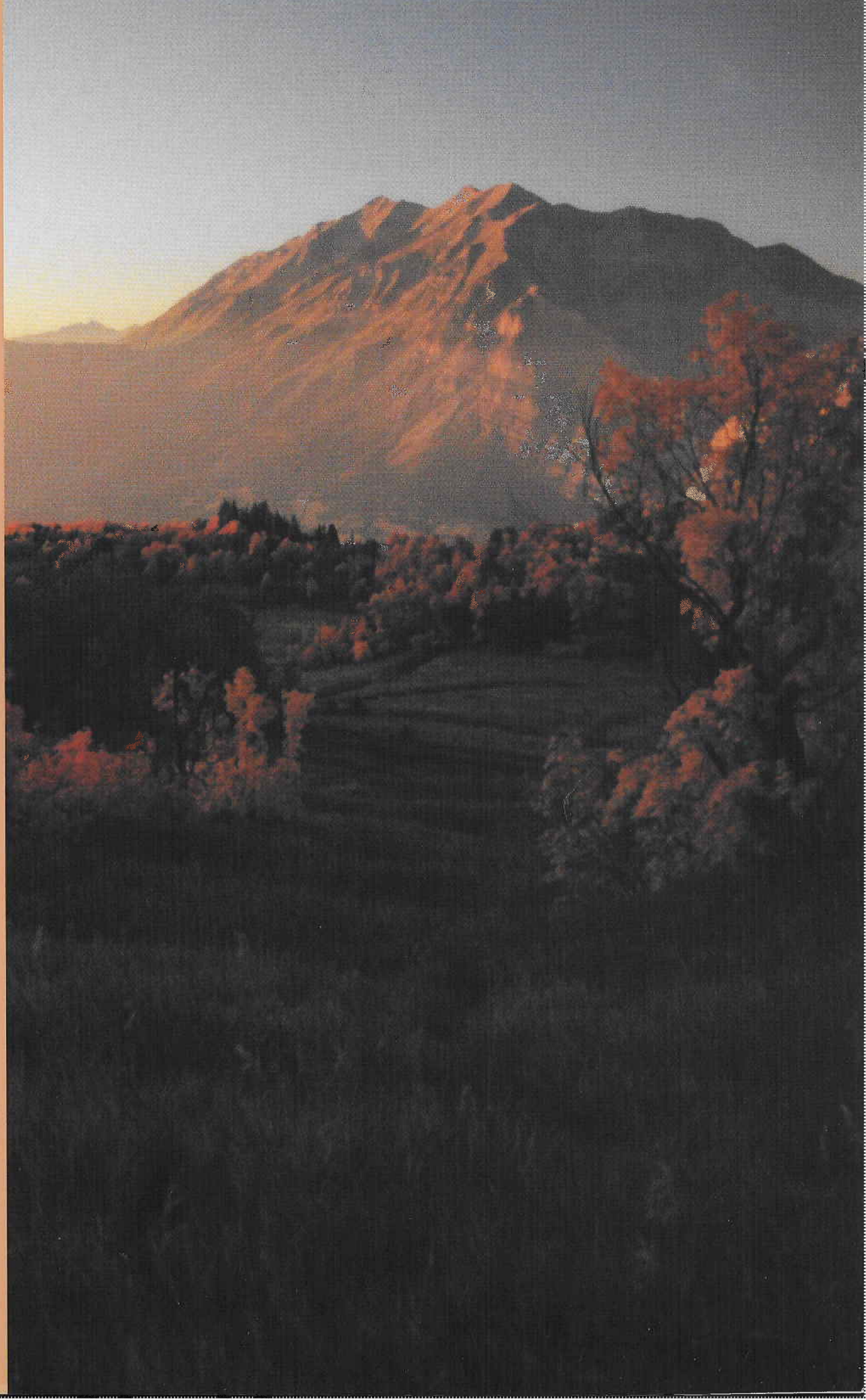
Utah Bar JOURNAL



Volume 11 No. 8
October 1998

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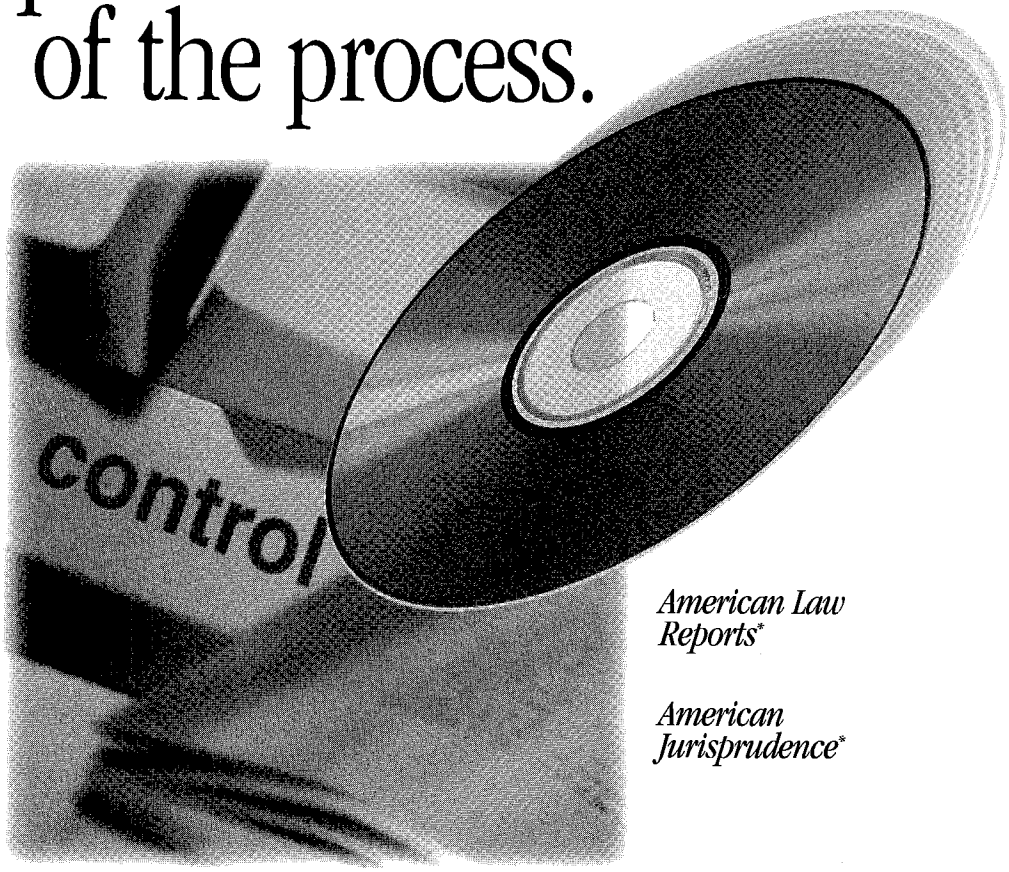

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Table of Contents

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: Mount Timpanogos from Squaw Peak Trail Summit (7700 feet) Utah County, by Philip E. Lowry.

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

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.

Utah Bar JOURNAL

Volume 11 No. 8
October 1998

Letters to the Editor

Dear Editor:

The issue of mandatory pro bono reporting has been of great interest to the members of the Bar, regardless of where they might stand on this issue. In an effort to keep the members of the Bar informed, I was wondering if you would be so kind as to publish (perhaps right below this letter) the names of the Bar Commissioners and how they voted on this issue? I've only been able to ascertain that it was an 8 to 4 vote, but I don't know who voted which way.

If the minutes of the meeting don't reflect individual votes, perhaps you could do us the service of contacting each Bar Commissioner and asking them how they voted, then publish the responses.

You efforts to inform the members of the Bar are certainly appreciated.

Michael D. Wims

Ed. – As you requested!
Voting yes: John Florez, James C. Jenkins, Steven M. Kaufman, Randy S. Kester, Debra J. Moore, David O. Nuffer, Ray O. Westergard and Francis M. Wikstrom.
Voting no: Charles R. Brown, Scott Daniels, Denise Dragoo and D. Frank Wilkins. Abstain: Charlotte L. Miller.

Dear Editor:

For the past two years or so I have donated an average of fifteen hours per month court time, and twenty hours per month office time for pro-bono projects through the Bar Association and independently of the Bar. I have not reported my efforts. I find it objectionable and will consider ceasing my volunteer activities if reporting becomes mandatory. The volunteer work is the most satisfying legal work I do, but the mandatory reporting will tend to turn it into another hypocritical game.

In what way does the mandatory reporting requirement increase the likelihood that volunteer work will be done? It seems to me that the Bar is once again concerned with the appearance of good works rather than the actual doing of anything substantive. A similar observation can be made toward mandatory CLE.

If we as a group have a bad image it may be because we as a group are not interested in service to the needy, but in appearing to care about them. If it is service that is being promoted, then promote the concept of service rather than the reporting of service.

John R. Bucher

Dear Editor:

I am a legal assistant/paralegal by profession and an active member of the Legal Assistant Division of the Bar. As such, I've been privileged to work with some of the best attorneys in the State, and some of the worst. There are many things I love about the legal profession and there are many things I don't, but for as long as I can remember I have wanted to be a part of the legal/political system; to be a part of social change for good and to support and nurture individual freedoms. That has changed dramatically over the last few years. I find it hard to believe that one person could make a difference or change anything. I now question whether we have all lost our sense of common decency and humanity and our passion for individual freedoms.

As I reviewed "The President's Message" in the August, 1998 issue of the *Bar Journal*, it reminded me of all of the things I wanted and still want to accomplish. The two experiences Mr. Jenkins shared touched my memory and brought to light brief glimpses of all that I once believed could be accomplished. We need more attorneys and paralegals like Mr. Jenkins, who focus on the basics. It is hard as a legal professional to retain the visions and dreams which elevate our actions and aspirations, but if more of us were to remember and join together, maybe, we could start to make a change. Maybe, however small a change, it will begin to grow and spread. It may just be the social change for good most of us dreamed of from the very beginning.

L. Denise Farnsworth

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.

Better Communication

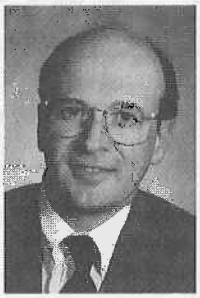
by James C. Jenkins

The *Utah Bar Journal* has been for many years the voice of the Utah State Bar. The articles, reports and messages printed in each edition center on the practice of law and our judicial system. It's purpose is to inform lawyers of our professional duties and of the activities of our association. The *Journal* is published nearly every month of the year and continues to be a quality product month after month. One appreciates the quality of the publication even more when you understand that it is produced by a dedicated committee of unpaid volunteers. I commend and thank Cal Thorpe and all those who work so hard to make the *Journal* a success.

I look forward each month to reading the *Journal*. I find the "how-to" articles helpful in my practice, and the reports and profiles acquaint me with fellow lawyers and judges whom I might not otherwise meet. The *Bar Journal* is an important tangible way that I identify with our profession.

This year we have divided the Bar Journal Committee into two cooperative committees by creating the Electronic Media Committee. Bill Holyoak, a long time member of the Bar Journal Committee, has accepted the responsibilities of chair of this new group. The Electronic Media Committee will focus on various ways to expand communication through electronic means. Bill's group will address how to improve our internet web site and encourage membership use. The Bar Journal Committee and the Electronic Media Committee expect to work together to better inform and thus unify our membership.

As we work together to improve communications within the Bar, it is important that we share ideas and observations. Please take time to write to me, Cal or Bill and tell us how you feel about the *Bar Journal*, the Bar Web page and our plans to better communicate with our members. If you have ideas on how we can improve our communications, please let us know.



The Democratic Process and Rule 6.1

by Charles R. Brown

Democracy works. However, effective democracy requires each of us to become an involved citizen. As you know by now, the Supreme Court entered an order on August 19, 1998 adopting a modified version of Rule 6.1, which provides that the reporting of pro bono legal services by lawyers to the Bar shall be voluntary rather than mandatory. The order of the Court was the culmination of a two-year process which commenced with the organization of the Access to Justice Task Force. The Task Force was originally organized by the Supreme Court and the Bar Commission as a response to the reduction in funding for the Legal Services Corporation by Congress. There was a sincere concern that access to the justice system for those of limited means would be severely restricted or eliminated by that funding cut. It was the goal of the Task Force to determine the existing status of access to justice in the state of Utah, to make recommendations to improve the process and to fill the gaps resulting from the reduction in Legal Services funding. The Report of the Task Force is exhaustive, informative and illuminating. I would strongly encourage each of you who has not yet done so to read the complete Report. It is available at the Bar offices and on the Bar's home page on the Internet.

With one significant exception, the recommendations of the Task Force were non-controversial and, I believe, supported by most, if not all, of our members. The controversial aspect of the Task Force Report was the recommendation for amendments to Rule 6.1 of the Utah Rules of Professional Conduct. Those amendments would modify the definition of what constitutes pro bono service and, most importantly, would have required mandatory reporting of pro bono legal services on the annual licensing form. By a vote of 8-4, the Bar Commission adopted the Task Force Report, including the recommendation to amend Rule 6.1 to require mandatory pro bono reporting. A petition was drafted and filed with the Supreme Court requesting adoption of that amended rule.

That proposal caused a fire storm among our members. The Bar received close to 150 letters from members regarding Rule 6.1. Approximately 77% of those letters were opposed to the requirement of mandatory reporting. The letters stated various reasons for the objection. Some people were concerned about the "camel's nose in the tent" syndrome – that mandatory reporting may be an initial step toward what would ultimately be a requirement for mandatory pro bono. Others were concerned about the definition, pointing out that they already performed charitable services in non- legal areas, i.e., serving on charitable boards, church work, etc. The third type of objection, which I found to be the most profound, was from those who were morally offended by the concept of reporting charitable work. They pointed out, often eloquently utilizing biblical quotes, that the motivation to perform charitable work is, and should be, a desire to do good out of the beneficence of your own heart. Any element of compulsion, including a requirement to report, demeans the charitable nature of the services.

The most eloquent letter along this line was from Professor Richard I. Aaron of the University of Utah College of Law. Professor Aaron emphasized that the concept of pro bono service does not normally involve keeping track of one's time. One simply performs the services for those who are in need. He was offended by the reporting requirement and indicated that if it were adopted he would probably stop performing pro bono services. Coming from Professor Aaron, I found that argument to be very compelling. When I was in law school, many years ago, I performed pro bono services for numerous clients of limited economic means in a clinical program under the direction of Professor Aaron. His dedication and commitment to the concept of pro bono service could not be questioned by anyone.

I was a member of the four-person minority which voted against the adoption of mandatory reporting. The minority believed that the amendment to the Rule, although proposed by sincere, well-meaning people, was not appropriate. The reasons for our dissent were similar to the reasons subsequently set forth in the letters from the members. We were also concerned that the Task Force, in making its recommendations, and the majority of the Commission, in adopting the proposed rule, may not have been totally efficient in the communication process to and from our members. The Utah State Bar is a quasi governmental agency which regulates the professional lives of its dues paying members. As with laws enacted by Congress and the Legislature, any rule which has a material impact on the members should not be adopted unless there is a compelling "Bar" interest requiring its adoption and unless an alternative, less intrusive remedy is not available to accomplish the intended goal.

The Court exercised its discretion on this matter in a wise manner. I believe the Justices sincerely considered the concerns of the members in adopting a rule which is more acceptable and less intrusive to those members. The public reaction by our members to the proposed rule and the response of the Court is a positive event. It shows that the democratic process can work in Bar matters. The leadership of the Bar understands that we should not be making decisions in order to facilitate a specific goal, no matter how positive or noble that goal is, without sincerely and honestly listening to and communicating with our members.

The democratic process worked and I am optimistic that it will continue. However, continued success will require significant input from each of us. Many members remain complacent regarding the Bar. They do not bother reading the *Bar Journal*, do not review Bar mailings and have no involvement with the Bar. Complacency is not acceptable. We have a duty to be good citizens, both in our personal lives and as members of the Bar. The Bar is attempting to communicate more effectively with its members. That process must be a two-way street. We expect and want to hear from you, and not just when you are upset about something. There is an abundance of information available about the Bar, its processes, its budget and its functions. In turn, we need objective, constructive feed back from our members. Democracy can work effectively for the Bar only if we have an informed, non complacent, responsive membership.

Regarding Rule 6.1 and access to justice, all of us must acknowledge that providing of pro-bono legal services to the economically disadvantaged is essential. Many of our members perform charitable work, by serving on charitable boards, working for our church or otherwise, but that misses the point. The ability to provide legal services is limited to a restricted few. In the state of Utah, it is limited to our approximately 5,000 active members. One of the non-lawyer community members of the Bar Commission advised me that he would like to become involved in helping disadvantaged persons with their legal needs. Notwithstanding his interest, he is legally prohibited from doing so because he is not licensed to practice law. I am not suggesting that we abandon our charitable work in non-legal areas. All the same, there are plenty of charitable minded people not licensed to practice law who can assist those charities. Those people cannot provide legal assistance to the economically disadvantaged. We can and should.

I do not believe in mandatory pro bono service or mandatory pro bono reporting. I do believe in and strongly encourage the minimal commitment of good citizenship. Each of us has a license to practice in a profession which is limited to a select few. Licensed members of our profession in the state of Utah constitute less that 1% of the total population. We are the only ones with the skills and training, and the license, necessary to help those less fortunate navigate the complexities of our legal system. It will be my goal over the next two years, as President-Elect and President, to encourage each of us to become more involved in Bar activities, including the providing of pro bono services to those who cannot afford to pay. None of that will be regulated and none of it will be mandated. Still, we do practice in a profession which has a monopoly on its services. We have a moral obligation to contribute some of our unique skills to the betterment of society. It is, as Utah resident Wilford Brimley would say, "the right thing to do."

Developments in Federal Court Practice: Rule 26(b)(3) and Attorney Work Product

by Robert S. Clark

The assistance of Michael Hoppe, a student at the University of Utah School of Law, is gratefully acknowledged.

1. INTRODUCTION TO THE ATTORNEY WORK PRODUCT DOCTRINE

Although sometimes erroneously referred to as a "privilege", attorney work product is a doctrine initially recognized by the judiciary and now written into Rule 26 of the Federal Rules of Civil Procedure. Rule 26(b)(3) provides that a party may obtain discovery of "documents and tangible things" otherwise discoverable which are "prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative" only by showing that the party has "substantial need" of the materials and "is unable without undue hardship to obtain the substantial equivalent of the materials by other means."[1] "Unlike the attorney client privilege, the work product privilege is governed, even in diversity cases, by a uniform federal standard embodied in Fed. R. Civ. P. 26(b)(3)."[2]

2. PREPARED IN ANTICIPATION OF LITIGATION

a. The Debate in the Circuits. The circuit courts that have directly addressed the issue have split as to the appropriate test to apply in determining whether materials have been "prepared in anticipation of litigation." The Second Circuit recently joined the Third, Fourth, Seventh, Eighth, and D.C. Circuits in adopting the more inclusive of the two tests. According to the Second Circuit, the proper test to apply in determining whether a document was "prepared in anticipation of litigation" is whether the document was prepared "because of" litigation.[3] In making its decision, the court discussed and considered the narrower test applied by the Fifth Circuit, which held that the work product privilege extends only to materials prepared "primarily or exclusively to aid in litigation."[4] Rejecting the Fifth Circuit test, the Second Circuit stated that "a requirement that documents be produced primarily or exclusively to assist in litigation in order to be protected is at odds with the text and the policies of the [work product] Rule."[5] The court found that by distinguishing documents "prepared in anticipation of litigation" from those prepared "for trial," the drafters of the rule had intended it to have a broader reach than the alternative test. Applying the more inclusive test to the case at hand, the Second Circuit held that a memorandum prepared by outside accountants at the request of counsel in order to determine the consequences of proposed reorganization upon expected litigation, was protected by the work product privilege although its primary purpose was to form a business decision. In so finding, the court stated that it saw "no basis for adopting a test under which an attorney's assessment of the likely outcome of litigation is freely available to his litigation adversary merely because the document was created for a business purpose rather than for litigation assistance."[6]

b. The Tenth Circuit and the District of Utah. Although the majority of the circuits follow the more inclusive work product test recently adopted by the Second Circuit, the Tenth Circuit has not ruled on the issue. In *McEwen v. Digitran Systems, Inc.*,[7] a Utah federal district court applied the narrower work product test, declaring its agreement with the Fifth Circuit. The decision recognized that the "Tenth Circuit Court of Appeals apparently ha[d] not adopted the 'primary motivating purpose' standard," 155 F. R.D. at 682 (n.5)(2n) but noted that several district courts within the Tenth Circuit had.[8] More recently, however, a Kansas district court quoted the Fourth Circuit's more expansive view with approval in stating that to qualify for the work product privilege, a document "must be prepared because of the prospect of litigation."[9] In light of this decision and the weight of circuit authority adopting the more inclusive test, it is unclear how the Tenth Circuit will rule. Until the Supreme Court or the Tenth Circuit speak to the issue, however, *McEwen* appears to be the standard in Utah.

Robert S. Clark is a shareholder in Parr Waddoups Brown Gee & Loveless. He is a 1980 graduate of the J. Reuben Clark Law School, and practices in the area of commercial and corporate litigation.

3. THE SCOPE OF THE WORK PRODUCT DOCTRINE: DOCUMENTS AND BEYOND

a. Introduction. Rule 26(b)(3) expressly applies only to "documents and tangible things." "When applying the work product privilege to [n]ontangible information, the principles enunciated in *Hickman* apply, as opposed to Rule 26(b)(3) of the Federal Rules of Civil Procedure . . . ."[10]

b. Purpose of the Work Product Doctrine. In *Resolution Trust Corp. v. Dabney*, the Tenth Circuit emphasized that the work product doctrine "is intended only to guard against divulging the attorney's strategies and legal impressions, [and] it does not protect facts concerning the creation of work product or facts contained within work product."[11] The court therefore affirmed sanctions against an attorney for counseling an RTC investigator not to answer questions relating to the scope of his investigation. The work product doctrine did not apply to inquiries about the mere fact of an investigation or its scope, even if the information and opinions resulting from the investigation were privileged.

c. Anticipation for Specific Litigation. That documents are prepared for litigation in general may not be enough to invoke work product protection. In *Burton v. R.J. Reynolds Tobacco Co.*,[12] defendants claimed work product protection for documents relating to a scientific study commissioned by them in anticipation of possible lawsuits. The court agreed with the magistrate judge that "RJR was required to show that these particular documents [were] linked to some particular anticipated litigation."[13] That they were prepared in preparation for possible litigation in general was not enough to invoke the work product protection.

d. Protection in Subsequent Litigation. The Tenth Circuit has recently held that the work product doctrine extends to subsequent litigation. In so holding, the court found it significant that in *FTC v. Grolier, Inc.*,[14] "[t]he Supreme Court has recognized in dicta that 'the literal language of [Rule 26(b)(3)] protects materials prepared for any litigation or trial as long as they were prepared by or for a party to the subsequent litigation."[15] The court also found it significant that every circuit to address the issue had held that the work product doctrine applies to subsequent litigation to some extent.[16] "Based on the compelling dicta in *Grolier* and the reasoning set out in the circuit court opinions . . . [the Tenth Circuit concluded] that the work product doctrine extends to subsequent litigation."[17]

4. CLAIMING PROTECTION.

The party asserting that materials are protected under the work product doctrine bears the burden of proving that the doctrine is applicable. "A mere allegation that the work product doctrine applies is insufficient."[18] Nor is the burden discharged by "making a blanket work product objection to an entire line of questioning."[19] In *Dabney*, the court found that the attorney's blanket instruction not to answer questions regarding the investigation was insufficient, and that the attorney had the burden of proving "that each question he instructed [the witness] not to answer called for work product."[20]

Foresight helps in establishing the applicability of the work product privilege to certain materials. For example, the *McEwen* decision suggested that "[c]larity of purpose in the engagement letter [could] help discharge that burden."[21] The court also quoted the following statement from a law review article with approval: "Clearly the most effective way to guard against inadvertent loss of the protection offered by the work product doctrine is to ensure that management's written authorization to proceed with the investigation identifies, as specifically as possible, the nature of the litigation that is anticipated."[22] In addition to these precautions taken before the work product is created, after the work product is created, "[a]n affidavit from counsel indicating that such work was done at his direction in anticipation of specified litigation will also help a party meet its burden under Rule 26(b)(3) of establishing that work was done in anticipation of litigation."[23]

"The party asserting that materials are protected under the work product doctrine bears the burden of proving that the doctrine is applicable."

5. OBTAINING WORK PRODUCT PROTECTED MATERIALS.

According to Rule 26(b)(3), a party may only obtain materials protected by the work product doctrine by showing that there is a "substantial need," and that the party " is unable without undue hardship to obtain the substantial equivalent of the materials by other means." The rule further states, that even when discovery of work product materials is allowed, "the court shall protect against disclosure of the mental impression, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." The courts have interpreted this provision to grant a stronger protection to what has been termed "opinion work product."

"Work product which betrays the attorney's opinions and mental impressions deserves more protection than work product which is a mere assemblage of facts."[24] "In contrast to fact work product,

which is discoverable 'upon a showing of both a substantial need and an inability to secure the substantial equivalent of the materials by alternate means without undue hardship,' opinion work product 'enjoys nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances."[25]

However, although obtaining opinion work product requires a stronger showing than the factors listed in 26(b)(3) to obtain fact work product, it does not enjoy absolute immunity from discovery. Opinion work product "is subject to discovery where the mental impressions of counsel are directly at issue."[26] For example, in *Ferrara & DiMercurio v. St. Paul Mercury Ins. Co.*, the plaintiff's bad faith insurance claim convinced the court to allow discovery of the entire claims file including materials containing attorney opinions, because "opinion work product is subject to discovery where the mental impressions of counsel are directly at issue."[27]

6. THE WORK PRODUCT DOCTRINE AND EXPERT TESTIMONY.

Rule 26(a)(2)(B) prescribes that "the data or other information considered by [an expert] witness in forming [his or her] opinions" shall be disclosed to the other party. "There is ample authority that any facts provided to an expert, even if provided by an attorney, are required to be disclosed."[28] However, the federal courts have reached inconsistent conclusions as to whether documents that contain mental impressions, opinions, and litigation strategies lose their work product protection when provided to experts.

"Work product which betrays the attorney's opinions and mental impressions deserves more protection than work product which is a mere assemblage of facts."

In *BCF Oil Refining v. Consolidated Edison Co. of New York*,[29] the court faced with this issue, and extensively examined the relevant case law. It found few cases dealing with the issue. In two cases, courts had concluded that "opinion work product was still privileged even if given to an expert."[30] But the *BCF* court was more persuaded by the rationale of *Karn v. Rand*,[31] in which the court held "that Rule 26(a)(2) 'unambiguously provide[s] a "bright-line" rule in favor of production of any information which the expert considers.'"[32] This includes materials that contain an attorney's mental impressions. The *BCF* court was further swayed by the Advisory Committee Notes to 26(a)(2) discussing the disclosure of information considered by the expert, which state in part that "[g]iven this obligation of disclosure, litigants should no longer be able to argue that materials furnished to their experts to be used in forming their opinions – whether or not ultimately relied upon by the expert – are privileged or otherwise protected from disclosure when such persons are testifying or being deposed."[33] The BCF court held that all documents provided to experts must be disclosed in accordance with 26(a)(2)(B). Other recent decisions which have followed this trend include *Furniture World, Inc. v. D.A.V. Thrift Stores, Inc.*,[34] and *Musselman v. Phillips*.[35]

Still the trend toward disclosure is not universally followed. Recently, a district court in New York held "that 'the data or other information considered by [an expert] witness in forming [his] opinions' required to be disclosed in the expert's report mandated under Rule 26(a)(2)(B) extends only to factual materials, and not to core attorney work product considered by an expert."[36]

Due to this uncertainty, one should not assume that work product materials given to an expert will necessarily be protected. Of course, this issue has not been definitively resolved, and will undoubtedly be the subject of additional development in the law.

[1] Fed. R. Civ. P. 26(b)(3).

[2] *Frontier Refining, Inc., v. Gormann-Rupp Co.*, 136 F.3d 695, 702 n.10 (10th Cir. 1998) (quoting *United Coal Cos. v. Powell Constr. Co.*, 839 F.2d 958, 966 (3d Cir. 1988). *See also Dawson v. New York Life Ins. Co.*, 901 F. Supp. 1362, 1367 (D.C. Ill. 1995); *In re Combustion, Inc.*, 161 F.R.D. 51, 161 F.R.D. 54 (D.C. La. 1995).

[3] United States v. Aldman, 134 F.3d 1194, 1998 (2d Cir. 1998).

[4] *U.S. v. Davis*, 636 F.2d 1028, 1040 (5th Cir. 1981). Other court opinions that have applied the Fifth Circuit test include *In re Kidder Peabody Sec. Litig.*, 168 F.R.D. 459, 462, 466 (S.D.N.Y. 1996); *Bowne v. AmBase Corp.*, 150 F.R.D. 465, 471 (S.D.N.Y. 1993); *Martin v. Valley Nat'l Bank of Arizona*, 140 F.R.D. 291 (S.D.N.Y. 1991).

[5] *Aldman*, 134 F.3d at 1198.

[6] *Id.* at 1200.

[7] *McEwen v. Digitran Systems, Inc.*, 155 F.R.D. 678, 682 (D. Utah 1994).

[8] *Id.*, n.5 ("the following courts within the Tenth Circuit have [adopted the primary motivating purpose test]: *Fine v. United States*, 823 F.Supp. 888, 903 (D.N.M. 1993); *Gottlieb v. Wiles*, 143 F.R.D. 241,253 (D.Colo. 1993); *Zulig v. Kansas City Power & Light Co.*, 1989 WL 7901, at 4 (D. Kan. 1989).")

[9] *Burton v. R.J. Reynolds Tobacco Co.*, 177 F.R.D. 491, 498 (D. Kan. 1997) (quoting *Nat'l Union Fire Ins. Co. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992).

[10] *United States v. One Tract of Real Property*, 95 F.3d 422, 428 n.10 (6th Cir. 1996).

[11] *Resolution Trust Corp. v. Dabney*, 73 F.3d 262, 266 (10th Cir. 1995).

[12] *Burton v. R.J. Reynolds Tobacco Co.*, 177 F.R.D. 491 (D. Kan. 1997).

[13] *Id.* at 498.

[14] *FTC v. Groiler, Inc.*, 462 U.S. 19, 25 (1983).

[15] *Frontier Refining, Inc. v. Gormann-Rupp Co., Inc.*, 136 F.3f 695, 703 (10th Cir. 1998) (quoting *FTC v. Groiler, Inc.*, 462 U.S. 19 (1983)).

[16] *See In re Grand Jury Proceedings*, 604 F.2d 798, 803-04 (3d Cir. 1979); *United States v. Pfzier, Inc.*, 560 F.2d 326, 335 (8th Cir. 1977); *Duplan Corp v. Moulinage et*

Retorderie de Chavanoz, 487 F.2d 480, 484-85 & n. 15 (4th Cir. 1973); *In re Grand Jury Proceedings*, 43 F.3d 966, 971 (5th Cir. 1994); *United States v. Leggett & Platt, Inc.*, 542 F.2d 655, 660 (6th Cir. 1976); *Republic Gear Co. v. Borg-Warner Corp.*, 381 F.2d 551, 557 (2d Cir. 1967).

[17]*Frontier Refining*, 136 F.3d at 703.

[18]*Dabney*, 73 F.3d at 266.

[19]*Id.* (citing Appellant's App. Vol. II at 283).

[20]*Id.* at 266.

[21]*McEwen*, 155 F.R.D. at 683.

[22]Id. at 683 n.6 (quoting Richard H. Porter, "Voluntary Disclosures to Federal Agencies – Their Impact on the Ability of Corporations to Protect From Discovery Materials Developed During the Course of Internal Investigations, 39 *Cath. U.L. Rev.* 1007, 1016 (1990)).

[23]*Pacamor Bearings, Inc., v. Minebea Co., Ltd.*, 918 F.Supp 491, 513 (D.N.H. 1996); *See also Martin v. Monfort, Inc.*, 150 F.R.D. 172, 173 (D. Colo. 1993).

[24]*BCF Oil Refining v. Consolidated Edison Co. of New York*, 171 F.R.D. 57, 63 n.5 (S.D.N.Y. 1997).

[25]*In re Allen*, 106 F.3d 582 (4th Cir. 1997) (quoting *In re Grand Jury Proceedings, Thursday Special Grand Jury*, 33 F.3d 342, 348 (4th Cir. 1994)).

[26]*Ferrara & DiMercurio v. St. Paul Mercury Ins. Co.*, 173 F.R.D. 7, 17 (D. Mass. 1997).

[27]*Id.*

[28]*BCF Oil Refining v. Consolidated Edison Co. of New York*, 171 F.R.D. 57, 62-63 (S.D.N.Y. 1997).

[29]*Id.*

[30]*Id.* at 65 (citing *Haworth v. Herman Miller, Inc.*, 162 F.R.D. 289, 2974-296 (W.D. Mich. 1995). *See also All West Pet Supply Co. v. Hill's Pet Products Division*, 152 F.R.D. 634, 638 (D.Kan. 1993).

[31]*Karn v. Rand*, 168 F.R.D. 633 (N.D. Ind. 1996).

[32]*BCF*, 171 F.R.D. at 66 (quoting *Karn*, 168 F.R.D. at 638).

[33]*Id.* (quoting the Advisory Committee Notes, 1970 Amendment; Fed. R. Civ. P. 26(a)(2).

[34]*Furniture World, Inc. v. D.A.V. Thrift Stores, Inc.*, 168 F.R.D. 61 (D. New Mexico 1996).

[35]*Musselman v. Phillips*, 1997 U.S. Dist. Lexis 16898 (D. Md. 1997).

[36]*Magee v. Paul Revere Life Ins. Co.*, 172 F.R.D. 627, 642 (E.D.N.Y. 1997).

Year 2000 For the Computer Challenged[1]

by Toby Brown and Blake Miller

Toby Brown is the Programs Administrator for the Utah State Bar and knows many impressive acronyms such as HVAC.

Blake Miller is a partner in the law firm of Suitter Axland. He carries both a briefcase and a pocket protector and looks good in his biking shorts.

The "Year 2000" or "Y2K" problem is much in the news these days. This problem developed years ago with the use of two-digit date codes (computer memory was a very scarce commodity). Two-digit codes obviously cannot handle the transition from 1999 to 2000. This is so obvious, no one thought about changing to four-digit codes after computer memory was no longer an issue. The other aspect of Y2k is that the year 2000 is a leap year. Both of these aspects must be dealt with in solving the problem.

Date codes exist in a number of levels in the computer world. They exist in the hardware, the operating system, the applications and in any customization done to software programs. Some examples of each level:

Hardware:	The motherboard and CPU in your computer.
Operating System:	Dos, Windows95 or Mac.
Applications:	Word-processing, e-mail and time & billing.
Customizations:	Usually this is a database customized for tracking clients or documents or other information. Another good example might be a spreadsheet you have set up to track financial information.

Customizations have the biggest potential for problems. Over the years you may have had a number of different programmers work on a database. These programmers likely developed thousands of lines of programming code. This presents the proverbial "needle in a haystack" scenario. Imagine trying to find every date code referenced within those thousands of lines (assuming you still have the original source code). Depending on the amount of custom programming you have, you may have a very big problem in becoming Y2K compliant. Now you know why some people get so excited about Y2K.

'Interoperability' adds to this problem. Different software providers may implement different four-digit solutions. For example, the Windows95 four-digit date code might be unreadable or only partially readable by WordPerfect. As you might expect, this would be a bad thing. Since there is currently no standard for solving the four-digit conversion, we offer little insight as to the impact of the 'interoperability' aspect of the Y2K Problem.

Other systems outside of your computer system have date codes too. A partial list: HVAC[2], phone systems, voice-mail, fax machines and copiers. If you own your own building, this list can get much longer. Suffice it to say you should give some thought to any equipment you may own or even just use which may have computer chips. For example Toby e-mailed Ford regarding the computer chips in his truck. Of course they haven't responded, but hey, it's a great example.

What is the first thing you think of doing when you consider testing your PC for Year 2000 Problems?[3] You probably figure you can set the date and time on your PC to 11:59 p.m., December 31, 1999. Then you will have to wait one minute and see what happens. Sounds simple doesn't it?

Before you do that, we thought we would share this quote from Microsoft's web site, "We recommend that customers DO NOT test year 2000 issues on production PCs. There are many date-related functions on the average desktop of which people may not be aware. Arbitrarily setting the clock ahead can have some unforeseen results." Having all of your e-mails disappear, or software licenses expire, are just some examples of such "unforeseen results."

We have given you the scenario above for a couple of reasons. First, many people believe that Y2K is a bunch of hype. That may be the case for you if you reside in a self-contained cabin in northern Idaho.[4] We will assume that most of you do not fit into this category and therefore will be impacted by this issue.[5]

The second reason for making you think about this issue is to point out the need to take a systematic approach to this problem and think through the possible ramifications, before you do any testing.[6] Y2K does have the potential to have a major impact on all of your technical systems. These systems will include your computers *and* anything else with embedded computer chips in them, like phone systems, elevators and pace makers.

Now that you are hopefully worried or at least concerned, what should you do about the Y2K Problem? Our top recommendation is to get started *now*! As Microsoft likes to point out, "Replacement will, however, be one of the most commonly-used changes in business process and technology to fix this problem."[7] The practical outcome of this is that there is going to be an extremely high demand for hardware, software and support in the latter half of 1999 and early 2000. The Bar's network will be Y2K compliant by the end of 1999 to avoid this rush. Waiting will be both expensive and cause many headaches.[8]

"Once you have completed the task of learning what you need to do to be Y2K compliant, then you need to plan how to implement these changes."

Your first step in the process will be to make a comprehensive assessment of the potentially effected systems. Then you will want to prioritize these systems listing the "mission critical" ones first. You may also want to prioritize the processes within each system. As an example of this, you might list "Billing Clients" as a mission critical system, but there might be ten or twenty processes within this system. Some of these processes may not be mission critical. The 'mission critical' list is important since you want those high-priority items dealt with first, in the event you run out of time. Without a priority list, on January 1, 2000 your coffee machine may work, but you won't be able to print documents.

Using your priority list, now you should start contacting vendors. You will want to ask them if their products are Y2K compliant. Unfortunately, the answer will not likely be 'yes' or 'no.' Microsoft[9] has five categories of answers. These are: compliant, compliant with minor issues, not-compliant, testing yet to be completed and will not test. If a product is not listed as compliant, you will want to find out the steps involved in making it compliant, if that is even possible. Many vendors have Y2K information on their web sites, including free downloadable software for making their products compliant. You should start by checking these sites first. You may also want to contact your sales or customer service representatives. Again, we want to remind you, these people will be very busy in 1999, so call them now.

Once you have completed the task of learning what you need to do to be Y2K compliant, then you need to plan how to implement these changes. Your priority list will come in handy here, but there will also be logistical issues. You may want to upgrade your operating system before you upgrade your applications. These logistical decisions will be based on your specific technology. We recommend that you develop a timetable for implementation that includes time for testing systems after implementation.

Now that you have your plan in place, there was something we forgot to tell you up in step number one; Beg for Money.[10] The Y2K process is going to cost you some money, both in terms of upgrade costs and personnel time. It is true that you need to develop a plan before you can calculate these costs however, we recommend that you proceed with the begging and groveling now. Because without the money, well . . . you know the outcome.

If you are really good at begging for money or your rich Uncle Buck just passed away, you may have the luxury of hiring a consultant to do all of this work for you. Actually you should seriously consider this option, as it may be the least expensive. You are good at practicing law. Spend your time doing that and hire someone with Y2K expertise to deal with this problem.

Speaking of practicing law, there will obviously be some legal issues surrounding the Y2K Problem. These legal issues have two sides. First, as a lawyer you may want to look in to representing clients who are damaged by Y2K problems. However, in the context of this article we are more concerned about *your* legal liability. Even if you take all the necessary steps and are fully Y2K compliant, you may have clients or vendors who are not compliant. This could be another great source of problems for you. Imagine , your paper vendor's ordering system went down on January 1st . On January 15th you are out of paper and can't print the will your client is waiting to sign. The "will-less" client then dies in an elevator accident leaving the building. This somewhat odd example highlights the countless possibilities for problems on both the vendor and client-side of this equation you should consider.

You may want to send notices to your clients and vendors that you have completed a Y2K audit and that you expect them to do the same. This might be a good marketing tool to impress clients with your technical savvy. It also could serve as a means for limiting your liability. Consult with a lawyer on this issue.[11]

See how easy this Y2K thing is. Now you should have a basic understanding of the issue surrounding Y2K. And hopefully you have an idea of how you might approach becoming Y2K compliant. To further help you out we have one final suggestion, well actually two. If you have gone through the process outlined above and still are worried, we suggest prayer.[12] Also, to help in this effort Microsoft, as usual, has their own solution. It's a new software product called *MS Supreme Being '99*. Its planned release date is June 2001.

[1]Any implication that lawyers are "computer challenged" is purely coincidental.

[2]An impressive acronym NOT from the computer world, which means, "Heating Ventilation and Air Conditioning."

[3]We use the two terms "Year 2000 *Problem*" and "Year 2000 *Issue*" interchangeably. It's a style thing, kind of like the two different pronunciations of "Uranus" or "Harassment."

[4]No offensive to any Idahoans. We have a number of friends who enjoy potatoes and automatic weapons.

[5]In fact recent predictions are that the Y2K Problem will impact the world economy, probably resulting in some level of global recession.

[6]"A little knowledge can be a dangerous thing." A phrase people use on Toby a lot.

[7]Taken from www.microsoft.com/ithome/topics/year2k/2kfaq/2kfaq01.htm, which is Frequently Asked Questions about Y2K.

[8]Make a note to buy some stock in "Advil."

[9]We know . . . we keep using Microsoft as an example. It's just that we can never remember if there is one or two l's in Novelll. Also, Microsoft is an industry leader on this issue, of which many vendors are following.

[10]Even if you are the managing partner in your firm, begging for dollars is likely a necessary step. For solo practitioners, you may need to beg from a spouse, significant other or your 'other' friend, the banker.

[11]Toby has long dreamed of suggesting to lawyers that they should consult a lawyer. It's a chicken/egg thing . . . we think.

[12]Those in government jobs should probably utilize a non-denominational-type prayer during a personal break.

West Group Launches Federal Supplement Second Series

West Group has opened a new chapter in legal publishing, announcing the introduction of the new ***Federal Supplement***® Second Series and closing of the venerable ***Federal Supplement*** First Series.

For more than 65 years, ***Federal Supplement*** volumes have been recognized as the legal community's primary source for published federal district court opinions. Beginning with Volume One, published in 1933, the 999 volumes of the First Series contain more than 200,000 opinions covering some 1.3 million pages.

Sue Schway, West Group senior publisher of the Cases Publishing Center, said the ***Federal Supplement*** volumes were designed to provide a foundation for efficient, effective legal research. In 1933, landmark cases and issues addressing labor relations, antitrust and controversial New Deal economic recovery legislation marked the legal landscape. Against this backdrop, Volume One included case law, opinions and legal data plus exclusive Key Number indexing and editorial enhancements written by West Group attorneys.

"The format established with Volume One of the First Series cast the die for research tools and methodologies that today help attorneys and researchers navigate an ever-expanding universe of legal information," Schway said. "Then, as now, the ***Federal Supplement*** series coupled with the Key Number system provides a compass that guides the user to the exact information or case law they need."

Schway added that the Federal Supplement series serves as an important chronicle of the evolution of American case law. "***Federal Supplement*** contains selected opinions that represent the most important social, political and economic issues to be addressed in federal district court," she noted.

Today, West's Key Number system is the master classification tool for American case law, serving as the index for West Group published primary law plus electronic search and citator tools like Westlaw, westlaw.com and KeyCite. This integration across print and electronic media positions ***Federal Supplement,*** Second Series, as a valuable resource for legal research now and into the future.

Are You Misinforming Your Clients?

by Lauri Arensmeyer, Communications Editor
Utah Division of Occupational and Professional Licensing

"If you continue to practice, you will be doing so illegally at the risk of potential fines and licensure disciplinary action."

Understandably, this is something no professional ever wants to hear. Unfortunately, however, many building contractors are being told just that, after being provided with incorrect or incomplete information by their legal counsel.

Many contractor licensees and their attorneys do not understand that the reorganization of a business organization or entity within Utah's regulated construction industry requires at least two major steps. First, appropriate documentation must be filed with the Utah Division of Corporations to form the new organization. Second, a new application for state licensure must be submitted to the Utah Division of Occupational and Professional Licensing (DOPL), the state agency responsible for the regulation of professions within the construction industry. [*See Utah Administrative Code R156-55a-311.*]

Too often, however, contractor licensees and their attorneys incorrectly assume that filing with the Division of Corporations is all that is required. They fail to realize that a contractor license is not automatically transferable to another form of organization or entity. When the organization changes (i.e., from a sole proprietorship to a partnership or from a partnership to a corporation), the new entity is not licensed. Additionally, it is unlawful for the prior entity to allow its license to be used by the new entity. [*See Utah Code Ann. 58-55-510(10).*] When contractors are subsequently notified that they are not in compliance with current regulations, many state that they had not been informed of this requirement by their individual attorneys when their attorneys filed their incorporation documents.

It is important to note that the licensee is responsible to know and understand the law regulating his or her licensed profession. However, it is becoming increasingly evident that many licensees often rely on the knowledge and expertise of their legal counsel. It is for this specific reason that DOPL encourages all Utah licensed attorneys to ensure that they fully understand this issue as specified in the following sections of the Utah Code and the Utah Administrative Code:

Title 58-55-301(1)(a) of the *Utah Construction Trades Licensing Act*

Any person engaged in the construction trades licensed under this chapter, or as a contractor regulated under this chapter shall become licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under Section 58-55-305.

Title 58-55-102(21) of the *Utah Construction Trades Licensing Act*

"Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

R156-55a-311 of the *Utah Construction Trades Licensing Act Rules*

(1) A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Title 58-55-501 of the *Utah Construction Trades Licensing Act*

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade beyond the scope of the license held;

(3) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required

to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;

. . .

(10) allowing one's license to be used by another except as provided by statute or rule;

DOPL asks all Utah attorneys to advise their clients working within the construction industry of this situation. Please Note: Your failure to advise your clients of this issue, when forming a new organization on their behalf, could be considered malpractice.

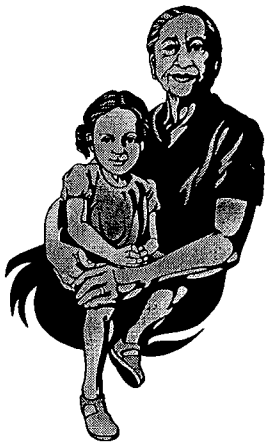
Additionally, while this problem primarily exists within the contractors profession, you should be aware that entities in the following professions are also licensed by DOPL and similar issues may be applicable: pharmacies, CPA firms, funeral homes and employee leasing companies.

Any current licensee who anticipates making such a transition is welcome to contact DOPL at (801) 530-6628 for assistance. Any licensee who has already filed documentation with the Division of Corporations for a business organization or entity change, and who has not submitted a license application for the new entity, should contact DOPL immediately.

NUTS & BOLTS OF GUARDIANSHIP/CONSERVATORSHIP LAW & PROCEDURE:

Is Granny Being "Taken Care of" or "Taken?"

CLE TRAINING
November 20, 1998
8 a.m. - 3:30 p.m.
645 South 200 East
Salt Lake City, Utah 84111



- Ethical Question: *"Who is the client?"*
- Alternatives to Guardianship/Conservatorship; *i.e., Joint Accounts, Representative Payees, Powers of Attorney, Living Wills, Advanced Health Care Directives, etc.*
- Elder Financial Abuse and Exploitation: *The Fiduciary Relationship*
- Statewide Guardianship/Conservatorship Panel of Attorneys--*the Perfect Pro Bono Case*
- Hands-On Approach to Guardianship/Conservatorship Procedure from Both the Petitioner/Respondent's Side of the Case
- Measuring Decisional Capacity or Competency
- The "Gap" in the Guardianship System: *Monitoring and Oversight*

Registration Fee: $75.00, lunch included *(training is free for those willing to serve on the statewide Guardianship/Conservatorship Panel of Attorneys)*

Sponsored by:
Needs of the Elderly Committee
Utah State Bar Association

For information and registration call (801) 531-9095

NUTS AND BOLTS OF GUARDIANSHIP/CONSERVATORSHIP LAW AND PROCEDURE:

Is Granny Being "Taken Care of" or "Taken?"

7:45 - 8:30	**Registration**
8:30 - 8:45	**Introduction,** *Phillip S. Ferguson, Attorney, Christensen & Jensen; Secretary, Needs of the Elderly Committee, Utah State Bar Association*
8:45 - 9:45	**A Brief History of Guardianship/Conservatorship Law & Dealing with the Ethical Question of:** ***"Who is the Client?"****, Kent B. Alderman, Attorney, Parsons Behle & Latimer; Chair, Needs of the Elderly Committee, Utah State Bar Association*
9: 45 - 10:00	***Break***
10:00 - 10:45	**It's Not an All-Or-Nothing Deal:** ***Limited v. Full Guardianship, Conservatorship, Powers of Attorney, Living Wills, Advanced Health Care Directives, etc.****, W. Paul Wharton, Attorney, Utah Legal Services*
10:45 - 11:30	**Elder Financial Abuse or Exploitation:** ***The Fiduciary Relationship According to UCA 76-5-111****, J. Denis Kroll, Assistant Attorney General, Division of Investigations, Medicaid Fraud Bureau*
11:30 - 12:00	**Establishing a Statewide Guardianship/Conservatorship Panel of Attorneys:** ***Friends of the Elderly & the Court--P.S., the Perfect Pro Bono Case****, Jo Ann S. Secrist, Attorney, State Legal Assistance Developer, Division of Aging & Adult Services; Assoc. Instructor of Family Law, University of Utah*
12:00 - 12:45	***Lunch Provided***
12:45 - 2:00	**Procedure for Guardianship/Conservatorship from both the Petitioner/Ward's Side of the Case:** ***Roles & Responsibilities of Counsel****, Robert B. Denton, Senior Attorney, Disability Law Center, W. Paul Wharton, Attorney, Utah Legal Services*
2:00 - 2:15	***Break***
2:15 - 2:45	**Measuring Decisional Capacity or Competency,** *Dr. Lois M. Brandriet, Nurse Gerontologist, Private Care Manager*
2:45 - 3:15	**The "Gap" in the Guardianship System:** ***Monitoring and Oversight****, Margy M. Campbell, Licensed Clinical Social Worker, Private Geriatric Care Manager, Adjunct Professor, University of Utah College of Nursing, Gerontology Center*
3:15 - 3:30	**Statewide Guardianship Panel & Ethical Questions Revisited:** ***Questions and Answers****, Jo Ann S. Secrist, Phillip S. Ferguson, W. Paul Wharton, & Kent B. Alderman, Attorneys*

7.5 CLE credits, including 1 hour of ethics
November 20, 1998
Utah State Bar Law & Justice Center
645 S 200 East, Salt Lake City, Utah

Cost: $75.00, including lunch
Fee waived for attorneys who are willing to serve on the guardianship/conservatorship panel
For more information call 531-9077

Discipline Corner

DISBARMENT

On July 30, 1998, the Honorable Dennis M. Fuchs, Third Judicial District Court, entered a Judgment of Disbarment disbarring N. Brett Jones from the practice of law for violation of Rules 1.15 (Safekeeping Property), and 8.4(a), (b) and (c) (Misconduct) of the Rules of Professional Conduct. The Order was based on a Discipline by Consent entered into by Jones and the Office of Professional Conduct.

A client retained Jones to represent the client in a class action suit. On January 14, 1998, the defendant in the class action suit issued a check made payable to the client and the attorney's firm in the amount of $20,000 as the client's share of settlement of the suit. Thereafter Jones misappropriated the client's settlement monies for his own use and benefit.

On June 23, 1997, August 27, 1997, September 3 1997, and September 8, 1997, the OPC received Non-Sufficient Funds Notices totaling $7314.89 from a bank on Jones's IOLTA Account. The OPC investigation indicated that the NSFs resulted from negligent bookkeeping.

DISBARMENT

On August 11, 1998, the Honorable Pat B. Brian, Third Judicial District Court, entered an Order of Discipline disbarring Michael Lee from the practice of law for violation of Rules 1.5 (Safekeeping Property), and 8.4(a), (b) and (c) (Misconduct) of the Rules of Professional Conduct. The Order was based on a Stipulation entered into by Lee and the Office of Professional Conduct.

On January 4, 1996, the United States Attorney's Office filed a Felony Information charging Lee with one felony count of engaging in a scheme and artifice to defraud, a violation of 18 U.S.C. §1344(2). Lee forged the signature of a payee on a check, opened an account in the name of the payee and deposited the check into the newly opened account. Lee later transferred $109,712.58 from this account into an account at another institution, which was under his control. Lee pled guilty to the felony count on March 13, 1996, and was sentenced to twelve months and one day in prison and a three-year suspended release upon conditions, including restitution of $109.712.58.

SUSPENSION

On July 17, 1998, the Honorable Leon A. Dever, Third Judicial District Court, entered an Order of Suspension suspending Frank J. Falk from the practice of law for one year effective December 22, 1998, for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed and Falk was placed on a one-year supervised probation. The Order was based on a Discipline by Consent and Settlement Agreement entered into by Falk and the Office of Professional Conduct.

In December of 1996, a client's father gave Falk $2,000 for a custody evaluation. Thereafter, Falk failed to maintain these monies in trust, but applied these funds to his fees. After the fact, Falk requested his client's permission to apply the monies to fees. When the client requested the return of the monies, Falk returned the money to the client's father.

SUSPENSION

On July 22, 1998, the Honorable Stephen L. Henriod, Third Judicial District Court, entered an Order of Discipline: Suspension suspending William H. Adams from the practice of law for one year for violation of Rule 8.4 (Misconduct) of the Rules of Professional Conduct. The suspension was stayed and Adams was placed on a one-year probation. The Order was based on a Discipline by Consent and Settlement Agreement entered into by Adams and the Office of Professional Conduct.

On March 4, 1996, the Honorable Stephen Henriod, Third District Court, filed Amended Findings of Fact and Conclusions of Law in the civil matter *Jackson v. Adams*, Case No. 940012270CV. Among the Findings of Fact were findings that Jeanne Jackson, Adam's then mother-in-law, transferred $10,000 to Adams in January 1979. Adams understood at the time he received the $10,000 from Jackson that the money was not a loan and was not a gift, but nevertheless treated the money as though it was a loan. Although Jackson transferred the monies to Adams in 1979, no request for return of the money or accounting of the investment of the money was made prior to litigation involving Adams and his former spouse. The District Court entered a judgment against Adams who timely paid all amounts due Jackson under the judgment.

There were extenuating mitigating factors which warranted a suspension held in abeyance in this matter.

VIOLATION OF INTERIM SUSPENSION ORDER

On July 29, 1998, the Honorable Frank G. Noel, Third Judicial District Court, ordered Robert A. Bentley incarcerated for thirty days for violation of the court's previous Order of Interim Suspension. Bentley was ordered to serve two days in the county jail, and twenty-eight days were suspended on the condition that Bentley refrain from the practice of law. Bentley also was ordered to perform twenty-five hours of community service.

INTERIM SUSPENSION AFFIRMED

On August 19, 1998, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, entered an Order denying a stay of interim suspension pending interlocutory appeal requested by Gary W. Pendleton.

DNA-People's Services Inc. Board of Directors Position Opening:

The Utah Bar Commission is seeking applicants from the Bar for service on the Board of DNA-People's Legal Services, Inc. Membership to the Board is two years. The term for this member will expire in October, 2000. Board members are compensated for mileage at $.31 per mile, lodging, meals or per diem, and DNA business-related out-of pocket expenses. The Board meets at least four times a year and generally on Saturdays. DNA-People's Legal Services, Inc. ("DNA") is a non-profit corporation that has provided legal services to low-income residents of the Navajo Nation and the Hopi Reservation since 1967. DNA provides comprehensive legal advice and representation in areas which include family law, consumer law, public entitlements, and civil rights with the goal of maintaining some minimal level of decency in the lives of those affected by poverty. Deadline for this position is October 29, 1998. All inquiries should be addressed to John C. Baldwin, Executive Director, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Litigation Section's Trial Academy 1998 Part V: "Exhibits, Instructions, and Other Things"

This biennial program of demonstrations and lectures by judges and experienced litigators is a useful introduction for the novice trial lawyer into the mysteries of trial practice. The focus is on practical hands-on information and in giving the answers that cannot be found in the books.

Wednesday, October 28, 1998
6:00 to 8:00 p.m.
Utah Law & Justice Center
(Registration at 5:30)

The fifth session of the six-part Trial Academy will be held on October 28th at the Utah Law & Justice Center. The subject will be "Exhibits, Instructions, and Other Things." The topics to be covered for this session include:

- Getting exhibits into evidence (without fumbling)
- The most-commonly needed foundations
- Using of overheads, blowups, and the like
- The rules on demonstrative evidence
- Making it easier with pretrial stipulations
- Why instructions really matter
- The "gotchas" on instructions that you must know
- Using your instructions to build a closing argument
- The extra challenges facing the female lawyer in trial

It is *not* necessary to have attended the prior sessions of the Trial Academy in order to fully benefit from the program.

Two hours of CLE credit will be granted. (The program qualifies for NLCLE credit for new members) The cost is $25 for Litigation Section members and $35 for non-members.
Pre-registration is recommended. To register, please send your payment to UTAH STATE BAR, CLE DEPT. 645 SOUTH 200 EAST, #310, SLC, UT, 84111 or call Toby Brown at 297-7024.

Notice of Amendments to Rules

The following rule changes have been adopted by the Supreme Court or Judicial Council with an effective date of November 1, 1998. The information is intended to alert Bar members to changes that may be of interest and not an inclusive list of all changes made. Further information may be found in the following sources:

- Code-Co. Web Site: *http://www.code-co.com/utah/utcourt.htm*
- *Intermountain Commercial Record*
- *Pacific Reporter Advance Sheets*
- Utah State Courts Web Site: *http://courtlink.utcourts.gov/rules/*

RULES OF APPELLATE PROCEDURE

Rule 4. Appeal as of right: when taken. Adds a paragraph addressing when a notice of appeal is deemed filed if mailed by an inmate confined in an institution.

Rule 26. Filing and service of briefs. Clarifies the requirements for briefing if a motion for summary disposition is filed after a Rule 13 briefing notice is sent.

CODE OF JUDICIAL ADMINISTRATION

Rule 4-202.08. Fees for records, information, and services. Adds fees for disk of court reporter stenographic text and preprinted forms.

Rule 4-202.12. Access to electronic data elements. Adds data elements required by legislative change.

Rule 4-501. Motions. Adds a paragraph allowing the moving party to withdraw its request for hearing or the court to strike the request if the non-moving party fails to file a memorandum in opposition.

RULES OF PROFESSIONAL CONDUCT

Rule 1.5. Fees. Adds language to comment acknowledging sale of a law practice under newly adopted Rule of Professional Conduct 1.17.

Rule 1.6. Confidentiality of Information. Amends rule to parallel ABA Model Rule.

Rule 1.12. Former judge or arbitrator. Amends rule to parallel ABA Model Rule.

Rule 1.17. Sale of Law Practice. Adds new rule providing for sale of a law practice.

Rule 5.6. Restrictions on Right to Practice. Adds language to comment acknowledging sale of a law practice under newly adopted Rule of Professional Conduct 1.17.

Rules 7.2. Advertising. Adds language to rule to accommodate sale of a law practice under newly adopted Rule of Professional Conduct 1.17.

OTHER CODE OF JUDICIAL ADMINISTRATION RULES

Rule 1-102. Role and objectives of the Council.
Rule 1-205. Standing and ad hoc committees.
Rule 1-302. Membership – Officers – Secretariat.
Rule 2-103. Open and closed Council meetings.
Rule 2-204. Local supplemental rules
Rule 2-205. Emergency rulemaking procedure.
Rule 2-207. Annual rulemaking and review of the Code.
Rule 3-101. Judicial nominating commissions.
Rule 3-102. Assumption of judicial office.
Rule 3-112. Justice Court Standards Committee
Rule 3-201.02. Court Commissioner Conduct Committee.
Rule 3-303. Justice court clerks. Rule 3-306. Court interpreters.
Rule 3-404. Public information program.
Rule 3-405. Contract management.
Rule 3-407. Accounting.
Rule 3-410. Automated information resource management.
Rule 3-413. Judicial library resources.
Rule 3-501. Insurance benefits upon retirement.
Rule 3-502. Insurance benefits for surviving spouses and dependent children of deceased justices and judges.
Rule 4-403. Signature stamp use.
Rule 4-406. Qualifications for process servers for collection agencies.
Rule 4-407. Commercial bail bond sureties.
Rule 4-408.01. Responsibility for administration of trial courts.
Rule 4-909. Mandatory divorce mediation.

Pro Bono Service Encouraged But Reporting Voluntary

The Utah Supreme Court on August 19, 1998 approved amendments to Rule 6.1 of the Utah Rules of Professional Conduct. The Rule provides that lawyers have a professional responsibility and should provide pro bono legal services but they are not required to perform or report their service.

The Court also approved language establishing 36 hours as the aspirational annual goal for service, provided for a comparable financial contribution goal and set guidelines regarding the type of services which could most benefit the poor and needy. The Rule does not apply to members of the Judiciary. A full copy of the approved Rule and Order are available on the Bar's website at *www.utahbar.org*.

CLE Discussion Groups Sponsored by Solo, Small Firm & Rural Practice Section

Oct 15	Bankruptcy
Nov 19	Foreclosure – Judicial & Non-judicial
Dec 17	Workman's Compensation Claims & Defenses

Reservations in advance to Connie (USB) (801) 297-7033.

Position Opening

UTAH LEGAL SERVICES, Provo Office is accepting applications for an attorney position. Areas of practice will include domestics involving abuse and may include landlord/tenant, public benefits. Some travel within central Utah. $30,000/year DOE. Paid holidays, vacation, sick, life ins., Employee contribution medical, dental, retirement. Please submit resumes to Eric Mittelstadt, Managing Attorney, 455 North University Ave., #100 Provo, Utah 84601 or by fax to 1-800-662-1563 or local 374-6766. Questions to Eric Mittelstadt at extension 111 at those numbers. Applications accepted until October 30, 1998.

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. Seventy opinions were approved by the Board of Bar Commissioners between January 1, 1988 and August 7, 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 check 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.

Membership Corner

CHANGE OF ADDRESS OR NAME FORM

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

Name (please print) _____ Bar No. _____

Name of Firm _____

Address _____

Signature _____

Phone _____ Fax _____ E-mail _____

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

Young Lawyer Profile – Augustus Chin

by Sandra Langley

Spending your childhood in Jamaica sounds idyllic. However, for Salt Lake City Associate Prosecutor Augustus "Gus" Chin, growing up in Kingston Jamaica was far from perfect.

Gus was born in Jamaica to parents of Chinese-Jamaican descent. While born of a rich heritage from each parent, Gus' background of color and minority meant that he faced opposition from many African-Jamaicans. Gus and his family members endured the constant ridicule of many African-Jamaicans who resented his Chinese heritage. This resentment was fostered by a common belief among many African-Jamaicans that the Chinese population on the island was extremely wealthy. Actually, Gus' family was not wealthy and both of his parents had to expend enormous effort to provide for their children. Though not rich in worldly wealth, Gus' mother emphasized the importance of education with her children. As a result of this emphasis, Gus and each of his siblings eventually graduated from college.

Prior to going to law school, Gus worked in a number of diverse jobs. For example, Gus worked for a number of years as a travel agent at Morris Travel. Thereafter, Gus worked as a civilian employee at the Tooele Army Depot where he managed and scheduled repair and maintenance programs for military and government agencies.

Ultimately, Gus achieved his dream of entering a career in the law. Gus attended law school at the University of Utah. During law school, Gus worked in a number of diverse jobs. He clerked at Kirton and McConkie where he researched immigration law issues, he also served an internship with Catholic Community Service, and he also worked as a circulation assistant in the University of Utah Law Library.

After graduation from law school, Gus clerked for the Honorable Tyrone Medley in the Third District Court. Gus' experience in this clerkship solidified his desire to make a human impact through his work as an attorney. Gus feels that he is able to achieve this human impact through his present employment as an Associate Prosecutor with Salt Lake City. He enjoys the opportunity this job affords him to be a central player in the criminal justice system.

In addition to his employment, Gus is the current President-Elect for the Utah Minority Bar Association. Gus' goal with this organization is that it will provide an avenue for minorities in regard to the practice of law in the State of Utah. As this background demonstrates, Gus joins a growing number of individuals who add to both the diversity and the strength of the Utah Bar.

Law Firms Can Now Link Their Intranets to the LEXIS®-NEXIS® Data Warehouse

Law firms can now have customized links on their intranets enabling attorneys and legal professionals to gain immediate access to the LEXIS-NEXIS data warehouse via their WEB browsers, along with delivery of specific news and information to a firm's various practice groups.

This new service allows a firm to tailor its access to the LEXIS®-NEXIS® services by providing links to cases, law reviews and statutes and delivering daily news that impacts their practice areas and clients, all from the firm's intranet.

"With this new initiative, law firms can truly custom design their intranet links to the LEXIS-NEXIS services to meet their specific information requirements," said Paul Brown, chief operating officer of LEXIS at LEXIS-NEXIS. "This can be as simple as placing an icon on a firm's intranet that links to the LEXIS-NEXIS services, or as sophisticated as enabling an attorney to enter a citation to be verified on LEXIS-NEXIS."

Demonstrated at the American Bar Association annual exposition in Toronto July 30-August 3, links available at www.lexis.com/enterprise can be cut and pasted directly to a firm's intranet to organize the firm's access to the LEXIS-NEXIS services.

"For example, a firm that counts tax law among its areas of specialization can set up its intranet so it links directly to the Tax Law practice area at www.lexis.com for commentary and updates in that area of law," said Brown, "and create links to pertinent tax statutes and case law on the LEXIS-NEXIS services."

Through this new service, law firm intranets can also include daily customized alerts from LEXIS-NEXIS that provide updated legal, regulatory and news developments on specific topics to an entire firm or solely to its practice group sections.

Ben H. Hadfield – District Court Judge

by Kevin McGaha

The Honorable Judge Ben H. Hadfield, First District Court, was the first Judge appointed by the newly elected Governor Leavitt in January, 1993. Born and raised in the Brigham City community, Judge Hadfield attended Box Elder High School and graduated from Weber State College with a major in political science and minor in German. Judge Hadfield went to J. Reuben Clark School of Law, where he served as Student Bar President, graduating in 1978. After law school, Judge Hadfield associated with, Mann, Hadfield, & Thorne, for 4 years before becoming full partner in the firm where he practiced general civil litigation and domestic law. Judge Hadfield also served as deputy Brigham City attorney and Brigham City attorney.

Judge Hadfield's family includes his wife, Annette, and five children (3 daughters, 2 sons) ages 12-23. He enjoys the diversity of the cases which come before the bench, and believes a sense of humor is important because of the pressures and emotional atmosphere of many of the courtroom situations. Judge Hadfield also notes that "people respond to being treated with dignity and respect. Treating them with respect for the most part causes them to respond with respect."

Prominent on the wall of his office hangs a copy of Rudyard Kipling's poem "If." This poem was on a card given to him by his mother as part of a high school graduation gift. Judge Hadfield notes that the lines "If you can meet with triumph and disaster/ and treat those two imposters just the same" have special significance for attorneys: "At the end of the day, when you're thinking about how great that win was in court, or when you lie awake at night going over how you lost that day in court, you need to treat those two imposters just the same."

LEXIS-NEXIS Enhances its Web-based Legal Research Service

LEXIS-NEXIS has enhanced its Web-based legal research service by brining more of the core features and functionality of traditional LEXIS®-NEXIS® searching to www. lexis.com.

Unveiled at the American Bar Association annual exposition in Toronto July 30-August 3 with immediate availability to customers, the enhancements include receiving automatic updates from a saved search, searching the LEXIS®-NEXIS® services using the natural language option, transforming simple searches to yield more pinpointed results and e-mail or fax delivery of retrieved documents.

"These enhancements to LEXIS-NEXIS Web-based research incorporate the popular features that customers have come to expect and rely upon from the LEXIS-NEXIS services," said Paul Brown, chief operating officer of LEXIS. "These new features combine the ease of use of a Web browser with the trusted breadth and depth of the LEXIS-NEXIS data warehouse."

Included among the Web enhancements is the ECLIPSE™ feature which enables a legal professional to stay up-to-date on a topic by automatically received daily, weekly or monthly updates based on the user's predefined search.

The Web-based ECLIPSE, available exclusively from LEXIS-NEXIS, notifies the user via e-mail of new articles or legal information added to the LEXIS-NEXIS services that update the original search results.

"The Web enhancements also make it easier to construct a LEXIS-NEXIS search to find relevant information quickly," Brown said.

Legal professionals can now more closely restrict a search to a specific part or segment of a legal document, such as the court that heard a particular case or the attorney or firm who appeared as counsel.

The Current Status of Utah's IOLTA Program

On June 15, 1998, the U.S. Supreme Court issued a 5-4 decision in *Phillips v. Washington Legal Foundation*. 1998 WL 309070, a case originating from the state of Texas. The Court held that interest income earned on client funds held in Texas IOLTA (interest on lawyer trust fund accounts) is the private property of the client. The majority opinion, authored by Chief Justice Renquist and joined by Justices O'Connor, Scalia, Kennedy and Thomas expressed no view as to whether Texas has "taken" client property through the IOLTA program, nor did it express an opinion as to the amount of "just compensation," if any, due the respondents. Those two issues were remanded to the district court for consideration.

Justice Breyer authored a dissent, joined by Justices Stevens, Souter and Ginsburg, expressing the view that the interest generated by the Texas IOLTA program is not client property. In addition, Justice Souter authored a dissent joined by Justices Stevens, Ginsburg and Breyer. It asserts that the Court should have either decided all three Takings Clause issues together or returned the case to the Fifth Circuit Court of Appeals to do the same. Justice Souter opined that this approach would reduce the risk of placing undue emphasis on the existence of a generalized property right that may turn out to be solely theoretical, especially when, in his estimation, the respondents will have a difficult time prevailing on the other two issues.

It is anticipated it will take several years before this case works its way back to the Supreme Court for final resolution. In the meantime, the Utah Bar Foundation, and all other IOLTA-funded programs in the country (all 50 states have such programs) have had to assess the impact of the *Phillips* decision on current operations. Utah's IOLTA program exists pursuant to an order from the Utah Supreme Court. *See In the Matter of Interest on Lawyers' Trust Accounts*, 672 P.2d 406 (Utah 1983). This order, and similar ones in other jurisdictions, permits the pooling of nominal client funds for deposit in interest bearing trust accounts, and requires that the accrued interest must be paid over to a non-profit entity for the support of law related public service activities.

After consideration of the options available, the Utah Bar Foundation and most, if not all, entities disbursing IOLTA funds, have decided to continue business pretty much as usual, until there is a change in the governing law. This decision is based on several factors. First, and foremost, is the scope of the *Phillips* opinion. The opinion did not declare that IOLTA programs are unconstitutional and did not enjoin their operation. Therefore, until the U.S. Supreme Court rules differently, IOLTA programs and lawyers can continue to comply with IOLTA requirements established by state law – in our case, by order of the Utah Supreme Court.

Our decision also took into consideration the possibilities of liability if the Court ultimately finds IOLTA to be unconstitutional. The lower courts in *Phillips* had held that IOLTA organizations, board members, and staff were immune from liability because of the bar of the Eleventh Amendment, which provided a qualified immunity defense to those individuals. Certiorari was sought on that issue but the Supreme Court declined to grant the same.

Similarly, because the claim in *Phillips* is about a state taking, most believe it is unlikely that lawyers participating would have any liability. The propriety of obtaining consent or an assignment from clients for paying over the funds to IOLTA is questionable, however. The IRS approved IOLTA in 1983 because neither the client nor the lawyer had control over the interest funds, thus precluding its taxability to either. Some have expressed a concern that client consent would have adverse tax consequences. In fact, in the state of Michigan, the IRS issued a favorable tax ruling only after Michigan deleted client consent as a requirement of their IOLTA program.

Furthermore, on August 6, 1998, the Conference of Chief Justices, comprised of all state supreme court chief justices, adopted a resolution stating as follows:

NOW, THEREFORE, BE IT RESOLVED that the Conference:

- reiterates its strong support for the concept of IOLTA, as first articulated in a resolution adopted by the Conference in 1979;

- supports the continued operation of IOLTA programs in each jurisdiction; and
- supports the continued growth and development of additional methods for funding the delivery of civil legal services to those who cannot afford an attorney.

The trustees of Utah's Bar Foundation are in agreement with this resolution and are hopeful that Utah's lawyers will continue to support IOLTA as a means of providing legal assistance and education to Utah's citizens.

Licensing Questionnaire Feedback

In April, a questionnaire was enclosed with the membership renewal slips for the Legal Assistant Division. The questionnaire requested feedback from LAD members and their attorneys regarding legal assistant licensing in the State of Utah. Danielle Davis compiled the responses and the results are as follows:

There were a total of 94 responses received; 83 responses were from legal assistants, 9 responses were from attorneys, 1 from a law office administrator, and 1 response unspecified (other).

1. Licensing of legal assistants will generally benefit the paralegal profession.

LAD member	48 agree	17 disagree	18 undecided	0 unanswered
Attorney	3 agree	5 disagree	1 undecided	0 unanswered
Law Office Administrator	agree			
Other			undecided	

2. It is necessary to license legal assistants in order to expand duties with the growing need for legal services.

LAD member	39 agree	29 disagree	15 undecided	1 unanswered
Attorney	1 agree	6 disagree	2 undecided	0 unanswered
Law Office Administrator			undecided	
Other		disagree		

3. Administering a written examination is a fair way to establish levels of competency in a given profession.

LAD member	49 agree	20 disagree	13 undecided	2 unanswered
Attorney	4 agree	3 disagree	2 undecided	0 unanswered
Law Office Administrator	agree			
Other		disagree		

4. As the legal assistant profession grows, the need for higher levels of formal education grows.

LAD member	62 agree	11 disagree	9 undecided	1 unanswered
Attorney	4 agree	4 disagree	1 undecided	0 unanswered
Law Office Administrator	agree			
Other		disagree		

5. It is mandatory that all presently working legal assistants, regardless of educational background, have an equal opportunity to apply for and take any exam administered in order to become licensed and that they should be permitted to do so for a certain period of time prior to any mandatory educational requirement becomes a qualifier for sitting for an exam.

LAD member	51 agree	21 disagree	9 undecided	3 unanswered
Attorney	3 agree	3 disagree	1 undecided	2 unanswered
Law Office Administrator			undecided	
Other	agree			

6. Some legal assistants who have great longevity in the field should *not* be required to take any exam to prove their competency.

LAD member	47 agree	20 disagree	15 undecided	1 unanswered
Attorney	3 agree	3 disagree	2 undecided	1 unanswered
Law Office Administrator	agree			
Other	agree			

7. I do not feel that I have enough information regarding the issue of licensing, in particular licensing in Utah, and therefore would like to attend seminars and forums discussing the same before I make my final decisions on this subject.

LAD member	35 agree	18 disagree	14 undecided	15 unanswered
Attorney	4 agree	4 disagree	0 undecided	1 unanswered
Law Office Administrator			undecided	
Other			undecided	

THE LEGAL ASSISTANTS DIVISION OF THE UTAH STATE BAR
presents
CURRENT FAMILY LAW ISSUES

Program Schedule

8:30 a.m.	Registration and Continental Breakfast
9:00 a.m.	Welcome and Division Update *Kay D. Hanson, CLA-S, Chair, Legal Assistants Div., USB*
9:30 a.m.	Surviving in the Third District Court Practical Tips for the Legal Assistant *Commissioner Lisa A. Jones,* *Third Judicial District Court*
10:30 a.m.	Break
10:45 a.m.	Working with Guardians ad Litem *Martin N. Olsen, Attorney at Law, Olsen & Olsen*
11:45 a.m.	Court Appointed Special Advocates (CASA) *Marsha L. Gibler, Legal Assistants/PLS,* *Scalley & Reading*
Noon	Lunch
1:00 p.m.	Ethics: Domestic Law Issues and the Legal Assistant *Carol A. Stewart, Attorney at Law,* *Office of Professional Conduct-USB*
2:00 p.m.	Community Resources for Family Law Clients Where Can a Client go for Help? *Beth A. Lee, Program Coordinator (Retired) and* *Instructor Project Turning Point*
2:45 p.m.	Break
3:00 p.m.	Update on the Child Welfare Reform Act Amendments *Jeanne C. Campbell, Assistant Attorney General*
4:00 p.m.	Custody, Support, Jurisdiction Uniform Interstate Family Support Act (UIFSA) and Parental Kidnapping Prevention Act (PKPA) *David S. Dolowitz, Attorney at Law,* *Cohne, Rappaport & Segal*

FRIDAY, OCTOBER 23, 1998
SHILO INN
206 SOUTH WEST TEMPLE
SALT LAKE CITY, UTAH 84101

CLE Credit: 6 HOURS
(NALA Approval Pending)

Registration Fees
$80.00 member
$95.00 non-member
(Add $10.00 if after 10/16/98)

To register: Please send your payment, along with your name, address, phone number and Bar #, if applicable, to:

Utah State Bar Legal Assistants Division
c/o Ann Streadbeck, Education Chair
50 West Broadway, Suite 905
SLC, UT 84111.

Questions? Call Ann Streadbeck
at (801) 359-5511

CLE Calendar

NLCLE WORKSHOP: MOTION PRACTICE

Date: Thursday, October 15, 1998
Time: 5:30 p.m. to 8:30 p.m. *(Registration begins at 5:00)*
Place: Utah Law & Justice Center
Fee: $30.00 for Members of the Young Lawyers Division
$60.00 for All Others
(Add $10.00 for door registration)
CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: HOW TO TRY A PERSONAL INJURY CASE

Date: Thursday, October 15, 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

FOURTH ANNUAL NATIVE AMERICAN LAW SYMPOSIUM: NUCLEAR & HAZARDOUS WASTE & ENVIRONMENTAL REGULATION IN INDIAN COUNTRY

Date: Friday, October 16, 1998
Time: 9:00 a.m. to 5:00 p.m. *(Registration begins at 8:30)*
Place: University of Utah College of Law – Moot Court Room
Fee: $125.00 before 10/9/98; $150.00 after 10/9/98
Half-day $75.00 *(Send registration to Utah State Bar, CLE Department, 645 So. 200 E., Salt Lake City, UT 84111)*
CLE Credit: 8 HOURS

ALI-ABA SATELLITE SEMINAR: ERISA BASICS – A TWO-PART PRIMER ON ERISA ISSUES

Date: Part 1 – Thursday, October 22, 1998
Part 2 – Thursday, October 29, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: Both Parts – $295.00 Standard;
$165 Government Employee
Part 1 Only – $165.00 Standard;
$85.00 Government Employee
Part 2 Only – $165.00 Standard;
$85.00 Government Employee
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 HOURS FOR EACH PART, (8 HOURS TOTAL)

LEGAL ASSISTANT DIVISION: "CURRENT FAMILY LAW ISSUES"

Date: Friday, October 23, 1998
Time: 9:00 a.m. to 5:00 p.m. *(Registration begins at 8:30 with continental breakfast)*
Place: Shiloh Inn
Fee: $80.00 Members; $95.00 Non-members
$10.00 late fee after 10/16/98 *(Send registration to Utah State Bar Legal Assistants Division, CLE Department, 645 So. 200 E., Salt Lake City, UT 84111)*
CLE Credit: 6 HOURS *(NALA approval pending)*

ALI-ABA SATELLITE SEMINAR: "TAX PRACTICE AND THE NEW ACCOUNTANT-CLIENT PRIVILEGE"

Date: Wednesday, October 28, 1998
Time: 12:00 p.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $119.00 Regular Registration
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 2 HOURS

LITIGATION SECTION'S TRIAL ACADEMY 1998 PART V: "EXHIBITS, INSTRUCTIONS, AND OTHER THINGS"

Date: Wednesday, October 28, 1998
Time: 6:00 p.m. to 8:00 p.m.
Place: Utah Law & Justice Center
Fee: $25.00 Section members; $35.00 Non-members
(Send registration to Utah State Bar CLE Dept., 645 So. 200 E., Salt Lake City, UT 84111 or call Connie Howard at 297-7033)
CLE Credit: 2 HOURS

ALI-ABA SATELLITE SEMINAR: "EMPLOYEE BENEFITS LAW & PRACTICE UPDATE"

Date: Thursday, November 12, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $165.00 Regular Registration
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 HOURS

PAUL M. LISNEK AND ASSOCIATES; DEPOSITIONS: TECHNIQUE, STRATEGY AND CONTROL

Date: Friday, November 13, 1998
Time: 9:00 a.m. to 4:30 p.m.
Place: Utah Law & Justice Center
Fee: TBA
CLE Credit: 7 HOURS

ALI-ABA SATELLITE SEMINAR: "1998 UPDATE: CLEAN AIR ACT"

Date: Tuesday, November 17, 1998
Time: 12:00 p.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $165.00 Regular Registration
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 2 HOURS

A FIRST AMENDMENT UPDATE ON RELIGION IN THE PUBLIC SCHOOLS: MOVING FROM BATTLE GROUND TO COMMON GROUND

Date: Wednesday, November 18, 1998
Time: 12:00 p.m. to 2:00 p.m.
Place: TBA
Fee: $15.00 for lunch and 1 HOUR CLE; $60.00 for Regular Registration *(questions please call Connie Howard @ 297-7033)*
CLE Credit: 1 or 4 HOURS

ALI-ABA SATELLITE SEMINAR: "UNDERSTANDING, PREVENTING, AND LITIGATING YEAR 2000 ISSUES: WHAT EVERY LAWYER NEEDS TO KNOW NOW"

Date: Thursday, November 19, 1998
Time: 9:00 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00 Regular Registration
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 7 HOURS

PROFESSIONAL EDUCATION GROUP, INC.: A DAY ON TRIAL: THE SECRETS OF PERSUASION

Date: Wednesday, December 2, 1998
Time: 8:30 a.m. to 5:00 p.m.
Place: Utah Law & Justice Center
Fee: TBA *(questions, please call Connie Howard or Toby Brown at 297-7033, or 297-7027)*
CLE Credit: 7.5 HOURS

ETHICS: "WHY BAD THINGS HAPPEN TO GOOD LAWYERS"

Date: Friday, December 11, 1998
Time: 9:00 a.m. to 5:00 p.m. *(Registration begins at 8:30)*
Place: Utah Law & Justice Center
Fee: TBA
CLE Credit: 6 HOURS

NATIONAL PRACTICE INSTITUTE: "EVIDENCE FOR THE TRIAL LAWYER"

Date: Friday, December 11, 1998
Time: 9:00 a.m. to 5:00 p.m. *(Registration begins at 8:30)*
Place: Utah Law & Justice Center
Fee: TBA
CLE Credit: 6 HOURS

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) 297-7033, 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 Connie Howard, CLE Coordinator, at (801) 297-7033.

CLE REGISTRATION FORM

TITLE OF PROGRAM FEE

1. _____ _____
2. _____ _____

Make all checks payable to the Utah State Bar/CLE Total Due _____

Name Phone

Address City, State, Zip

Bar Number American Express/MasterCard/VISA Exp. Date

Credit Card Billing Address City, State, ZIP

Signature

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.

Classified Ads

RATES & DEADLINES

Bar Member Rates: 1-50 words — $20.00 / 51-100 words — $35.00. Confidential box is $10.00 extra. Cancellations must be in writing. For information regarding classified advertising, please call (801) 297-7022.

Classified Advertising Policy: No commercial advertising is allowed in the classified advertising section of the Journal. For display advertising rates and information, please call (801) 486-9095. It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification or discrimination based on color, handicap, religion, sex, national origin or age.

Utah Bar Journal and the Utah State Bar Association do not assume any responsibility for an ad, including errors or omissions, beyond the cost of the ad itself. Claims for error adjustment must be made within a reasonable time after the ad is published.

CAVEAT — The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: May 1 deadline for June publication). If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

BOOKS FOR SALE

Two sets current Utah Code Annotated for sale. Call (801) 355-3431. Ask for Marilyn B.

POSITIONS AVAILABLE

Large Salt Lake City law firm seeks ERISA attorney for associate position. Must have 3-5 years of pension and welfare benefits experience, including plan drafting and qualification; research and writing skills; and significant client contact. This position will provide an opportunity to work with all types and sizes of defined contribution and defined benefit plans. We feel this opening provides an excellent career opportunity. Inquiries will be kept strictly confidential. Send resumes to Confidential Box #53, Attention: Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Civil Rights Attorney: Public interest law firm seeks experienced attorney with a commitment to the rights of citizens with disabilities including special education law. Persons of color, women and persons with disabilities encouraged to apply. Positions are available in our Salt Lake City and Cedar City offices. Submit resume and letter of application to Ronald J. Gardner, Legal Director, Disability Law Center, 455 East 400 South #410, Salt Lake City, Utah 84111. Equal Opportunity Employer.

PARSONS BEHLE & LATIMER is seeking an **ASSOCIATE** with three to five years of real estate and real estate financing transaction experience. Applicants must be a member in good standing of the Utah State Bar or be able to become a member within a 12-month period. Excellent written and verbal skills are required. Send resume and cover letter to: Recruitment Specialist, P.O. Box 45898, Salt Lake City, UT 84145-0898. Fax (801) 536-6111.

ATTORNEY WANTED: 15-20 hours per week; Sandy office space and amenities provided; must have own work load; salary negotiable. Please contact Brenda @ (801) 571-6611 or fax inquiry to (801) 571-4888.

APPLICANTS FOR CRIMINAL CONFLICT OF INTEREST CONTRACT: The Salt Lake Legal Defender Association is currently accepting applications for several trial and appellate conflict of interest contracts to be awarded for the fiscal year 1999. To qualify each application must consist of two or more individuals. Should you and your associate have extensive experience in criminal law and wish to submit an applications, please contact F. JOHN Hill, Director of Salt Lake Legal Defender Association, (801) 532-5444.

POSITIONS SOUGHT

ENTERTAINMENT LAW: Denver-based attorney licensed in Colorado and California available for consultant or of-counsel services. All aspects of entertainment law, including contracts, copyright and trademark law. Call Ira C. Selkowitz @ (800) 550-0058.

ATTORNEY: Former Assistant Bar Counsel. Experienced in attorney discipline matters. Familiar with the disciplinary proceedings of the Utah State Bar. Reasonable rates. Call Nayer H. Honarvar, 39 Exchange Place, Suite #100, Salt Lake City, UT 84111. Call (801) 583-0206 or (801) 534-0909.

BAR COMPLAINT DEFENSE ATTORNEY: Representation in all Bar disciplinary proceedings. Let me assist you in preparing your response to that Bar Complaint. Five years as Assistant Disciplinary Counsel, Utah State Bar. Wendell K. Smith, 275 East 850 South, Richmond, UT 84333, (435) 258-0011.

CALIFORNIA/UTAH ATTORNEY: Attorney has experience in criminal and civil cases in California and Utah. Available for court appearances and other work in California. Call George L. Wright @ (801) 322-3000.

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MCLE Administrator
297-7035

Member Benefits: 297-7025
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Program Title
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Date of Activity CLE Hours Type of Activity**

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Date of Activity CLE Hours Type of Activity**

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**EXPLANATION OF TYPE OF ACTIVITY

A. Audio/Video Tapes. No more than one-half of the credit hour requirement 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.

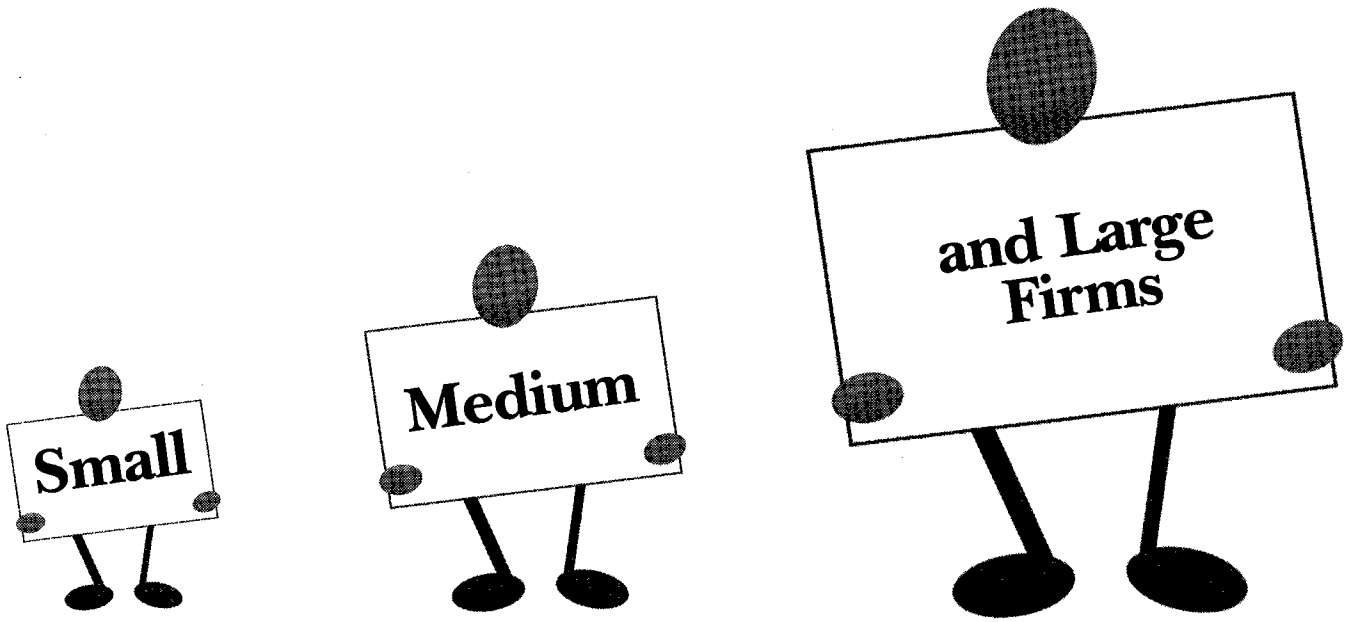
THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

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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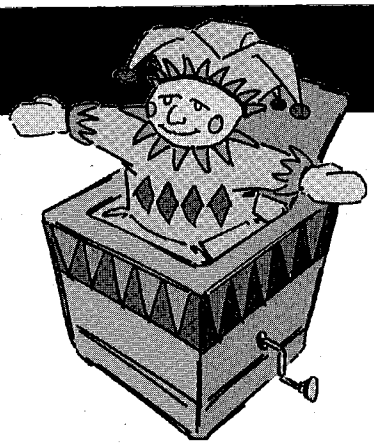

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