority of cases. By ignoring the difference in valuation categories, that is payment of debt and/or payment of taxes as contrasted with increase in value which comes either from inflation or appreciation because of market forces, the confusion in rule application has been magnified.

In *Burke,* the Utah Supreme Court upheld the award to the wife of appreciation in inherited property, ruling that it did not become part of the marital estate in which the husband was entitled to share,

which would, on its face, have been directly contrary to the ruling in *Moon*. Mr. Moon completed building the house before the marriage. It was the loan he incurred to build it that was paid during the marriage. *Noble* permitted the award of premarital property to a spouse based upon physical disabilities inflicted on the wife during the marriage by the marriage partner who owned the property prior to the marriage. No factor of this sort was present in *Moon*. The Court of Appeals in *Moon* related that the general purpose of property distribution is "to enable the former spouses to pursue their separate lives as well as possible." 790 P.2d at 56, citing *Burke* and ignoring *Mortensen* as well as the economic realities of the case. Thus the equitable principles articulated in *Burke*, not the rule with exceptions announced in *Mortensen*, were the standards utilized by the Court of Appeals in the first real post-*Mortensen* decision.

Two months later, *Barber v. Barber*, 792 P.2d 134 (Utah App. 1990), was released. Prior to marriage, Mr. Barber and his children moved into Mrs. Barber's home and he made a series of improvements in the property. He also purchased furniture which was used to replace furniture owned by Mrs. Barber. The Utah Court of Appeals, affirming the trial court, ruled that the improvements in the home, rather than being accumulated property of unmarried cohabitants, was in fact marital property and it was divided. The same treatment was accorded the furniture. No discussion of the application of *Mortensen* to the facts or law in *Barber* was made, though *Mortensen* was cited as authority for affirming the trial court's determination that it was appropriate to value and divide Mr. Barber's improvements in the house. (See footnote 4, 792 P.2d at 136). There is no discussion of the application of *Mortensen* to the facts or law in *Barber*. In fact, the *Barber* Court cites *Mortensen* for a proposition of law almost entirely antithetical to the actual holding, stating "it is well settled that premarital or separate property may, under appropriate circumstances, be subject to equitable division upon divorce." 792 P.2d at 136, n. 4. The Court then affirmed the trial court's determination that it was appropriate to value and divide Mr. Barber's improvements in the house. Once again, the Court of Appeals cited *Mortensen* to apply a hybrid rule, utilizing equitable principles as a third, unwritten exception to the treatment of marital property, and citing *Burke* for such exception.

On October 12, 1990, the Utah Court of Appeals published its decision in *Burt v. Burt*, 799 P.2d 1166 (Utah App. 1990). This is the case that the Utah Court of Appeals thereafter cites and most often applies in subsequent decisions when reviewing trial court decisions regarding gifted, inherited and premarital property.

"The Court did rule the findings entered by the trial court did not provide a basis for the award of the total equity of the parties in their marital home to Mr. Burt. Declaring that such an award could be appropriate if supported by proper findings, the Court found the existing findings inadequate."

The Burts were married in 1946. Between 1969 and 1972, Mrs. Burt received a total of $71,600.00 by inheritance. Over the years she made various investments and increased her holdings so they had a value of $174,600.00 at the time of trial. Mr. Burt had also inherited some property. The trial court awarded each of them their respective inherited properties, then awarded Mr. Burt the marital home which effected an unequal division of the marital property and Mrs. Burt appealed. In analyzing the facts, the Utah Court of Appeals noted that apparently the trial court had rationalized that Mrs. Burt had been able to amass her property through investment of her inherited funds only because Mr. Burt paid the mortgage and family living expenses from his income, even though both parties worked. The Court reasoned that had they not used these marital earnings for their living expenses, Mrs. Burt could not have accumulated her separate fund.[1] Consequently, the Court concluded that while Mrs. Burt was given all that she had accumulated, Mr. Burt, in being awarded the marital home, was, in effect, awarded a portion of Mrs. Burt's marital funds and a portion of her inherited funds.

The Court of Appeals recited the general rule articulated by *Mortensen*, 799 P.2d at 1169, then went on to reject Mr. Burt's challenge to the determination that the funds which were inherited by Mrs. Burt should be awarded to her. He asserted because they had changed form, that is, they were received as cash, then invested in stocks, bonds and real estate, they became marital. The Court ruled that moving the funds from one investment to another does not, by itself, destroy the integrity of the separate property. The Court of Appeals held that one who receives a gift or an inheritance or who brings property into a marriage does not have to maintain the property in the form in which it was received or held, it can be converted or changed as long as its separate identity is maintained and none of the other exceptions to application of *Mortensen* occur. If this is effected, a return to the donee is appropriate. 799 P.2d at 1169.

The Court of Appeals went on to declare that Mr. Burt could have been awarded a portion of Mrs. Burt's augmented inheritance under any of the *Mortensen* exceptions, 799 P.2d at 1169, then affirmed the trial court's declining to do so. The Court did rule the findings entered by the trial court did not provide a basis for the award of the total equity of the parties in their marital home to Mr. Burt. Declaring that such an award could be appropriate if supported by proper findings, the Court found the existing findings inadequate. Accordingly, it vacated the decision and remanded the matter for further findings without indicating what rule should be applied to the disposition of that particular property. 799 P.2d at 1169-70.

The *Burt* decision is the most thorough examination of the economic problem presented in these cases. Separate, inherited or gifted property can be maintained as separate property generally, only if marital income is used to support the parties and the separate property. Taxes have to be paid on income as well as real estate if ownership is to be maintained. This is equally true of securities when income is reinvested. Assuming that the parties can bring before the court appropriate accounting evidence to demonstrate how the separate property was maintained as separate property, appropriate adjustments should seem to include awarding some or all of the appreciation in value and/or interest on the original property if it is included in the

property to be divided to the person who owned it or inherited it or to whom it was gifted and a return of taxes or interest paid should be made to the marital estate.

None of these factors were specifically addressed in the decision though (with the exception of the taxes) they were discussed. Subsequent decisions refer back to the *Burt* considerations which, in reality, without mentioning it apply the *Burke v. Burke* rationale, even when *Mortensen* is the standard purportedly utilized.

These concepts have been considered by the Utah Supreme Court though they have not been recently applied. In its 1982 decision of *Davis v. Davis*, 655 P.2d 672 (Utah 1982), the Court ruled that where a husband was awarded one-half of the equity in a property which included appreciation coming from increase in value in the future due to inflation, but was not awarded half of the increase of value that would come from payment of the mortgage, the result was inequitable. The Court ordered the decree be amended to allow the husband to participate in one-half of the increase in value brought about by both reduction of the mortgage as well as the increase in market value.

Because the Court of Appeals in *Burt* discussed the concepts involved and problems, purportedly utilizing the *Mortensen* framework but, in reality, using the *Burke* rationale, *Mortensen* and *Burke* have become scrambled. This emerges in subsequent decisions of the Court of Appeals which cite *Burt* as authority for the decision made. The *Burt* decision also emerges as another lost chance to clearly set the *Mortensen* decision apart from *Burke*, while presenting a clear example of the hybrid formula the Court of Appeals has established in distribution cases involving separate property. As outlined above, *Burt* cites *Mortensen* and its general rule, but proceeds to deviate from this rule. The justification for such deviation is stated at 799 P.2d at 1169, "The court may award an interest in the inherited property to the non-heir spouse . . . in other extraordinary situations where equity so demands." Although *Burt* cites *Mortensen* for this proposition, this is really the rule of *Burke*. Therefore, like many cases before it and, unfortunately, many cases to follow, the *Burt* Court finds a way to ostensibly follow both *Burke* and *Mortensen*, preferring the comfort of equity to the hard-nosed standard of predictability. Therefore, another chance for establishing predictability was lost, assuring years of future confusion and "equitable excuses."

The final decision in 1990 is *Dunn v. Dunn*, 802 P.2d 1314 (Utah App. 1990). The trial court had ruled that a professional corporation formed by Dr. Dunn during the marriage was separate property because it was built by his professional activities. The Court of Appeals reversed and ruled that the professional corporation was a marital asset as it was formed during the marriage and, while Mrs. Dunn may not have been involved in the day-to-day activities of the professional corporation, she was a partner in the marriage and therefore, as Dr. Dunn's partner in the marriage, was a partner in his business. 802 P.2d at 1318. The Court also ruled that patents created during the marriage were marital assets. 802 P.2d at 1318-19. The decision expanded the definition of marital property and, if applied to the undiscussed but practical principles of payment of debt, payment of taxes and growth in value during marriage, provide a further method of complicating the clear articulations of *Mortensen*.

"The court may award an interest in the inherited property to the non-heir spouse . . . in other extraordinary situations where equity so demands."

Interestingly enough, however, the *Dunn* decision did seem to state, or came very close to stating, the correct rule at the end of its decision. Citing *Burt*, the Court stated:

> On remand the trial court should follow the systematic approach set forth in *Burt*. That is, the court should first properly categorize the parties' property as part of the marital estate or as the separate property of one or the other . . . . Each party is then presumed to be entitled to all of his or her separate property and fifty percent of the marital property.

802 P.2d 1323. This is the correct statement of the *Mortensen* rule. As long as the lower court does not confuse the proper place of equity in this decision, it will be following *Mortensen*. Equity should have no place in the determination of whether separate property should be divided between the parties. Equity only applies to the "hotchpot" of marital property already itemized. This is the full rule of *Mortensen* and, as will be noted at the end of this paper, the Utah Supreme Court should take the opportunity to clarify this ruling. Until it does, the hybrid application of *Mortensen* and *Burke* will continue to confuse everyone.

In any event, as it stands the *Dunn* decision fits together with the *Barber* decision in defining what is marital property and non-marital property. However, both of these decisions should be considered as modified by the 1991 decision of *Walters v. Walters*, 812 P.2d 64 (Utah App. 1991), where the Court of Appeals ruled that marital property begins to accumulate only when the parties are married. 812 P.2d at 67. Consequently, property acquired prior to the marriage, even though accumulated during cohabitation, cannot be treated as marital property. 812 P.2d at 68. While this does not directly involve the application of *Mortensen*, it sets the foundation for the application of *Mortensen* in a case which has not faced the appellate courts, that of parties who cohabit for a period of time, each bringing in premarital property which increases in value during cohabitation and marriage, which then should either be awarded to the person who owned it prior to marriage or divided as marital property.

Unfortunately, it would seem that the promise of predictability will go just as unfulfilled in terms of cohabitation property divisions as it has for the disposition of property in marital situations. Without citing *Mortensen*, the *Walters* Court asserted that while the general rule allows each party to retain separate property, "this rule is not invariable. In fashioning an equitable property division, trial courts need consider all of the pertinent circumstances . . . . Thus, where unique circumstances exist, a trial court may reallocate premarital property as party of a property division incident to divorce." 812 P.2d at 67, citing *Burke* and *Burt*. Thus, even in its infancy, the discussion of distribution of increases in property and property values during cohabitation raises the hybrid applications of equity and separate property.

The next decision was published approximately one year later. In April of 1992, the Court of Appeals released its

decision in *Hogue v. Hogue*, 831 P.2d 120 (Utah App. 1992). Mr. and Mrs. Hogue were married, divorced, then remarried. In the time period between the two marriages, Mr. Hogue acquired a ranch. Prior to their second marriage, Mr. Hogue conveyed his ownership in the ranch to Mrs. Hogue as a means of protecting the property from his creditors. Two years after their remarriage, Mr. Hogue went through a bankruptcy proceeding in which he claimed no interest in the ranch. Four years after the bankruptcy, Mrs. Hogue filed the second divorce action. The trial court determined that the ranch was marital property which should be divided between the parties and each was awarded an undivided one-half interest. Mrs. Hogue appealed. The Court of Appeals affirmed quoting extensively from *Burke v. Burke*, 831 P.2d at 121-22, rather than the subsequent, theoretically seminal decision of *Mortensen* and its own decisions of *Moon v. Moon* (discussed above) and *Naranjo v. Naranjo*, 751 P.2d 1144 (Utah App. 1988), a decision which preceded *Mortensen*. The Court of Appeals ruled that the trial court did not abuse its discretion in making the award of an undivided half of the property to each of the parties. The principle utilized was equitable division. The Court did not determine whether an exception to the rule of the return of premarital property should be effected as, theoretically, should have been required by application of the more recent *Mortensen* decision.

Four months later, the Court of Appeals affirmed the trial court's award of an automobile claimed to be non-marital as well as premarital property of the husband to the wife, in *Watson v. Watson*, 837 P.2d 1 (Utah App. 1992), based on the trial court's finding of a unity of interest between Mr. Watson and his solely owned corporation which permitted the court to treat the corporation as an alter-ego. The trial court also awarded some person premarital property owned by Mr. Watson (household furniture, garden tools, washer and dryer and premarital contribution to a trailer) to Mrs. Watson citing *Burke* and *Newmeyer v. Newmeyer*, 745 P.2d 1276 (Utah 1987), a Utah Supreme Court decision which preceded Mortensen, as authority to affirm the decision. The Court of Appeals ruled that because the ultimate division of property was fair and equitable, the award of premarital property to Mrs. Watson would be upheld. This is a ruling based on *Burke* principles with no discussion of the application of *Mortensen*.

Thus, by the end of 1992, four years after the articulation of the *Mortensen* decision, the Utah Court of Appeals continued to apply *Burke* to uphold a division of premarital property rather than applying the *Mortensen* decision which is what the Utah Supreme Court appeared to be ruling would be required from and after that decision.

"The Court of Appeals ruled that the trial court did not abuse its discretion in making the award of an undivided half of the property to each of the parties. The principle utilized was equitable division."

The next decisions of the Utah Court of Appeals addressing this area was rendered in 1993. In *Hall v. Hall*, 858 P.2d 1018 (Utah App. 1993), the Court affirmed the decision of the trial court to return the inheritance of Mrs. Hall, which had been placed in to the marital home, to her, applying *Burt v. Burt*, its own prior decision of 1990, and the *Watson* decision, 858 P.2d 1022, but remanded the matter to the trial court, finding that the trial court had either improperly computed the proper method of return or failed to explain why it had used a method of return which returned more than the inheritance. No discussion of *Mortensen* exists in the opinion. Instead, the Court purports to follow *Burt*, stating that, although property may be divided into separate and marital categories, "the court should then consider the existence of exceptional circumstances and, if any be shown, proceed to effect an equitable distribution in light of those circumstances." 858 P.2d at 1022. Thus, the *Hall* Court once again applies the wrong equitable equation to the calculus of property division, either by ignoring *Mortensen* or applying an unwritten third exception.

In November of 1993, the *Willey v. Willey*, 866 P.2d 547 (Utah App. 1993), decision was published. The exception noted in *Mortensen v. Mortensen*, that if property has been consumed or its identify lost, was applied to affirm the ruling that where Mrs. Willey's home had been sold and the proceeds merged into other property which had been utilized by the parties in order to support their lifestyle, Mrs. Willey's claim for return of these funds was appropriately rejected. This decision applied and followed *Mortensen*.

The Court of Appeals examined this problem four times in 1994. The first was *Bingham v. Bingham*, 872 P.2d 1065 (Utah App. 1994). Mr. Bingham had been given $175,000.00 by his father. After receipt of the gift, he loaned the funds to his dairy corporation. He claimed that this $175,000.00 should therefore have been awarded to him in the division of the equity of the dairy. Mrs. Bingham agreed that the $175,000.00 was a gift but asserted that by loaning the money to the dairy, in which she was deemed to have an interest, the money was effectively commingled. The Court of Appeals applied the *Mortensen* rule, 872 P.2d at 1068-69. The Court held the funds retained their nature as an identifiable gift of separate property, even after it was loaned to the corporation, and it should not have been included as part of the dairy's equity. However, the Court went on to note that a portion of the loan had been repaid and ruled that those funds which were repaid by the dairy to Mr. Bingham had be subtracted from the $175,000.00. The trial court was found not to have effected this subtraction but other calculation errors were ruled to negate this error and the bottom line property distribution was affirmed. The application of *Mortensen* and the investment language of *Burt* were properly effected in the *Bingham* decision though the discussion is cursory.

The second 1994 decision is *Finlayson v. Finlayson*, 874 P.2d 843 (Utah App. 1994). While the Court recited the principles of *Mortensen*, the evidentiary issues eclipsed application of the rule. The crucial issue became what was marital versus separate property. The primary value of this decision is the importance of meeting the burden of proof in establishing that property is marital, or gifted, or inherited and being able to trace it. Failure in this area will lead to not even reaching the *Mortensen* versus *Burke* problems.

The third 1994 decision was *Schaumberg v. Schaumberg*, 875 P.2d 598 (Utah App. 1994). In this case, the husband inherited money which he invested in a business building. After the initial invest-

ment, he refinanced the building several times. The issue was whether or not he was entitled to back out and have returned to him more than the amount of his inheritance. The trial court ruled the appreciation in the building was a marital asset. Application of *Mortensen* to value appreciation would appear to require the court to have awarded him all of the appreciation. However, the court ruled that even though the husband used inherited funds to make the down payment on the building, he used marital funds to maintain and augment that asset. Consequently, the Court of Appeals found no error in the trial court's determination that appreciated portions of the assets changed its character from separate to marital. In this regard, the decision is similar to but is a step beyond the decisions of *Moon* and *Burt*. In *Burt*, the Court noted that Mrs. Burt could not have accumulated her separate funds if Mr. Burt had not supported the family. In this case, Mr. Schaumberg used funds that were clearly marital funds for the maintenance and operation of the asset, thereby, the Court ruled, converting the appreciation into marital property. This is similar to the ruling in *Moon*. The *Schaumberg* marriage was a long one and the inheritance placed in the commercial property had been held for a substantial portion of the marriage.

The *Schaumberg* decision reveals another aspect to the problem in applying *Mortensen*. The longer gifted, inherited or premarital property is maintained during a marriage, the more difficult it is to show that it is a separate property. If nothing else, payment of taxes would show use of marital funds to maintain separate property. If marital funds are used to pay debt, such as a mortgage, the facts will present the use of marital income to pay debt and taxes. The facts may also show use of the property which will result in its being considered marital. *Schaumberg* clearly demonstrates the difficulty of maintaining the separate identity of real estate. While *Schaumberg* involves a commercial building, a residence would present the same problems.

As discussed above, the payment of property taxes, refinancing, maintenance, remodeling, repair of a home or a rental property presents the probability of commingling. If that occurs, then a question arises not yet addressed by the Court, which is, should the donee, legatee or premarital owner be entitled to at least interest on the value of the separate property as compensation for ownership prior to conversion of the appreciation into marital property. It would appear that should be a just result if the accounting and tracing evidence can be properly developed.

The final decision in this series of decisions is *Cox v. Cox*, 877 P.2d 1262 (Utah App. 1994), which was published July 5, 1994. While this primarily presents the issue of interpretation and application of the law in regard to premarital agreements, the Utah Court of Appeals applied *Burt* through *Hogue* to rule that the trial court could consider equitable principles in considering the property to be divided. In this case, when the issue was whether Mrs. Cox was to be awarded half interest in Mr. Cox's home or simply a return to her of her funds used to remodel the home. The Court applied equitable rationale to reinforce its contract ruling and the award of her money back, not half the equity in the home. 877 P.2d at 1269-70. Application of *Burke* was used by the Court to anchor its ruling.

While equitable principles articulated in Burke *can lead to fair decisions in individual cases, it does not lead to a predictable body of case law, which the Supreme Court appeared to envision would flow from its* Mortensen *decision."*

Not directly involved, but of note on this subject, is the 1996 decision of *Endrody v. Endrody*, 914 P.2d 1166 (Utah App. 1996), where the Utah Court of Appeals ruled that the property placed in a trust established by Mr. Endrody's parents for his benefit during the marriage could not be considered marital property or part of the marital estate.

The Utah Court of Appeals has shown a tendency to apply the *Burke* decision more than the *Mortensen* decision even though *Mortensen* should be viewed as controlling and defining *Burke*. This has been true even though the Utah Supreme Court discussed *Burke* as one of the decisions that was to be reconciled in the *Mortensen* decision. 760 P.2d at 306. It would appear generally that *Mortensen* is being applied by the trial courts and Court of Appeals to return to a party a clearly identified piece of property that is inherited, premarital, of gifted. The key issue is whether it is commingled, enhanced, or there is an equitable reason of some type to require its division. Although, according to *Mortensen*, considerations of equity were not to be made in the distribution equation until after separate property was removed by a devisable mix, many courts have apparently read *Burke* to include equity as a third exception to the *Mortensen* rule, and have equitably distributed property, separate or not. Indeed, equitable considerations may be the key ingredient in a court's decision to deviate from the guidelines of *Mortensen*.

The second question is the appreciation in the value. The decisions are in conflict and appear to be governed by *Burke* rather than *Mortensen*. *Mortensen* would appear to require a gifted, inherited or premarital property with its appreciation to be returned to the person who owned it prior to the marriage or to whom it was donated or by whom it was inherited, unless one of the particular exceptions articulated in *Mortensen* applied. This has generally not been done.

As the Court of Appeals has declined to enforce *Mortensen*, it is apparently honored only in those cases where the trial court has applied it. In most cases, the Utah Court of Appeals turns to the *Burke* decision through its own decisions of *Burt* and *Naranjo* to justify division of premarital, gifted or inherited property. The problem this presents for practitioners and the trial court is to determine which standard is actually to be applied in the case that is being presented to the court. This problem apparently will not resolve itself until the Utah Supreme Court revisits the *Mortensen* decision. This solution would not require much difficulty. The Court simply needs to assure the Court of Appeals that it meant what it said in *Mortensen*: (1) that separate property, as well as its increased value, is to be divided from marital property; (2) that equity will not deny the donee or heir spouse of such property; (3) that the resulting marital property is to be divided equitably; and (4) that deviations from this rule shall only apply in the case of commingling or enhancement through joint effort. Reaffirmance of this rule should assure that the hybrid application of *Mortensen* and *Burke* – that is, the

application of a third exception to the separate property rule, namely general principles of equity – which seems to have developed in the Court of Appeals will no longer apply. Such a pronouncement would finally bring about the predictability *Mortensen* originally strived for but ultimately did not ensure.

The Utah Supreme Court articulated in *Mortensen* what should have been and was apparently proposed to be a seminal decision. Unfortunately, that decision has not been consistently applied by the Utah Court of Appeals. The resulting confusion has led to the inconsistent results discussed above. While equitable principles articulated in *Burke* can lead to fair decisions in individual cases, it does not lead to a predictable body of case law, which the Supreme Court appeared to envision would flow from its *Mortensen* decision. As the Supreme Court has not revisited this area by granting certiorari and either moving back to *Burke* or reexamining *Mortensen*, it appears the Utah Court of Appeals, while discussing *Mortensen*, has in fact applied *Burke*, which has produced a lack of clarity and conflicting results in the decisions rendered since *Mortensen* by that court.

[1]Unexplored was payment of income taxes. It is probable that not only was earned income used to pay living expenses, it paid the income taxes (if any were incurred) on Mrs. Burt's reinvested income.

ABF News

American Bar Foundation

Justice Judith M. Billings and James B. Lee Become Life Fellows of the American Bar Foundation

Judith M. Billings, Judge for the Utah Court of Appeals and ABF Fellows State Chair James B. Lee, Parsons Behle & Latimer, both of Salt Lake City, were honored as Life Fellows of the American Bar Foundation at the Forty-second Annual Meeting of The Fellows on February 1, 1998. The Chair of The Fellows, Joseph A. Woods, Jr., presented plaques to new Life Fellows at a reception in their honor at the Hermitage in Nashville, Tennessee. Life Fellows were recognized for their generous support and strong commitment to the ideals and goals of the Foundation.

The Fellows is an honorary organization of attorneys, judges and law professors whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

Established in 1955, The Fellows encourage and support the research program of the American Bar Foundation. The objective of the Foundation is the improvement of the legal system through research concerning the law, the administration of justice, and the legal profession. The Fellows are limited to one third of one percent of lawyers licensed to practice in each jurisdiction.

Discipline Corner

DISBARMENT

On February 11, 1998, the Honorable Guy R. Burningham, Fourth Judicial District Court, entered a Judgment of Disbarment, disbarring Richard C. Coxson from the practice of law for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5(a) (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 5.5(a) (Unauthorized Practice of Law), 8.4(a), (b), (c) and (d) (Misconduct) of the Rules of Professional Conduct. Coxson was also ordered to pay restitution. The Order was based on a Discipline By Consent entered into by Coxson and the Office of Professional Conduct.

Coxson misappropriated client funds in five matters totaling approximately $105,275 for his own use and benefit.

Additionally in March of 1993, a former client retained Coxson to represent him in an adversary proceeding in a Utah bankruptcy action in which the Trustee sought to recover money from the client as a fraudulent transfer by the debtor. Coxson failed to provide competent representation to the client in both matters. Coxson failed to abide by the client's decisions about the objectives of the collection matter when he failed to obtain local counsel to represent the client in the Hawaii bankruptcy proceeding filed by the debtors. He did not notify the client of this fact, and the judgment owed to the client was subsequently discharged by that bankruptcy proceeding. Coxson similarly failed to abide by the client's decisions about the objectives of his representation in the Utah bankruptcy proceeding. In this matter, Coxson failed to notify the client that he would not be present at a hearing on a Motion for Partial Summary Judgment, which was subsequently granted when Coxson failed to appear on the client's behalf. Although Coxson had attempted to withdraw as the client's counsel before the hearing at the client's repeated requests and demands, having already secured other counsel, the order granting his withdrawal had not been granted as of the date of the hearing.

While still domiciled in Nevada, a client contacted Coxson in Utah in August of 1994, and Coxson advised her that she could remove her daughter from Nevada and establish residency in Utah. The client retained Coxson to file a Motion for Separate Maintenance, to be followed by the filing of a divorce action after she had established residency. The client paid Coxson a $1,000 retainer fee. Coxson failed to competently represent the client in the Nevada divorce action. Although Coxson explained to the client that he could not appear in a Nevada court because he was not licensed to practice in Nevada, Coxson failed to abide by the client's decisions concerning the objectives of her representation when he neither appeared with her, as he had initially promised, nor arranged for local counsel to appear with her at a hearing in Nevada on her husband's action against her for unlawfully removing their child from that state. The client subsequently had to retain a Nevada attorney to represent her in the Nevada proceeding. Coxson submits that he tried unsuccessfully to retain counsel in Nevada before the hearing. Coxson assisted the client in retaining Nevada counsel after the hearing. Coxson provided no beneficial legal services to the client, yet failed to return her $1,000 retainer fee. Coxson engaged in the unauthorized practice of law when he promised the client he would appear with her at the hearing in Nevada, and then prepared and directed her to submit at the hearing a motion and memorandum requesting abatement of any jurisdictional determination. The court rejected the motion because Coxson was not licensed to practice law in Nevada.

In May 1996, clients retained Coxson to represent them in a disputed property matter. Coxson failed to competently represent the clients and failed to act with reasonable diligence and promptness in representing them. Coxson failed to keep the clients reasonably informed about the status of their matter, did not promptly comply with their reasonable requests for information, and did not explain their matter to the extent reasonably necessary for the clients to make informed decisions regarding their representation. Coxson failed to promptly surrender the clients' file to the attorney who subsequently represented them. Coxson engaged in conduct prejudicial to the administration of justice when he failed to attend at least one court hearing on their behalf. Coxson has agreed to pay the clients $6,200.00, plus 7.45 percent in interest.

In August 1996, a client retained Coxson to represent her in a child custody and support matter. Coxson failed to competently represent her, and failed to abide by her decisions concerning the objectives of the representation when he failed to respond to interrogatories. Coxson failed to act with reasonable diligence and promptness in representing the client, failed to keep her reasonably informed about the status of her matter, and did not explain the matter to the extent reasonably necessary to enable her to make informed decisions regarding her representation. Additionally, Coxson failed to promptly surrender the client's file to her upon her request after she terminated his representation. Coxson engaged in conduct prejudicial to the administration of justice when he failed to respond to interrogatories propounded to his client, resulting in the Court ordering a default judgment to be taken against his client.

DISBARMENT/RECIPROCAL DISCIPLINE

On February 13, 1998, the Honorable G. Rand Beacham, Fifth Judicial District Court, entered a Judgment of Disbarment, disbarring Donald R. Sherer from the practice of law pursuant to Rule 22 of the Rules of Law Discipline and Disability. The Judgment of Disbarment was based on a Stipulation for Entry of Reciprocal Discipline entered into by Sherer and the Office of Professional Conduct.

On March 30, 1993, the Honorable Ellen R. Peck, Judge of the State Bar Court of the State Bar of California signed a Decision Recommending Disbarment and Related Orders. The court noted the following reason for Sherer's disbarment:

> After a noticed hearing at which DONALD RALPH SHERER (hereinafter "Respondent") failed to appear, this Court concluded that Respondent wil[l]fully failed to comply with the provisions of rule 955, California Rules of Court, as ordered by the California Supreme Court and wil[l]fully committed other acts of professional misconduct against four

clients and the State Bar. In light of his prior misconduct and the present record, this Court recommends that Respondent be disbarred from the practice of law for the protection of the public.

In four cases, Sherer was retained by clients and failed to respond to the client's reasonable requests for information, failed to file a lawsuit, failed to provide an accounting of services as requested by the client, and failed to return the files after his withdrawal from the cases. In one case, Sherer threatened a client that if he did not withdraw his complaint with the State Bar of California, he would file a lawsuit against the client for false and malicious complaints.

Additionally, Sherer failed to maintain his correct membership address with the State Bar of California. As a result, he did not participate with the State Bar of California's investigations and their disciplinary proceeding.

RESIGNATION PENDING DISCIPLINE/RECIPROCAL DISCIPLINE

On February 12, 1998, the Honorable Michael D. Zimmerman, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline, enjoining and prohibiting Robert F. Feland from practicing law in the State of Utah.

On June 16, 1986, Feland was disbarred from the practice of law in the State of Arizona by the Supreme Court of Arizona. Feland's Resignation Pending Discipline evolved from a reciprocal discipline investigation conducted by the Office of Professional Conduct pursuant to Rule 22 of the Rules of Lawyer Discipline and Disability.

SUSPENSION

On February 8, 1998, the Honorable G. Rand Beacham, Fifth Judicial District Court, entered an Order of Suspension, suspending John A. Giffen from the practice of law for six months for violation of Rule 3.1 (Meritorious Claims and Contentions) of the Rules of Professional Conduct. The suspension was stayed and the Order places Giffen's practice involving adoptions on supervised probation for one year. Giffen was also ordered to attend the Ethics School of the Utah State Bar and the Annual Family Law Seminar of the Utah State Bar. The Order was based on a Stipulation for Discipline By Consent entered into by Giffen and the Office of Professional Conduct.

During his representation of prospective adoptive parents in an adoption matter, Giffen violated the Rules of Professional Conduct. Not married or living together, both birth parents lived in California. Giffen and a California attorney arranged for the birth mother to come to Salt Lake City when she was pregnant with another child that was to be adopted after the birth. The birth mother miscarried in Salt Lake City. Thereafter, while the birth mother was in Utah, arrangements were made to adopt the other child of the birth mother ("the child"), at the birth mother's suggestion. The birth mother placed the child with the adoptive parents where the child stayed for some time. The birth father did not consent to the adoption of the child and retained an attorney in Salt Lake City to represent him to take the child away from the adoptive parents and to return the child to him. Judge James L. Shumate granted the natural father's request to have the child returned to him and ordered Rule 11 sanctions against Giffen. Giffen appealed Judge Shumate's rulings. The Utah Court of Appeals upheld Judge Shumate's rulings.

Giffen violated Rule 3.1 of the Rules of Professional Conduct in that he did not make a reasonable inquiry into existing law, made allegations in the amended petition that were not well grounded in fact, failed to obtain a preplacement adoptive study, failed to comply with the Interstate Compact on the Placement of Children, knew or should have known that the birth mother's consent was flawed, knew that the birth father would not consent to the adoption, and failed to make a reasonable inquiry as to whether the natural father's parental rights were terminable.

ADMONITION

On February 2, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.9(a) (Conflict of Interest: Former Client) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School.

In September 1996, the attorney was employed by a client to represent him in a water purchase agreement. The client was the seller. Thereafter, the client discharged the attorney. After the attorney was discharged by his client, the other parties to the agreement contacted the attorney. At their request, the attorney wrote a "demand letter" on their behalf to his former client.

BAR COMMISSION CANDIDATES

Second Division Candidates

CALVIN GOULD

At the urging of a number of lawyers from the Second Division I have chosen to seek the Bar Commission seat that is open. I practiced law in Ogden for 17 years; was Second District Court Judge for 14 years; was United States Magistrate Judge for 8 years. I have acted as both prosecutor and defense attorney and served in the Utah Legislature. Although retired, I am healthy and vigorous and I am able and willing to devote the time necessary to represent the lawyers of the Second Division. I really would like to make the discovery processes more simple and I would like to restore more civility to the practice of law and will work towards those goals.

LARRY L. WHYTE

I am running for Bar Commissioner because those responsible for creating and overseeing Bar programs have lost touch with the Bar membership. The current proposal to mandate minimum pro bono requirements, at the same time limiting what is and is not to be considered acceptable pro bono activities, demonstrates how detached and patronizing Bar leadership has become. Despite overwhelming opposition to Bar proposals of recent years (double collection of bar dues, contributions to the Law & Justice Center, contributions to the new Third District Courthouse and imposition of pro bono requirements), those in charge have forged ahead, convinced that they alone know what is best for Bar membership.

It is because Bar members cannot relate to this type of thinking that I am running for Bar Commissioner. It is time for common sense and common consent to govern the decisions of the Bar. The Bar should be less involved in lobbying, politics and bureaucracy and more involved in assisting, representing and providing services to its members, on whom the Bar relies for its financial support. If elected I will do everything in my power to represent the individual Bar Members and reverse the current tide of burgeoning Bar bureaucracy and politics.

Third Division Candidates

JOHN A. ADAMS

John Adams has served as president of the Young Lawyers Division and as president of the Salt Lake County Bar. He has served on various bar committees, including the past two Annual Convention planning committees. He has practiced in Salt Lake City since 1982 with the law firm of Ray, Quinney & Nebeker where he emphasizes commercial litigation.

You expect your bar commissioners to be on top of issues affecting lawyers, use good judgment, be even-handed and plan for the future. From my past bar service, I know these objectives can only be achieved by investing a great deal of time and effort. I'm willing to make that commitment. I ask for your vote and support.

R. CLARK ARNOLD

Last year I sued[1] to overturn the Bar Commission's contribution to the new Courthouse. I objected more to the Commission acting without input or approval from the Bar members as a whole than to the contribution itself. The Court rejected my positions that the Rules require advance notification to Bar members and that major actions should be submitted to the Bar membership for approval. That decision allows the Bar Commission to act on major matters without oversight and without meaningful input by individual Bar members. Individuals can insure involvement in Commission actions only by electing Commissioners pledged to consult with the members they represent and committed to limiting arbitrary action. It is with that pledge that I am seeking election as a Bar Commissioner. I will insure that members are involved in major Commission actions and will support changes in Bar organization to give members demographically fair representation and a meaningful voice in the selection of Bar officers.

[1] *Arnold v. Utah State Bar,* No. 970300, Utah Supreme Court, Decision filed October 3, 1997.

Born 4/4/42, BA (Occidental '64) JD (U of U, '67), LLM (Geo. Wash. '72), USAF (1967-72); Admitted Utah (67) & Colo (90), US Dist. Ct., Utah, 10th Cir, U.S. Sup. Ct., Court Military Appeals.

Third Division Candidates cont.

SHARON A. DONOVAN

Dear Colleagues,

I would appreciate your support for my candidacy for Bar Commissioner for the Third District. I am a partner in the firm of Dart, Adamson and Donovan and have been an active Bar member for 19 years. I am past chair of the Family Law Section of the Utah State Bar. I have also served the Bar in a variety of other areas throughout my career and was selected as the Utah Family Lawyer of the Year in 1992.

I have been honored to lecture for the Bar in many areas of family law and professionalism. The following is a list of some of the most critical issues I believe the Bar should be addressing now and in the immediate future:

- Financial responsibility and accountability to all members
- Implementation of advanced technology in the practice of law and intensive education programs to aid lawyers in its use.
- Professionalism in the practice.
- *Pro Bono* Legal Service Availability.
- New Lawyer Support and Training.

Serving you as Bar Commissioner would be a privilege. I would appreciate your support. Thank you.

MICHAEL N. MARTINEZ

Dear Colleague:

Last summer, like many of you, I didn't go fishing. I didn't ride a roller coaster. I didn't see a Buzz game. Clients came first. When I worked as an Assistant City Attorney, in the Attorney General's Office and later for the County Attorney, daily contact with other attorneys made the daily grind less cumbersome. But, now, as a sole practitioner, I see few attorneys. Contacts are through fax, e-mail and phone. Hard as it is to believe, you don't miss it till it's gone, as they say in divorce court.

Then I had an epiphany. If I become a Bar Commish, I thought, I can kill two birds with one stone [a hybird]. I can commingle with colleagues and get out of the office at least one day a month and even help the profession and community.

My political guru advises I have a campaign plan. So, here it is:

1. Campaign slogan: Be Like Mike [I said this before that guy Jordan did]. My first slogan was "I'm #3" because there are three positions open and if each attorney voted for me as their third vote I might be elected.

2. Campaign goal: Take a day off to fraternize with peers and maybe do some good. [Don't dwell on the do-gooder part if you don't like them.]

3. Voters love promises, so, attorneys who vote for me will not be invited to my annual slush fund raiser. I will appoint friends to committees, since I have no partners to appoint. My obituary will reflect your participation at this crucial time in my political career.

When JFK appointed Bobby United States Attorney General he said, "If I don't look out for my brother who will?" President Clinton expressed the same sentiment when he said "If I don't look out for my homeboys and squeezes who will?" I believe the Bar's allegiance is first and foremost to its members. If we do not look out for each other who will? I pledge to look out for lawyers, Bar and public.

On Law Day, April 1 this year, give the Bar Commission what it deserves:

BE LIKE MIKE [MARTINEZ] I'M #3.

DEBRA J. MOORE

Debra Moore has practiced law in Salt Lake City since 1983 in a variety of settings, including small firm, large firm and government. She currently handles civil appeal in the Litigation Section of the Utah Attorney General's Office. Ms. Moore was formerly a shareholder in the law firm of Watkiss & Saperstein, where she focused on product liability litigation. She also taught legal writing at the University of Utah College of Law.

Ms. Moore serves on the Board of Bar Commissioners, and is a past Chair of the Litigation Section and a former member of the Executive Committee of Women Lawyers of Utah. As a Bar Commissioner, Ms. Moore has served as Chair of the First Hundred Committee, and as a member of the Long Range Planning Committee.

Dear Colleagues:

Having had the honor of serving one three-year term as your representative on the Bar Commission, I would welcome the opportunity to serve another term. If re-elected, I will continue to listen attentively to your concerns, to vigilantly maintain the Bar's sound financial condition, and to work hard to support your efforts to honorably serve your clients and the public. Toward those ends, I would appreciate your vote.

HARDIN A. WHITNEY

I have had considerable experience in Bar activities the last few years and would like to use that experience in helping guide the future governance of the Bar. Although much of my experience has been in the alternative dispute resolution area, my interests are much more eclectic.

We should continue and expand the existing Bar programs to enlighten the public concerning the positive contributions lawyers make to the community. Such programs can best be accomplished by the Bar association and I would like to be part of that effort.

If elected, I will do all I can to bring credit to the law and to those who practice law.

1998-1999 Utah State Bar Request for Committee Assignment
DEADLINE – May 15, 1998

When the Utah Supreme Court organized the Bar to regulate and manage the legal profession in Utah, it defined our mission to include regulating admissions and discipline and fostering integrity, learning, competence, public service and high standards of conduct. The Bar has standing and special committees dedicated to fulfilling this mission. Hundreds of lawyers spend literally thousands of hours in volunteer services on these committees.

Many committee appointments are set to expire July 1, 1998. If you are currently serving on a committee, please check your appointment letter to verify your term expiration date. If your term expires July 1, 1998, and we do not hear from you, we will assume you do not want to be reappointed, and we will appoint someone to take your place. If your term expires in 1999 or 2000, you do not need to reapply until then. If you are not currently serving on a committee and wish to become involved, please complete this form. See bottom of this page for a brief explanation of each Committee.

COMMITTEE SELECTION

Applicant Information

Name _____ Bar No. _____

Office Address _____ Telephone _____

Choice	Committee Name	Past Service On This Committee?	Length of Service On This Committee?	Are you willing to Chair the Committee?
1st Choice	_____	Yes / No	1, 2, 3, 3+ yrs.	Yes / No
2nd Choice	_____	Yes / No	1, 2, 3, 3+ yrs.	Yes / No
3rd Choice	_____	Yes / No	1, 2, 3, 3+ yrs.	Yes / No

☐ **Check here if you have NEVER served on a Bar Committee**

ADDITIONAL COMMENTS (to include qualifications, reason for serving and other past committee affiliation)

_____

_____

_____

_____

For over 60 years, the Utah State Bar has relied on its members to volunteer time and resources to advance the legal profession, improve the administration of justice, and to serve the general public. The Bar has many outstanding people whose talents have never been tapped.

Instructions to Applicants: Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday. Members from outside Salt Lake are encouraged to participate in committee work.

COMMITTEES

1. Advertising. Makes recommendations to the Office of Bar Counsel regarding violations of professional conduct and reviews procedures for resolving related offenses.

2. Alternative Dispute Resolution. Recommends involvement and monitors developments in the various forms of alternative dispute resolution programs.

3. Annual Meeting. Selects and coordinates CLE program topics, panelists and speakers, and organizes appropriate social and sporting events.

4. Bar Examiner. Drafts and grades essay questions for the February and July Bar Examinations.

5. Bar Examiner Review. Reviews essay questions for the February and July Bar Exams to ensure that they are fair, accurate and consistent with federal and local laws.

6. Bar Journal. Annually publishes ten monthly editions of the *Utah Bar Journal* to provide comprehensive coverage of the profession, the Bar, articles of legal importance and announcements of general interest.

7. Character & Fitness. Reviews applicants for the Bar Examination to make recommendations on their character and fitness for admission to the Utah State Bar.

8. Clients Security Fund. Considers claims made against the Clients Security Fund and recommends appropriate payouts for approval by the Bar Commission.

9. Courts and Judges. Coordinates the formal relationship between the judiciary and the Bar including review of the organization of the court system and recent court reorganization developments.

10. Delivery of Legal Services. Explores and recommends appropriate means of providing access to legal services for indigent and low income people.

11. Fee Arbitration. Holds arbitration hearings to resolve voluntary disputes between members of the Bar and clients regarding fees.

12. Law Related Education and Law Day. Helps organize and promote law related education and the annual Law Day including mock trial competitions.

13. Law & Technology. Creates a network for the exchange of information and acts as a resource to Bar members about new and emerging technologies and the implementation of these technologies.

14. Lawyer Benefits. Review requests for sponsorship and involvement in various group benefit programs, including health, malpractice, disability, term life insurance and other potentially beneficial group activities.

15. Lawyers Helping Lawyers. Provides assistance to lawyers with substance abuse or other various impairments and makes appropriate referral for rehabilitation or dependency help.

16. Legal/Health Care. Assists in defining and clarifying the relationship between the medical and legal professions.

17. Legislative Affairs. Monitors pending or proposed legislation which falls within the Bar's legislative policy and makes recommendations for appropriate action.

18. Mid-Year Meeting. Selects and coordinates CLE program topics, panelists, and speakers, and organizes appropriate social and sporting events.

19. Needs of Children. Raises awareness among Bar members about legal issues affecting children and formulates positions on children's issues.

20. Needs of the Elderly. Assists in formulating positions on issues involving the elderly and recommending appropriate legislative action.

21. New Lawyers CLE. Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality and conformance with mandatory New Lawyer CLE requirements.

22. Unauthorized Practice of Law. Reviews and investigates complaints made regarding unauthorized practice of law and recommends appropriate action, including civil proceedings.

DETACH & RETURN to James C. Jenkins, President-Elect, 645 South 200 East, Salt Lake City, UT 84111-3834

Zimmerman, Uno and Ciccarello Honored by Bar

At the Mid-year meeting of the Utah State Bar, Chief Justice Michael Zimmerman, Judge Ray Uno and attorney Mary Jane Ciccarello received recognition from the professional organization which represents all practicing attorneys in the state.

DISTINGUISHED SERVICE AWARD

The Distinguished Service Award was presented to Chief Justice Michael D. Zimmerman who was appointed to the Utah Supreme Court in 1984 and elected Chief Justice in 1993. The Bar honored the Chief Justice for "his thoughtful and conscientious manner in which he coordinated Bar relations over his term as Chief Justice, and for his creativity, innovative ideas and resolve in positioning the judiciary for the 21st Century."

ADVANCEMENT OF MINORITIES IN THE LAW

Judge Raymond Uno, a Senior Judge in the Third District, was selected to receive the award for Advancement of Minorities in the Law. As the first president of the Utah Minority Bar Association, and long time advocate for advancement of minorities in the legal profession, Judge Uno has made lasting and important contributions. For over 30 years he has championed causes important to Utah's minority citizens.

DISTINGUISHED PRO BONO LAWYER OF THE YEAR

The Distinguished Pro Bono Lawyer of the Year award was presented to Mary Jane Ciccarello, assistant dean for student affairs at the University of Utah College of Law. She has worked in public interest practice with Utah Legal Service and Legal Aid Society of Utah. She is a volunteer lawyer with the Office of the Guardian ad Litem, the Domestic Violence Victims' Clinic, and the Children's SSI Pro Bono Project.

Join the New Solo and Small Firm E-mail List

The **solosmall** list is sponsored by the **Solo, Small Firm and Rural Practice Section of the Utah State Bar.** Membership and participation in and with the Solosmall list is limited to licensed attorneys and their staff.

If you are not a currently licensed attorney, please do not participate. If you have a legal question, please do not post it to this list, nor solicit legal services or the services of an attorney. If legal advice or services are required or desired, please directly contact an attorney in your local area and enter into a prior written agreement for said services and advice. In Utah, you may call the Utah State Bar's Lawyer Referral number for assistance (801) 531-9075. Other states offer similar services.

The Solosmall list is maintained to provide a vehicle or avenue of legal discussion and communication between attorneys that fit within the definition of the section membership and join the list. The list facilitates an exchange of ideas, discussion of topics, consultation, direction, assistance, etc. – all to enhance the level and proficiency of the practice of law in Utah. If you are such an attorney, please join and participate to make this a lively and helpful list.

SUBSCRIPTION INFORMATION

To subscribe to Solosmall, send an e-mail message to **majordomo@aros.net** with the following in the body of the message (not the subject):

subscribe solosmall

To unsubscribe from the list, send a message to majordomo@aros.net with the following in the body of the message (not the subject):

unsubscribe solosmall

If you are going to be away from your e-mail account and use an auto-response function to respond to e-mail in your absence, please remember to unsubscribe from this and other lists.

PARTICIPATION

To post a message that will be sent out to the entire list, send the message to **solosmall@utahbar.org**. When you reply to a message you have received from the list, remember to check your addresses and make sure a private message is not sent to the list address. Likewise, if you do wish the reply to go to the entire list, make sure the list address is included.

Remember we need your participation!!!! Ask a question? Give an answer !!!!

Neither the Utah State Bar, the Solo, Small Firm and Rural Practice Section, nor any of the attorneys participating on this listserve are engaged in rendering legal services or advice to the public, to any particular person or group of persons, or to any attorney or law firm by participation in this listserve.

The listserve is really just a giant list of e-mail addresses. When you join, you add your address to the list. When you quit, your address is removed. You communicate with the group by sending an e-mail message to the central computer running the list. That computer distributes a copy of the message to everyone in the group. Then, anyone can respond either to the entire group by responding to the central computer, or respond directly to you.

For example, suppose you are looking for advice from any lawyer who has handled a trial before Judge X, in St. George, or you need a form for Attorney's Lien, or you have a question on how to renew a judgement before it expires, etc. You can send a message to the group that asks your question, and anyone in the group can respond to you directly by e-mail. Or they can respond to the group as a whole. Group responses often trigger a larger, broader discussion. This will enable us to expand our form files, expand our network of associates, enlarge our perspective, relieve stress and help us enjoy our practice. Participate soon!!!!!

Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the Bar for the cost of $20.00. Sixty-five opinions were approved by the Board of Bar Commissioners between January 1, 1988 and January 23, 1998. For an additional $10.00 ($30.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1998.

ETHICS OPINIONS ORDER FORM

Quantity		Amount Remitted
_____	Utah State Bar Ethics Opinions	_____ ($20.00 each set)
_____	Ethics Opinions/ Subscription list	_____ ($30.00 both)

Please make all checks payable to the Utah State Bar
Mail to: Utah State Bar Ethics Opinions, ATTN: Maud Thurman
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

NOTICE

OF LEGISLATIVE REBATE

Bar policies and procedures provide that any member may receive a proportionate dues rebate for legislative related expenditures by notifying the Executive Director, John C. Baldwin, 645 South 200 East, Salt Lake City, UT 84111.

MEMBERSHIP CORNER

CHANGE OF ADDRESS FORM

Please change my name, address, and/or telephone and fax number on the membership records:

Name (please print) _____ Bar No. _____

Firm _____

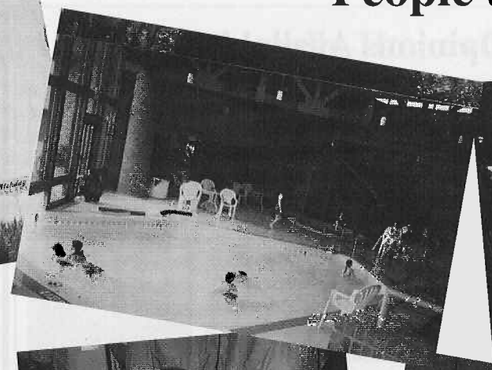
Address _____

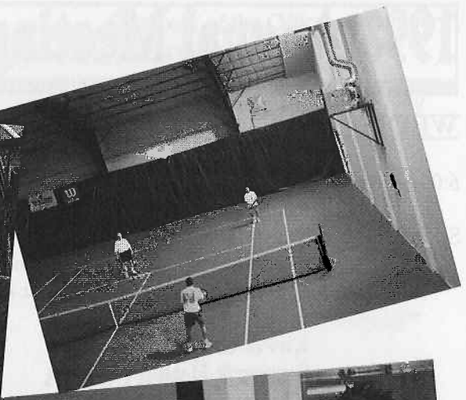
City/State/Zip _____

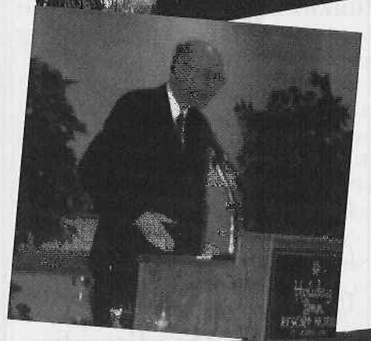
Phone _____ Fax _____ E-mail _____

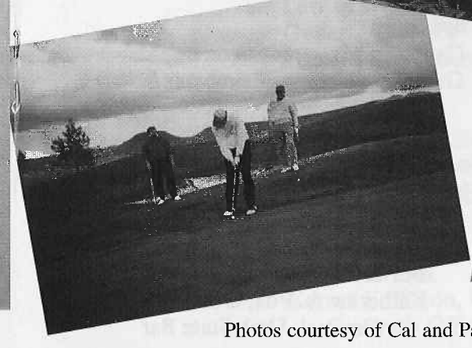
All changes of address must be made in writing and NAME changes must be verified by a legal document. Please return to: UTAH STATE BAR, 645 South 200 East Salt Lake City, Utah 84111-3834; Attention: Arnold Birrell. Fax Number (801) 531-0660.

People and Scenes of the 1998 Mid-Year Meeting









Utah State Bar

MID-YEAR CONVENTION GOLF TOURNAMENT

The Utah State Bar would like to express sincere appreciation to the following Tournament Sponsors:

Alexander's Legal Copy
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Prudential Securities
Salt Palace Convention Center
Snell & Wilmer

Photos courtesy of Cal and Patricia Thorpe

1998 Annual Meeting Program

( ) Indicates Number of CLE Hours Available

WEDNESDAY, JULY 1, 1998

6:00-8:00 p.m. **President's Reception Registration**
Sponsored by: Parsons Behle & Latimer
Snow, Christensen & Martineau
VanCott, Bagley, Cornwall & McCarthy
Kipp & Christian
Strong & Hanni

THURSDAY, JULY 2, 1998

7:30 a.m. **Registration and Continental Breakfast**
Sponsored by: Sun Valley Company

8:00 a.m. - 1:30 p.m. ***Kid's Activity Fair***

8:00 a.m. **Opening General Session and Business Reports**

Welcome and Opening Remarks
Elizabeth T. Dunning, 1998 Annual Meeting Co-Chair
Billy L. Walker, Jr., 1998 Annual Meeting Co-Chair
Report on the Utah State Bar
Charlotte L. Miller, President, Utah State Bar
Report on State Judiciary
Chief Justice Richard C. Howe
Report on Federal Judiciary
Chief Judge David Sam
Report on the Utah Bar Foundation
Hon. Pamela T. Greenwood, President, Utah Bar Foundation

9:00 a.m. **Keynote Address: Lawyers With Root Canals** (1)
Hon. Richard P. Matsch, Chief Judge, U.S. District Court, District of Colorado
Sponsored by: Durham, Evans, Jones & Pinegar
Parr, Waddoups, Brown, Gee & Loveless

10:00 a.m. **Break**
Sponsored by: Clyde, Snow & Swenson
Cohne, Rappaport & Segal

10:15 a.m. **Breakout Sessions** (1 each)

1 **Mediation and Arbitration in Domestic Relations**
William W. Downes, Jr., Winder & Haslam
Brian R. Florence, Florence & Hutchison

2 **Current Developments in Chapter 13; Current Developments in Specific Creditor Remedies in Chapter 7 & 11**
Andres Diaz, Standing Chapter 13 Trustee
Danny C. Kelly, VanCott, Bagley, Cornwall & McCarthy
William T. Thurman, Jr., McKay, Burton & Thurman

3 **Attorney Opinion Letters**
Richard G. Brown, Parr, Waddoups, Brown, Gee & Loveless
David K. Redd, Bonneville International

4 **50 Internet Sites in 50 Minutes**
David Nuffer, Snow, Nuffer, Engstrom, Drake, Wade & Smart
Toby Brown, Utah State Bar

5a **A Trial Advocacy Seminar - Opening Statements: Style & Substance**
Bryon J. Benevento, Snell & Wilmer
Hon. Dee V. Benson, U.S. District Court
Robert S. Clark, Parr, Waddoups, Brown, Gee & Loveless
Stephen G. Crockett, Giauque, Crockett, Bendinger & Peterson
Bradley P. Rich, Yengich, Rich & Xaiz

11:05 a.m. **Break**
Sponsored by: Campbell Maack & Sessions
Giauque, Crockett Bendinger & Peterson

11:20 a.m. Breakout Sessions (1 each)

5b **A Trial Advocacy Seminar, cont.**

6 **ETHICS: Ethical Obligation Between Paralegals and Lawyers**
Katherine A. Fox, General Counsel, Utah State Bar

Carol A. Stewart, Office of Professional Conduct, Utah State Bar

7 **Land Issues in the "New West"**
Pat Shea, U.S. Bureau of Land Management

8 **Intellectual Property for a 21st Century Economy: Essentials for the General Practitioner**
Thomas J. Rossa, Trask, Britt & Rossa
Robert G. Winkle, Trask, Britt & Rossa

9 **Legal Valuation Issues in Business Transactions**
Richard Hoffman, Coopers & Lybrand
Glen D. Watkins, Jones, Waldo, Holbrook & McDonough

12:10 p.m. **Break**
Sponsored by: TRASK, BRITT & ROSSA
RICHARDS, BIRD & KUMP

12:30 p.m Breakout Sessions
(1 each)

10 **How to Phrase a Statement of Issues**
Frederic J. Voros, Jr., Utah Attorney General's Office

11 **Employment Laws: Working, Just Abused, or in Need of Serious Reform?**
Hon. Dee V. Benson, U.S. District Court
Lisa-Michelle Church, Sinclair Oil
Roger Hoole, Hoole & King
Michael Patrick O'Brien, Jones, Waldo, Holbrook & McDonough

12 **The New Probate Code: New Law of Divorce, Probate & General Practice**
Thomas Christensen, Jr., Fabian & Clendenin

13 **50 Tech Tips in 50 Minutes**
Blake D. Miller, Suitter Axland
Toby J. Brown, Utah State Bar

14 **Welfare Reform: It just Impacted You**
Karma K. Dixon, Utah Attorney General's Office
Members of the Office of Recovery Services

1:20 p.m. Breakout Sessions Adjourn for the Day

4:00 p.m. **Law School Receptions**

J. Reuben Clark School of Law

University of Utah School of Law

5:00 p.m. ***Softball Game "Judges v. Lawyers"***

6:30 p.m. ***Family Picnic & Carnival***
Sponsored by: INTERMOUNTAIN HEALTH CARE
CARL'S JR.
STAR BUFFET

FRIDAY, JULY 3, 1998

7:30 a.m. **Section Breakfasts**

8:00 a.m. **Registration and Continental Breakfast**
Sponsored by: LEXIS-NEXIS

8:30 a.m. **General Session**

Presentation of Annual Awards
Charlotte L. Miller, President, Utah State Bar

Swearing in of New Bar Commissioners and President-Elect
Chief Justice Richard C. Howe, Utah Supreme Court

9:15 a.m. **General Session - "Feeding the Media Beast"**
(1)
Michael E. Tigar, Haddon, Morgan & Foreman
Sponsored by: THE LITIGATION SECTION
THE CRIMINAL LAW SECTION

8:30 a.m. - ***Kid's Activity Fair***
12:00 noon

10:15 a.m. ***Spouse/Partner Art Gallery Tour***

10:15 a.m. **Break**
Sponsored by: KRUSE, LANDA & MAYCOCK
STOEL RIVES BOLEY JONES & GREY

10:30 a.m. **Breakout Sessions**
(1 each)

15 **The Trial Theme As a Story**
Michael E. Tigar, Haddon, Morgan & Foreman

16 **Recent Anti-Trust Cases Concerning Utah Companies**
Prof. John J. Flynn, University of Utah College of Law
Mark Glick, Parsons Behle & Latimer
Clark Waddoups, Parr, Waddoups, Brown, Gee & Loveless

17 **Lessons for Drafting Real Estate Loan Documents from the New Restatement of Mortgages**
Prof. Dale A. Whitman, J. Reuben Clark Law School

18a **ETHICS: Creative Pro Bono Opportunities for Everyone**
Presented by a Panel of Pro Bono Lawyers and Judges

11:30 a.m. **Break**
Sponsored by: BLUE CROSS/BLUE SHIELD OF UTAH

11:40 a.m. **Breakout Sessions**
(1 each)
18b **ETHICS: Pro Bono Opportunities, cont.**

19 **If You CAN Build It...Land Use Practice Tips to Help Avoid a Field of Dreams**
Thomas A. Ellison, Stoel Rives Boley Jones & Grey

20 **Out of the Closet and into the Courtroom: Current Issues in Sexual Orientation Law**
Marlin Criddle
Laura Gray
Jane A. Marquardt, Marquardt, Hasenyager & Custen

21 **Technology Licensing and Protection**
John R. Morris, Snell & Wilmer
John W. L. Ogilvie, Computer Law++

22 **Basic Principles of Accident Reconstruction for Attorneys**
John E. Hansen, Scalley & Reading

23 **Tax Aspects of Bankruptcy and Insolvency**
Langdon T. Owen, Parsons, Davies, Kinghorn & Peters

12:30 p.m. Meetings Adjourn for the Day

1:00 - 6:00 p.m. ***Sporting Events***

1:00 p.m. ***10th Annual President's Cup Golf Tournament***

1:00 - 5:00 p.m. ***Kid's Activity Fair***

2:00 p.m. ***Trapshoot Tournament***

2:00 p.m. ***Volleyball Tournament***

2:30 p.m. ***Fly Fishing Clinic***

SATURDAY, JULY 4, 1998

7:00 a.m. **Fun Run**

8:30 a.m. **Registration and Continental Breakfast**
Sponsored by: HOLME ROBERTS & OWEN
THORPE, NORTH & WESTERN

8:45 a.m. **General Session: The Free Press and**
(1.5) **the Privacy Rights of Individuals**
Thomas P. Lambert, Mitchell, Silberberg & Knupp
Mike Watkiss, "A Current Affair"
Sponsored by: LEBOEUF, LAMB, GREENE & MACRAE
RAY, QUINNEY & NEBEKER
RICHARDS BRANDT MILLER & NELSON
GREEN & BERRY
MCKAY, BURTON & THURMAN
WATKISS, DUNNING & WATKISS
MOXLEY, JONES & CAMPBELL
PARK CITY BAR ASSOCIATION

9:00 a.m. - 12:15 p.m. ***Kid's Activity Fair***

10:00 a.m. **Break**
Sponsored by: MBNA OF AMERICA
WILLIAMS & HUNT

10:15 a.m. Breakout Sessions
(1 each)
24 **Utah Electronic Law Project Update**
David O. Nuffer, Snow, Nuffer, Engstrom, Drake, Wade & Smart

25 **Alimony - Abolished or Awarded?**
Martin W. Custen, Marquardt, Hasenyager & Custen

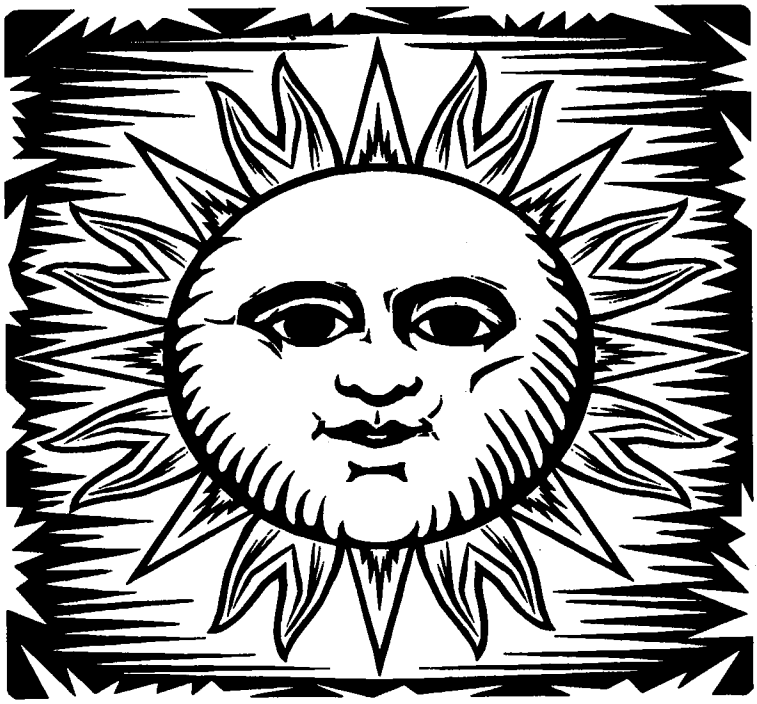
Ann L. Wasserman, Littlefield & Peterson

26 **First Amendment Church-State Constitutional Law**
Prof. Frederick Gedicks, J. Reuben Clark Law School
Prof. Michael McConnell, University of Utah College of Law
David B. Watkiss, Watkiss, Dunning & Watkiss

27 **The Changing Face of Utah's Clientele**
Robert L. Booker, Booker & Associates

11:15 a.m.	Breakout Sessions Adjourn
11:30 a.m. (2)	**Salt Lake County Bar Film Presentation**
1:00 p.m.	***Tennis Tournament***
2:00 p.m.	All Meetings Adjourn
7:00 p.m.	***Ice Show, Buffet and Fireworks***

Mark your calendars now to attend the Utah State Bar's 1998 Annual Convention!



JULY 1 - 4, 1998
SUN VALLEY, IDAHO

Applicants Sought for Bar's Representative to American Bar Association

The Board of Bar Commissioners is seeking applicants to serve a two-year term as the Bar's representative to the American Bar Association's House of Delegates. Each State Bar is entitled to one delegate. The term would begin at the conclusion of the ABA's Annual Meeting in August, and run through the August of 2000 Annual Meeting. Paul T. Moxley is currently serving as the Bar's delegate.

Please send your letter of application and resume to John C. Baldwin, Executive Director, Utah State Bar, 645 South 200 East, #310, Salt Lake City, Utah 84111, no later than May 1, 1998.

Central Staff Attorney Wanted

Utah Court of Appeals is seeking an attorney to join its central staff. Works under the general guidance and direction of the Court of Appeals judges. Performs complex legal work, including review and classification of appellate cases, and assists in preparation of memos, opinions and orders. Excellent legal research and writing skills required. Must be member of Utah State Bar at time of appointment. Transcripts and a recent writing sample must be submitted with application. Hiring range $16.93 to $25.42 DOE. **Closing date:** April 30, 1998, at 5:00 p.m. Complete job announcement and application may be obtained from and returned to: Human Resources, Administrative Office of the Courts, 230 South 500 East, #300, Salt Lake 84102. Phone: 578-3890/3804. **EOE**

Notice of Ethics & Discipline Committee Vacancies

The Bar is seeking interested volunteers to fill ten vacancies on the Utah State Bar Ethics & Discipline Committee. The Ethics & Discipline Committee is divided into four panels which hear all informal complaints charging unethical or unprofessional conduct against members of the Bar and determine whether or not informal disciplinary action should result from the complaint or whether a formal complaint shall be filed in district court against the respondent attorney. Appointments to the Ethics & Discipline Committee are made by the Utah Supreme Court upon recommendations of the Bar Commission. Please send resume to John C. Baldwin, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111 no later than May 1, 1998.

UTAH LAWYERS CONCERNED ABOUT LAWYERS

Confidential* assistance for any Utah attorney whose professional performance may be impaired because of emotional distress, mental illness, substance abuse or other problems.

Referrals and Peer Support

(801)297-7029

LAWYERS HELPING LAWYERS COMMITTEE
UTAH STATE BAR

*** See Rule 8.3(d), Utah Code of Professional Conduct**

Rule Change

The Utah State Board of Continuing Legal Education successfully petitioned the Utah Supreme Court to amend Rule 4(d) of the Rules and Regulations Governing Mandatory Continuing Legal Education for the State of Utah to allow continuing legal education credit for lawyers who present on legal topics to legal assistants. The petition will better reflect the recent inclusion of legal assistants in the Bar, and will provide an incentive for licensed attorneys to make available quality legal education for legal assistants who are affiliate members of the Utah State Bar.

Rule 4. Hours of Accredited Continuing Legal Education Defined

(d) The board shall allow equivalent credit for such activities as, in the board's determination, further the purpose of these rules and should be allowed such equivalency. Such equivalent activities may include, but are not limited to, viewing of approved continuing legal education videotapes, writing and publishing an article in a legal periodical, part-time teaching by a practitioner in an ABA approved law school, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyers, ***legal assistants*** or law students. The number of hours of credit to be allowed for such activities and the procedures for obtaining such equivalent credit may be established by regulation of the board or may be determined specifically in particular instances by the board.

Pro Bono Services Needed

The Utah Task Force on Racial and Ethnic Fairness is seeking attorneys interested in providing pro bono services to assist Task Force efforts to assess Utah's criminal justice system for real and perceived bias due to race and ethnicity. Come take part in improving Utah's justice system.

Attorneys are needed to serve as coordinators for each of the Task Force's following committees: Pre-Adjudication, Representation, Courts, Post-Adjudication, Client Perspective, and Community Resources. Pro Bono Coordinators will work with a committee to formulate research objectives, prepare informational materials, and conduct legal research. A time commitment of approx. 20 hours / month for 12 to 15 months is anticipated. Related special projects may also need assistance and require a lesser time commitment.

If interested please contact: Jennifer Yim, Task Force Director, at (801) 578-3976.

Utah Rules of Professional Conduct

Public Service

Proposed Rule 6.1 Pro Bono ~~Publico~~ Legal Service

Voluntary Pro Bono Service

A lawyer should render public interest legal service. ~~A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.~~ This Rule sets forth three components:

(a) The Rule establishes the professional responsibility for lawyers to provide pro bono legal services. This service is not mandatory, but aspirational in nature.

(b) The Rule provides guidelines for what constitutes pro bono legal services.

(c) The Rule establishes mandatory reporting of pro bono legal services. All lawyers are required to report annually the amount of pro bono legal services they have provided.

(a) Professional Responsibility. Lawyers have a professional responsibility to provide pro bono legal services. The professional responsibility established under this Rule is aspirational rather than mandatory in nature. The failure to fulfill one's professional responsibility under this Rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal services may be discharged by:

(1) annually providing at least 36 hours of pro bono legal services; or

(2) making an annual contribution of at least $10 per hour for each hour not provided under (a)(1) above (e.g. 36 hours * $10.00 = $360.00) to an agency which provides direct services as defined in (b) below.

(b) Guidelines on Providing Pro Bono Legal Services:

In fulling this responsibility, the lawyer should:

(1) provide a majority of the 36 hours of pro bono legal services without fee or expectation of fee to:

(i) persons of limited means; or

(ii) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(2) provide any additional services through:

(i) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate;

(ii) delivery of legal services at a substantially reduced fee to persons of limited means; or

(iii) participation in activities for improving the law, the legal system or the legal profession.

(c) Reporting Requirement. Each active member shall annually report to the Utah State Bar whether the member has satisfied the member's professional responsibility to provide pro bono legal services. Out-of-state members of the bar may fulfill their professional responsibility in the states in which they practice or reside. For purposes of this Rule, a reporting year shall mean the just completed licensing year. The licensing period runs from July 1 through June 30. Each member shall report this information through a simplified reporting form that is made a part of the member's annual dues statement. The form will contain the following categories from which each member will be allowed to choose in reporting whether the member has provided pro bono legal services:

(1) I have personally provided ____ hours of pro bono legal services during this past reporting year.

(2)(i) I hereby submit $____ for the Utah Access to Justice Foundation in meeting my obligation, or

(ii) I have contributed $____. (Only contributions to organizations which provide direct services as defined in (b) above qualify);

(3) I am carrying forward into this reporting year ____ hours of pro bono legal services from the previous reporting year.

Reporting a zero amount in both 1 and 2 above meets the reporting requirement of this Rule. The failure to report this information shall not constitute a disciplinary offense under this rule. Annual dues statements submitted without the reporting information will be treated as incomplete and incomplete dues statements will be rejected. Licensing for that year will not be processed until the reporting information is complete.

COMMENT

~~The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas; poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through the disciplinary process.~~

~~The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well to do.~~

~~The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in~~

~~or otherwise support the provision of legal services to the disadvantaged. The provision of free legal service to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.~~

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to persons of limited means. The Utah State Bar urges all lawyers to provide 36 hours of *pro bono* legal services annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified of 36 hours, but during the course of a legal career, each lawyer should aspire to render on average per year, the number of hours set forth in this Rule. Services can be performed in civil, administrative, criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (b)(1)(i) and (ii) recognize the critical need for legal service that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, corporate counsel, judges and others, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under the paragraphs (b)(1)(i) and (ii) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. Lawyers providing *pro bono* legal services on their own need not undertake an investigation to determine client eligibility. Rather, a good faith determination by the lawyer of client eligibility is sufficient. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service should be provided without fee or expectation of fee or with a substantially reduced fee, the *intent* of the lawyer to render free or reduced fee legal services is essential for the work performed to fall within the meaning of paragraphs (b)(1) (i) and (ii). Accordingly, services rendered cannot be considered *pro bono* if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as *pro bono* would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means. It is recognized that some *pro bono* services provided to individuals slightly above program income guidelines may be provided at significantly reduced fees, based on the resources of the individuals.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform *pro bono* services exclusively through activities described in paragraphs (b)(1))i) and (ii), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b)(2). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing *pro bono* services outlined in paragraphs (b)(1)(i) and (ii). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their *pro bono* responsibility by performing services outlined in paragraph (b)(2).

[6] Paragraph (b)(2)(i) includes the provision of certain types of *pro bono* legal services to those whose incomes and financial resources place them above limited means. It also permits the *pro bono* lawyers to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2)(ii) covers instances in which lawyers agree to and receive a modest fee for furnishing *pro bono* legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(2)(iii) recognizes the value of lawyer engaging in activities that improve the law, the legal system or the legal profession. Serving on board of *pro bono* or legal services programs, taking part in Law Day activities, taking part in law related education activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that may fall within this paragraph.

[9] Because the provision of *pro bono* legal services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in *pro bono* services. At such times a lawyer may discharge the *pro bono* responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the *pro bono* responsibility collectively, as by a firm's aggregate *pro bono* activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct *pro bono* services or making financial contributions when providing *pro bono* legal services is not feasible.

[11] Paragraph (b)(1) recognizes the pressing need for legal services to be provided to persons of limited means without fee or expectation of fee. That type of service is a greater priority than services rendered at a reduced fee to those same persons. For the majority of Utah's practitioners, this preference for "no-fee" service is reasonable. However, a substantial number of Utah's lawyers practice in communities in which (or with clientele for whom) the cost of living is high and wages are low. For example, Utah's rural counties have average wages ranging from 60% to 80% of the Salt Lake County norm, while cost of living is from 90% to over 100% of the national norm. The same is true of some Wasatch Front communities. These lawyers may have a practice which consists generally of rendering services at reduced fees to persons of limited means. The general preference of "no-fee" service may not apply to these lawyers in the same manner as to lawyers who rarely render such service.

[12] While the personal involvement of each lawyer in the provision of *pro bono* legal services is generally preferable, such personal involvement may not always be possible or produce the ultimate desired result, that is, a significant maximum increase in the quantity and quality of *pro bono* legal services provided. The annual contribution alternative recognizes a lawyer's professional responsibility to provide financial assistance to increase and improve the delivery of *pro bono* legal services when a lawyer cannot or decides not to provide *pro bono* legal services through the contribution of time. Also, there is no prohibition against a lawyer contributing a combination of hours and financial support.

[13] The reporting requirement is designed to provide a sound basis for evaluating the results achieved by this Rule and to remind lawyers of their professional responsibility under this Rule. In meeting this reporting requirement, lawyers must report the number of hours provided in the preceding reporting year in section (c)(1). A reporting year is the just completed or the about to be completed, licensing year for the lawyer. Therefore a lawyer submitting a report for the licensing year starting July 1 of a given year, would report *pro bono* activities or contributions for the preceding July 1 through June 30.

[14] For section (c)(2), a lawyer must report amounts contributed to appropriate organizations in section (i) *or* section (ii) of (c)(2). A lawyer may report in both (i) and (ii), but must report in at least one of the two. Appropriate organizations are those organizations which provide *pro bono* legal services, as described in section (b) of the Rule. The intent of this Rule is to direct resources towards providing representation for persons of limited means. Therefore, only contributions made to these described organizations should be reported.

[15] The 36-hour standard for the provision of *pro bono* legal services is a minimum. Additional hours of service are to be encouraged. Many lawyers will, as they have before the adoption of this Rule, contribute many more hours than the minimum. To ensure that a lawyer is recognized for the time required to handle a particularly involved matter, this Rule provides that a lawyer may carry forward, into the next reporting year, any time expended in excess of 36 hours in any one reporting year. Lawyers may only carry forward hours from the immediate preceding reporting year. Hours carried forward may be reported in section (c)(iii). However, a lawyer does not have to complete section (c)(iii) to comply with the reporting requirement of this Rule.

[16] If a lawyer submits his or her annual dues statement without reporting the required information in sections (c)(i) and (c)(ii), the lawyer's dues statement for that year will be incomplete. Incomplete statements will be returned to the lawyer and the lawyer's licensing for that year will not be processed until the dues statement is complete. Lawyers in this category may be suspended from practicing law for non-compliance.

[17] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process. Suspended attorneys, however, may not engage in the practice of law. Lawyers who do so may be subject to attorney discipline for violation of Rule 5.5 as well as other applicable rules.

[18] Reporting records for individual attorneys will not be kept or released by the Utah State Bar. The Utah State Bar will gather useful statistical information at the close of each reporting cycle and then purge individual reporting statistics from its database. The general statistical information will be maintained by the Bar for year-to year comparisons and may be released, at the Bar's discretion, to appropriate organizations and individuals for furthering access to justice in Utah.

CODE COMPARISON

There was no counterpart of this rule in the Disciplinary Rules of the Code. EC 2-25 stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyers . . . Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged." EC 8-9 stated that "[t]he advancement of our legal system is of vital importance in maintaining the rule of law . . . [and] lawyers should encourage, and should aid in making, needed changes and improvements." EC 8-3 stated that "[t]hose persons unable to pay for legal services should be provided needed services."

The Sixteenth Annual Bob Miller Memorial Law Day Run

The Sixteenth Annual Bob Miller Memorial Law Day Run is set for 9:00 on Saturday morning, May 2, 1997. As in the past, we encourage the legal community to join us in this annual rite of spring. The course will be similar to that of the past few years, with the start and finish lines moved to accommodate construction on the new stadium. As in the past, the race is a five kilometer race. The course is generally flat and downhill, sure to generate some good early season times. As in the past, we will have divisions for attorneys, paralegals, legal personnel, law students, law faculty, and the usual age group divisions, from children 11 and under to seniors 70 and over. The typically heated team competition will again involve teams of two women and three men. Medals for the top three in each division will be awarded, as well as a trophy to the winning team. T-shirts will be provided for all registrants. Registration is $13 prior to race day, and $15 at the race (plus $12 for each team). A registration form is included in this issue, and additional forms are available from Kent Hansen or Pat Moeller, Richards, Brandt, Miller & Nelson (531-2000).

SATURDAY, MAY 2, 1998, 9:00 AM

THE BOB MILLER MEMORIAL LAW DAY RUN

- **REGISTRATION:**
  Pre-registration: must be postmarked by Monday, April 27 or received at Richards, Brandt, Miller & Nelson, P.O. Box 2465, Salt Lake City, UT 84110-2465 by Thursday, April 30 at 5:00 pm.
  Day-of-Race Registration and T-Shirt Pick-up: 8:00 am - 8:45 am at the parking lot located at 1530 East South Campus Drive (near the entrance to the Marriott Library and the Behavioral Sciences Building, and northeast of Rice Stadium) on the University of Utah Campus.
- **FEE:** Pre-registration $13.00; day-of-race registration $15.00.
- **All proceeds in excess of the costs of the race will be donated to the Court Appointed Special Advocate program (CASA) to benefit abused and neglected children.**
- **AWARDS** to top three finishers in 17 categories (Male and Female).
- **T-SHIRTS** to all registrants.

THE 1998 BOB MILLER MEMORIAL LAW DAY RUN
Registration Form

Name _____ Age _____
(Please print. Write "TEAM" if used for team registration)

Address _____ Zip _____

Phone _____ Law Firm (if applicable) _____

Write Individual Category here: _____ MALE/FEMALE (circle one)

A Attorney (under 40)	E Law Enforcement	I 11 and under	M 30-39
B Attorney (40 and over)	F Judge	J 12-14	N 40-49
C Law Student	G Legal Secretary/Personnel	K 15-19	O 50-59
D Law Faculty	H Paralegal/Legal Assistant	L 20-29	P 60-69
			Q 70 and over

I am also a **TEAM MEMBER** Yes No (circle one)
(Each three man/two woman team must complete one additional Registration Form listing all team members on the back of the form. **Additional Team Fee** $12.00/team.)

DISCLAIMER: In consideration of the privilege of participating in this race, I hereby release from all liability the sponsors of this race and all volunteers and support people associated therewith, for any injury, accident, illness or mishap that may result from participation in the race.

Mail form and registration fee to:
LAW DAY RUN
c/o RICHARDS, BRANDT, MILLER & NELSON
P.O. BOX 2465
SALT LAKE CITY, UT 84110-2465

Signature of Participant _____ Date _____

Signature of Parent (if participant is a minor) _____

Please enclose a $13.00 registration fee
Make checks payable to: **Law Day Run**
*Day of race registration $15.00
*Team registration $12.00 (in addition to team members' registration)

T-Shirt size (circle one)
Adult M L XL XXL

The Scott M. Matheson Courthouse A Users' Guide

By Briana L. Lavelle

Now that the Scott M. Matheson Courthouse has been completed, you probably have many practical questions concerning the move and familiarizing yourself with the layout of the building. This article is designed to assist you with gaining some practical information about the new Courthouse so your first visit and subsequent visits will be less confusing and intimidating.

A. LOCATION

The Scott M. Matheson Courthouse is located at 450 South State Street, Salt Lake City, Utah 84102. It occupies the eastern half of the block and is directly west of the City County building. The main entrance is on the east side of the building between 4th and 5th South streets facing State Street. There is a secondary entrance on the west side of the building on Church Street.

B. HOURS OF OPERATION

The hours of operation for the new building will be from 7:30 a.m. to 6:00 p.m. Monday through Fridays, except for legal holidays. These new hours are an extension of the current State Court hours of 8 a.m. to 5 p.m. Activities and programs conducted in the evenings or weekdays beyond the normal hours of operation will be accommodated. For example, Small Claims Court is expected to be held on Tuesday, Wednesday, and Thursday of each week until approximately 10:00 p.m. Traffic Court session are currently scheduled to be held Wednesday and Thursday evenings from 6:00 p.m. until 7:30 p.m. Also, Peer Court, Mock Trials, and programs involving the Guardian Ad Litem, CASA (Court Appointed Special Advocates) volunteers for the Guardian Ad Litem, and Pro-Bono projects may be conducted some evenings. The State Law Library located inside the new Courthouse may extend its hours of operation, but such determination is still waiting further consideration.

Resources within the Courthouse, such as the State Law Library, Conference Center and Meetings Rooms will be made available for approved programs and activities. To schedule such approved programs and activities, arrangements should be made with the appropriate persons in the Administrative Office of the Courts and Building Security.

C. PARKING

Parking is located below the Courthouse building. Entry to the parking structure is on 4th South with exits on either 4th or 5th South streets. Public parking will be available on the second parking level. There are approximately 275 public parking stalls on the second level for cars and motorcycles. Motorcycles will be parked in a regular automobile stall. Bicycle racks are also

BRIANA L. LAVELLE is a partner at Crowther Gardner & Lavelle. She earned her Bachelors of the Arts degree from University of California, Santa Barbara in 1989 with a double major in Communications Studies and Economics, and her Juris Doctorate degree from Southwestern University, School of Law in 1993. She clerked for a State District Court Judge in Las Vegas, Nevada from 1993 through 1994 and then moved to Utah where she commenced her practice of Civil Law with a focus towards Commercial and Corporate litigation. She is a member of both the California and Utah State Bars. She now serves on the Utah State Bar Membership Support Committee of the Young Lawyers Division and Alternative Dispute Resolution, Education Subcommittee.

installed on Parking Level Two for the public or employees of the Courthouse.

Diamond Parking Services has contracted to manage the Public Parking area. The hourly fee charged for parking will be determined and is expected to be approximately $1 - $2 per hour. Vehicle drivers will obtain a ticket from a machine to trigger the lifting of a gate to enter the parking area, similar to parking at the airport or shopping mall. Arrangements may be made directly with Diamond Parking Services to purchase parking "script" at a bulk rate to be used to pay for parking in lieu of cash. Validation stickers will be issued by the appropriate department, free of charge, to the following:

civil and criminal case jurors; criminal and juvenile case witnesses; judicial committees; council and board members; visiting dignitaries; and visiting Judges.

There will be no metered parking spaces in front of the Courthouse on State Street. The metered parking spaces currently located there will be removed to allow free flowing traffic along State Street. Limited metered parking may be found on 4th and 5th South Streets.

D. COURTHOUSE LAYOUT

The five story Courthouse has 420,000 square feet of floor space. The cost to complete the building was approximately $115 per square foot for a total of $68 Million. Apparently, the National average for the cost of State Courts is more than $150 per square foot and Federal Courthouses average considerably more. Members of the Utah State Bar have contributed to the furnishings for the lawyer use areas such as the attorney lounge and the attorney-client conference rooms through the voluntary donation of bar dues.

Parking Level 1: Scott M. Matheson Building Support, Central Control Security and Building Services. Public telephones will also be located on the first floor in the main hallway.

Courthouse Level 1: District and Juvenile Court Clerk's Office; State Law Library; Attorney Lounge; Convention and Education Centers; Jury Assembly Room; and Cafeteria.

Courthouse Level 2: District Attorney Office; Administrative Office of the Courts; Juvenile Courtrooms; and Juvenile Court Judge's Chambers.

Courthouse Level 3: Remaining Offices in the Administrative Office of the Courts; Judicial Council; District Courtrooms; and District Court Judges' Chambers.

Courthouse Level 4: District Courtrooms and District Court Judges' Chambers; and a High-Security Courtroom.

Courthouse Level 5: Supreme Court; Court of Appeals; the Appellate Justices' Chambers; and the Clerks Office for both Appellate Courts.

Moreover, attorney-client meeting rooms are located at the entrance of each Courtroom. These Conference rooms are available on a first-come first-serve basis. There is also a Reception Area on each floor at which attorneys may request to speak with Judges, Commissioners or Court staff. On the 2nd, 3rd and 4th floors, these reception areas are located at both the North and South Wings of the Courthouse.

E. MOVING SCHEDULE

The moving schedule is coordinated based on the organization of the new Courthouse. As of January 23, 1998 the moving schedule is as follows:

Court of Appeals: March 7 - 9, 1998
Supreme Court: March 10 - 12, 1998
District Court Judges, Commissioners and Staff: April 4 - 7, 1998
District Court Clerk's Office: April 7 - 10, 1998
District Attorney's Office: May 3 and 4, 1998
Administrative Office of the Courts: May 3 - 8, 1998
Guardian Ad Litem: May 9, 1998
Juvenile Court: May 20 and 21, 1998
Law Library: June 2 - 8, 1998

F. MAIL DELIVERY

State Central Mail will provide mail services to the new Courthouse building. The mail is scheduled to be delivered to the Courthouse by 8:30 or 9:00 a.m. each morning. This provides for mail delivery two hours earlier than the current system. This system is based on P.O. Box numbers and individualized zip codes assigned to each specific department.

In order for the automated machines at the Post Office and State Central Mail to read the address, it must appear exactly as shown below, with the street number and the P.O. Box number listed on separate lines. At this time, P.O. Box numbers and zip codes are assigned as follows:

Supreme Court
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Law Library
450 South State Street
P.O. Box 140220
Salt Lake City, Utah 84114-0220

Court of Appeals
450 South State Street
P.O. Box 140230
Salt Lake City, Utah 84114-0230

Administrative Office of the Courts
450 South State Street
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Third District Court
450 South State Street
P.O. Box 1860
Salt Lake City, Utah 84114

Office of Guardian Ad Litem
450 South State Street
P.O. Box 140403
Salt Lake City, Utah 84114-0403

Third District Juvenile Court
450 South State Street
P.O. Box 140431
Salt Lake City, Utah 84114-0431

G. BUILDING SECURITY

The Courthouse was designed with safety as a primary consideration. Significantly improved structural design measures were incorporated in the construction to limit damage from explosion or earthquakes. Lower support columns were enlarged and strengthened and special reinforcing was added to protect the main building frame in the event of an explosion or earthquake.

A state of the art security system with a Central Control Security Center and video monitors throughout the building is installed in the Courthouse. The audio-visual monitoring and alarm systems throughout the Courthouse are controlled form the Central Control Center located on parking level one and is operated 24 hours a day by Deputies of the Salt Lake County Sheriff's office ("Central Control Security"). Central Control Security can observe any disturbance in Courtrooms or other area throughout the building. Video cameras are also located in the parking areas and surrounding the outside of the

building. The sophisticated security system also consists of zones throughout the building. Electronic card readers control access internally and to the perimeters of the building. The electronic card readers are programmed to permit particular individuals to access only those areas which the individual has been authorized to enter.

Also located in parking level one, in close proximity to the Central Control Security Center, are secured holding cells which will house inmates who are scheduled for a Court hearing. The Central Control Security Center is capable of holding all prisoners until the last one appears in Court, thus reducing the number of transportation vehicles and guards necessary.

H. DIRECTORIES/INFORMATION

Building directory floor maps, similar to those seen in shopping malls, will be located on the first floor, near or in the rotunda area. Such floor maps will provide assistance in locating particular areas within the Courthouse. In addition, television type monitors, similar to a flight schedule monitor at the airport, will also be displayed in or around the rotunda area and will list the calendar schedule for each courtroom.

An information desk will be established near the entrance of the first floor once volunteers are identified and trained.

I. CAFETERIA

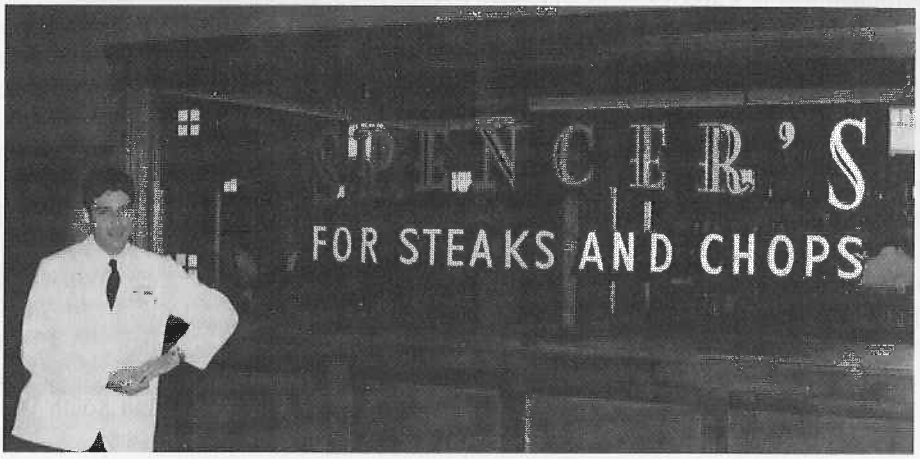
The new Courthouse will have a cafeteria on the main level operated and serviced by the State Office of Rehabilitation. The cafeteria operating hours will be 7:30 a.m. to 3:00 p.m. Vending machines will also be located in the cafeteria.

J. CONCLUSION

Once the departments, courtrooms, judges, staff and files are moved, the Scott M. Matheson Courthouse should provide a dignified and convenient complex which houses all of the appropriate State Judicial and related offices under one roof. It should be a welcome change to the present situation.

Young Attorney Profile
John Bowen

By Peggy E. Stone



The next time you and your guest are out for lunch or dinner and wondering which wine would go best with the London broil or the ahi tuna entrees you have chosen, the person giving you advice on the proper or best wine selection might be John Bowen.

John, a 1993 graduate of the University of Utah College of Law and Assistant Attorney General in the Child and Family Support Division, has a second interesting job. When John is not representing the Office of Recovery Services in state district and juvenile courts or in federal bankruptcy court, John is the wine steward for Spencer's in the Doubletree Hotel. Spencer's is a restaurant and also offers its customers a cigar bar. John is also a cigar steward, but is more comfortable with his wine steward position because he has six more years of knowledge and experience in that aspect of his work for Spencer's.

When we met for this interview, John had to coordinate his lunch entree with one of the new wines on Spencer's wine list that he had yet to try. "One of the best and perhaps the most fun way of learning about wines is to try them," said Bowen. Although he can tell you about where they are made, and what foods they compliment best, the fact that Spencer's has more than one hundred wines on its wine list, means that John has a few more to actually try for himself.

I asked him what exactly his job as wine steward entailed. "The job of a wine steward is to help people decide which wine will go best with their food choice and with their particular preference. Then I serve the wine, taking into account the proper chilling and optimal serving temperature. I guess you could say that I get to counsel and serve people in both of my jobs."

When I asked how he became interested in wines, Bowen responded that, "It started in 1992 when the Utah Jazz were in the playoffs against the Denver Nuggets. Some friends and I went to Denver for a game and had a fabulous meal, accompanied by a great wine. It was the first time that I understood how the two went together to create such a wonderful experience. Something just clicked. Now I am fascinated with the different food and wine combinations and I try to recreate that first experience. It is exciting for me to share that feeling with other people too. I want to be able to help someone else understand the simple pleasure that can come from a good meal, a fine wine and some good company and conversation."

I asked why John decided to take his wine hobby and turn it into another career. He said that, "I was going to work out three nights a week to get in shape, this way I still get some exercise but I play with bottles of wine instead of weights. Besides, the extra income is a nice bonus for doing something that I enjoy anyway. I have always enjoyed being able to give friends and colleagues advice on what wine to take to a party, or what wine can serve a bunch of people without costing the host an arm and a leg. Now I can do this for people that I don't already know."

Before starting to work at Spencer's, John and the other employees took a class

to learn about the potent potables that Spencer's sells. The class lasted for two and a half weeks and was held in the evenings on work days and then all day on Saturday. They learned about wines, single malt scotches, cognacs, ports, small batch bourbons, and the foods that compliment these beverages. Spencer's offers all of these choices and it is John's job to be there to help customers choose the best drink for their meals.

"The rules that are typically thought of–white wine with fish and red wine with beef – are not as strict as people think. The first rule is to start with a wine that you like and go from there. It is fun to talk about the different wines and how individual wines and vintages impact the particular flavor," said Bowen. "I always thought that I would go back to school and get a CPA, but now I think that I might do something that I have a bit more passion for and try to get accreditation as a sommelier."

I asked John about the difference between a sommelier and a wine steward. "A sommelier is an expert on wines and has charge of the wines and wine service in a restaurant," he told me. "A true sommelier is accredited at one of five levels. A Master Sommelier has reached the fifth level." John added, "There is only one American that has reached the level of a Master Sommelier and I am fairly certain that he is not also an attorney."

When I asked John if he had ever considered combining his law degree and his knowledge of wines, he laughed and replied, "Well, learning and applying the state's liquor laws would be a full time job, and I already have a full time job with the Attorney General's Office that I love. Besides, my job as wine steward provides some balance in my life. It is a way for me to get away from the practice of law for a while and explore something else. I don't really want the two to mix. Luckily, I have not had an opposing counsel as a customer yet."

When I remarked that I was surprised that there was a market for so many different wines, not to mention single malt scotches, John said, "Well the single malts are most often tied to the cigar bar because many people enjoy them together. Cigar bars are the new trend in many places. The wines enjoy a wider market, but they have been around much longer."

Astonishingly, Bowen says that despite some people's perceptions, "Utah is not a wine unfriendly place." When I looked amazed he went on. "For its size, Utah gets many fine and acclaimed wines. The cross section of choices is quite remarkable. Many come from boutique wineries that only produce 200 to 300 hundred cases worldwide. Some always seem to end up on the shelves of Utah liquor and wine stores." Bowen conceded, however, that only about one-half of the meals sold at Spencer's had wine accompanying them and that most of the wine purchasers were out-of-towners in Utah for vacations or on business.

I asked what has most surprised John since he became a wine steward. John said that, "I was amazed with the number of boutique wineries and the wonderful wines they make. The exciting thing is that these wines are here today and gone tomorrow. With production at only 200 to 300 cases world wide they do not stay around long. Once those bottles are gone, they are gone for good. The fun is the hunt to find them and to see what they have to offer."

John told me his tastes in wine do not change; it is the wines and particular vintages that change. "In some ways it is like the practice of law," he said, "the particular legal principle does not change, but the application of the facts to the principle can change an outcome significantly."

Like any good lawyer who keeps up with changes in the law, John keeps up with changes in wines and studies to keep up with industry changes and trends. "With my practice of law, I have found that there is always something new and exciting to learn. The more I learn about an area of law, the more I recognize that there is much more that I do not know. My knowledge of wines is the same. The more I learn, the more there is to know. At this point in my wine career I would say that I am knowledgeable about California Reds, I am familiar with California Whites, Washington Reds, Australian Reds and Chilean Reds. I am acquainted with French Reds and Australian Whites. And that does not even touch the ports, brandies, cognacs, and single malt scotches. The fun part is all of the fine company and food that I will enjoy as I learn."

1998 Law Day Luncheon Keynote Address: Judge Mills Lane

By Dan Garrison

"Let's get it on!" he says at the beginning of each boxing match, after cautioning the fighters that he wants a "clean, hard fight." Mike Tyson calls him Mr. Mills. Attorneys and the smarter litigants and criminal defendants who appear before him call him "Your Honor."

He's Mills Lane, Chief Judge of the Reno District Court in Nevada. He's also the most sought after and recognized prize fighting referee in the business. He's refereed over ninety world championship bouts, including the now infamous Mike Tyson/ Evander Holyfield bout. That one left Mike Tyson suspended from boxing, and Evander Holyfield with a slightly smaller ear. He doesn't take crap from anybody, and nobody who knows him tries to give him any.

Judge Lane was himself a boxer. A good one. He was the All Far East Marine Corps Boxing Champion in 1957 and 1958. In 1960, as an undergraduate at the University of Nevada at Reno, he was the N.C.A.A. Welterweight Champion, and received the John S. LaRowe Trophy as the Outstanding Boxer in the N.C.A.A. tournament. He was also a finalist in the 1960 Olympic Trials. He boxed professionally from 1960 to 1963. In 1991, he was inducted into the World Boxing Hall of Fame.

Then there's the part of him that fights for law and order. In 1967, after receiving his Bachelor's Degree in business administration, he enrolled at the University of Utah College of Law. After graduating in 1970, he went into private practice for a year. In 1971, he joined the Washoe County District Attorney's Office in Reno. Over the next twelve years, he developed a wide reputation as a feared and respected prosecutor. His trial losses were few and far between.

In 1983, the voters made him Washoe County District Attorney, and his reputation continued to grow. He's been awarded

countless distinctions for law enforcement. In 1991, he was elected District Judge.

May 1, 1998, the day he will speak at the Law Day Luncheon, is his last day as a Nevada State judge. He's resigning the bench to begin filming episodes of a new "People's Court" genre television show called "Judge Mills Lane – Justice You Can Trust." Look for it in the fall.

He's a character. Bigger than life, despite his five-foot seven-inch frame. He lists his hobbies as "Physical Fitness, Refereeing Professional Prize Fights, and Poker," and he's as conservative as "calling" on a nickel bet. He *is* law and order. Just ask him. Never mind, he'll probably tell you.

Volunteers Needed for 1998 Call-A-Lawyer Program

The Young Lawyers Division of the Utah State Bar needs volunteer attorneys to help provide free legal information during the YLD's 1998 Call-A-Lawyer Program. The event is scheduled for Thursday, April 30, 1998, from 6:00 p.m. to 9:00 p.m. Please contact Robert Rice at Ray Quinney & Nebeker, 532-1500, for further information.

Information about the Law Day Luncheon

The 1998 Law Day Luncheon will be held at noon on Friday, May 1, 1998, at the Doubletree Hotel in Downtown Salt Lake City. Registration materials are being sent in the mail to all Utah State Bar members. You may also call Ms. Amy Jacobs at (801) 297-7033 for further information or to register. Don't miss what is sure to be a very entertaining luncheon.

State of the Judiciary

Remarks Delivered by Chief Justice Michael D. Zimmerman
January 19, 1998

Governor Leavitt, President Beattie, Speaker Brown, legislators, and members of the public. On behalf of the Utah Judicial Council, the Utah Supreme Court, and all the judges and staff in the third branch of government, I thank you for this opportunity to report on the state of the Utah judiciary.

As the Chief Justice of the Utah Supreme Court, one of my primary duties is to chair the Utah Judicial Council and to see that the policies set by the Council are implemented by the State Court Administrator. In performing these duties, I do not act as a judge, a decider of cases. Rather, I fulfill an administrative role assigned me by the Constitution. I am here today in that capacity to report to you on the state of the third branch from an operational perspective.

We in the judiciary face a number of challenges as we head into the next century. Some of these are recurring challenges and are the inevitable consequence of Utah's growth. Others are unanticipated and raise fundamental questions about the way we have always done business. But in either case, the Utah judiciary is positioned to meet those challenges. We are well organized, innovative, and efficient. And our excellent working relationship with the executive and legislative branches assures that we can communicate openly and candidly about how to best address these challenges with a minimum of mutual suspicion and posturing.

Before I start into the body of my report, I want to take this opportunity to introduce several people to you. First, all of you know my colleagues on the Utah Supreme Court. Justices Stewart, Howe, Durham and Russon. But today I would like to ask Associate Chief Justice Richard C. Howe to stand. As of April 1, I will be stepping down as Chief Justice and he will be assuming the post. He will do an excellent job. Justice Howe has been a member of our court since 1980. Before that, he served for nearly two decades in this legislature, first in the House, where he was speaker in 1971 and 1972, and then in the Senate, where he served from 1973 to 1978. He understands your institution and will maintain our excellent working relationship. Justices Stewart, Durham and Russon are also here today.

I would also like to introduce you to the members of the Utah Judicial Council. The Supreme Court is the top of the judicial decision-making pyramid in Utah. And the Constitution also gives it some administrative responsibilities over the system, such as setting rules of evidence and procedure, overseeing the Bar, and managing the appellate process. But the role of administering the courts as a whole is assigned by the Constitution not to the Supreme Court, but to the elected representatives of the legal system who constitute the Utah Judicial Council. I though this would be a good opportunity for you to put faces to that institution.

The Council has 14 members, 12 judges elected from their respective court levels, including one Supreme Court justice, one court of appeals judge, five district court judges, three justice court judges, and two juvenile court judges. There is also a bar representative on the Council, elected by the Bar Commission. And the final members is the Chief Justice, who is the chair and votes only to break ties. I would like the members of the Council to stand as I introduce them.

Supreme Court Justice Leonard H. Russon

Court of Appeals Judge, and vice chair of the Council, Pamela T. Greenwood

Judge Anne M. Stirba of the 3rd District Court, Salt Lake County

Judge Michael Glasmann of the 2nd District Court, Weber County

Judge Robert T. Braithwaite of the 5th District Court, Iron County

Judge Michael Burton of the 3rd District Court, Salt Lake County

Judge Anthony W. Schofield of the 4th District Court, Utah County

Judge Kay A. Lindsay of the 4th Juvenile Court, Utah County

Judge Stephen A. Van Dyke of the 2nd Juvenile Court in Davis County

Judge Kent Nielsen of the Sevier County Justice Court

Judge Stan Truman of the Emery County Justice Court

Judge John Sandberg of the Municipal Justice Courts of Clearfield, Clinton, Riverdale and Sunset. (That is four different courts John handles. I have not merged these municipalities into one.)

James Jenkins, a member of the bar from Logan.

That is the Utah Judicial Council. These are the people who set the administrative policies by which the judicial branch is run, and also set the budget and legislative priorities for the system. Of course, we depend heavily on our able State Court Administrator, Dan Becker, his staff, and all the other court employees working across the state to carry out those policies. Dan, would you please stand, too.

I want to take one moment to congratulate all who had a hand in the 1984 revision of the Judicial Article of the Constitution that established the Council. You provided us with one of the soundest judicial administrative structures in the United States. It assures that all levels of court, and both urban and rural areas of the state, have their perspectives considered. Yet because no court level dominates the council, all must work out their differences and make common cause for anything to be accomplished. This has the effect of taking people who may have fairly parochial perspectives at the start and bringing them to see the needs of the judiciary as a whole, people capable of placing the needs of the system ahead of the needs of their own court level and geographical area. Largely because of this need for consensus, the Council has proven itself capable of developing and refining sound initiatives, and of mounting support for them to see that they are implemented. And because the terms of members are staggered, we have continuity in direction despite changes in membership.

My diversion onto the subject of the strengths of the Council system is not irrelevant to the theme of my speech today. One of the Council's strengths is that it enables the judiciary to formulate coherent positions internally, and then present them to others with one voice.

A recent example of how this has served all the branches, and the public, is in the area of juvenile justice. In my state of the judiciary address four years ago, I first began calling your attention to the inability of the juvenile justice system to deal with the large increase in youth crime that has paralleled growth in this segment of the population. A lack of necessary probation staff, of programs, and of secure detention beds produced long delays and an inability to match swift and appropriate sanctions to youthful offenders.

Competing visions between the juvenile court and various executive agencies as to how the problem should be addressed and by whom, and the threat that any remedy would have a large price tag, made the prospects of corrective actions dim. But after extensive conversations we initiated among leadership of the Senate and House, the Governor's office, the courts, and affected executive agencies, an agreement was reached to put together the Juvenile Justice Task Force, now in its second year. This legislative task force was carefully structured to include all the key players and to put all the tough issues on the table.

It is a testament to how well that task force process worked that last year, you passed without reduction its proposed $22 million package of increases for juvenile justice. The courts received $6 million of this money. One half of that $6 million was used to establish programs developed in the local juvenile court districts to provide services that previously did not exist. The other half of the money was used to hire 60 new probation officers to make sure that youth go to those newly available programs and do what ever else the court has ordered them to do. The rest of the $22 million is being used by other agencies to provide other much needed juvenile facilities and services.

I think we can look back on this whole matter with some pride. You, the legislature, and the governor have shown real leadership. The problem was identified, a process for addressing it was created, a consensus solution emerged, and you found the means to implement that solution. This is a model of effective problem solving by all three branches of government.

While this example illustrates the capacity of the courts, as an entity, to play an important role in working with the other two branches of government, another strength of our structure is that its coherent statewide administration is combined with a sensitivity to the needs of each part of the system. That has allowed us to be innovative and flexible in meeting the public's needs. We are constantly planning, setting goals, and trying new approaches to reach them efficiently. These new approaches are often done on a pilot basis, with little or no additional funding. If these approaches are successful, we attempt to implement them statewide, coming to you when necessary for additional funding or legislation.

The juvenile victim-offender mediation program is an example of a program that we developed and later came to you for support to expand it after it showed promise. This was initiated on an experimental basis in the 3rd District Juvenile Court in 1996. Under that program, mediation is offered to the victim and the offender, generally before a judge is ever involved. The objective is to give the victim an opportunity to meet the juvenile offender and impress upon them how the crime has affected their lives. It also gives the victim a chance to play an active role in determining the restitution required and any community services to be performed.

That program proved very successful. Victims are vastly more pleased with the process than when cases are handled in the traditional manner. Surveys tell us that more than 90% of the victims participating in the program felt good about the process, a remarkable figure given that they are victims of crime. In addition, the process makes a strong, positive impact on offenders. They must sit down with their victims and understand the result of their actions in very personal terms. That has changed their subsequent behavior.

From our records, we find that when mediation is used, the offending youth is 20% less likely to reoffend than those who have not gone through mediation. And when mediation has been used to set the amount and terms of restitution to be paid, the offenders pay a higher percentage of the amount ordered, and on time.

These startlingly, good results, led us last year to ask for funding from one staff person to expand the program. You gave us that funding, and with that support staff person, we have been able to secure the services of volunteer mediators, allowing the program to be taken statewide. Obvi-

ously, if these results hold up over time, this program has real potential for getting youth out of the juvenile system sooner, and keeping them out. It also has the added advantage of giving victims a much greater sense that the system cares about them, and that they are an integral part of the process.

The Alternative Dispute Resolution program I have just described is only one of six ADR programs that we are presently conducting in the appellate, district and juvenile courts, all of which show considerable promise. The bulk of these programs have been initiated without additional funding through the use of existing staff and volunteers.

Innovative programs that provide better solutions for the parties and the public are not without their challenges, both for the judiciary and for the legislature. We have undertaken several intensive judge-centered programs in the district and juvenile courts to respond to obvious needs. These programs show that better results for the parties and the public are often available, but that they come at the cost of much increased judge time and attention per case. The very success of these programs raises serious questions about how much we are willing to pay to improve the quality of justice the courts can provide.

In January of 1997, Judge Sheila McCleve of the 3rd District Court established a separate domestic violence calendar. In addition to her normal caseload, she took on responsibility for a calendar composed exclusively of domestic violence matters. The effect of concentrating the matters, instead of scattering them among all the judges' calendars, and of devoting additional judge time to each case, was to assure consistent treatment of offenders, to dramatically shorten the time between an offense and a court appearance, and to greatly increase the likelihood that those not complying with the terms of the court's orders would be punished.

As a result of her program, a far higher percentage of abusers are now complying with orders to get treatment, and compliance with other aspects of court orders is also up sharply. But the cost was far more judge time per case. By year's end, after having personally conducted over 5,000 cases, seeing the average defendant four times as often as would have been the case otherwise, Judge McCleve has returned to a more traditional calendar. The draining nature of the caseload and the sheer volume of the work was too demanding for one judge. But the lesson of her experience is that sustained attention by one judge to a defendant produces positive results that are hard to achieve otherwise. The other lesson is that increased judge time per case sharply increases workload and cannot be maintained without additional judicial and clerical resources.

A similar lesson is taught by our two existing drug court programs, and can be expected from other drug court programs that are being proposed around the state. Dramatic reductions in the rates at which defendants reoffend result from successful completion of the program, but the judge time per defendant is about 15 times what it would be in the routine criminal case.

We have had a similar experience in the juvenile court. The Child Welfare Reform Act of 1994 formalized proceedings and required more judge time per case in the hope of achieving better outcomes for children, parents, and society. The Act has had the desired consequences. However, at a high cost. Abuse and neglect matters constitute less than 5% of the case filings in the juvenile court, but now require almost 50% of the total available judge time to process.

These are only examples, but I suspect that in the future, we will see more programs, whether originated internally or from without, where particular types of cases will be earmarked for more intensive judge attention in the hope of producing better results. And if these programs are promising, I am sure that we will respond by seeking their expansion. But you can see that more judge-intensive calendars will only compound the problems of growth we face, and put in high relief the choice between cost and the quality of justice.

To help us meet the demands of current judge-intensive programs, and as well to meet the growth in our traditional district court caseload, we are asking for two additional judgeships this year, one for the juvenile court and one for the district court. They are not all we need, but they are a start.

Let me take a minute and reflect on another emerging issue which I think will eventually be of great importance to the judiciary and the legislature; not necessarily this year or next, but certainly in the foreseeable future.

This is the challenge posed by the sharp increase in pro se litigants: that is, people representing themselves in civil matters. These cases are of various types, from divorce, abuse protective orders, custody and visitation, to contract and torts. In Utah, currently one in every five civil cases is filed pro se, and the trend is upwards. This trend toward self-representation is nationwide and I think it will persist. For example, in Phoenix, Arizona, one-half of all divorce matters are now filed pro se. This trend is partly driven by economics – the cost of lawyers – and partly by a desire of people to handle their disputes by themselves. Direct participation gives them more understanding and more control over the process and the outcome. This same desire to participate directly is also one of the things that is fueling the growth in our ADR programs.

Direct participation presents problems, however. Courts are structured to operate with lawyers representing the parties, which permits the court personnel and judges to act as detached participants in the litigation process. In such a scenario, lawyers who understand the intricacies of the law and the procedures can be counted on to advise the clients, advocate their positions, and get them through the process. The presence of large numbers of pro se litigants is fundamentally inconsistent with this system. Their lack of understanding of procedure and the law raises the prospect of the pro se litigant losing not on the merits of their case, but on technical grounds. Also, their lack of knowledge also means that they make many missteps and require help through the process from court employees.

I have no doubt that the judiciary has a clear responsibility to accommodate these people seeking to assert their legal rights.

We have made efforts. In 1995, we placed five QuickCourt kiosks around the state to permit people to prepare their own pleadings in some types of matters. The forms produced by these machines, after a simple question and answer session with a computer, comply fully with the requirements of our court rules, thus avoiding a source of technical problems for pro se litigants. Although we have only five machines in place, last year almost 12,000 people sought court information from these kiosks, and almost 4,000 people printed out forms for divorce and landlord-tenant issues. This represented a 50% increase in usage over the previous year.

This year, we are asking for legislation that will permit us to make these same services more widely available over the Internet. In addition, we are making ADR available in more forums, which should help meet the needs of these litigants for understandable, sound, and accessible dispute resolution processes. Finally, to make the system a bit less daunting, we are instituting a 1-800 number where the public can call and get information or register complaints.

You in the legislature have already addressed one small aspect of this pro se problem and seem to agree that the courts should help them navigate the judicial processes. In 1996, you required that court clerks essentially act as paralegals for those seeking domestic abuse protective orders. As a result, a large number of court clerks are devoting the bulk of their time to this work, and the demand continues to rise.

The long-range implications of this increase in pro se civil litigation is that it will bog the courts down, retarding the processing of all types of cases. Already, I hear judges complaining about how they have to act as lawyers for these pro se litigants and how this slows down their calendar. Some who have studied this problem have suggested that the courts will soon have to provide more clerks to act as paralegals for pro se litigants if court access is to be meaningful. This would not be greatly different from what we are already doing for those seeking protective orders.

Whatever steps are taken to accommodate this trend, it is sure to have substantial cost implications. And this is an area where there is no real options for the courts or the legislature. Referring back to my earlier remarks about more judge-intensive programs, there you can choose not to provide the judicial resources needed to permit judges to devote more time to each case in order to produce better results. But in the area of pro se litigation, regardless of what you do or do not do to facilitate access, the public will make its own demands on the court system.

As this is my last appearance before you as Chief Justice, I would like to take a moment to extend my warm thanks to members of the House and Senate and the executive branch with whom I have had the pleasure of working over these past four years. There are natural tensions between the branches of government that the founders wisely relied upon to keep each in its own sphere. But beyond our areas of necessary autonomy, we are all part of one government, trying to do the peoples' business. Governor Leavitt, President Beattie, and Speaker Brown all understood that fact and made my task of representing the judiciary far easier than it might have been. I trust that understanding will also serve to ease the way for my successor.

In concluding, I would like to invite each of you to visit us in the new courthouse in March, after our move. The building is on time and on budget, no mean feat for a project of its size.

Thank you for your attention.

THE NATIONAL JUDICIAL COLLEGE

Judicial College Building • University of Nevada, Reno • Reno, NV • 89557
Telephone: (702) 784-6747 or 1-800-25-JUDGE

In 1997, 31 judges from the state of Utah attended The National Judicial College to gain more knowledge and skills with regard to their work on the bench. The National Judicial College provided these judges with a forum for education, an opportunity for dialogue with their peers from across the country and information on topical issues. Over the years, 602 certificates of completion for course work have been issued from The National Judicial College to judges from Utah.

"The National Judicial College is an important resource for increased awareness of expanding judicial education and practices for judicial officers in Utah," said Judge Christine M. Durham of Salt Lake City. "The College is a unique facility that provides continuing education for about 3,000 judges and administrative officers of the court each year. The College is an invaluable resource for the bench as well as its constituencies.

Founded in 1963 by U.S. Supreme Court Justice Tom C. Clark and the ABA Joint Committee for the Effective Administration of Justice. The National Judicial College is the leader in national judicial education in this country and throughout the world. An ABA-affiliated institution located on the campus of the University of Nevada, Reno, its mission remains to provide leadership in achieving justice through quality education and collegial dialogue. The college is funded by a mix of tuition, endowment income and contributions from corporations, law firms, foundations and alumni.

The faculty at NJC consists of outstanding judges, lawyers and law professors from across the nation, most of whom serve without compensation. Significantly, 300 faculty members serve the College each year which equates to an annual contribution of $1.1 million.

The National Judicial College's Master of Judicial Studies program awarded eight degrees during 1997.

"As a judge in Michigan for twenty years, I visited The National Judicial College as both a participant and faculty member. I experienced the value of interacting with judges from across the country. Each year the College strives to enhance its curriculum and update its course offerings to assure that burgeoning topics are constantly being addressed," said Judge V. Robert Payant, president of The National Judicial College.

The National Judicial College was featured on "60 Minutes" as the leading continuing education center for trial judges. Additionally, the College was noted in a segment of NBC news on handling domestic violence cases. Since the College was founded in 1963, more than 60,000 certificates of completion have been issued to graduates including U.S. Supreme Court Justices Sandra Day O'Connor and David Souter. U.S. Supreme Court Justice Anthony Kennedy has served on the faculty.

Case Summaries

By Daniel M. Torrence

Richardson v. Matador Steak House, Inc., 330 Utah Adv. Rep. 25 (Utah 1997). Paul M. Durham and J. Mark Gibb for Plaintiffs; Dale J. Lambert and Mark L. Anderson for Defendants.

Berdette Richardson became intoxicated at Matador Steak House. She died when driving herself home. Her relatives sued Matador under the Dramshop Liability Act. The Act provides that "third persons" may claim relief against one who serves alcohol to a minor and are injured as a result. However, the Supreme Court held that "third person" does not include a relative of the intoxicated person.

The Court declined to address the issue of whether the trial court erred in ruling that the Dramshop Act provides the exclusive remedy for actions against providers of alcohol and preempts all common law claims for relief.

Hirpa v. IHC Hospitals, Inc., Merrill C. Daines, et. al, 330 Utah Adv. Rep. 3 (Utah 1997). Patricia W. Christensen, D. Craig

Parry, and Kathleen Switzer for Plaintiffs; B. Lloyd Poelman for IHC; Elliot J. Williams and Kurt M. Frankenburg for Daines.

Mr. Hirpa's wife became unresponsive during childbirth at Logan Regional Hospital. A "Code Blue" intercom call brought Dr. Daines, the hospital's medical doctor and a specialist in internal medicine, who took over the care of Mrs. Hirpa. Despite the efforts of the response team, Mrs. Hirpa died seventeen minutes later. Mr. Hirpa later brought suit against, among others, Dr. Daines. Dr. Daines contended he was acting as a volunteer and thus protected by the Utah Good Samaritan Act.

The Supreme Court ruled that doctors are protected by the Good Samaritan Act when they respond to an in-hospital emergency, if they have no pre-existing duty to do so. In deciding whether such a pre-existing duty arises in a particular case, judges and juries may consider factors such as whether the doctor was "on call," the doctor's contract, hospital rules, any doctor/patient relationship, or any duty created by employment, practice, or custom.

The Court also held that this interpretation of the Good Samaritan Act does not violate either the Open Courts Provision or the Wrongful Death Provision of the Utah Constitution.

Independent People

By Halldor Laxness

Reviewed by Betsy L. Ross

Most of the time I choose what books to read based on recommendations from others – people I know being most influential (thank you to Betsy Burke at The King's English and Marcelyn Ritchie at The Waking Owl), authors I enjoy, and even book reviewers. Those of you who have read *A Thousand Acres*, and enjoyed it, will appreciate Jane Smiley's comments about this novel: "I love this book. It is an unfolding wonder of artistic vision and skill – one of the best books of the twentieth century, I can't imagine any greater delight than coming to *Independent People* for the first time." Or if you read and loved E. Annie Proulx's *The Shipping News*, you might be influenced by her comments: "Reader, rejoice! At last this funny, clever, sardonic and brilliant book is back in print. *Independent People* is one of my Top Ten Favorite Books of All Time."

Independent People is, not surprisingly, about independence; it is a theme with which you and I can identify. The very fabric of our nation is based on a declaration of independence from another sovereignty. This sense of independence encouraged the creation of a new society founded on individual hard work and the common good. And yet, it is independence, too, for which we can thank the alienation in our culture today. Under the rubric of independence we have lost our sense of connectedness to others. "Independence" is, on the one hand, a bedrock component of our society, and, on the other hand, a destructive one. It is, in essence, contradiction.

Laxness explores this contradiction in a very different setting from twentieth century America. The 1955 Nobel Prize winner was born near Reykjavik, Iceland, in 1902. *Independent People*, his legacy, explores "independence" from the Icelander's point of view. Though influenced by a very different society, and a very different physicality, *Independent People* reveals the same contradictions of independence that we in America experience today.

In the same way that Wallace Stegner's works are dominated by place, *Independent People* is driven by the influence of the forbidding Icelandic landscape. Set in the early twentieth century, it is the story of a sheepherder, Bjartur of Summerhouses, who struggles to secure his independence in what is still a feudal society. The harshness of the landscape, the vastness of nature, its cruelty and beauty combined, are the backdrop for these independent people. They are a people full of the contradiction of the land. Laxness brilliantly and ironically captures many of these contradictions, and allows them to exist without resolution, almost reveling in them. His Icelanders recite the Lord's Prayer, for example, as follows:

> Our Father, which art in Heaven, yes, so infinitely far away that no one knows where You are, almost nowhere, give us this day just a few crumbs to eat in the name of They Glory, and forgive us if we can't pay the dealer and our creditors and let us not, above all, be tempted to be happy, for Thine is the Kingdom . . . .

Although our history is one of acceptance of religion, there exists a tension that Laxness exploits between the concept of religion, based upon faith in someone other than ourselves, and independence, which touts self-reliance. Laxness' characters, uneducated philosophers, explore this seeming contradiction, questioning yet not discarding the precepts of religion, as in this discussion of a newborn child:

> It's marvelous, you know, when you come to think of it: there you have a new body and a new soul suddenly making their appearance, and where do they come from and why are they always coming? Yes, I've asked

myself that same question many a time, both night and day. As if it wouldn't have been more natural to let the same folk live in the world continually; then there would have been at least some likelihood of ordinary people like you and me working their way up into a comfortable position eventually.

Political philosophies and their impact on independence are also explored by Laxness. The competition between the old feudalism and the new socialism raises the question of which is best for the independent man. Bjartur of Summerhouses certainly has his opinion:

> . . . [I]s there any reason why you or the Women's Institute should concern yourselves with me and my wife, may I ask? Or my children? As long as I owe neither you nor the Women's Institute I shall demand in return that neither you nor the Women's Institute meddle with my wife or my children. My wife and my children are mine in life and death. And it is my business, mine alone, and neither yours nor that pack of blasted old scandalmongers' whether my children look well or not. Sooner shall all the hummocks on Summerhouses land hop up to heaven and all the bogs sink down to bottomless bloody hell than I shall renounce my independence and my rights as a man.

The contradiction of independence seeps into the personal realm, too. Bjartur's wife recognizes the "impassable distance that separates two human beings" and yet it is Bjartur's daughter to whom Bjartur ultimately clings, with words "Keep a good hod round my neck, my flower." And she responds "Yes . . . Always – as long as I live. Your one flower. The flower of your life."

Where does resolution and relief from the contradictions lie? Like Schoenberg's atonality, you will not find it in this novel. But then, neither will you find it in our society today. Independence, a value so highly touted, and with a position of such prominence in American culture, is quite simply imbued with contradiction. And thus it is. Or, as Laxness ends his novel, simply, "Then they went on their way."

A WELCOME PLACE
IOLTA Grant Recipient

A Welcome Place – Medina Family, clients, with attorney Teresa Hensley, March 1998

A Welcome Place is the non-profit Utah legal services agency providing assistance to low income immigrants and their families seeking benefits from the Immigration and Naturalization Service. Located in Salt Lake, just north of the INS office, the agency provides both information and direct legal services. Attorney Teresa Hensley works with a bilingual staff, interns from Utah's law schools and volunteers to assist clients with asylum, litigation, family reunification, immigrant battered spouse protection and naturalization.

The agency is accredited by the Federal Board of Immigration Appeals, and works with other low income service providers to assist immigrants in normalizing their immigration status, and accessing the services to which they are entitled. Due to recent changes in the law, there are some social services which are available to immigrants, but if used, may jeopardize their ability to retain their legal residency. In such cases, the staff at A Welcome Place serves as a resource for locating much needed assistance which is not tied into the federally funded programs.

A Welcome Place staff appears before the Immigration and Naturalization Service, the Regional Service Centers, the Immigration Court, the Asylum Office, and the Board of Immigration Appeals on behalf of immigrants and their families. The agency provides a staff to run a state-wide outreach program that offers off site presentation on immigration law from Blanding to Tremonton.

Because of the rapidly changing laws, and the tremendous impact that legal proceedings can have upon immigration status, the agency provides training to attorneys, community organizations, schools, and government agency staff on the substantive and procedural aspects of immigration law. Of particular importance are the provisions relating to family law, criminal proceedings, public assistance and domestic violence. In an area of the law where a little knowledge is significantly more dangerous than no knowledge, the agency provides a reliable source of current immigration information.

A Welcome Place facilitates naturalization, and in turn assists the new citizens in working toward the legal reunification of their families. Many of the processes are lengthy and involve complicated filing processes. For persons with limited English, competent assistance is a necessity. When a new citizen is trying to process an application for a family member that will take fifteen years if it is properly submitted, incorrect processing can be devastating.

The agency is supported by the Utah Bar Foundation, United Way of Salt Lake, private donations, and sliding scale subsidized client fees. Immigration filing fees are substantial, and for many low income families, it is impossible to cover both those fees and the cost of private counsel. Under the new immigration domestic violence provisions, fee waivers may be available. For most immigration filings, a request for a fee waiver raises the issue of public charge – which in turn become a basis for deportability.

The agency is located at 5242 South College Drive, Suite 210, Salt Lake City. The phone number is (801) 685-8268. Members of the bar are invited to use A Welcome Place as a resource.

CLE CALENDAR

ALI-ABA SATELLITE SEMINAR: LITIGATORS UNDER FIRE! ETHICS AND PROFESSIONALISM UPDATE

Date: Thursday, April 9, 1998
Time: 10:00 a.m. to 1:15 p.m.
Place: Utah Law & Justice Center
Fee: $175.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 3.5 HOURS ETHICS

NLCLE WORKSHOP: LAW OFFICE MANAGEMENT

Date: Thursday, April 16, 1998
Time: 5:30 p.m. to 8:30 p.m. *(Registration begins at 5:00 p.m.)*
Place: Utah Law & Justice Center
Fee: $30.00 for Young Lawyers Division Members
$60.00 for all others
CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: BUSINESS VALUATION – WHAT EVERY BUSINESS LAWYER SHOULD KNOW

Date: Thursday, April 16, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

ANNUAL REAL PROPERTY SECTION SEMINAR

Date: Thursday, April 16, 1998
Time: 8:00 a.m. to 1:00 p.m.
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: ~4 HOURS

ALI-ABA SATELLITE SEMINAR: ANNUAL SPRING EMPLOYEE BENEFITS LAW AND PRACTICE UPDATE

Date: Thursday, April 23, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

ALI-ABA SATELLITE SEMINAR: WORKPLACE HARASSMENT LITIGATION UPDATE: CLAIMS BASED ON SEX, RACE, AGE & DISABILITY

Date: Tuesday, April 28, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

ALI-ABA SATELLITE SEMINAR: DRAFTING AND ENFORCING TRADEMARK, COPYRIGHT, AND SOFTWARE LICENSING AGREEMENTS

Date: Thursday, April 30, 1998
Time: 9:00 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 6 HOURS

ALI-ABA SATELLITE SEMINAR: TACKLING THE TOUGH TOXIC WASTE PROBLEMS: CERCLA, RCRA, AND BROWNFIELDS

Date: Tuesday, May 5, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: Thursday, May 7, 1998
Time: Registration & Continental Breakfast – 7:30 a.m Seminar – 8:00 a.m. to noon Section Business Meeting & Luncheon – 12:00 noon
Place: Utah Law & Justice Center
Fee: $40.00 for Corporate Counsel Section Members
$55.00 for All Others
CLE Credit: 4 HOURS, which includes 1 in ETHICS

NLCLE: EFFECTIVE COMMUNICATIONS

Date: Thursday, May 14, 1998
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $30.00 for Young Lawyer Division Members
$60.00 for All Others
CLE Credit: 3 HOURS

TRIAL ACADEMY PART III: FACT WITNESSES

Date: Wednesday, May 27, 1998
Time: 6:00 p.m. to 8:00 p.m. *(Registration begins at 5:30 p.m.)*
Place: Utah Law & Justice Center
Fee: $25.00 for Litigation Section Members; $35.00 for All Others
CLE Credit: 2 HOURS CLE/NLCLE

Those attorneys who need to comply with the New Lawyer CLE requirements, and who live outside the Wasatch Front, may satisfy their NLCLE requirements by videotape. Please contact the CLE Department (801) 531-9095, for further details.

Seminar fees and times are subject to change. Please watch your mail for brochures and mailings on these and other upcoming seminars for final information. Questions regarding any Utah State Bar CLE seminar should be directed to Monica Jergensen, CLE Administrator, at (801) 531-9095.

CLE REGISTRATION FORM

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Please send in your registration with payment to: **Utah State Bar, CLE Dept., 645 S. 200 E., S.L.C., Utah 84111.** The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars. Please watch for brochure mailings on these.

Registration Policy: Please register in advance as registrations are taken on a space available basis. Those who register at the door are welcome but cannot always be guaranteed entrance or materials on the seminar day.

Cancellation Policy: Cancellations must be confirmed by letter at least 48 hours prior to the seminar date. Registration fees, minus a *$20 nonrefundable fee*, will be returned to those registrants who cancel at least 48 hours prior to the seminar date. No refunds will be given for cancellations made after that time.

NOTE: It is the responsibility of each attorney to maintain records of his or her attendance at seminars for purposes of the 2 year CLE reporting period required by the Utah Mandatory CLE Board.

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Get to Know Your Bar Staff

KIM WILLIAMS

Kim Williams was born and raised in Salt Lake City. She graduated from Skyline High School and went to California to be a nanny for a two year old boy. Kim returned to Utah and attended Salt Lake Community College where she studied Elementary Education.

Kim began working at the Utah State Bar in 1990 as the full time receptionist. She has assisted in several departments including Continuing Legal Education, Law and Justice Center, and the Lawyer Referral Service. She currently works part time as the afternoon receptionist and assists with the Tuesday Night Bar program.

Kim has two beautiful children ages one and four who are full of energy and love to explore their world. She enjoys mountain biking, walking, reading, and spending time with her family. She hopes one day to return to college and earn her teaching degree as well as spend a little time traveling.

LORRIE LIMA

Lorrie Lima graduated from the University of Utah College of Law in 1989. Following law school she has worked for various Utah government agencies: investigator for the Utah Antidiscrimination Labor Division, staff attorney for the Utah Department of Corrections, assistant attorney general for the Utah Attorney General's Office, and Associate Director of the Office of Equal Opportunity and Affirmative Action at the University of Utah. Although the trek from one government entity to another may be considered nontraditional when compared to the more traditional path many lawyers take following law school, Lorrie has enjoyed the challenge of developing new skills required for each position. Lorrie opines she has honed certain skills that are critical to her in order to be an effective attorney: the ability to listen, to ask the right questions and to provide direction. Lorrie states, as the Pro Bono Coordinator for the Bar she spends a majority of her work time talking to individuals who need help defining their legal issues and identifying their legal options. Lorrie concludes she has the best of both worlds: practicing law and assisting people whose options are limited by their circumstances.

Lorrie was born in Quezaltenango, Guatemala and was raised in Salt Lake City. As a child she spent her winters in Utah and her summers in Guatemala. As an adult she was dismayed to learn that she could not maintain the same calendar schedule and earn a living too. Lorrie has two sons: one who is 20 years going on six years and the other who is six years going on 20 years. It can be rather confusing at times.

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Program Title
_____
Date of Activity CLE Hours Type of Activity**

2. _____
Provider/Sponsor
_____
Program Title
_____
Date of Activity CLE Hours Type of Activity**

3. _____
Provider/Sponsor
_____
Program Title
_____
Date of Activity CLE Hours Type of Activity**

4. _____
Provider/Sponsor
_____
Program Title
_____
Date of Activity CLE Hours Type of Activity**

IF YOU HAVE MORE PROGRAM ENTRIES, COPY THIS FORM AND ATTACH AN EXTRA PAGE

**EXPLANATION OF TYPE OF ACTIVITY

A. Audio/Video Tapes. No more than twelve hours of credit may be obtained through self-study with audio and video tapes. See Regulation 4(d)-101(a).

B. Writing and Publishing an Article. Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. An application for accreditation of the article must be submitted at least sixty days prior to reporting the activity for credit. No more than twelve hours of credit may be obtained through writing and publishing an article or articles. See Regulation 4(d)-101(b).

C. Lecturing. Lecturers in an accredited continuing legal education program and part-time teachers who are practitioners in an ABA approved law school may receive three hours of credit for each hour spent in lecturing or teaching. No more than twelve hours of credit may be obtained through lecturing and part-time teaching. No lecturing or teaching credit is available for participation in a panel discussion. See Regulation 4(d)-101(c).

D. CLE Program. There is no restriction on the percentage of the credit hour requirement which may be obtained through attendance at an accredited legal education program. However, a minimum of one-third of the credit hour requirement must be obtained through attendance at live continuing legal education programs.

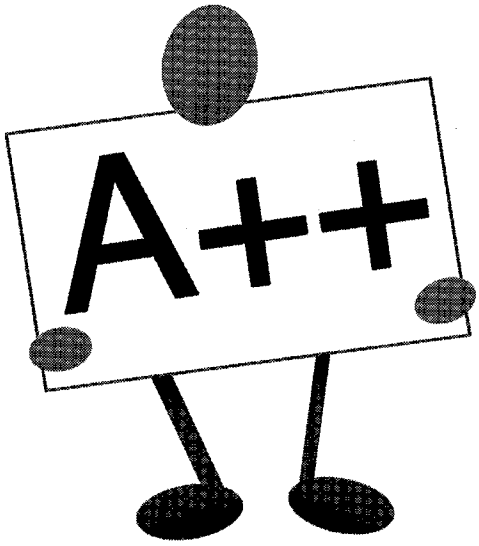
THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

Regulation 5-102 — In accordance with Rule 8, each attorney shall pay a filing fee of $5.00 at the time of filing the statement of compliance. Any attorney who fails to complete the CLE requirement by the December 31 deadline shall be assessed a **$50.00** late fee.

I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the State of Utah including Regulations 5-103(1).

DATE:_____ **SIGNATURE:**_____

Regulation 5-103(1) — Each attorney shall keep and maintain proof to substantiate the claims made on any statement of compliance filed with the board. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders or materials claimed to provide credit. This proof shall be retained by the attorney for a period of four years from the end of the period of which the statement of compliance is filed, and shall be submitted to the board upon written request.



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