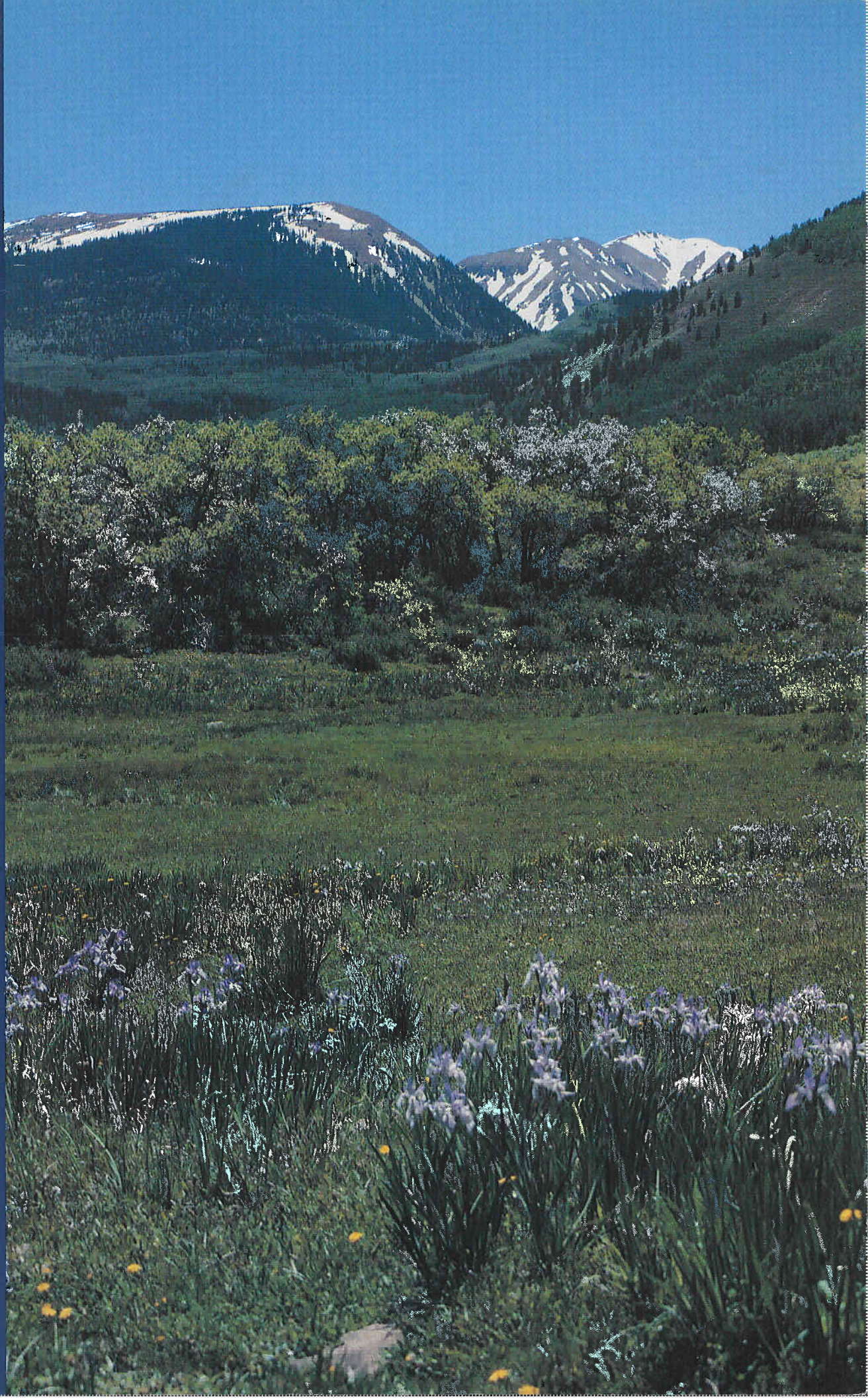
Utah Bar JOURNAL



Volume 12 No. 5
May 1999

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: Spring Comes to the Wasatch Range, by Harry Caston of McKay, Burton & Thurman.

Members of the Utah State 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, McConkie & 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. If you would like your photograph to be returned, enclose a self-addressed, stamped envelope.

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, $50.00; single copies, $5.00. For information on advertising rates and space reservation, call or write Utah State Bar offices.

Utah Bar JOURNAL

Volume 12 No. 5
May 1999

Letters to the Editor

Dear Editor,

I have just finished reading the discipline corner, and you wonder why we have such demoralizing lawyer jokes. The discipline I read about in the March issue of the *Bar Journal* is about as big a joke as one would want to see in the *Bar Journal*: Attorney retained by client, attorney does nothing and won't communicate with client . . . Admonition; Conflict of interest, notice of lien etc . . . Admonition; and overdrawn trust account, and two prior cautions . . . Admonition. You have got to be kidding.

With this kind of protection of the public I should start a class action against the Bar on behalf of us attorneys that pay for such incompetent discipline. Or are these attorneys a part of the "Good Old Boys Club?" I hope the public doesn't read this section of the *Journal*.

Richard L. Tretheway

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 532-1234 or write, *Utah Bar Journal*, 645 South 200 East, Salt Lake City, Utah 84111.

The Utah Bar Journal

Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.

2. No one person shall have more than one letter to the editor published every six months.

3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.

4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.

5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Code of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.

7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.

8. The Editor, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

Celebrate Your Freedom

by James C. Jenkins

Just a few weeks ago I had the privilege of judging a mock trial competition between two high school teams. I was genuinely impressed with the understanding and skills of the rules of procedure and evidence and persuasive speaking these young people demonstrated. I have since spoken with other lawyers who participated in this year's mock trial program. They all expressed similar observations. It was a refreshing experience to see the youth of our community interested in the law.

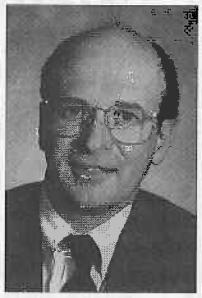
Each year the Utah State Bar joins with other groups and individuals to celebrate Law Day. The Young Lawyers Division and the Law Day and Law Related Education Committees have been particularly active in this effort. It is an opportunity to promote the role of our profession and the importance of the rule of law. This year's activities included:

- Law Day celebration at Hill Air Force Base commemorating the 50th anniversary of the Judge Advocate General's Department of the United States Air Force.
- The 6th Annual Law Day Luncheon with former Congressman Wayne Owens as the featured speaker.
- A Law Day Proclamation from Governor Michael O. Leavitt.
- The culmination of the 1999 Utah Mock Trail Program. This competition is in its 20th year and provides middle school and high school with an opportunity to learn and experience court room mock trials. The program is sponsored by the Utah State Bar, the Utah Bar Foundation, and Utah State Bar Law Related Education and Law Day Committee, the Utah Administrative Office of the Courts and the Utah Law Related Education Project.
- The Art and Law Project and the Law Day Essay Contest sponsored by the Salt Lake County Bar and the Minority Bar Association.
- Judge for a Day Program sponsored by the Young Lawyer's Division.
- The Annual Bob Miller Law Day 5K run.

In addition to these activities the Scott M. Matheson Award, the Liberty Bell Award and the Annual Young Lawyer of the Year Award were presented.

In 1958, President Dwight D. Eisenhower established Law Day USA to strengthen our great heritage of liberty, justice and equality under the law. Our Law Day theme this year is "Celebrate Your Freedom." It is a theme calculated to remember the freedoms guaranteed by our Constitution and the Bill of Rights and protected by our laws and courts. Law Day is a time to celebrate and a time to rededicate ourselves to upholding the law and defending the Constitution.

I thank all who have worked to make this year's Law Day a success. It is a positive example to our communities of the important work lawyers do in preserving our way of life.



Accounting 101 for Lawyers or Too Late, You Lose?

by Toby Brown,
Law Office Management Specialist, Utah State Bar

This past year the American Bar Association created a new commission called the Commission on Multidisciplinary Practice. The Commission issued a preliminary report entitled "Background Paper on Multidisciplinary Practice: Issues and Developments" in January of 1999. The report is an excellent review of the issues on this subject. A copy can be found at http://www.abanet.org/cpr/multicomreport0199.html.[1]

The Utah State Bar has established a Task Force on Multidisciplinary Practice ("MDP") as well. Its charge is to assess the MDP situation in Utah, examine the issues as they apply to Utah and make recommendations for action.

MDP is the practice of combining professional services under one roof. The primary example is that of accounting firms adding legal, technical and other professional services within their product mix. This produces an integrated level of services for clients.

The MDP issue has had little debate in Utah, especially among the Bar. Therefore, this article is written to highlight current events and stimulate debate on MDP. The article does not represent the position of the Utah State Bar but represents the view of the author.

The central issue presented for lawyers by MDP is that accountants, and other non-lawyers, are taking market share from lawyers (a.k.a. "stealing your business" or "eating your lunch"). When most lawyers hear that this may be possible, they write it off as another hype-tactic and discount any meaning to it. "Obviously non-lawyers cannot practice law, so this is not a problem." I have read through the literature on this topic and I have come to a similar conclusion, only from a different angle. Lawyers do not need to worry about this issue, because it's too late. The accountants (and other professions) have already won this economic war.

CURRENT STATE OF MDP

In order to demonstrate this position, I will provide some background information on the current state of MDP. To cover this, I will address three broad questions:

#1 - What efforts (if any) are being made to stop this practice?
#2 - Why are lawyers unable to provide MDP?
#3 - Who is providing MDP services and at what level?

In response to #1, MDP could be considered a form of the unauthorized practice of law (UPL). Bars around the country have focused most of their limited UPL efforts on a narrow area of UPL – legal assistant "form shop" practice. When some legal assistants sell legal forms to the public at affordable prices and end up giving some legal advice, since the customers invariably demand it, the bar files suit. These shops, however, are neither the real problem nor the victor in the UPL war. And therefore no real effort is being made to stop MDP.

So why are lawyers not responding with their own MDPs? In MDP markets, lawyers have tied their own hands. Restrictive ethical rules limit the ability of lawyers to market and expand their businesses. Fee splitting and advertising rules are at the center of this focus. However, if these two rules are relaxed, then conflict and other ethical rules come in to play. So the ethical issues, on all sides, prevent lawyers from participating in the MDP market. So that leaves MDP-type markets open to non-lawyers, especially accountants. And it is accountants who are making the most aggressive moves into MDP markets.

BIG FIVE MDP EFFORTS

Essentially, the Big Five accounting firms are establishing a full-service business consulting practice. This market includes accounting, tax, technical, legal and other services. What they want to provide is a one-stop, seamless web of professional services for businesses. From the clients' perspective, this is probably a good thing. Their tax, technology and legal needs are handled in an integrated fashion. They no longer need to worry about coordination between multiple professionals – for example, that the lawyer's solution for limiting legal liability might compromise their accountant's design for their tax situation. Most

Toby Brown, among his many capacities at the Bar, serves as the Bar's Law Office Management Specialist. A former law firm administrator, Toby watches for information and tools to help lawyers in the management of the practice. As well, he has an impressive string of epiphanies.

often in this MDP scenario, the client pays less for better service. I'll repeat that phrase, "pays less for better service."

In all other industries this phrase equates to market advantage. And market advantage means you take market share and put others out of business. Should this concern lawyers? Absolutely. Ethical rules aside, the reality of the market will displace lawyers and the legal profession regardless of whether lawyers think it is right or wrong.

Given that there are MDP services in the market, we need to examine the amount of these services being offered. PriceWaterhouseCoopers currently employs over 1600 non-tax lawyers. My educated guess is that these lawyers are employed for their legal skills and not their accounting savvy. A look at the PriceWaterhouseCoopers web site shows some interesting services they provide. Under the "Comprehensive Financial Planning" area of services, we find: Trusts and Estate Wealth, Asset Management Consulting and Financial Product Innovation services.[2] Re-worded in lawyer market terms, these products cover: Estate Planning, Asset Protection and Refinancing Work (and possibly Intellectual Property work).

"Multidisciplinary practice is the practice of combining professional services under one roof."

The remainder of the Big Five employ proportional numbers of non-tax lawyers as well. And likely they offer similar services.

OTHER PROFESSIONALS IN MDP

The current debate on MDPs has focused on accountants because they are a related profession and were likely drawn on to lawyer's radar screens by clients. However, there are many other professionals moving into the legal market. Consider financial planners, employment services companies, human resource consultants, banks, financial services companies and others. Two years ago I heard a commercial on public radio from a major financial services company advertising their "Business Transition Unit." This unit provides services for small business owners who need to transfer their companies to their children as they approach retirement. This sounds an awful lot like legal work to me. It is estate planning, corporate entity and asset protection work.

As noted above, clients have been bringing the MDP issue to lawyers, but why? Because they are "paying less for better service." One central driving issue in the debate is, "what is best for clients?" Lawyers will likely argue that clients need the supe-

rior protection and confidentially that the legal profession provides. This superior "quality" should keep and maintain clients with lawyers. But it isn't. Clients are beginning to rebel against the archaic nature of the law firm business model. Take the alternative billing trend as an example. Hourly billing rewards slow and unproductive legal work. Larger more sophisticated clients have been putting pressure on law firms the past few years to eliminate this practice.

In fact when you look seriously at the law firm business model, the hourly billing approach and its corresponding compensation model have created what I would call a "backwards business model." How many industries can get away with a system that pushes tasks to their highest cost labor source? That is exactly what hourly billing does. Partners hold as much work as they can (since that determines their pay), and pass the rest to associates, who in turn do the same with legal assistants, and so on. In fact, the most recognized productivity measure in law firms is the lawyer-to-secretary ratio. This measure is focused on eliminating lower cost labor sources. It not only discourages the use of lower cost labor sources, it encourages the retention and promotion of higher cost sources. No wonder clients are upset and asking hard questions. Would you continue to do business with a company that maximized its profits at your expense? I think not.

In March at the Fourth Annual Law Firm Leadership Summit in San Francisco, Fred Bartlit, Jr., of Bartlit Beck in Chicago, asked a group of managing partners if they knew how much a web page cost or how much a deposition cost to produce. No one could answer.[3] Imagine a business which does not know the cost of production of its own products, and you've just envisioned a law firm.

So a strong argument can be made that clients are better off getting their legal services from MDP-type companies.

Now the legal profession has a dilemma. What sort of response to MDPs will be effective? I'll give you a number of possible options and potential outcomes to them. The analysis focuses on accountants, since they currently are the driving force for MDPs. These options assume the goal is keeping the legal industry in lawyers' hands.[4]

RESPONSE #1 - DO NOTHING.

This has been the traditional response by the industry and is actually the most likely. Wait and see what clients will do. The outcome to this approach seems obvious. Clients will take their business to those companies that provide better services at lower prices. Then when the legal profession finally decides to act, it will be way too late. Actions to push other professions out of established markets will be seen as entirely monopolistic and self-serving by the clients and the public and these efforts will fail.

Score: Accountants win.

RESPONSE #2 - ENFORCE UPL STRICTLY.

Currently most state bars (which are the entities that enforce UPL) have very small budgets for UPL. Therefore in order to use this option, more money will be needed. Where will this money come from? Resources could be shifted away from other areas of the bar. Maybe discipline or CLE or lawyer referral could take the hit. However, significant cuts to these areas will hurt the profession and therefore clients. Therefore dues increases will be needed to cover these costs.

"Lawyers have used the shield of the adversarial model of justice too long. It has sheltered them from market realities and encouraged them to stagnate."

But how much money will be needed? Consider that market data shows that there is currently a 500 million dollar market for these non-lawyer legal services.[5] Assume that there is only a 10% margin in that number. That means there is conservatively about $50 million in profits in this market annually (and this number is growing). In order to eliminate that economic incentive in the market, the legal profession would have to outspend it. Let's say $60 million is a reasonable goal for the first year. That's a lot of Bar dues. Given the high resistance to Bar dues increases, this is not a likely outcome.

But let's take a (huge) leap of faith and assume dues increases provide the necessary money. Now the legal profession will be fighting a very public battle in the courts, to essentially limit clients' access to legal services. And this will be done under the guise of helping clients. Even if the court battles could be won, the reality will be a loss, for clients will not take this effort lying down. The result would be a strong public backlash against the legal profession. Once again, not a high likelihood for success.

Score: Accountants win.

RESPONSE #3 - RELAX THE ETHICAL RULES TO ALLOW LAWYERS TO COMPETE.

This solution has the greatest potential for success. The best way to overcome such high economic incentives is to level the playing field. If lawyers are able to compete head-to-head with accountants and other non-lawyers, they will have a shot at retaining market share. In theory, this approach has a shot. However, I think reality will reduce the potential success of this option.

First, there will be resistance among lawyers to change the ethical rules. Relaxation of any rules will be seen as compromising the quality of legal services. A lawyer/acquaintance of mine made a great statement on this issue, "Doctors made a similar refusal to change in the 80's based on 'quality' concerns and now we have HMO's and insurance companies running the medical industry." There is strong sentiment among lawyers to keep the art of lawyering a profession, instead of allowing it to become a business (when in actuality it is both). Given that many lawyers will take this position and dig their heels in, it will delay the changing of any rules to the point that the issue will be moot.

Second, even if the rules change, the ability of lawyers and law firms to compete in the market is quite limited. I point out again the "backward business model" that law firms utilize. How can lawyers expect to win the economic race when their race car is parked upside down? The accounting firms are much better structured and will therefore continue to dominate the market.

Third, I predict that if fee splitting rules are relaxed, in a matter of a couple of years the Big Five will own a lion's share of the larger law firms. One effective method for gaining market share is to buy the competition. In this scenario, the lawyers will probably be in the best possible position, since many of them will take partnership positions within the accounting firms. But these positions will be subordinate to the long-established accounting partners already in the Big Five. This solution leaves lawyers as players in the market, but in a supporting role.

Score: Accountants win (but lawyers lose less).

RESPONSE #4 - ATTEMPT TO TIGHTEN ACCOUNTANT ETHICAL RULES.

If we are unable to open legal ethics to accountants' level, then maybe the legal profession can restrict accountant rules (and other professional rules, where they exist) to the lawyer level.

This option would entail lobbying the legislatures and regulatory agencies to place "legal-type" ethical limits on accounting and other professional services. In effect, this would make their rules equal to lawyers, leveling the playing field. A broader approach for this idea would be to enact strong UPL statutes and fund the enforcement through state general funds.

We must now pause to allow some time for the non-lawyers reading this article to stop laughing. The likelihood that any legislature is going to restrict markets to protect lawyer monopolies and possibly fund such an effort is less than zero. Since the public already has limited access to justice, any request to further limit that access would be suicidal. Legislators and other regulators would likely respond to such efforts by opening more doors to MDP services. Therefore the potential for this option of succeeding is extremely low.

Score: Accountants win (big).

CONCLUSION

Lawyers are just finding out about the issue of MDP and I believe it is already too late for them to successfully react. I can think of no economic scenarios where lawyers maintain their position in the market. The best the profession can hope for is a level playing field where, in order to compete, lawyers are forced to make major changes to their business structures.

And it's about time they do.

Lawyers have used the shield of the adversarial model of justice too long. It has sheltered them from market realities and encouraged them to stagnate. While this has been going on, other players in the market have seen opportunity and have been changing to meet this market demand. And the winners have been clients. And isn't that what it is all about: "protecting the client's best interest." Lawyers are failing at their own game and the market place is poised to teach them a lesson.

Economics can be a cold master. If lawyers expect to survive at all they had better take action, and fast. Change comes hard, but consider the alternative.

Hopefully this article will stimulate some debate and action on the issue of MDP. The Bar's MDP Task Force will serve as an excellent vehicle for input and discussion. Through this process I hope lawyers are able to open their eyes and see the market and then respond to it. My pessimistic side tells me that most lawyers will write-off the issue of MDPs as just another hype-tactic. But they will do so at their own peril.

[1]NYSBA also has a report at http://www.nysba.org/whatsnew/multidiscrpt.html##_Toc440112948.

[2]This listing can be found at http://www.pwcglobal.com/extweb/service.nsf/docid/E5250B0DF1B1F918852566F20070C9DF?OpenDocument.

[3]For a copy of the article, go to http://www.lawnewsnetwork.com/stories/mar/e031199d.html.

[4]There are other alternative goals, such as maintaining the high standards of client protection – but this article assumes the marketplace will not value that as highly as the convenience and economy of multidisciplinary practice.

[5]The $500 million figure is referenced in http://www.lawnewsnetwork.com/stories/feb/e022299b.html.

Update on the Law Governing Jurisdiction Issues in Child Custody, Visitation and Support Cases

by David S. Dolowitz

Editor's Note: This is an update to an article that was written as part of the Special Problems in Divorce Seminar presented by the Utah Fellows of the American Academy of Matrimonial Lawyer in December, 1995 and published in the Utah Bar Journal *in October, 1996. It reflects the adoption of the Uniform Interstate Support of Families Act, decisions that have occurred since the original publication and in the pending adoption of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).*

The Utah Supreme Court has clearly articulated the constitutional rule that before a Utah court may take any action, it must have jurisdiction over both the parties and the subject matter. *Rimensburger v. Rimensburger,* 841 P.2d 709 (Utah App. 1992); *Arguello v. Industrial Woodworking Machine Co.,* 838 P.2d 1120 (Utah 1992). Custody, visitation and child support actions involve two types of cases: those handled in Utah where either a Utah judgment or a foreign judgment is to be enforced and those outside of Utah where a Utah judgment is to be enforced. Each of these two categories presents different problems which must be addressed both under the Constitution of the United States and applicable State and Federal statutes.

A UTAH JUDGMENT IN UTAH

Once an action originating in Utah has resulted in the entry of a decree of divorce adjudicating custody, visitation or child support, absent an agreement to change venue, further actions to modify this judgment must be brought in the original court. *Rimensburger v. Rimensburger*, 841 P.2d 709 (Utah App. 1992). In *Rimensburger*, the Utah Supreme Court ruled that it was clear error for the Third District Court to hear modification and enforcement proceedings of a judgment originally entered by the Fifth District Court. The Court ruled the Third District had no subject matter jurisdiction absent agreement of the parties to transfer the matter to that court. The Third District Court's decision was vacated. The clear rule is that once a Utah district court enters a decree of judgment, modification proceedings must be instituted in that court unless the parties agree otherwise.

FOREIGN JUDGMENTS IN UTAH

If one wishes to enforce or modify a foreign judgment in Utah courts it can be done in several ways: (1) bringing an action to domesticate the foreign judgment in Utah and/or modify that judgment; (2) requesting the Utah courts pursuant to §78-45c-15 of the Utah Uniform Child Custody and Jurisdiction Act; or (3) registering under the Foreign Judgments Act, §78-22a-1 *et. seq.* The 1996 Legislature enacted Utah Code §30-6-1(8), which provides for enforcement in Utah courts of foreign protective orders where the protective order was entered in another state in conformity with due process of law and the procedural requirements of the Utah Domestic Violence Act.

The traditional method of domesticating a foreign judgment is to file an action to enter a foreign judgment as a Utah judgment. This is effected by securing an authenticated copy of the foreign judgment and filing an action for its entry in Utah as a Utah judgment requesting enforcement or modification as would a party in a Utah court (in the district where the defendant resides). *Angell v. Sixth Judicial District Court of Sevier County,* 656 P.2d 405 (Utah 1982).

To utilize the procedure under the Uniform Child Custody and Jurisdiction Act, one would have to comply with the procedure described in §78-45c-15.

David S. Dolowitz is a Fellow of the American Academy of Matrimonial Lawyers, President of the Mountain States Chapter of the American Academy of Matrimonial Lawyers, Fellow of the International Academy of Matrimonial Lawyers and past President and member of the Executive Committee of the Family Law Section of the Utah State Bar. He was named Lawyer of the Year, 1988-1989 by the Family Law Section. Mr. Dolowitz is Chairman of the Utah Supreme Court Advisory Committee for Juvenile Court Rules of Procedure. He has published numerous articles in the Utah Bar Journal *and* Fair$hare.

It should be noted that the following requirements of §78-45c-15 of the Utah Code provide for enforcement, not modification, of a foreign decree. Therefore, an action to modify a foreign decree would have to be pursued after registration and any such action would have to comply with the requirements of both §78-45c-1 of the Uniform Child Custody and Jurisdiction Act and the Parental Kidnaping Prevention Act. 28 U.S.C. §1738A. However, the 1998 decision of the Utah Court of Appeals in *Bankler v. Bankler*, 963 P.2d 797 (Utah App. 1998), appears to prohibit Utah courts from modifying a decree of divorce which would include support and custody if either party continues to reside in the original decree state and did not agree to Utah courts assuming jurisdiction to modify the original decree. This goes beyond the reservations of jurisdiction that are discussed later under the Parental Kidnaping Prevention Act (PKPA) (28 U.S.C. §1738A), the Full Faith and Credit for Child Support orders (28 U.S.C. §1738B), the Uniform Interstate Family Support Act (§78-45f-205(4) of the Utah Code) and, if it is adopted, the UCCJEA.

"The traditional method of domesticating a foreign judgment is to file an action to enter a foreign judgment as a Utah judgment."

In interpreting and applying § 78-45c-15, one should keep in mind the definition of a "custody determination" as set forth in §78-45c-2(2):

> (2) "Custody determination" means a court decision and court orders and instruction providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

and a "custody proceeding" as defined in §78-45c-2(3):

> (3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, or legal separation, and includes child neglect and dependency proceedings.

A custody determination involves custody and visitation under the Uniform Child Custody and Jurisdiction Act, but not child support. *Cf. In re The Marriage of Tinke*, ___ P.2d ___, 1998 Colo. App. Lexis 246 (Colo. App. 1998).

Turning to the third method, registration of a foreign judgment under the Foreign Judgment Act, §78-22a-1 *et seq.*, one would proceed by filing a judgment pursuant to this Act following the procedures set forth in §78-22a-3 of the Utah Code, which provides:

Notice of Filing:

(1) The judgment creditor or attorney for the creditor, at the time of filing a foreign judgment, shall file an affidavit with the clerk of the district court stating the last known post-office address of the judgment debtor and the judgment creditor.

(2) Upon the filing of a foreign judgment and affidavit, the clerk of the district court shall notify the judgment debtor that the judgment has been filed. Notice shall be sent to the address stated in the affidavit. The clerk shall record the date the notice is mailed in the register of actions. The notice shall include the name and post-office

address of the judgment creditor and the name and address of the judgment creditor's attorney, if any.

(3) No execution or other process for the enforcement of a foreign judgment filed under this chapter may issue until 30 days after the judgment is filed.

If one acts to register and then modify a foreign judgment (UCCJA, UIFSA or Foreign Judgment Act) the modification action would have to be instituted after the judgment becomes a Utah judgment and then only if a modification is permitted under the terms of the PKPA, UIFSA, FFCCSO, or UCCJEA (if adopted), as discussed *infra* and in the *Bankler* decision.

The new §30-6-12, Full Faith and Credit for Foreign Protective Orders, is buttressed by the federal Violence Against Women Act (18 U.S.C. §§2265-66) and sets forth its own procedure. It provides:

(1) A foreign protective order is enforceable in this state as long as it is in effect in the issuing state or political entity.

(2) (a) A person entitled to protection under a foreign protective order may file the order in any district court by filing with the court a certified copy of the order. A filing fee may not be required.

(b) The person filing the foreign protective order shall swear under oath in an affidavit that to the best of the person's knowledge the order is presently in effect as written and the respondent was personally served with a copy of the order.

(c) The affidavit shall be in the form adopted by the Administrative Office of the Courts, consistent with its responsibilities to develop and adopt forms under §30-6-4.

(d) The court where the order is filed shall transmit a copy of the order to the statewide domestic violence network described in §30-6-8.

(e) Upon inquiry by a law enforcement agency, the clerk of the district court shall make a copy of the foreign protective order available.

(3) Law enforcement personnel may rely:

(a) upon a certified copy of any foreign protective order which has been provided to the peace officer by any source; and

(b) On the statement of the person protected by the order that the order is in effect and the respondent was personally served with a copy of the order.

(4) A violation in Utah of a foreign protective order is subject to the same penalties as the violation of a protective order issued in Utah.

The face of this statute appears to create a fourth method by which a custody and/or visitation order can be docketed and enforced in Utah.

The UCCJEA has been adopted by the Commissioners for Uniform State Laws and endorsed by the ABA to amend the UCCJA to effect the Parental Kidnaping Prevention Act, the Violence Against Women Act, to clarify and resolve different constructions by different courts of these acts and to provide a method for a uniform expedited enforcement of interstate custody and visitation orders. This includes protecting women under the Violence Against Women Act who flee violence with the children and thus are involved in interstate proceedings.

UCCJEA retains and enforces the definition of "Home State Jurisdiction" contained in both the UCCJA and PKPA. "Emergency Jurisdiction" is allowed for temporary visitation or custody emergencies. In any emergency jurisdiction case, judicial communication is required between the courts of the original state and the state requested to exercise emergency jurisdiction. Thus, assuming that the UCCJEA is adopted, which it probably will be, communication will be required whether Utah issues the original order or Utah is asked to act in an emergency for an interim order until the court with full jurisdiction can act.

"An action to modify a foriegn decree would have to be pursued after registration . . . ."

If, on the other hand, the Utah courts are involved in determining custody or modifying custody after an initial award has been entered, communication between the courts is authorized and encouraged. The decision of the Utah Court of Appeals in *Liska v. Liska*, 902 P.2d 644 (Utah App. 1995) is instructive. The original order was entered in Utah. After the entry of that order, the mother moved with the children to Colorado. She invoked emergency jurisdiction of the Colorado courts seeking changes in the custody and visitation order. Apparently Mr. Liska did not raise the Parental Kidnaping Prevention Act provisions which would have blocked the Colorado court from taking any action besides entering an emergency order and referring the matter back to Utah. The Colorado court entered an order.

A second problem later arose and Mrs. Liska followed the same procedure. Another order resulted. This time Mr. Liska came before the Utah courts after the second Colorado court and requested from the Third District Court an order to show

cause for enforcement of the Utah orders. By this point, however, the courts in both states had already acted. The Utah commissioner communicated with the Colorado court although it was not made a matter of record. While this was ruled harmless error, it was an error and a record of the court-to-court communication should be made. The Utah court's decision to decline to exercise jurisdiction and to permit the Colorado courts to assume full jurisdiction was upheld as a valid, appropriate exercise of discretion.

If the UCCJEA had been in effect the first two times that Mrs. Liska went before the court in Colorado, that court would have been required to communicate with the Utah court. That did not occur nor is it required under the UCCJA or the PKPA. Once a permanent change in the order is sought, the communication between the courts is encouraged and authorized. Under *Liska*, the actual communication should be made a matter of record. If the UCCJEA had been in effect, the *Liska* decision would be the proper final result in terms of an exercise of jurisdiction under either the UCCJA and PKPA or the UCCJEA. However, the result would probably be different because the emergency jurisdiction requirement of communication would probably have led to the custody and visitation issues being raised before the Utah court which would then have continued to be involved and exercised jurisdiction. *Liska* appeared to have ended as it did only because two court actions had already been pursued to completion in Colorado.

"The courts of the original state retain jurisdiction so long as the child or either parent resides in that state."

ENFORCEMENT IN UTAH

When seeking to enforce a judgment regarding custody or visitation from outside the State of Utah, the judgment must be registered in such a way as to give the Utah resident an opportunity to respond before any order is enforced. §78-45-c-15(1). *Holm v. Smilowitz*, 840 P.2d 157 (Utah App. 1992). In addition, the Utah court and the court of the foreign state must determine which state has jurisdiction if there is any effort to modify or change the existing order. This is governed by the provisions of §78-45c-14 of the Utah Code, which provides:

> (1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (a) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and (b) the court of this state has jurisdiction.
>
> (2) If a court of this state is authorized under Subsection (1) and §78-45c-8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with §78-45c-22.

and the Parental Kidnaping Prevention Act, §1738A Title 28 U.S.C., which prohibits Utah courts from taking any action except to enforce the foreign order by its terms, 28 U.S.C. §1738A(a), unless either the original state no longer has or has declined to exercise jurisdiction, 28 U.S.C. §1738A(f). The courts of the original state retain jurisdiction so long as the child or either parent resides in that state, 28 U.S.C. §1738A(d). The *Bankler* decision can be read as holding Utah courts may not assume jurisdiction to modify a foreign decree so long as one of the parties resides in the original state unless that resident agrees to action by the Utah court.

The key to understanding these two acts together is, if either parent or child resides in the state that issued the original decree, the courts of that state retain exclusive jurisdiction to modify the decree unless the courts of that state surrender or agree to give up jurisdiction. 28 U.S.C. §1738A(d) and (f); *Crump v. Crump*, 821 P.2d 1172 (Utah App. 1991). As the Utah Court of Appeals stated:

> This section explicitly limits when a state, which would otherwise have jurisdiction over child custody dispute, must defer to the state which originally issued the custody order.

821 P.2d at 1175.

It should also be noted that both the UCCJA and the PKPA defined custody as involving both custody and visitation. §78-45c-2(2) of the Utah Code and §1738A(b)(3) of Title 28 U.S.C. However, the PKPA provides that a second state will have jurisdiction to enforce the provisions of the original state's decree. 28 U.S.C. §1738A(a). This means that a decree from outside of Utah may be enforced in Utah by registering the decree or bringing an action to make the decree a Utah action, then requesting the court to enforce it. However, the jurisdiction in the Utah court, once such an action is maintained where the original state still retains jurisdiction under the PKPA, is only to enforce the provisions as to custody and visitation. Any modification must be initiated in the original state. *Crump v. Crump*, 821 P.2d at 1176-78.

In addition to the ordinary enforcement provisions, §78-45c-11 provides additional enforcement in Utah. It contains arrest warrant provisions which are unique to the Utah version of the UCCJA.

While the case might be referred to the Utah Juvenile courts for a determination of dependency and neglect, Utah courts do not have the power to modify the other state's decree. *State in the Interest of D.S.K.*, 792 P.2d 118 (Utah App. 1990).

If the UCCJEA is adopted, the same rules will continue but will be made more simple and direct. The enforcement of out-of-state orders will continue once registered for enforcement in Utah (§305) and the model for enforcement will be *habeas corpus* type of proceedings (§§308-310). Pick-up orders will be authorized if a child is endangered or if there is a risk of imminent removal from Utah (§311). Prosecutors and law enforcement official will be given a role even though these are civil procedures (§§315-317). Finally, if actions are brought in Utah courts to enforce foreign orders such as Hague Convention cases, the custody and visitation orders of the foreign state must be treated as through they had been issued by a sister state (§105(a)) as opposed to the existing law under the UCCJA (§23) which simply provides they are entitled to comity.

"If the UCCJEA is adopted, the same rules will continue but will be made more simple and direct."

OUT OF THE STATE OF UTAH

If a Utah resident seeks to enforce a Utah decree for custody or visitation, the courts of the state in which the other parent resides will not have jurisdiction to take any action except to enforce the Utah decree unless the Utah court gives up jurisdiction in cases where either parent or the child resides in Utah. The enforcement may even go so far as to include the arrest warrant provisions of §78-45c-11 of the Utah Code discussed above.

If the UCCJEA is adopted, the state to which the children move must enforce a Utah custody or visitation order which by its terms provides that one of the parents or the child still resides in Utah, as is presently required by the PKPA, with the additional enforcement teeth described above (expedited enforcement, *habeas corpus*-type treatment, pick-up orders and involvement of prosecutors and law enforcement), as the enforcing state will be enforcing the order as though it were an order of its own. The only difference if the UCCJEA is adopted would be that to secure a modification to the original order will require a return to the Utah court.

CHILD SUPPORT

The concept of jurisdiction over child support and alimony issues described in the UCCJA and PKPA above have been adopted and defined in greater detail in regard to support. The 1996 Legislature of the State of Utah adopted the Uniform Interstate Family Support Act, §§78-45f-100 *et. seq.* The federal Full Faith and Credit for Child Support Order Act, §1738B of Title 28 U.S.C. (enacted in 1994), prohibits modifying support orders. The Full Faith Act uses the same language as the PKPA which prohibits modifying custody and visitation orders. Reading together the provisions of the federal §1738B(a) of Title 28 U.S.C., and the Interstate Family Support Act, no state courts will have jurisdiction to change an alimony or child support order issued by the state having original jurisdiction so long as either one parent or the child resides in the original state unless the courts of that state give it up, 28 U.S.C. §1738B(f). *In re Marriage of Tinke,* ___ P.2d ___, 1998 Colo. App. Lexis 246 (Colo. App. 1998), *Gentzel v. Williams,* ___ P.2d ___, 1998 Kan. App. Lexis 114 (Kan. App. 1998). They do, however, have the power to enforce and collect the ordered support, 28 U.S.C. §1738B(a).

This will replace existing support statutes. Examination of the language of these state and federal support statutes demonstrates the same structure is being created for support as has been created for custody and visitation.

Examples of application of these principles are the recent decisions of the Court of Appeals of North Carolina in *State v. Bray*, 1998 N.C. App. LEXIS 1002, August 18, 1998, *In re Marriage of Tinke,* ___ P.2d ___, 1998 Colo. App. Lexis 246 (Colo. App. 1998), *Gentzel v. Williams,* ___ P.2d ___, 1998 Kan. App. Lexis 114 (Kan. App. 1998).

In *Bray,* the North Carolina Child Support Agency brought an action to enforce a child support order where the mother and child resided in Indiana, which had entered the original divorce decree. The father had moved to North Carolina. The enforcement action was substantially delayed because the mother remarried and the step-father started an adoption procedure to which the natural father agreed. The adoption procedure was not completed yet no child support was requested until public assistance was obtained. In the North Carolina court action the father raised as a defense the North Carolina statute of limitations on pursuing support. The trial court accepted the father's position and limited the award. The Court of Appeals analyzed the Uniform Interstate Family Support Act and Full Faith and Credit for Child Support

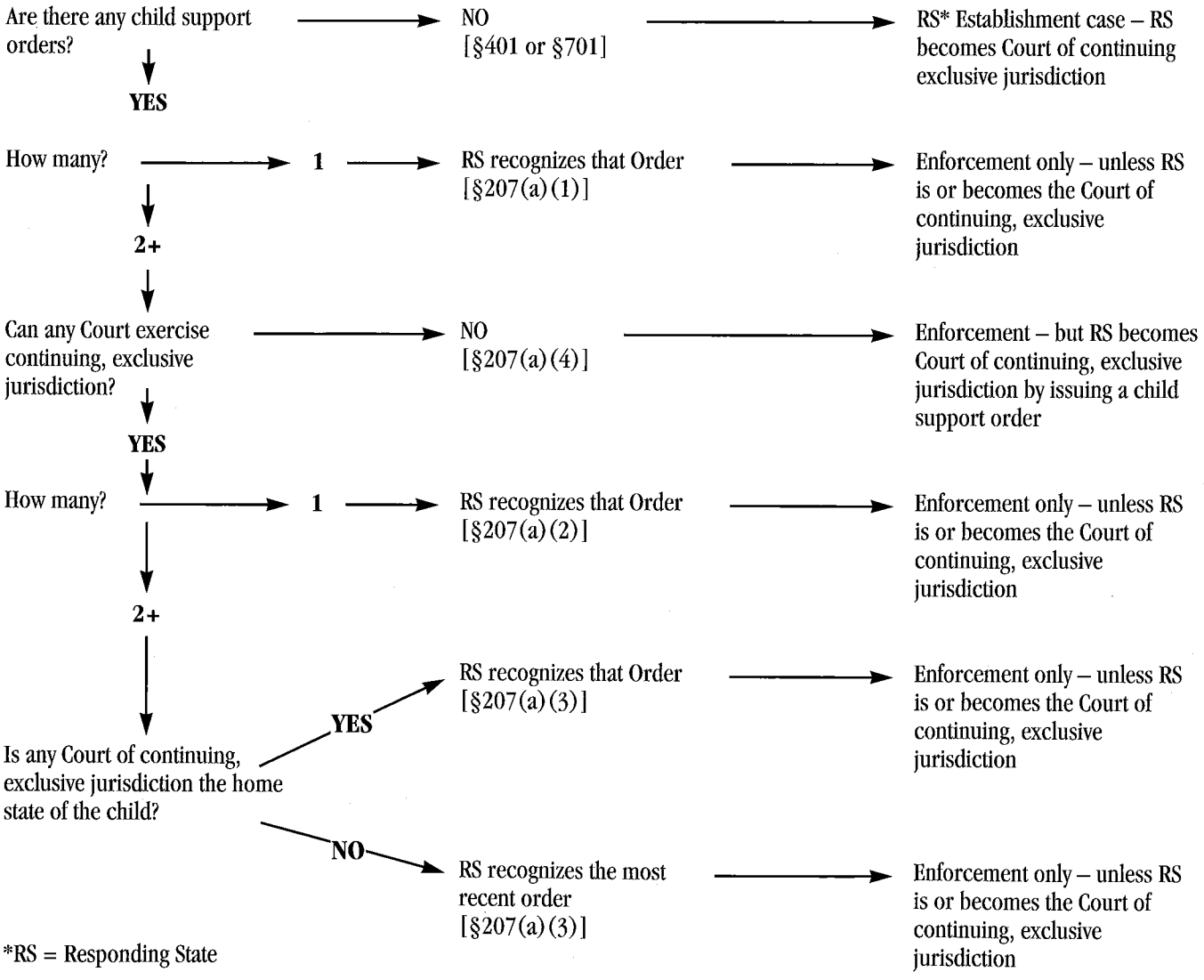
Orders Act and ruled that in order for the father to raise the statute of limitations defense, he was required to have raised that defense in the original decree. The court ruled that while the provisions of UIFSA seem to permit the raising of defenses under the law of the state in which enforcement is being pursued, UIFSA and the Full Faith and Credit for Child Support Order Act actually prohibit this. The North Carolina Court of Appeals then ruled that the North Carolina courts could only enter judgment for the amount requested and the father must return to Indiana to raise his equitable defenses such as statute of limitations, including modification of the judgment just entered against him.

In *Tinke*, the Colorado Court of Appeals ruled that while under the UCCJA and PKPA the trial court had jurisdiction to modify a Montana divorce decree regarding custody when the trial courts of Colorado and Montana jointly determined that Colorado was the more convenient jurisdiction after the father and child had moved to Colorado with the mother's permission, there was no jurisdiction under UIFSA to modify the child support order.

In *Gentzel*, the parties were divorced in Arizona. The mother and children moved to Texas. The father moved to Kansas. When the mother sought to enforce the Arizona support order in Kansas, the father moved to modify the order based on a change in his circumstances. The Kansas Court of Appeals, applying UIFSA, ruled that it did not have jurisdiction over the mother to be able to modify the Arizona child support order. It ruled that Kansas courts, under these circumstances, had jurisdiction only to enforce the Arizona order.

In summary form, the chart below for UIFSA, prepared by Barry J. Brooks, explains jurisdictional requirements in any given circumstance.

UIFSA Assessment Flowchart



*RS = Responding State

Commission Highlights

During its regularly scheduled meeting March 4, 1999, which was held in St. George, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated:

1. The Board approved the minutes of the January 29, 1999.

2. A report was given by Charles R. Brown on the National Conference of Bar Presidents and Western States Bar Conference meetings.

3. Bar Exam Applicants were approved by the Commission.

4. Appointment to the Access of Justice Foundation was discussed.

5. Discussion was held on creating a policy of making E-mail addresses, private or public.

6. Review of status of Ethics Opinion on rule 4.2.

7. Reconsider term length of new commissioner filling last year of Francis M. Wikstrom's term.

8. Consider appeal of Ethics Advisory Opinion 98-06.

9. Ray Westergard reviewed the Commission Education Program.

10. D. Frank Wilkins gave a report on the Lawyer Referral Program.

11. David Nuffer reviewed the Long-Range Planning Priority: Legal Assistants Division.

12. Review Long-Range Priority: Access to Justice was given by James C. Jenkins.

13. Debra Moore led the discussion on amending Rules for Integration and Rules of Professional Conduct to Provide for consistency.

14. Recommend names to the Supreme Court for additional public members for the Ethics Discipline Committee.

15. Amend Bylaws for President-elect voting procedure.

16. Consider the request for Amicus Curiae brief.

17. Review the annual rules of Professional Conduct to reinstate the re-enrollment fee after suspension for non-payment.

A full text of minutes of this and other meetings of the Bar Commission are available for inspection at the office of the Executive Director.

Mailing of Licensing Forms

The licensing forms for 1999-2000 will be mailed during the last week of May and the first week of June. Fees are due July 1, 1999, however fees received or postmarked on or before August 2, 1999 will be processed without penalty.

It is the responsibility of each attorney to provide the Bar with current address information. This information must be submitted in writing. Failing to notify the Bar of an address change does not relieve an attorney from paying licensing fees, late fees, or possible suspension for non-payment of fees. You may check the Bar's web site to see what information is on file. The site is updated weekly and is located at www.utahbar.org.

If you need to update your address please submit the information to Arnold Birrell, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111-3834. You may also fax the information to (801) 531-0660.

Park City Tuesday Night Bar

The Executive Committee of the Park City Bar has decided to sponsor a Tuesday Night Bar. Christina Miller, the CLE director of the Park City Bar, has been working for the past several months to set-up this event. The Tuesday Night Bar will be held on the first Tuesday of every month from 6:00 p.m. to 8:00 pm., beginning in May. The Tuesday Night Bar will be held at the Park City Miner's Hospital. Attorney members of the Park City Bar will be volunteering their time at this event. Ms. Miller is currently organizing CLE brown bag luncheons to allow attorneys the opportunity to become familiar with general issues that may arise when volunteering their time for this event. In addition, Ms. Miller has arranged for interpreters from Conexion Amigo to be on hand to interpret, when necessary.

If you have any questions please call Christina Miller at (435) 649-0077.

Discipline Corner

DISBARMENT

On March 5, 1999, the Honorable Boyd Bunnell (Specially Assigned), Fifth Judicial District Court, entered an order disbarring Gary W. Pendleton from the practice of law for violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct. The effective date of disbarment is July 6, 1998, the date the Interim Suspension began.

The facts as reported by Judge Bunnell in the Memorandum Decision, Findings of Fact & Conclusions of Law and Order of Disbarment indicate the following:

The Court found that the presumptive discipline is disbarment based on Rule 4.2(b) of the Standards for Imposing Sanctions ("Standards"). In this regard, the Court found that when Pendleton asked clients to obtain methamphetamine for him he solicited another to distribute a controlled substance, and when he provided methamphetamine to one client, he distributed methamphetamine.

In the alternative, the Court found that suspension would be the presumptive discipline aggravated up to disbarment. In this regard, the Court found that if the presumptive discipline were suspension under Rule 4.2(b) of the Standards, the Office of Professional Conduct ("OPC") presented evidence consistent with Rule 6.2 of the Standards that established the following aggravating circumstances by a preponderance of evidence:

Rule 6.2(b) Dishonest or Selfish Motive
Rule 6.2(c) Pattern of Misconduct
Rule 6.2(d) Multiple Offenses
Rule 6.2(f) False Statements
Rule 6.2(g) Refusal to Acknowledge the Wrongful Nature of Misconduct Involved
Rule 6.2(h) Vulnerability of Victim
Rule 6.2(l) Substantial Experience in the Practice of Law

In addition to the aggravating circumstances listed above, the Court found the following additional aggravating circumstances:

The Court found by a preponderance of the evidence that the trial judge in the criminal matter found Pendleton violated the terms of his criminal probation for his felony conviction for possession of methamphetamine, by among other things, receiving traffic citations for driving while his driver's license was suspended, failing to report those citations, and being charged with a failure to appear. The trial judge in the criminal matter sentenced Pendleton to 60 days in jail, with two days for one-day good time served.

The Court also found by a preponderance of the evidence that when Pendleton presented himself at the Washington County jail facility on August 8, 1998, he was under the influence of methamphetamine and refused to provide a urine sample in violation of his probation agreement, and in violation of the Administrative Rules of the jail.

The Court stated that Pendleton has shown absolutely no remorse for his criminal conduct, and refuses to acknowledge the harm he has done to the judicial system, the legal profession, or to his clients, whom he invited to join him in committing numerous felonies.

The Court found the only mitigating circumstances was Pendleton's lack of prior record or public discipline.

INTERIM SUSPENSION AND APPOINTMENT OF TRUSTEE

On December 14, 1998, the Honorable Sheila K. McCleve, Third Judicial District Court, entered an order placing Isaac B. Morley on Interim Suspension and appointing the Office of Professional Conduct ("OPC") as Trustee to protect Morley's clients' interests. The effective date of the Interim Suspension is June 23, 1998, the date the Court signed a "Disposition Summary" granting the Bar's Petition and Request for Appointment of Trustee.

The Court authorized the OPC to take possession of and inventory Morley's client files, notify them of the suspension, distribute the files to the clients, and the return unearned fees and other funds.

PUBLIC REPRIMAND

On March 11, 1989, the Honorable William B. Bohling, Third Judicial District Court, entered an Order of Reprimand reprimanding Martin S. Tanner for violation of Rule 1.5 (Fees) of the Rules of Professional Conduct. Tanner was also ordered to submit to binding fee arbitration.

Tanner represented a couple in various legal matters without a written fee agreement. The couple paid Tanner a $2500 retainer in one of the matters involving a zoning and nuisance issues concerning horses being kept on property near their home. Tanner applied most of the $2500 for the horse representation retainer to the bills he claimed were owed him for legal matters other than the horse matter. Some of the other legal matters on which Tanner represented the couple, and their son, were a home purchase dispute involving home improvements, a DUI matter and domestic matters for their son, and a carpet installation matter.

In the home purchase and improvement matter, Tanner agreed to take the matter on a contingency fee basis; however, he billed the couple on an hourly rate although he received 1/3 of the moneys collected. There was no written fee agreement for the contingency fee representation in the home purchase and improvement matter. Tanner did not maintain accurate billing records or report to the couple for his billings on most of the matters on which he represented them.

The fees Tanner charged for the horse matter and the other matters were excessive. Thus, Tanner violated Rule 1.5 because of the excessive nature of the fees and the failure to have a written fee agreement.

ADMONITION

On February 26, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 5.5(b) (Unauthorized Practice of Law) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar's Ethics School.

The attorney's firm employed a Texas attorney, not admitted to practice law in Utah, to assist the attorneys in the firm. The attorney mistakenly believed the Texas attorney was admitted pro hac vice in a civil matter and unintentionally assisted in the Texas attorney's unauthorized practice of law in Utah by allowing him to file an Answer and Counterclaim in the civil case.

Opposing counsel in the civil case objected to the Texas attorney's pro hac vice application on the basis that the Texas attorney was currently a resident in the State of Utah awaiting his Utah Bar examination results. The attorney, after researching opposing counsel's objection, and upon learning that the rule governing pro hac vice admission had been changed not to allow attorneys residing in Utah but licensed only in another state to appear pro hac vice, caused the application to be immediately withdrawn.

Thereafter, the attorney acknowledged that he had not followed the proper procedures to allow the Texas attorney to make an appearance pro hac vice. The attorney subsequently took the necessary steps to ensure that the Texas attorney was no longer working on the civil case, so that there would be no further issues regarding his improper supervision of a non-attorney.

The attorney's conduct was in violation of Rule 5.5(b), 8.4(a) and (d) of the Rules of Professional Conduct.

ADMONITION

On February 10, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.9(b) (Conflict of Interest: Former Client) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a personal injury matter. During the representation, the attorney hired the client to work in his law office. Several months later, the client's employment with the attorney terminated. Sometime after the client's employment was terminated, the attorney-client relationship between them also ended. After the attorney-client relationship ended, the attorney wrote a letter to the insurance company involved in the client's personal injury matter. The letter contained disparaging statements about the client. The disparaging statements were based upon information obtained by the attorney during the attorney-client relationship. Thus Rule 1.9(b) was violated when this information was used to the disadvantage of the client.

ADMONITION

On February 10, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.6 (Confidentiality of Information) of the Rules of Professional Conduct.

The attorney was hired to represent a client in a dissolution. The client subsequently terminated the attorney's representation and filed a complaint against the attorney with the Utah State Bar's office of Professional Conduct ("OPC"). During the course of the OPC investigation, the attorney revealed confidential information relating to his representation of the former client to a third party.

ADMONITION

On February 26, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar's Ethics School.

The Office of Professional Conduct ("OPC") received notice that the attorney's trust account was overdrawn. During the course of the ensuing OPC investigation, the attorney admitted that a deposit to cover the check was delivered to his bookkeeper prior to the check being written, but mistakenly was not deposited before the check was presented to the bank for payment. The attorney further admitted that the deposit his

bookkeeper was to have made represented an irrevocable gift to an irrevocable life insurance trust, whose beneficiaries were the attorney's family members, for payment of an annual life insurance premium. Thus, the attorney was commingling funds that benefited his family with client funds in his trust account.

The attorney's conduct was in violation of Rule 1.15(a) and 8.4(a) of the Rules of Professional Conduct.

ADMONITION

On March 29, 1999 an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 8.4(b) (Misconduct) of the Rules of Professional Conduct and Rule 21(e) of the Rules for Integration and Management of the Utah State Bar.

A woman went to the attorney's office to return a summons issued to her former husband that had been erroneously delivered to her house. After an acrimonious verbal exchange, the attorney swore at the woman, took her arm, and shoved her. When another summons was served at the woman's house, she returned to the attorney's office to deliver the summons. The woman and the attorney again engaged in an acrimonious verbal exchange, which escalated into the attorney's grabbing the woman's arm, shoving her, and pushing her into a wall. The woman's son witnessed some of the physical assault upon her.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

PUBLIC NOTICE

REAPPOINTMENT OF INCUMBENT FULL-TIME UNITED STATES MAGISTRATE JUDGE

The current term of Chief United States Magistrate Judge Ronald N. Boyce of the United States District Court for the District of Utah will expire on February 6, 2000. The Court is required to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term as provided by law.

The duties of a full-time magistrate judge include the conduct of preliminary proceedings in criminal cases, the trial and disposition of misdemeanor cases, the handling of civil matters referred by the Court, and the conduct of various pre-trial matters as directed by the Court.

Comments from members of the Bar and the public are invited as to whether incumbent full-time United States Magistrate Judge Ronald Boyce should be recommended by the panel for reappointment by the Court. All comments will be treated confidentially. Comments should be directed to:

Markus B. Zimmer
Clerk of Court
United States District Court
Suite 120
United States Courthouse
350 South Main Street
Salt Lake City, Utah 84101

Comments must be received no later than Friday, June 25, 1999.

Ethics Advisory Opinion Committee Seeks Applicants

The Utah State Bar is currently accepting applications for the 14-member Ethics Advisory Opinion Committee. Lawyers who have an interest in the Bar's ongoing efforts to resolve ethical issues are encouraged to apply.

The charge of the Committee is to prepare formal written opinions concerning the ethical aspects of lawyers' anticipated professional or personal conduct and to forward these opinions to the Board of Bar Commissioners for its approval.

Because the written opinions of the Committee have major and enduring significance to the Bar and the general public, the Bar solicits the participation of lawyers and members of the judiciary who can make a significant commitment to the goals of the Committee and the Bar.

If you are interested in serving on the Ethics Advisory Opinion Committee, please submit an application with the following information, either in resume or narrative form:

- Basic information, such as years and location of practice, type of practice (large firm, solo, corporate, government, etc.), and substantive areas of practice.
- A brief description of your interest in the Committee, including relevant experience and commitment to contribute to well-written, well-researched opinions.

Appointments will be made to maintain a Committee that:

- Is dedicated to carrying out its responsibilities; i.e., to consider ethical questions in a timely manner, and issue well reasoned and articulate opinions.
- Involves diverse views, experience and backgrounds from the members of the practicing Bar.

If you would like to contribute to this important function of the Bar, please submit a letter and resume indicating your interest to:

Gary G. Sackett, Chairman
Ethics Advisory Opinion Committee
P.O. Box 45444
Salt Lake City, Utah 84145

NOTICE

OF LEGISLATIVE REBATE

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

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-seven opinions were approved by the Board of Bar Commissioners between January 1, 1988 and January 29, 1999. 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 1999.

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: Christine Critchley
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

Commerce Taking First Steps Toward Digital State

As Utah state government begins to move toward Governor Leavitt's goal of providing key services over the Internet, a variety of obstacles, both physical and operational, are going to have to be overcome. Departments within state government are going to need to develop new tools and techniques for how they do their work in a new electronic world.

One challenge facing many agencies, as they look to the Internet as a means to provide services, is how to verify the contents and origin of a document that must be held to be legally binding.

A key element in the move toward developing a "digital state" with verifiable electronic documents, is currently being tested by the Utah Department of Commerce's Division of Corporations and Commercial Code.

Working in cooperation with First Security Bank and USERTRUST Network-DATACorp, the Department is involved in a pilot project, utilizing digital signature technology, where Uniform Commercial Code financing statements are electronically transmitted, by way of Internet e-mail to the Division of Corporations.

While e-mailing alone might not appear to be significant, because this process utilizes the USERTRUST Network-DATACorp digital signature technology, once the UCC document is received by the Division, the document can be verified as to the integrity of the message and the authenticity of the sender. With this electronic verification, the e-mailed document, along with the attached digital signature has the same legal effect as a paper document with a hand-affixed signature. This digital signature technology is the same as was used by Governor Leavitt as he made history by digitally signing the "Digital State" bill on March 20.

"Digital signatures are indispensable to cyber contracting," said Paul Toscano, Director of the USERTRUST Network. "With a digital signature a signer attests to the truthfulness of the contents and that he or she is willing to be legally bound by the document. Without non-repudiable digital signatures, e-commerce will never get beyond simple credit card sales, government services will never be available over the Internet, and digital filing of official and legal documents will not be possible. Digital signatures are the keystone in the arch of e-commerce."

Kenneth Allen, the Utah Digital Signature Coordinator, notes that "digital signatures will significantly change the way government does business."

"Digital signatures will enable organizations to re-engineer their paper-based work processes and become much more efficient, resulting in significant reductions in per transactions costs, " says Allen. "Simply put, digital signature technology is a necessary element in the growth of electronic commerce."

The Utah Division of Corporation receives more than 3,000 UCC-1 filings each month. Each document must be sorted, time-stamped, and processed for data-entry, scanning, verification, and filing. Each of these steps is currently being done manually by Division of Corporations employees. Under the concept of a "digital state" if forms can be transmitted to the Division, verified and stored electronically, significant long-term cost-savings might be realized.

The First Security Bank/USERTRUST Network-DATACorp pilot project involves the conversion of paper UCC filing forms into a digital format which are then e-mailed to the Department. Once received, a department employee checks the contents of the filing for required information, confirms the signature, authenticates and electronically time-stamps the document and sends a digitally signed confirmation e-mail back to the sender.

In the first phase of the pilot project, while technologies and protocols were being developed, only a handful of UCC filings were transmitted daily. Now, with many of the bugs worked out, the Division of Corporations is expanding the test project to include more of First Security's 70 branches as well as involving other interested companies who file UCC documents.

1999-2000 Utah State Bar Request for Committee Assignment DEADLINE – May 15, 1999

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

Many committee appointments are set to expire July 1, 1999. If you are currently serving on a committee, please check your appointment letter to verify your term expiration date. If your term expires July 1, 1999, and we do not hear from you, we will assume you do not want to be reappointed, and we will appoint someone to take your place. If your term expires in 2000 or 2001, you do not need to reapply until then. If you are not currently serving on a committee and wish to become involved, please complete this form. See bottom of this page for a brief explanation of each Committee.

Committee Selection

Applicant Information

Name _____ Bar No. _____

Office Address _____ Telephone _____

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

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

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

_____

_____

_____

For 68 years, the Utah State Bar has relied on its members to volunteer time and resources to advance the legal profession, improve the administration of justice, and to serve the general public. The Bar has many outstanding people whose talents have never been tapped.

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

COMMITTEES

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

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

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

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

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

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

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

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

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

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

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

12. Governmental Relations. Monitors pending or proposed legislation which falls within the Bar's legislative policy and makes recommendations for appropriate action.

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

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

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

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

17. Legal/Health Care. Assists in defining and clarifying the relationship between the medical and legal profession.

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

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

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

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

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

DETACH & RETURN to Charles R. Brown, President-Elect, 645 South 200 East, Salt Lake City, UT 84111-3834

Summary of Utah State Bar Licensing

This information is provided to answer frequently asked questions and is accurate for the current year. There are five categories of licensure available to Utah lawyers.

Active - A lawyer who is practicing law generally and not necessarily for a fee, giving legal advice or counsel, examining or passing upon the legal effect of an act, document or law, or representing clients, not necessarily in a judicial setting, must be licensed on Active Status. You must pay the current active licensing fee plus the required annual client security fund assessment and you must satisfy continuing legal education requirements. The current annual fee is $350.

Active, Under Three - A lawyer on Active Status who has taken the Student Bar Examination and was admitted on or after July 1, 1997 qualifies for a reduced licensing fee. (If you took the Attorney Bar Examination you do not qualify for this status.) The current licensing fee is $190 plus the client security fund assessment. You must also satisfy the New Lawyer Continuing Legal Education requirements.

Active Emeritus - A lawyer who has been a member of the Bar for 50 years or is 75 years old as of July 1 of the current year qualifies for Emeritus Status and is not required to pay a licensing fee or the client security fund assessment. If you are practicing law while on Emeritus Status, you are considered Active Emeritus and must meet continuing legal education requirements.

Inactive - A lawyer on Inactive Status is considered to be "in good standing" but may not practice law and is not required to meet continuing legal education requirements. The annual fee is $80. If you want to receive the *Utah Bar Journal* the fee is $90. To be placed on Inactive Status, please indicate by paying the inactive fee when renewing through the annual licensing form or by letter. **You will not automatically receive Inactive Status by not paying the annual licensing fee. If you do not pay the licensing fee you will be suspended for non-payment.**

Inactive Emeritus - A lawyer who has been a member of the Bar for 50 years or is 75 years old as of July 1 of the current year and who wishes to be on Inactive Status is not required to pay a licensing fee, the client security fund assessment or meet continuing legal education requirements.

Reinstatement after Suspension for Non-Payment of Fees - A lawyer who has been suspended for non-payment of any fees may be reinstated to licensure by paying the annual licensing fees for the years he or she was suspended plus the current annual licensing fee, the client security fund assessment and a $100 reinstatement fee. Your licensure fees due for the years while suspended are determined by your status at the time you were suspended for non-payment.

Resignation from the Bar - A lawyer may resign from the Bar if he or she has no disciplinary matters outstanding or pending and is not currently suspended from the practice of law. Requests to resign must be made in writing.

Readmission to the Bar after Resignation without Discipline Pending - A lawyer wishing to be readmitted after resignation without discipline pending must file a verified petition, addressed to the Bar Commission and filed with the Executive Director, identifying the lawyer's name, age, current residence and business address, the residence and occupation during the period subsequent to resignation and the reasons for resignation. The petitioner must pay a $200 filing fee. For readmission with discipline, contact the Office of Professional Conduct.

United States Court of Appeals for the Tenth Circuit

In re: Procedures for the Management of Death Penalty Matters.

ORDER Filed April 8, 1999

Before **SEYMOUR**, Chief Judge

To process and consider capital cases in the most effective and efficient manner, the court adopts the following procedures:

1. Upon receipt of the docketing statement in capital cases arising under 28 U.S.C. §2254 or any federal criminal statute, the Clerk shall enter a case management order directing the parties to schedule a video or phone conference with the chief deputy clerk or other designated court representative. Lead counsel for both parties must be available for the conference.

2. At the designated time, counsel and the court shall address matters related to issues to be appealed, page limitations, record issues, and any other procedural matters which the parties believe are significant in the appeal. At the time of the conference, counsel shall be prepared to discuss and adopt a briefing schedule. In addition, where appropriate, the court may address issues regarding issuance of a certificate of appealability.

3. The court will issue a scheduling order following the conference. In that order, the court will set all appropriate deadlines. Motions to amend those deadlines are discouraged and the court will deviate from the scheduling order only under very extreme circumstances. These procedures shall be effective as of the date of this order.

Entered for the Court
PATRICK FISHER, Clerk of Court

Correction

In the Crime & Punishment Seminar brochure the names of Marguerite Driessen and Glen Lambert were misspelled. We apologize for the oversite.

1999 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1999 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Monica Jergensen, Convention Coordinator, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than Thursday, May 17, 1999. The award categories include:

1. Judge of the Year
2. Distinguished Lawyer of the Year
3. Distinguished Young Lawyer of the Year
4. Distinguished Section/Committee
5. Distinguished Non-Lawyer for Service to the Profession
6. Dorathy Merrill Brothers Award for Advancement of Women in the Legal Profession.
7. Ray Uno Award for Advancement of Minorities in the Legal Profession

Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 1999 and ends June 30, 2000. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its July 1, 1999 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, will be available for inspection and comment at the Law & Justice Center after May 31, 1999. You may pick up a copy from the receptionist.

Please call or write John Baldwin at the Bar office with your questions or comments.

UTAH STATE BAR ADDRESS CHANGE FORM

The following information is required:

- **You must provide a street address for your business and a street address for your residence.**
- **The address of your business is public information. The address of your residence is confidential and will not be disclosed to the public if it is different from the business address.**
- **If your residence is your place of business it is public information as your place of business.**
- **You may designate either your business, residence or a post office box for mailing purposes.**

***PLEASE PRINT**

1. Name _____ **Bar No.** _____ **Effective Date** _____

2. Business Address – Public Information

Firm or Company Name _____

Street Address _____ Suite _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail address (optional) _____

3. Residence Address – Private Information

Street Address _____ Suite _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail address (optional) _____

4. Mailing Address – Which address do you want used for mailings? (Check one) (If P.O. Box, please fill out)

_____ Business _____ Residence

_____ P.O. Box Number _____ City _____ Zip _____

Signature _____

All changes 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.

A Primer on 42 U.S.C. § 1983

by Daniel J. McDonald

The Ku Klux Klan Act of 1871, more commonly referred to as "section 1983,"[1] is the operating system or software that allows citizens of the United States "or other person[s] within the jurisdiction thereof"[2] to utilize the hardware of the United States Constitution. The Constitution is generally not self-executing. Thus, in most cases litigants may not bring claims for money damages directly under the Constitution.[3] Instead, litigants seeking redress for violations of federal constitutional rights generally must assert their claims *via* 42 U.S.C. §1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .[4]

Section 1983 litigation is a fairly recent phenomenon. Before the landmark United States Supreme Court decision of *Monroe v. Pape*[5] in 1961, "§1983 was remarkable for its insignificance."[6] "Indeed, one commentator found only 21 suits brought under this provision in the years between 1871 and 1920."[7] However, in *Monroe* the Court overturned a long-standing assumption that §1983 reached only misconduct either officially authorized or so widely tolerated as to amount to a "custom or usage" of government by holding that §1983 was "meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position."[8] Since *Monroe*, there has been a literal explosion of §1983 litigation, ranging from suits brought by prisoners to land use cases brought by wealthy corporate developers.

Section 1983 now encompasses any action taken "under color" of state or local law, even when the actor is not, himself, a state or local official.[9] Additionally, deprivations of non-constitutional,

Daniel J. McDonald joined NIELSEN & SENIOR as an associate in 1997 after graduating cum laude *from the J. Reuben Clark Law School at Brigham Young University in 1997. Mr. McDonald graduated* magna cum laude *from the University of Utah in 1994 with a bachelor's degree in Sociology. He received an A.S. degree in human resource development from Ricks College in 1992.*

Mr. McDonald served as Lead Articles Editor for the B.Y.U. Law Review during 1996-97 and is the author of the award-winning article Regulating Sexually Oriented Businesses: The Regulatory Uncertainties of a "Regime of Prohibition by Indirection" and the Obscenity Doctrine's Communal Solution, *1997 B.Y.U. L. Rev. 339. Mr. McDonald was the 1998 recipient of BYU's Douglas H. Parker Award for Outstanding Performance in Jurisprudence. In 1997, he received the Foundation Press Award, recognizing his expertise in constitutional law, the Code-Co Publishing Co. Award, recognizing his accomplishments in the areas of legal research and writing, and the Scholarly Writing Award. He has received numerous other honors and distinctions.*

Mr. McDonald was admitted to the Utah State Bar in October, 1997. He is a member of the Labor & Employment Law, Constitutional Law, and Litigation sections of the Utah State Bar. He is also a member of the American Bar Association.

Mr. McDonald has expertise in the areas of civil rights (42 U.S.C. §1983), constitutional law, and employment law, and has been involved in several high-profile civil rights lawsuits, including Bauchman v. West High School. *He also practices in the following areas: litigation, consumer protection law, natural resources law, and water law.*

Mr. McDonald is actively involved in civic and religious organizations and serves as pro bono *counsel for the NAACP, the nation's oldest civil rights organization.*

federal law are also remediable under §1983.[10] However, with each expansion of §1983 liability there has been concomitant contractions, including a host of immunities and procedural hurdles such as heightened pleading requirements. In the wake of these developments, a complicated and often counterintuitive patchwork of precedents has emerged under §1983. This patchwork contains many traps for the unwary §1983 litigant.

It would be impossible to describe this entire patchwork within the confines of a single *Utah Bar Journal* article. However, it is possible – and, hopefully, helpful – to sketch a very general framework of §1983.

I. WHAT RIGHTS ARE REMEDIABLE UNDER 42 U.S.C. §1983?

Section 1983, itself, does not create any substantive rights.[11] As the Supreme Court has said, "one cannot go into court and claim a 'violation of §1983' – for §1983 by itself does not protect anyone against anything."[12] Instead, it is the vehicle used to vindicate rights secured by the federal constitution or federal law.[13]

A. Violations of the federal constitution.

As mentioned, most violations of the federal Constitution must be remedied via a §1983 action.[14] Thus to properly bring a §1983 claim for violation of a constitutional right, the litigant must properly plead the underlying constitutional violation and plead the requirements of §1983, itself. Although "[n]othing in the language of §1983 or its legislative history limits the statute solely to intentional deprivations of constitutional rights," and although §1983 does not "contain a state-of-mind requirement,"[15] many underlying constitutional provisions do have state-of-mind requirements.[16] Therefore, §1983 plaintiffs must pay special attention to the substantive provisions of the underlying constitutional right they think has been violated. Once the underlying constitutional right has been identified and its violation properly plead, the §1983 litigant must also plead and prove the following two elements under §1983: first, that the defendant acted under color of state law; and second, that the action complained of deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.[17]

"Section 1983, itself, does not create any substantive rights."

B. Violations of federal law

The rights, privileges, or immunities secured by the laws of the United States include non-constitutional, federal law. However, not every violation of federal law is actionable under §1983. "A plaintiff alleging a violation of a federal statute will be permitted to sue under §1983 unless (1) 'the statute [does] not create enforceable rights, privileges, or immunities within the meaning of §1983,' or (2) 'Congress has foreclosed such enforcement of the statute in the enactment itself.'"[18]

In determining the scope of the first exception – whether a federal statute creates enforceable rights, privilege or immunities within the meaning of §1983 – the Supreme Court has developed a three-part test. The Court asks (1) whether the statutory provision at issue "'was intend[ed] to benefit the putative plaintiff.'"[19] If so, then the statute is deemed to create an enforceable right unless (2) the provision "reflects merely a 'congressional preference' for a certain kind of conduct rather than a binding obligation on the governmental unit,"[20] or unless (3) the plaintiff's interest is so vague and amorphous as to be beyond the competence of the judiciary to enforce.[21]

In determining the scope of the second exception – whether Congress has foreclosed enforcement of the statute under §1983 in the enactment itself – the Supreme Court has admonished, "We do not lightly conclude that Congress intended to preclude reliance on §1983 as a remedy for the deprivation of a federally secured right."[22] Further, "[t]he burden is on the [defendant] to show by express provision or other specific evidence from the statute itself that Congress intended to foreclose such private enforcement."[23] The Supreme Court has found "private enforcement foreclosed only when the statute itself creates a remedial scheme that is sufficiently comprehensive . . . to demonstrate congressional intent to preclude the remedy of suits under§1983."[24] Thus, for example, sexual harassment suits under Title VII to the Civil Rights of 1964 are not actionable via §1983 because it has its own remedial scheme.[25]

Finally, it should be noted that §1983 is not available to redress violations of state law, including violations of a state constitution.

II. WHO CAN AND CANNOT BE SUED UNDER §1983?

A. States and "arms" of the state

Generally speaking, unless a state has waived its Eleventh Amendment immunity it is not subject to a suit for damages in federal court under §1983. The Supreme Court has held that Congress did not abrogate the states' Eleventh Amendment immunity when enacting §1983.[26] However, Eleventh Amendment immunity extends only to the states themselves and to those governmental entities that are "arms of the state" and not to political subdivisions.[27] The Supreme Court applies several factors to determine whether a governmental entity is an "arm"

of the state. These factors, set forth in *Mt. Healthy Board of Education v. Doyle*,[28] include: (1) the characterization of the entity under state law; (2) the guidance and control exercised by the state over the entity; (3) the degree of state funding received by the entity; and (4) the ability of the entity to fund itself or generate revenue through assessments or taxes.[29] Thus, for example, the Tenth Circuit held in *Ambus v. Granite Board of Education* that Utah school districts are not arms of the state because the Utah Constitution and the Utah Governmental Immunity Act characterize school districts as political subdivisions of the state, Utah school districts exercise a significant degree of autonomy, and Utah school districts obtain funding at least in part through locally administered property taxes.[30]

States may also not be sued under §1983 in state court, not because they are entitled to Eleventh Amendment immunity, but because, according to the Supreme Court, a state "is not a person within the meaning of §1983."[31] State entities that would be "arms of the state" under the Eleventh Amendment are also not "person[s]" within the meaning of §1983.[32] Thus, the scope of the Eleventh Amendment and the scope of §1983 are analytically distinct but practically inseparable. In short, states or arms of the state may not be sued for damages in federal court or state court under §1983.

"Most violations of the federal Constitution must be remedied via a §1983 action."

B. State officials in their official capacity

According to the Supreme Court, "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office."[33] "As such, it is no different from a suit against the State itself."[34] Thus, state officials may not be sued for damages in their official capacity in federal court because of the Eleventh Amendment and may not be sued in their official capacity in state court because such officials are not "persons" within the meaning of §1983.[35]

It should be noted that to the extent a plaintiff is seeking injunctive relief he may sue the individual defendants in their official capacities or the state as a state under §1983.[36]

C. Political subdivisions of the state

In *Monell v. Department of Social Services of New York City*,[37] the Supreme Court held that "Congress *did* intend . . . local government units to be included among those persons to whom §1983 applies."[38] Consequently, local government units, such as cities and counties, "can be sued directly under §1983 for monetary, declaratory, or injunctive relief."[39] The Court also held that "local government officials sued in their official capacities are "persons" under §1983 in those cases in which . . . a local government would be suable in its own name."[40] Additionally, in *Hess v. Port Authority Trans-Hudson Corp.*,[41] the Supreme Court acknowledged that "cities and counties do not enjoy Eleventh Amendment immunity."[42] Moreover, political subdivisions are not entitled to even qualified immunity, which is discussed more fully in Part III. A., below.[43] However, suing a political subdivision of the state under §1983 is no easy task.

Political subdivisions are not automatically liable for the acts of their officers, agents or employees under a theory of vicarious liability. As the Supreme Court has held:

> Local governing bodies . . . can be sued directly under §1983 for monetary declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the §1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other §1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decision making channels.
>
> . . . .
>
> On the other hand[,] . . . a municipality cannot be held liable solely because it employs a tortfeasor – or, in other words, a municipality cannot be held liable under §1983 on a *respondeat superior* theory.[44]

Accordingly, a §1983 plaintiff will have to do more than allege that an officer, agent, or employee of a political subdivision deprived him of federally protected rights to hold the political subdivision liable. The §1983 plaintiff must show the political subdivision, itself, was somehow culpable.[45] This can be done by demonstrating, *inter alia*: (1) that the actions of an officer, agent, or employee who was a final policy maker for the political subdivision caused the violation;[46] (2) that the actions of an officer, agent, or employee who was not a final policy maker were ratified or sanctioned by a final policy maker;[47] or (3) that the actions of an officer, agent, or employee who was not a final policy maker were merely part of a broader spectrum of conduct engaged in or tolerated by the municipality to such an extent that it constitutes a "custom or usage with the force of law."[48]

D. Non-independent units of government entities

"Courts have routinely dismissed §1983 claims brought against legally non-independent units of government entities otherwise subject to suit under §1983."[49] For example, a high school, which typically has no independent legal status apart from the school district to which it belongs cannot be separately liable under §1983.[50]

E. Individuals in their individual capacity

Unlike official-capacity suits, "personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law."[51] An award of damages in a personal capacity suit "can be executed only against the official's personal assets," whereas in an official capacity suit the plaintiff "must look to the government entity itself."[52] Since individual-capacity suits do not impose any liability on the state, the Eleventh Amendment is not implicated, though the named defendant holds public office, and though he acted under color of state law.[53] Thus, there is no Eleventh Amendment bar to an individual-capacity suit in federal court under §1983.[54] "While the plaintiff in a personal-capacity suit need not establish a connection to governmental 'policy or custom,' officials sued in their personal capacities, unlike those sued in their official capacities, may assert personal immunity defenses such as objectively reasonable reliance on existing law."[55] These "qualified immunity" defenses are discussed more fully in Part III.A, below. In sum, while state officials sued in their official capacities are entitled to Eleventh Amendment immunity and are not "persons" within the meaning of §1983, individuals sued in their individual capacities are not entitled to Eleventh Amendment immunity and are "persons" within the meaning of §1983.[56]

"A state is not subject to a suit for damages under §1983."

III. IMMUNITIES, PLEADING REQUIREMENTS, AND OTHER PROCEDURAL BARRIERS

Once the §1983 plaintiff has decided what rights have been violated and who can be held accountable for violation of those rights, he must anticipate various procedural defenses and prepare his complaint accordingly. Some of these defenses are briefly outlined below.

A. Qualified immunity

Since damages claims cannot be brought or sustained against states or state officials in their official capacities, and since political subdivisions are not vicariously liable for the actions of their officers, agents, or employees, §1983 claims are frequently brought against individual government officials who acted "under color of law" in their individual capacities. However, the fear that such individual liability would discourage anyone from seeking public employment or office led to the development of qualified immunity. Under the doctrine of qualified immunity, public employees are entitled to immunity "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[57] Thus, if the right which has allegedly been violated was not clearly established at the time of the alleged violation or, even assuming the right was clearly established, if no reasonable person would have known of that right, the individual defendant is immune from suit and not subject to the jurisdiction of the court.

In analyzing the affirmative defense of qualified immunity courts "first ask if a plaintiff has asserted the violation of a constitutional right at all, and *then* assess whether that right was clearly established at the time of a defendant's actions."[58] In order for the law to be clearly established in the Tenth Circuit, "there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains."[59] This can be a daunting task for the plaintiff in emerging, complex, or confused areas of the law, like the First Amendment, where some have said that not even members of the Supreme Court are sure what the law is.[60]

B. Pleading with particularity

Where qualified immunity is raised as an affirmative defense the Tenth Circuit requires the plaintiff to plead the alleged violation of his rights under §1983 with such particularity that "'all the factual allegations necessary to sustain a conclusion that defendant violated clearly established law'" are contained in the complaint.[61] A complaint containing only conclusory allegations will be dismissed.[62] This can often put §1983 plaintiffs in a "Catch-22" situation in which they seek to allege a constitutional violation but cannot plead detailed facts without the aid of discovery.[63] The only solace offered by the Tenth Circuit is that "the plaintiffs should pursue every possible avenue to obtain the necessary facts to support their legal claims prior to filing a complaint in federal court."[64]

Utah state courts have not imposed a heightened pleading requirement in §1983 claims brought against individuals in their individual capacities. Indeed, in *Baker v. Angus*,[65] the Utah Court of Appeals, in reversing a dismissal of such a suit, held:

> Admittedly, the [plaintiffs'] complaint is not a model of specificity in outlining the individual statutory provisions that establish [their] civil rights or the specific actions by

the state defendants violating those rights. However, Rule 8(a) of the Utah Rules of Civil Procedure provides only that "[a] pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." . . . The [plaintiffs] are therefore not required in their complaint to provide an in-depth statutory analysis with an accompanying expansive narrative of the state defendants' alleged violations. . . . To survive dismissal, the [plaintiffs] need only allege sufficient facts that can reasonably be argued and that cannot, as a matter of law, be dismissed.[66]

Accordingly, §1983 plaintiffs may want to bring their claims in state court where the Tenth Circuit's heightened pleading standard may pose a problem. Of course, defendants should remove these cases to federal court and then move to dismiss.

C. Statute of limitations

Congress provided no specific statute of limitations for actions brought under §1983. However, 42 U.S.C. §1988 "endorses for the Civil Rights Acts the 'settled practice' of adopting a state limitations period when the federal statute provides no such period, provided the state limitations period is not inconsistent with federal law or policy."[67] Under this standard, the Tenth Circuit rejected the Utah legislature's two-year statute of limitations for §1983 actions in *Arnold v. Duchesne County*, and held that Utah's four-year residual statute of limitations, Utah Code Ann. §78-12-25(3), applies to §1983 actions.[68]

"Local government units, such as cities and counties, can be sued directly under §1983."

D. Exhaustion of administrative remedies

Patsy v. Board of Regents of Florida,[69] held that plaintiffs need not exhaust state administrative remedies before instituting §1983 suits in federal court. That holding was extended in *Felder v. Casey*,[70] where the Supreme Court held that the Wisconsin notice-of-claim statute was preempted with respect to §1983 actions brought in state court. The Court reasoned that the States' authority to prescribe rules and procedures governing suits in their courts "does not extend so far as to permit States to place conditions on the vindication of a federal right."[71] To hold otherwise would mean that "those who sought to vindicate their federal rights in state courts could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their injuries."[72] Generally speaking, there is no exhaustion of administrative remedies requirement for §1983 claims.[73]

E. Absolute immunity from an award of damages

There are several other types of immunity available to defendants under §1983, which typically provide absolute immunity from an award of damages. These immunities include legislative immunity,[74] judicial immunity,[75] prosecutorial immunity,[76] and witness immunity.[77]

IV. DAMAGES

Perhaps one of the biggest misconceptions about §1983 is that it authorizes an award of compensatory damages based on the fact finder's assessment of the value or importance of a substantive constitutional right. However, compensatory damages are not available for the deprivation of a constitutional right alone. Such an award must be grounded in a determination of the plaintiff's actual loss.[78] The Supreme Court has said, "Rights, constitutional and otherwise, do not exist in a vacuum. Their purpose is to protect persons from injuries to particular interests."[79] Thus, where no injury is present, no "compensatory" damages can be awarded.[80] Civil rights plaintiffs may typically recover only the kinds of damages traditionally available in tort. There is no additional award to vindicate the abstract or general value of the constitutional right in question. In short, "the abstract value of a constitutional right may not form the basis for §1983 damages."[81]

An award of nominal damages is appropriate where a plaintiff fails to establish the factual basis for an award of compensatory damages but nonetheless establishes a violation of the Constitution.[82] Punitive damages are available against individuals sued under §1983 but are not available against political subdivisions.[83]

V. ATTORNEY'S FEES

The successful civil rights plaintiff is entitled to an award of his attorney's fees pursuant to 42 U.S.C. §1988(b), which provides, in pertinent part, "In any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."[84] While the text of §1988(b) seems to make fee awards discretionary, in fact, an award of fees to the successful plaintiff is required absent "special circumstances" that would render such an award unjust.[85] A prevailing defendant, by contrast, can recover fees only when the litigation is unreasonable, frivolous, meritless or vexatious.[86]

A plaintiff need only succeed on "any significant issue" in the litigation and achieve "some of the benefit" sought in bringing the suit to be deemed a "prevailing party" under §1988.[87] How-

ever, "[p]urely technical or de minimus" success is inadequate to make one a "prevailing party."[88] Instead, the plaintiff must achieve some "material alteration of the legal relationship of the parties."[89] Thus, in theory, a plaintiff who recovers only nominal damages is a "prevailing party." However, in *Farrar v. Hobby*[90] the Supreme Court concluded that where only nominal damages were obtained by the plaintiff in that case, the only fee that was "reasonable" under §1988 was no fee at all.[91] However, in *Brandau v. State of Kansas*,[92] the Tenth Circuit has recently made in-roads on *Farrar* by recognizing that *Farrar* can be limited to situations where the plaintiff wins a technical victory that serves no important public purpose. In *Brandau*, the Tenth Circuit allowed a plaintiff who was awarded only $1 in nominal damages to recover more than $41,000.00 in attorney's fees because her victory put her employer on notice that it should reform its policies, which vindicates the rights of others, thereby serving an important public purpose.[93]

VI. CONCLUSION

Since entire treatises have been written on the subjects only summarily covered herein, it is a bit intimidating to attempt a general outline of the §1983 basics, which I have attempted to do here. This article is the proverbial "tip of the iceberg." The law of §1983 is constantly changing and evolving. However, the general framework set forth herein should give the §1983 neophyte a place to start.

[1]42 U.S.C. §1983.

[2]*Id.*

[3]The Supreme Court has held that damages causes of action may be brought against federal officials directly under the United States Constitution. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 395-96 (1971). However, direct actions under the Constitution against state officials are not appropriate. *Bauchman v. West High School*, 900 F. Supp. 254, 263 (D. Utah 1995). By enacting 42 U.S.C. §1983, "'Congress has provided an alternative remedy which it explicitly declared to be a substitute for recovery directly under the Constitution and viewed as equally effective . . .'" *Id.* (quoting *Carlson v. Green*, 446 U.S. 14, 18-19 (1980)).

[4]42 U.S.C. §1983.

[5]365 U.S. 167 (1961).

[6]Peter W. Low and John C. Jeffries, Jr., Civil Rights Actions: §1983 and Related Statutues 11 n.1 (2d ed. 1994).

[7]*Id.* at 11-12 (citing Comment, *The Civil Rights Act: Emergence of an Adequate Federal Civil Remedy?*, 26 Ind. L.J. 361, 363 (1951)).

[8]*Monroe,* 365 U.S. at 172.

[9]For example, in *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 146-50 (1970), where a §1983 action was brought against a nongovernmental party for violation of the Fourteenth Amendment to the federal Constitution, the Supreme Court held that the private party's joint participation with a state official to discriminate would constitute both state action essential to show a violation of the Fourteenth Amendment and action "under color" of law under §1983. *Id.* at 152.

[10]*See Maine v. Thiboutot*, 448 U.S. 1, 4 (1980).

[11]*See Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 616-18 (1979).

[12]*Id.* at 617.

[13]*Id.* at 616-18.

[14]*See* note 3, *supra.*

[15]*See Daniels v. Williams*, 474 U.S. 327, 330 (1986) (citing *Parratt v. Taylor*, 451 U.S. 527, 534 (1981)).

[16]For example, in order to make a claim under the Equal Protection Clause, a plaintiff must show intentional discrimination. *See Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

[17]*Parratt*, 451 U.S. at 535.

[18]*Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990) (quoting *Wright v. Roanoke Redevelopment & Housing Auth.*, 479 U.S. 418, 423 (1987)).

[19]*Id.* at 509 (quoting *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106 (1989)).

[20]*Id.* (quoting *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 19 (1981)).

[21]*Id.*

[22]*Id.* at 520 (quoting *Wright*, 479 U.S. at 423-24 (quoting *Smith v. Robinson*, 468 U.S. 992, 1012 (1984))).

[23]*Id.* at 520-21 (quoting *Wright*, 479 U.S. at 423).

[24]*Id.* at 521 (quoting *Middlesex County Sewerage Auth. v. National Sea Clammers Assn.*, 453 U.S. 1, 20 (1981)).

[25]*See Starrett v. Wadley*, 876 F.2d 808, 813-14 (10th Cir. 1989).

[26]*See Quern v. Jordan*, 440 U.S. 332, 340-41 (1979).

[27]*See Ambus v. Granite Bd. of Educ.*, 995 F.2d 992, 994 (10th Cir. 1993).

[28]429 U.S. 274, 280 (1977) (In determining whether an agency is protected by the Eleventh Amendment, the critical inquiry is whether the entity "is to be treated as an arm of the State partaking of the State's Eleventh Amendment immunity, or is instead to be treated as a municipal corporation or other political subdivision to which the Eleventh Amendment does not extend.").

[29]*See Ambus*, 995 F.2d at 994.

[30] *Id.* at 997.

[31] *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 64 (1989).

[32] *Id.* at 70.

[33] *Id.* at 71.

[34] *Id.*

[35] *See id.*

[36] *See id.* at n.10.

[37] 436 U.S. 658 (1978).

[38] *Id.* at 690.

[39] *Id.*

[40] *Id.* n. 55.

[41] 513 U.S. 30, 47 (1994).

[42] *Id.*

[43] *See Owen v. City of Independence*, 445 U.S. 622, 650 (1980).

[44] *Monell*, 436 U.S. at 690-91.

[45] Recently, in *Board of County Comm'rs v. Brown*, 520 U.S. 397 (1997), the Supreme Court commented:

> As our §1983 municipal liability jurisprudence illustrates, however, it is not enough for a §1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the "moving force" behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.

Id. at 404.

[46] *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986).

[47] *Butcher v. City of McAlester*, 956 F.2d 973, 977 n.2 (10th Cir. 1992) (citing *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)).

[48] *Id.* In *City of Canton v. Harris*, 489 U.S. 378, 389 (1989), the Supreme Court held that municipal liability based on a policy of inadequate training or failure to train requires proof of the municipality's "deliberate indifference" to its inhabitants. *Barney v. Pulsipher*, 143 F.3d 1299, 1307 (10th Cir. 1998) (citing *Harris*, 489 U.S. at 389). "The 'deliberate indifference' standard may be satisfied when the municipality has actual or constructive notice that its action or failure to act is substantially certain to result in a constitutional violation, and it consciously or deliberately chooses to disregard the risk of harm." *Id.*

[49] *Bauchman v. West High School*, 900 F. Supp. at 263 (citations omitted).

[50] *Id.* at 263-64.

[51] *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

[52] *Id.* at 166.

[53] *See Papasan v. Allain*, 478 U.S. 265, 278 & n.11 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 237-39 (1974)).

[54] *See Hafer v. Melo*, 502 U.S. 21, 30-31 (1991).

[55] *Id.* at 25.

[56] *Id.* at 31.

[57] *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1981).

[58] *The Gehl Group v. Koby*, 63 F.3d 1528, 1533 (10th Cir. 1995) (emphasis added) (citing *Siegert v. Gilley*, 500 U.S. 226, 232 (1991)).

[59] *Medina v. City and County of Denver*, 960 F.2d 1493, 1498 (10th Cir. 1992).

[60] *See Bauchman*, 900 F. Supp. at 265.

[61] *Sawyer v. County of Creek*, 908 F.2d 663, 667 (10th Cir. 1990) (quoting *Pueblo Neighborhood Health Centers, Inc. v. Losavio*, 847 F.2d 642, 646 (10th Cir. 1988)). The Supreme Court has not squarely addressed the issue of this heightened pleading standard in the context of individual capacity suits. In *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993), the Court held that a federal court may not apply a heightened pleading standard to a complaint asserting municipal liability under §1983. However, the Court expressly declined to decide whether federal courts may apply a heightened pleading standard where qualified immunity is at issue. *Id.* at 166-67.

[62] *See Breidenbach v. Bolish*, 126 F.3d 1288, 1293 (10th Cir. 1997).

[63] *Cf. id.* at 1293-94.

[64] *Id.* at 1294. Whether the Tenth Circuit's heightened pleading standard can survive the recent Supreme Court decision of *Crawford-El v. Britton*, 118 S. Ct. 1584 (1998), remains to be seen. In that case, the Court held that in an individual capacity suit against a government official in which the official's improper motive is a necessary element of the underlying claim, a plaintiff need not adduce "clear and convincing evidence" of the motive to defeat a summary judgment motion. The Court reasoned that "[n]either the text of §1983 or any other federal statute, nor the Federal Rules of Civil Procedure, provides any support for imposing" the heightened requirement. *Id.* at 1595. So far, courts within the Tenth Circuit have "continued to apply a heightened standard of pleading, even after *Crawford-El*." *Keys Youth Servs., Inc. v. City of Olathe*, 1999 WL 153096, *12 n. 4 (D. Kan. Feb. 23, 1999).

[65] 910 F.2d 427.

[66] *Id.* at 432 (citations omitted).

[67] *Arnold v. Duchesne County*, 26 F.3d 982, 984 (10th Cir. 1994), *cert. denied*, 115 S. Ct. 721 (1995) (citing *Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985)).

[68] *Fratus v. Deland*, 49 F.3d 673, 675 (10th Cir. 1995).

[69] 457 U.S. 496, 516 (1982).

[70] 487 U.S. 131 (1988).

[71] *Id.* at 147.

[72] *Id.*

[73] But *see Batemen v. City of West Bountiful*, 89 F.3d 704, 708-09 (10th Cir. 1996) (when state provides an adequate procedure for seeking just compensation, property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation); *Landmark Land Co. of Oklahoma, Inc. v. Buchanan*, 874 F.2d 717 (10th Cir. 1989) (same).

[74] *See Tenney v. Brandhove*, 341 U.S. 367, 376-79 (1951).

[75] *See Pierson v. Ray*, 386 U.S. 547, 554-55 (1967).

[76] *See Imbler v. Pachtman*, 424 U.S. 409, 420-30 (1976).

[77] *See Brisco v. LaHue*, 460 U.S. 325, 335-46 (1983).

[78] *See Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 306-08, 309-10 (1986).

[79] *Carey v. Piphus*, 435 U.S. 247, 254 (1978).

[80] *See id.* at 254-66.

[81] *Stachura*, 477 U.S. at 308.

[82] *See Carey*, 435 U.S. at 266-67.

[83] *See City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

[84] 42 U.S.C. §1988(b).

[85] Low & Jeffries, *supra*, note 6, at 571 (citing *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402(1968)).

[86] *Id.* (citing *Christiansburg Garment Co. v. E.E.O.C.*, 434 U.S. 412, 421 (1978) and *Hughes v. Rowe*, 449 U.S. 5 (1980)).

[87] *See Texas State Teachers Assoc. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989).

[88] *Id.* at 792.

[89] *Id.* at 792-93.

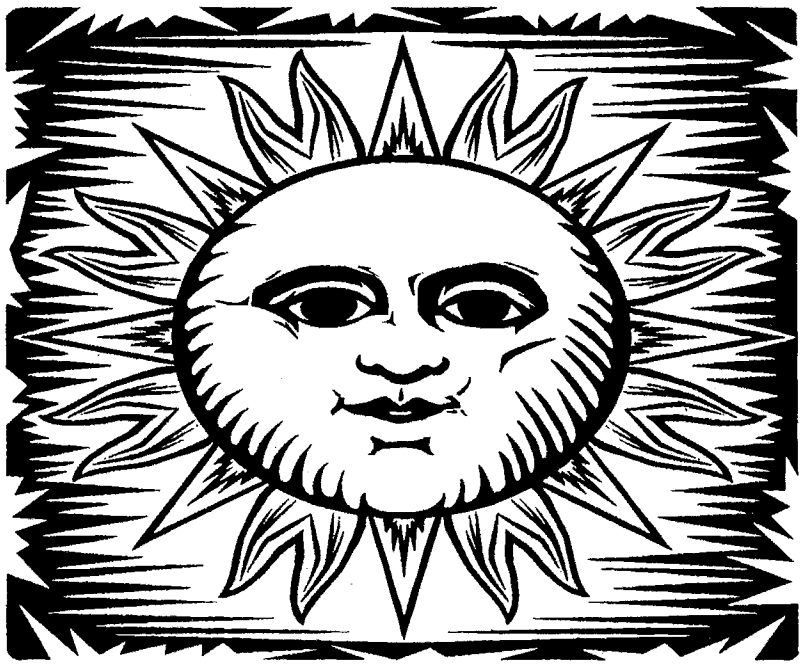
[90] 506 U.S. 103 (1992).

[91] *See id.* at 114-15.

[92] ___F.3d___, 1999 WL 72239 (10th Cir. Feb. 16, 1999).

[93] Id. at *3.

Mark your calendars now . . .



for the 1999 Utah State Bar
Annual Meeting!
June 30 - July 3, 1999
Sun Valley, Idaho

We hope to see you this summer!

And don't miss the opportunity
to dance to "big band" favorites
with the Crestmark Orchestra!
Stick around after the Family Picnic
and Carnival on Friday, July 2
for swing dancing and great music!

CLE Program Schedule

Wednesday, June 30, 1999

6:00 p.m. - 8:00 p.m.
Opening President's Reception and Registration

Sponsored by:
Parsons Behle & Latimer
Snow, Christensen & Martineau
Kipp & Christian
VanCott, Bagley, Cornwall & McCarthy
Strong & Hanni
Parr Waddoups Brown Gee & Loveless

Thursday, July 1, 1999

7:30 a.m. - 8:00 a.m.
Registration and Continental Breakfast
Sponsored by: *Sun Valley Company*

8:00 a.m. - 9:00 a.m.
Opening General Session and Business Reports

Welcome & Opening Remarks
John T. Nielsen, 1999 Annual Convention Program Chair

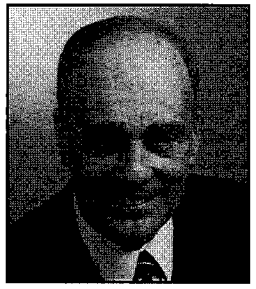
Report on the Utah State Bar
James C. Jenkins, President, Utah State Bar

Report on State Judiciary
Chief Justice Richard C. Howe, Utah Supreme Court

Report on Federal Judiciary
Chief Judge David Sam, Federal District Court, State of Utah

Report on the Utah Bar Foundation
H. James Clegg, President, Utah Bar Foundation

9:00 a.m. - 9:50 a.m.
Keynote Speaker: Vincent Bugliosi
The OJ Simpson Case **(1 CLE hour)**



VINCENT BUGLIOSI
Mr. Bugliosi is the acclaimed prosecutor who convicted Charles Manson in the bloody Tate/LaBianca murders, the most bizarre mass murder case in the recorded annals of crime. The story of that case was immortalized in his book, Helter Skelter, the biggest selling true crime book in publishing history. His most recent book is Outrage: The Five Reasons Why OJ Simpson Got Away With Murder, which reached #1 in the country on the New York Times best sellers list. It is the only book out of the over 60 on the Simpson case that was nominated for the Edgar Allen Poe award as best true crime book of the year. The American Bar Association states: "One can be sure, Outrage is the best book, that will ever be written on the OJ Simpson murder trial." Bugliosi's lecture on the trial has been spellbinding audiences throughout the country. Bugliosi received his law degree in 1964 from UCLA Law School. In his career as a prosecutor for the Los Angeles District Attorney's office, he lost only one out of the 106 felony jury trials he prosecuted, including 21 consecutive murder convictions. His most famous trial was that of Charles Manson. But even before that, the starring role of Robert Conrad in the TV series "The DA" was patterned after him. None other than F. Lee Bailey calls Bugliosi "the quintessential prosecutor."

Sponsored by: *The Litigation Section, Utah State Bar*

9:50 a.m. - 10:15 a.m.
Refreshment Break

Sponsored by:
Clyde, Snow, Sessions & Swenson
Giauque, Crockett, Bendinger & Peterson

	Litigation Track	Transactional Track	General Practice/ Government Track	Technology Track	Young Lawyers Track
Session I **10:15 a.m. to 11:05 a.m.** **(1 CLE hour each)**	**Family Law Legislative Update - What's Current and What's in the Future** *Senator Terry R. Spencer, Utah Senate*	**Hot Issues in Law & Economics** *Gregory Adams, LECG* *Mark Glick, University of Utah* *Richard Hoffman, PriceWaterhouseCoopers* *James Kearl, Brigham Young University*	**The New Federal Defender Office** *Steven Killpack, Federal Defender for the State of Utah - Designate*	**Electronic Document Management** *Patrick J. Kilbourne, Arthur Anderson LLP* *James Mitchell, Arthur Anderson LLP*	**NLCLE: Trying Your Case to Win on Appeal** *Panel Discussion*
11:05 a.m. - 11:20 a.m. **Refreshment Break**		Sponsored by: *Cohne, Rappaport & Segal* *Green & Berry*			
Session II **11:20 a.m. to 12:10 p.m.** **(1 CLE hour each)**	**NLCLE: The New Discovery and Disclosure Rules - The Basics** *Francis J. Carney, Anderson & Karrenberg* *Thomas R. Karrenberg, Anderson & Karrenberg* *Francis M. Wikstrom, Parsons Behle & Latimer*	**Utah's Office of Public Guardian, Yes or No?** *Kent B. Alderman, Parsons Behle & Latimer*	**Ethical Dilemmas for Civil Practitioners When Clients Become Criminal Targets or "The World is Welcome Here"** *Gregory K. Skordas, Watkiss, Dunning & Skordas*	**Cyber-Ethics: Protecting Client Confidence in Cyberspace** *Paul J. Toscano, The USERTRUST Network*	**Ethical Dilemmas for Civil Practitioners When Clients Become Criminal Targets or "The World is Welcome Here"** *Gregory K. Skordas, Watkiss, Dunning & Skordas*
12:10 p.m. - 12:30 p.m. **Refreshment Break**		Sponsored by: *DeBry & Associates*			
Session III **12:30 p.m. to 1:20 p.m.** **(1 CLE hour each)**	**From Divisions to Consolidation to Divisions: Criminal and Civil Divisions in Third District Court** *Hon. Frank G. Noel, Third District Court Presiding Judge*	**Affirmative Action: Damned If You Do, Damned If You Don't** *Chris P. Wangsgard, Parsons Behle & Latimer*	**From Divisions to Consolidation to Divisions: Criminal and Civil Divisions in Third District Court** *Hon. Frank G. Noel, Third District Court Presiding Judge*	**Y2K Litigation Issues** *Blake D. Miller, Ballard Spahr Andrews & Ingersoll*	**From Divisions to Consolidation to Divisions: Criminal and Civil Divisions in Third District Court** *Hon. Frank G. Noel, Third District Court Presiding Judge*
1:20 p.m.	Meetings Adjourn for the Day				

Friday, July 2, 1999

7:30 a.m. - 8:15 a.m.
Section Breakfasts

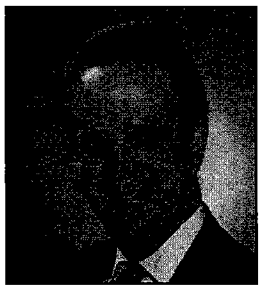
8:00 a.m. - 8:30 a.m.
Registration and Continental Breakfast
Sponsored by: *Lexis-Nexis*

8:30 a.m. - 9:15 a.m.
General Session

Presentation of Annual Awards
James C. Jenkins, President, Utah State Bar

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

9:15 a.m. - 10:05 a.m.
General Session: The Use of the Internet
David P. Vandagriff, Lexis-Nexis **(1 CLE hour)**



DAVID P. VANDAGRIFF
Mr. Vandagriff is the Director of Vertical Applications for Lexis-Nexis. Prior to joining Lexis-Nexis in 1995, he owned his own law practice in a small town in Missouri. He was the technology columnist for the The American Bar Association Journal for several years and has written extensively on computer subjects. He has spoken to legal audiences from New York to Hawaii about computers and the law and has written a number of software programs for use by attorneys. He has received numerous honors including Sole Practitioner of the Year, American Bar Association; Pro Bono Publico Award, the Missouri Bar; and Equal Access to Justice Award, Legal Aid of Southwest Missouri. Mr. Vandagriff is a former member of the ABA Coordinating Commission of Legal Technology, the highest-level committee in the ABA; a former member of the Missouri Court Automation Committee; and a former chair of the Computer Interest Group of the ABA General Practice Section.

10:05 a.m. - 10:15 a.m.
Refreshment Break

Sponsored by:
LeBoeuf, Lamb, Greene & MacRae
Trask, Britt & Rossa

	LITIGATION TRACK	TRANSACTIONAL TRACK	GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
Session I 10:15 a.m. to 11:05 a.m. (1 CLE hour each)	**The New Discovery and Disclosure Rules - Advanced Concepts** *Francis J. Carney, Anderson & Karrenberg* *Thomas R. Karrenberg, Anderson & Karrenberg* *Francis M. Wikstrom, Parsons Behle & Latimer*	**Conveyancing and Collaterlizing Utah Water Rights** *Rick L. Knuth, Jones, Waldo, Holbrook & McDonough*	**1999 Legislative Update** *John T. Nielsen, Utah State Bar Legislative Representative*	**Establishing & Building Web Pages for Lawyers** *Kent Lewin, ArosNet* *Lincoln Mead, Utah State Bar*	**NLCLE: Ethics Fundamentals: Complying with the Rules of Professional Conduct and Avoiding Disciplinary Action & Malpractice Claims** *Brent J. Giauque, Stoel Rives LLP*

11:05 a.m. - 11:20 a.m.
Refreshment Break

Sponsored by:
McKay, Burton & Thurman
Williams & Hunt

Session II **11:20 a.m. to 12:10 p.m.** **(1 CLE hour each)**	**Taking the Robes Off: A "Judge" Speaks Freely** *Comm. Lisa A. Jones, Third District Court* *Judge "Anonymous"*	**Minding and Binding Corporate Clients** *Lois A. Baar, Parsons Behle & Latimer* *Diane H. Banks, Fabian & Clendenin* *Patricia W. Christensen, Parr Waddoups Brown Gee & Loveless*	**The New (and Improved?) Bankruptcy Code and Rules - Highlights of Proposed Changes** *David E. Leta, Snell & Wilmer*	**50 Sites in 50 Minutes** *David P. Vandagriff, Lexis-Nexis*	**NLCLE: Mediation Preparation and Advocacy Workshop** *Laura Milliken Gray, Attorney and Mediator* *Karin S. Hobbs, Utah Court of Appeals* *David Nuffer, Snow, Nuffer, Engstrom, Drake, Wade & Smart*

12:10 p.m. Meetings Adjourn for the Day

Saturday, July 3, 1999

8:30 a.m. - 9:00 a.m.
Registration and Continental Breakfast
Sponsored by: *Intermountain Health Care*

9:00 a.m. - 9:50 a.m.
ETHICS General Session: Market Encroachment: A Report From the ABA's Commission on Multi-Disciplinary Practice **(1 CLE hour)**
Roberta R. Katz, Netscape Communications Corporation

ROBERTA R. KATZ
Ms. Katz is the Senior Vice President, Secretary and General Counsel of Netscape Communications Corp. She is a member of several Boards of Directors, including those of the Information Technology Association of America, Software Industry Association, and LAWFund, and is a member of the California Governor's Electronic Commerce Advisory Council.

9:50 a.m. - 10:10 a.m.
Refreshment Break
Sponsored by:
Watkiss, Dunning & Skordas
Richards, Bird & Kump

	LITIGATION TRACK	TRANSACTIONAL TRACK	GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
Session I **10:10 a.m. to 11:00 a.m.** **(1 CLE hour each)**	**Update on Sexual Harassment** *Janet Hugie Smith, Ray Quinney & Nebeker*	**Protecting Trade Secrets in Utah** *H. Dickson Burton, Trask Britt & Rossa* *John R. Morris, Snell & Wilmer*	**The Elected Public Attorney - Who Is the Client?** *A panel of scholars, legislators and attorneys.* *Moderator - John T. Nielsen, Utah State Bar Legislative Representative*	**50 Sites in 50 Minutes** *Toby Brown, Utah State Bar* *David Nuffer, Snow, Nuffer, Engstrom, Drake, Wade & Smart*	**NLCLE: The Care and Feeding of Associates: What New Lawyers Should Expect From Firms and Vice Versa** *James S. Jardine, Ray, Quinney & Nebeker* *Alan L. Sullivan, Snell & Wilmer*

11:00 a.m. - 11:10 a.m.
Refreshment Break
Sponsored by:
Stoel Rives LLP

	Litigation Track	Transactional Track	General Practice/ Government Track	Technology Track	Young Lawyers Track
Session II 11:10 a.m. to 12:00 p.m. (1 CLE hour each)	**Heather Has Two Mommies: A Debate Concerning the Legal and Social Implications of Same Sex Parenting and Adoptions** *Laura Milliken Gray, Attorney and Mediator* *Jane Marquardt, Marquardt, Hasenyager & Custen* *Prof. Lynn Wardle, J. Reuben Clark Law School*	**Taming the Takings Tiger** *Nick J. Colessides, Attorney at Law* *Prof. John Martinez, University of Utah College of Law*	**The Question of Sentencing** *Ross C. Anderson, Anderson & Karrenberg* *Hon. Leslie A. Lewis, Third District Court*	**E-Mail - Sexual Harassment, Company Liability and Record Retention** *Mark Gavre, Parsons Behle & Latimer*	**NLCLE: The Nuts and Bolts of Cross Examination** *G. Fred Metos, McCaughey & Metos*

12:00 p.m.
Breakout Sessions Adjourn

12:30 p.m. - 3:00 p.m.
Salt Lake County Bar Film & Discussion: "Adam's Rib" **(2 CLE hours)**
Richard D. Burbidge, Burbidge & Mitchell
Hon. Leslie A. Lewis, Third District Court
Ellen M. Maycock, Kruse, Landa & Maycock
Hon. Ronald E. Nehring, Third District Court
Janet Hugie Smith, Ray, Quinney & Nebeker

Don't miss out on the most popular event of the Annual Convention!!!

The Family Picnic and Carnival
Friday, July 2, 1999 at 6:00 p.m.

And this year, during and after the carnival, enjoy music and dancing featuring **The Crestmark Orchestra** - one of the leading swing bands, and honored by the Glenn Miller Birthplace Society as the featured performing group at the international Glenn Miller Festival.

This event is sponsored by:
Durham, Evans, Jones & Pinegar
Callister, Nebeker & McCullough
Ray, Quinney & Nebeker
Fabian & Clendenin
Holme Roberts & Owen
Corporon & Williams
Nielsen & Senior

Legal Assistant's Day and Recognition of Certified Legal Assistants in Utah

A reception and dinner recognizing more than 100 legal assistants in Utah who have achieved the CLA (Certified Legal Assistant) credential will be held Thursday, May 20, 1999 at the Alta Club in Salt Lake City. The function will also celebrate Legal Assistants' Day which was designated in 1989 by Governor Norman Bangerter as the third Thursday in May. Governor Michael Leavitt approved a permanent declaration of Legal Assistants' Day in 1994. Scheduled speakers for the evening are Utah Supreme Court Justice Michael Zimmerman, James C. Jenkins, President, Utah State Bar and Linda J. Wolf of the National Association of Legal Assistants. The event is organized by the Legal Assistants Association of Utah with sponsorship from the Board of Bar Commissioners, First American Title Company and the law firms of Strong & Hanni and Parsons Behle & Latimer. Marilu Peterson and Sanda Kirkham are chairpersons for the event.

In Utah, the first legal assistant successfully completed the CLA examination in 1984 and since that time more than 100 others have attained this standard of professional competency. The credential is one of the standards being considered for the Legal Assistant Division by the Utah State Bar Commission. Attaining the credential requires that qualified legal assistants successfully complete a comprehensive two day examination and periodically submit evidence of continuing legal education. The program is offered by the National Association of Legal Assistants, Inc. and is administered by the National Certifying Board for Legal Assistants which is made up of legal assistants who have achieved the CLA/Specialty designation, attorney and legal assistant school program directors. Recognition of the program is nationwide, with nearly 10,000 legal assistants holding the credential.

Utah legal assistants who have achieved this standard are employed in private law firms, government agencies and private corporations throughout the state. These legal assistants will be recognized for their contributions and commitment to the legal profession through having achieved this professional standard.

ANNOUNCING THE UTAH STATE BAR LEGAL ASSISTANT DIVISION 1999 ANNUAL MEETING

The Utah State Bar Legal Assistant Division's 1999 Annual Meeting will be held Friday, June 18th, 1999, from 8:00 a.m. to 3:00 p.m. at the Hampton Inn, 10690 South Holiday Park Drive, Sandy, Utah. While most Legal Assistant Division events are held in the downtown area, the southerly location of this year's Annual Meeting was chosen for the convenience of legal assistants who live and work south of Salt Lake City.

Speakers and Topics:

In addition to the Annual Meeting, we have an interesting educational program lined up, including approximately 4.5 hours of CLE credit. Our keynote speaker is Francis J. Carney, Esq. of Anderson & Karrenberg, who will discuss amendments to the discovery provisions of the Utah Rules of Civil Procedure. Mr. Carney's presentation is uniquely topical and will be of interest to all legal assistants working in any area of litigation. Kelly Hill, General Counsel for Westminster College, will discuss the impact of current Department of Labor standards and recent case law on paralegal career issues. Ms. Hill's presentation will be of interest to all legal assistants as employees, whether or not they work in the employment law arena. Other speakers will provide up-to-date information on topics relating to interaction with the District Courts and interaction with administrative agencies.

Registration:

Registration fees are $60.00 for LAD members and $70.00 for non-LAD members (with $10.00 late registration charge if paid after June 4, 1999). Full registration includes breakfast buffet, handout materials, luncheon, prize drawing entry, and annual meeting participation. There is no charge for those wishing to attend only the Division's Annual Meeting, which takes place from 11:15 to Noon.

Registration for all Legal Assistant Division educational events is used to cover costs of sponsoring the event. Any additional proceeds from registration fees are used to sponsor other Legal Assistant Division events, including free monthly brown bag seminars on a variety of topics.

An Annual Meeting brochure and registration form with additional information will be mailed to all Legal Assistant Division members.

Please Note:

Bring a friend! We encourage all Division members to invite legal assistants with whom they work to register and attend this event. And, as always, we invite all Utah legal assistants to join the Division and become aware of what is happening in our profession. Membership in the Legal Assistant Division provides legal assistants with a direct voice and an opportunity to guide their profession through involvement in the professional organization, opportunities to work on committees and hold office, access to information regarding special projects and issues within Utah, and special opportunities for continuing legal education programs. Help make a difference. Annual membership in the Legal Assistant Division is only $35.00. Information on joining the Division can be obtained by contacting Connie Howard, CLE coordinator for the Utah State Bar. Also, for information on the creation and direction for the Division, check out the LAD website at: www.utahbar.org/doc_arch/LAD/LAD_Forum/lad_forum.html

DURHAM
JONES &
PINEGAR

The Law Firm of

DURHAM JONES & PINEGAR

is pleased to announce that

ROBERT A. ALSOP | Formerly of Ray Quinney & Nebeker

has joined the Firm as a Shareholder, and will continue his practice in the areas of International and Domestic Business and Banking Transactions and General Business Representation.

C. PARKINSON LLOYD | Formerly of Ballard Spahr Andrews & Ingersoll

has joined the Firm as an Associate, and will continue his practice in Corporate and Securities Law.

A Professional Law Corporation
Attorneys & Counselors at Law

Key Bank Tower
50 South Main, Suite 800
Salt Lake City, Utah 84144

Telephone 801.538.2424
Facsimile 801.538.2425

Case Summaries

by Daniel M. Torrence

CRIMINAL LAW

Spanish Fork City v. Bryan, 364 Utah Adv. Rep. 16 (Utah App. 1999). Attorneys: Margaret P. Lindsey for Bryan; S. Junior Baker for Spanish Fork.

Armed with a warrant, police searched the house shared by Mr. and Mrs. Bryan, finding paraphernalia. Mrs. Bryan was convicted of possession of drug paraphernalia. She appealed.

The Court of Appeals noted that, because no drugs or drug residue were found, Mrs. Bryan's conviction for possession of drug paraphernalia necessarily required proof that she "possessed with intent to use." To prove constructive possession, the evidence must raise a reasonable inference that the suspect was engaged in a criminal enterprise and not simply a bystander. Factors include the defendant's presence, proximity, and access to the contraband, the defendant's "use and enjoyment" of the contraband, and incriminating statements. Here, the State had no such evidence and thus failed to prove the "extensive and detailed facts" needed to prove constructive possession. Although constructive possession can be proved by circumstantial evidence, the State still must support each element of the offense, including possession with intent to use, with a quantum of evidence. Conviction reversed.

PERSONAL INJURY

Thompson v. Jess, 364 Utah Adv. Rep 64 (Utah 1999). Attorneys: John Paul Kennedy and David J. Bennion (California) for Thompson; Stephen G. Morgan and Joseph E. Minnock for Jess.

Connie Jess, a motel owner, bought a 20 foot long, 8 inch diameter steel pipe from AmeriKan Sanitation. The pipe was intended to fit over an existing vertical pipe stub and act as a sign post. Upon delivery, Jess asked the AmeriKan employees, Jensen and Thompson, to install the pipe. Jensen first declined, saying he was instructed only to deliver the pipe and because he was not equipped to do the job in the best manner. Jess asked again and Jensen agreed to install the pipe. Jess then went inside and had nothing to do with the installation. Jensen was quite experienced in such installations. Nevertheless, the pipe slipped out of its chain, bounced, and struck Thompson's leg. He later required amputation of his leg below the knee.

The District Court, the Hon. John R. Anderson presiding, granted Jess' motion for summary judgment, finding that Jess owed Thompson no duty of protection or warning concerning performance of the task because, under the general rule, a principal employer of an independent contractor is not liable for harm caused by the independent contractor, including harm caused to the employees of the independent contractor. Thompson appealed.

On appeal, Thompson argued that Jess owed him a duty under the Restatement (Second) of Torts doctrines of "retained control," "peculiar risk," and "inherently dangerous work."

Under the "retained control" doctrine, a principal employer is liable for injuries caused by his independent contractor's work if the employer is actively involved in, or asserts control over, the manner or performance of the work. This arises when the principal employer directs that the work be performed in a certain way or otherwise interferes with the means and methods used by the independent contractor. Here, Jess exercised no direction, control or supervision. Thus, she owed Jess no duty under this doctrine.

The "peculiar risk" and "inherently dangerous work" doctrines are based on sections 413, 416, and 427 of the Restatement. These sections do impose liability on a principal employer when an independent contractor's work poses a "peculiar unreasonable risk of harm to others." However, the purpose of these Restatement sections is to ensure that innocent third parties who are injured will not have to depend solely on the solvency of the independent contractor. These sections are not intended to apply when the injured person is one of the independent contractor's employees.

Thus, the trial court correctly ruled that Jess owed Thompson no duty under either the "retained control," "peculiar risk," or "inherently dangerous work" doctrines. The trial court correctly applied the general rule that the principal employer of an independent contractor is not liable for harm caused by the independent contractor and correctly granted summary judgment for the defendant.

FIRST AMENDMENT/EMPLOYMENT LAW

Cassidy v. Salt Lake County Fire Civil Service Council, 364 Utah Adv. Rep. 6 (Utah App. 1998). Attorneys: Mary J. Woodhead for Cassidy; Douglas R. Short and Jerry G. Campbell for the County.

Cassidy, a firefighter, objected to Fire Department policies on two occasions in 1990 and 1992. Also in 1992, he filed a grievance alleging an unfair promotion interview procedure. The Council ruled against him, and Cassidy appealed to Third District Court. He argued that: (1) his First Amendment and Due Process Rights were violated, (2) the Department improperly promoted others over him, and (3) he suffered retaliation because of his free speech activities. The District Court, the Hon. Homer Wilkinson presiding, held for the Council. Cassidy appealed.

Initially, the Court of Appeals rejected the Council's argument that Fire Chief Larry Hinman was a necessary and indispensable party to the action. The Court also ruled in Cassidy's favor by holding that a refusal to promote may form the basis of an "adverse employment action."

Claims involving the free speech rights of public employees involve a balancing of interests. Analysis of such claims involves four steps. First, the plaintiff must show the speech involved a matter of public concern. Second, the plaintiff must show the speech substantially caused the adverse employment action. Third, the employer may escape liability by showing it would have made the same decision regardless of the speech. Fourth, if the employer cannot disprove the retaliatory motive, the court weighs the free speech rights against the needs of the agency for efficient operation of public service.

Here, Cassidy's speech addressed matters of public concern. The Court, assuming *arguendo* that Cassidy could prevail on the second and third parts of the analysis, went on to balance Cassidy's rights against the Department's need for efficient operation. Here, Cassidy's carried his grievances far beyond legitimate concerns for public safety: his grievance became a vendetta against the fire department and his intent was to undermine his supervising officers and create a disruptive atmosphere. Because his actions unnecessarily disrupted the efficient management of the Department, the needs of the Department outweighed Cassidy's free speech rights. Thus, the trial court was correct in upholding the Council's ruling that Cassidy's First Amendment rights were not violated.

CRIMINAL LAW/FIRST AMENDMENT

State of Utah v. Krueger, 363 Utah Adv. Rep. 26 (Utah App. 1999). Attorneys: Gregory G. Skordas, Elizabeth T. Dunning, David B. Watkiss, and Brett J. Delporto for Krueger; Gene E. Strate, John E. Schindler, and George M. Harmon, Jr., for the State.

KTVX television reporter Mary Ann Sawyers and cameraman Joseph Krueger were invited to report on a Carbon (Price) High School assembly designed to discourage chewing tobacco use among students. Sawyers interviewed students who chewed tobacco in the parking lot following a school assembly. Several students later told police that Sawyer and Krueger asked them to chew tobacco during the interview and that they wouldn't be punished for doing so. Sawyer and Krueger denied this, but were later charged with five counts of contributing to the delinquency of a minor. This statute, U.C.A. 78-3a-801(1)(a), has two subsections. Subsection (i) makes it a crime to encourage a minor to break the law. Subsection (ii) makes it illegal to do anything that "tends to cause minors to become or remain delinquent."

Sawyers and Krueger filed motions to dismiss. The trial court ruled Sawyers and Krueger could not be prosecuted under subsection (i) of the law, because the students were charged with possession of tobacco, and the State did not allege Sawyers and Krueger provided any tobacco to the students. But Sawyers and Krueger could be prosecuted under subsection (ii). Also, the trial court ruled that U.C.A. 78-3a-801(1)(a) was not unconstitutionally vague.

On appeal, Sawyers and Krueger argued that : (1) the alleged conduct is not prohibited by the statute; (2) they lacked the requisite intent; (3) the law is unconstitutionally vague; and (4) being journalists insulates them from prosecution.

The Court of Appeals noted that the statute only requires proof of acts that "tend to cause minors to become or remain delinquent" and does not require proof that the minor in fact became delinquent. The Court declined to adopt a narrow interpretation of "delinquent," instead citing to a 1970 Utah Supreme Court case interpreting the "contributing to the delinquency" statute. There, the Supreme Court held that such acts include those that aid, encourage or involve children in conduct which is illegal or which is so contrary to generally accepted standards of decency and morality that its result would be substantially harmful to the mental, moral, or physical well-being of the child. Thus, a trier of fact could find the alleged conduct tended to cause "delinquency."

Regarding the necessary intent, the subjective motive for Sawyers and Krueger wanting the children to chew tobacco is irrelevant. Furthermore, this is a question for the trier of fact.

Regarding vagueness, the Court cited the long-standing rule that a law is not unconstitutionally vague if it is sufficiently explicit to inform the ordinary reader what conduct is prohibited and does not encourage arbitrary and discriminatory enforcement. Even though "delinquent" is not defined in the statute, the term is well-known and so is not unconstitutionally vague.

As for their protected status as news gatherers, the Court notes that Sawyers and Krueger could not be prosecuted for merely reporting on or recording illegal activity. Here, however, the State alleged that Sawyers and Krueger asked the children to chew tobacco. Thus, no First Amendment rights are implicated. The matter was remanded for trial.

FAMILY LAW

State of Utah v. Jacoby, 363 Utah Adv. Rep. 23 (Utah App. 1999). Attorneys: A. Alexander Jacoby, pro se; Jan Graham and Lynn Nicholas, for the State.

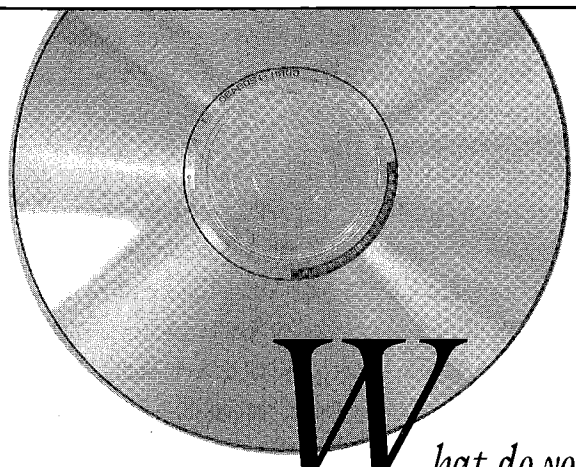
Jacoby and Kirby divorced in Virginia; jurisdiction over child support was later transferred to Pennsylvania. Jacoby was ordered to pay alimony and child support. Jacoby later moved to Utah and fell behind in his payments. Acting on a request from Pennsylvania, Utah brought suit against Jacoby under the Uniform Reciprocal Enforcement of Support Act (URESA) and under the successor law, the Uniform Interstate Family Support Act (UIFSA), and the trial court entered judgment against Jacoby for about $56,000.00, representing 12 years of arrearages. Jacoby appealed.

First, Jacoby argued the UIFSA should not have been applied retroactively. The Court of Appeals noted that laws which alter substantive rights are not applied retroactively in the absence of clear legislative intent. UIFSA contains no express declaration of retroactivity. The relevant differences between UIFSA and URESA are in their choice of law provisions and statute of limitations. Finding these to be procedural in nature, it was proper to apply UIFSA retroactively.

Jacoby also argued that the trial court incorrectly applied the longer Pennsylvania statute of limitations. Under UIFSA, the longer statute of limitations applies, so the trial court correctly applied the longer (Pennsylvania) statute of limitations.

Jacoby further argued the trial court erred in failing to modify the child support order. Under UIFSA, such orders may be modified in two circumstances. One occurs when a nonresident petitioner seeks modification, and this was not the case here. The second occurs when all parties have consented to the modification, and this condition was not met.

Similarly, Jacoby lost his argument to modify the spousal support order. Utah courts have no authority to modify such orders because Utah courts have no jurisdiction to do so unless the order was issued in Utah. Thus, the trial court's award to Kirby was affirmed.



"The breadth and depth of [these] titles make them wonderful legal research and writing tools ... [They] can leverage an attorney's ability to know the law."

Law Office Computing
April/May 1997 issue

What do you get when you combine Michie's 150 years of legal publishing excellence with the technological vision of LEXIS®-NEXIS®?

LEXIS® Law Publishing and Michie's™ Law on Disc™ Products

The critically acclaimed Michie's™ Law on Disc™ CD-ROM research system is now part of LEXIS® Law Publishing, a new enterprise drawing upon Michie's 150 years of editorial excellence and the technological know-how of LEXIS®-NEXIS®. We currently offer LEXIS® Law Publishing and Michie's™ Law on Disc™ products in 40 states and territories, plus a comprehensive series of federal titles. Why choose a LEXIS® Law Publishing or Michie's™ Law on Disc™ product for your electronic research?

IT'S FAST. The powerful FOLIO® search engine and a sophisticated hypertext linking system enable you to find law "on point" instantly.

IT'S EASY. With a simple click of your mouse you can access an entire library of state law.

IT'S CURRENT. Your subscription includes regular updates and everyday access to a state specific case law update library on the LEXIS® service — at no extra charge.

IT'S AFFORDABLE. Talk to your LEXIS® Law Publishing sales representative to find out about special savings available only to Bar members.

To order or to learn more about LEXIS® Law Publishing and Michie's™ Law on Disc™ products, or to set up an appointment with your sales representative, call us toll-free at 888/217-1730.

LEXIS® LAW PUBLISHING

888/217-1730

Please use code 6AG when ordering

www.lexislawpublishing.com

A MEMBER SERVICE OF: UTAH STATE BAR ORGANIZED 1931

IOLTA Participants Honored

The Utah Bar Foundation honors all individuals and law firms who have supported the Foundation by converting their trust accounts to the IOLTA Program (Interest On Lawyer Trust Accounts).

Foundation funding is generated primarily with interest earned on lawyer trust accounts. These are the accounts that are too small or held for too short a period of time to economically benefit the client or to justify paying bank service charges. When pooled together, these accounts provide significant amounts.

Lawyers can take pride in the work the Utah Bar Foundation is performing on their behalf. The Foundation strives to invest their support in community projects and programs that will enhance the public understanding of the legal system, improve the administration of justice, provide access to legal services, and support other worthwhile law-related community projects in Utah. Every time a project is funded, the community is enriched and the image of the legal profession enhanced.

If any name has been omitted, we regret the oversight. To correct an error or omission, please contact the Bar Foundation office at 297-7046. We encourage all of those who are not now participating in the IOLTA Program to call and make arrangements to join the following lawyers and law firms.

1999 IOLTA Honor Roll

AAA ACADEMY LEGAL SERVICES
A WELCOME PLACE
ACCIDENT & INJURY
Adamson, Craig G.
AFFORDABLE LEGAL ADVOCATES
Aldous, Jeffrey N.
Alex, John
Allred, David M.
ANDERSON & SMITH
ANDERSON & WATKINS
Angerhofer, David J.
ARMSTRONG RAWLINGS & WEST
Arrowsmith, James A.
Ascione, Patrick
ATKIN & LILJA
Atkin, Gary Eugene
Atkin, J. Ralph
ATTORNEY TITLE GUARANTY
Atwood, Robert
ROBERT F. BABCOCK & ASSOCIATES
Baden, Wesley
Bagley, Marvin D.
Bailey, Steven R.
Bainum, Craig M.
Baird, Bruce R.
BAIRD & JONES
Baker, Laurence N.
BALLARD SPAHR ANDREWS & INGERSOLL
Ballif, Stanley L.
Barber, James N.
Barking, Judy Dawn
Barnard, Brian
Barnum, Craig M.
BARR & CLARK
Barton, Paul J.
Barton, Warren
Bastar, Shirlene
Bean, James E.
BEASLIN NYGAARD COKE & VINCENT
Beesley, Wilford A.
BELL & BELL
Bell, Gary L.
Belnap, Michael G.
Benge, William
Bennett, Wendell E.
Bertch, Daniel F.
BERTCH & BIRCH
Beshear, Sanford L.
EDWIN H. BEUS & ASSOCIATES
Biesinger, Keith
Biljanic, Matt
BIRD & FUGAL
Bishop, Willard R.
BLACK & BLACK
BLACK, JAMES R. & ASSOC.
Black, John L.
BLACKBURN & STOLL
Blakelock, Rosemond G.
BLATTER & FIELDING
Blonquist, Thomas R.
Boettger, Amy L.
Bogar, D.
BOOKER & ASSOCIATES
Bouwhuis, Michael D.
BOWEN & WRIGHT
Bowen, David R.
BOWLER & ASSOCIATES
Boyack, Alan D.
Boyer, Theodore, Jr.
Boyle, Michael J.
BRADFORD BRADY & JOHNSON
Bradford, R. William
Bradshaw, James C.
Bradshaw, Kenneth D.
BROADBENT HULSE
Brown, David W.
Bullock, J. Jay
BUNDERSON & BARON
BURBIDGE & MITCHELL
Burrows, Dana D.
RULON T. BURTON & ASSOCIATES
Cahoon, Richard C.
CALLISTER NEBEKER & McCULLOUGH
CAMPBELL & CAMPBELL
CAMPBELL MAACK & SESSSIONS
Cannon, Diane
Cannon, Russell A.
Chacon, Solomon
Chacon, Sylvia Pena
Chalkley, Sheleigh A.
Challed, David G.
CHAMBERLAIN & HIGBEE
Charlier, Scott G.
CHRISTENSEN & JENSEN
Christensen, Krege B.
Christensen, Steven A.
Christopherson, M. Kent
CHRISTOPHERSON THOMAS WHITE & FARRIS
Chrystler, Gary L.

Claflin, James W., Jr.
Clark, John F.
Clark, Newhall S.
Cline, Russell A.
COHNE RAPPAPORT & SEGAL
Coleman, Brian A.
Conklin, Catherine
Constantino, Gregory M.
COOK & LAWRENCE
Cook, Craig, S.
Cook, Stephen R.
CORBRIDGE BAIRD & CHRISTENSEN
CORPORAN & WILLIAMS
Cragun, Michael J.
Crawford, William L.
Creer, John Preston
Criddle, Marlin
Crippen, Michael W.
Crist, Neil B.
Crocker, Billie
CROWTHER & REED
Crum, Judith E.
Cummings, Craig S.
COMPUTER LAW & TRUST ACCT
Culas, Roberto
Custen, Martin W.
DAIGLE SULLIVAN DUPRE & ALDOUS
Dalby, Ronald E.
Dalebout, Richard S.
Dalgleish, William J.
Dallimore, Suzanne M.
Dalton, Donald F.
DALTON & KELLEY
Dangerfield, Joel R
Daniels, Scott
Darger, Daniel
DART ADAMSON DONOVAN & HANSON
Davies, Christopher A.
Davis, Eugene H.
Dawson, Bruce L.
Day, Daniel L.
Daynes, Richard W.
DeJonge, Nicolaas
DeMontreux, Belami
Demler, Shannon R.
Denver, William James
Deschamps, Daniel P.
DEWSNUP KING & OLSEN
Dibblee, Richard C.
Dillon, Robert C.
DISABILITY LAW CENTER
Dishell, Amy B.
Ditto, Daniel T.
DIUMENTI LAW OFFICE
DNA PEOPLE'S LEGAL SERVICES
Doncouse, Russell T.
Dorius, Dale M.
DORSEY & WHITNEY
Drage, Daniel S.
Drage, Nathan W.
DRESCH LAW OFFICE
Dunbeck, Joseph T.
Duncan, Robert B.
Dunn, James T.
Dunn, Clifford V.
Dunn, Ronald L.
Echard, Robert A.
Edwards, J. Duke
Ellis, Dean B.
Ellis, Glen J.
England, Les F.
ENNENGA & ASSOCIATES
Epperson, Dwight D.
Espinoza, Milly C.
Evans, John T.
FAMILY LAW PRACTICE
FARR KAUFMAN SULLIVAN GORMAN JENSEN MEDSKER NICHOLS & PERKINS
Fay, John F.
Fenton, Steven L.
Fenton, Wendy W.
Ferre, L. Mark
Fisher, Darwin C.
Flint, Edward D.
Florence, Brian R.
Fonnesbeck, Christian S.
FOSTER & FOSTER
Frost, Clarence J.
Gale, Gary L.
Galvez, Jorge H.
George, Ronald S.
Geurts, Bryan A.
GIAUQUE CROCKETT BENDINGER & PETERSON
Gilbert, Donald D.
Giles, Wayne B.
Gill, L. Zane
Gilland, James K.
Gladwell, David
Godfrey, Ted K.
Goldstein, Janet A.
Gray, Laura M.
GREEN & BERRY
GREEN & LUHN
Greiner, Paul L.
Greer, John P.
GRIDLEY WARD HAVAS SHAW & THOMAS
Grow, Steven L.
Gubler, Scott A.
Guarino, Andrew J.
Guerra, Maximo R.
GUSTIN & CHRISTIAN
Gutke, Robert W.
Halliday, Paul M.
HALLIDAY & WATKINS
Hallock, Todd, N.
HALLOCK & HALLOCK
Halls, William C.
HANCEY & ASSOCIATES
Hanni, Kenneth J.
Hansen, F. Mark
Hansen, Steven L.
HANSEN & ANDERSON
Harding, Phillip A
Harmond, George M. Jr.
Harris, Stephen K.
Harris, W. Thomas
HARRIS PRESTON & CHAMBERS
Hart, Robert B.
HART & HART
Hasenyager, James R.
Hatch, Denton M.
Hatch, Joseph E.
Haun, Rae Ann
Hawkins, Gregory P.
Hawkley, Melissa
Healy, Tim W.
Heiner, Randall B.
Henriod, Joseph L.
HENRIOD NIELSEN & CHRISTENSEN
Heward, Lynn P.
HIGBEE & MACFARLANE
HILL, JOHNSON & SCHMUTZ
Hines, Dane L.
HOLLAND & HART
Holm, Floyd W.
HOLME ROBERTS & OWEN
Honarvar, Nayer H.
HOWARD LEWIS & PETERSEN
Howard, Thomas
Howe, James S.
HSU & PERRERO
Hufnagel, Wendy
Huggins, Joseph J.
HUGHES & REED
Hughes, Robert W.
Hult, Nathan D.
Hummel, John E.
HUNT & RENEER
Huntsman, Diana
HUNTSMAN LAW OFFICE
Hurtado, Lisa
Hutchins, Richard M.
Hutchison, John B.
Hutchison, Richard C.
ISHOLA & ASSOCIATES
Isom, Thomas P.
ISOM & ASSOCIATES
IVIE & YOUNG
Jackson, Daniel W.
JANOVE & ASSOCIATES
JARDINE LINEBAUGH & DUNN
Jaussi, Clair J.
JEFFS & JEFFS
Jenkins, Bruce C.
JENSEN LAW OFFICE
Jensen, Jerrold S.
Jensen, Jonathan K.
Jensen, Michael A.
JENSEN & LEWIS
Jewell, Stephen W.
Jocums, Kristen B.
Johnson, F. McKay
Johnson, Paul H.
Johnstone, Cathy
N. BRETT JONES & ASSOCIATES
Jones, Marti L.
Jones, Michael G.
Jones, Michael K.
JONES WALDO HOLBROOK & McDONOUGH
Judd, Phillip D.

Kanell, Leo
KELLEY & KELLEY
Kelm, Brian D.
Kesler, Susannah E.
Killpack, Steven B.
Kinateder, J. Douglas
King, Paul M.
King, Richard L.
King, Scott W.
KIPP & CHRISTIAN
KIRTON & McCONKIE
Knauer, Louise
Kofford, Quinn M.
Kozak, Mark A.
KRUSE LANDA & MAYCOCK
Kuhnhausen, Steven
Kunz, David S.
Labrum, Michael R.
LAHERTY & ASSOCIATES
Laker, Stephen A.
Lambert, Loren M.
Lang, Marsha
LaPolla, Ann E.
Larson, Bryan A.
Lauritzen, A. W.
Lawrence, C. Michael
LAWLER & ASSOCIATES
Lee, Jennifer P.
Lee, Virginia C.
Lee, Wallace A.
LEGAL AID SOCIETY
Leo, David T.
Lewis, Janet
Lilja, Scott M.
Lithgoe, W. Scott
Little, D. Scott
LITTLEFIELD & PETERSON
Long, S. Dee
Ludlow, B. Kent
LYNN J. LUND & ASSOCIATES
ROBERT C. LUNNEN & ASSOC.
Lyman, Paul
Macfarlane, Grant
Macfarlane, Kira
Macri, Robert
Maddox, David R.
Major, Lois
MALLINCKRODT & MALLINCKRODT
MALOUF LAW OFFICES
Mangum, D. Karl
MANN HADFIELD & THORNE
MANNING CURTIS BRADSHAW & BEDNAR
Marelius, Suzanne
Marquardt, Jane A.
MARQUARDT HASENYAGER & CUSTEN
MARSDEN CAHOON GOTTFREDSON & BELL
Match, Marva L
MATHESON MORTENSEN OLSEN & JEPPSON
Maughan, Mitchell D.
Mauro, Richard
Maycock, John B.
MAZURAN & HAYES
McALLISTER & CHUNTZ
McAllister, E. Craig
McCARTHY & SADLER
McCoy, John L.
McDonald, Robert M.
MARK R. McDOUGAL & ASSOC.
McDOWELL & GILLMAN
McFarlane, Grant
McGEE & BRADSHAW
McINTYRE & GOLDEN
McKAY BURTON & THURMAN
McKEACHNIE ALLRED & McCLELLAN
McKeown, Richard B.
McMURRAY McMURRAY DALE & PARKINSON
McPhail, Ross E.
Meek, Randall
Merkley, A. H.
Meservy, Jay A.
Metos, Allan M.
Mickelson, James D.
EUGENE MILLER & ASSOCIATES
Minas, Russell Y.
Mitchell, Scott B.
Mitsunaga, Jimi
MOHLMAN & YOUNG
Montgomery, Edward R.
MONTREUX FRERES LAW OFFICE
MOODY & BROWN
MOONEY & ASSOCIATES
MORGAN & HANSEN
MORGAN MEYER & RICE
MORRIS BATEMAN O'BRYANT & COMPAGNI
MORRIS & MORRIS
Morrison, Grant W.P.
Morrison Heather E.
Morrison, John K.
Mortensen, Paul W.
MORTENSEN & LUNCEFORD
Morton, Joseph L. III
MORTON & GARCIA
MOXLEY & CAMPBELL
MOYLE & DRAPER
MURPHY TOLBOE & MABEY
Murray, Duncan T.
Myers, Karlin S.
Myler, Bradford D.
NEELEMAN & STEPHENS
Neeleman, Thomas D.
Neeley, Douglas L.
Neeley, Robert L.
Nelson, Thomas E.
NEW HORIZONS SCHOLARSHIP
NEWBERRY FOUNDATION
Newman, Curtis C.
NIELSEN & DIXON
NIELSEN & SENIOR
Nielsen, Gary W.
NORRIS & ASSOCIATES
Okazaki, Kenneth A.
O'Keefe, Joseph W. Jr
OLMSTEAD & OLMSTEAD
OLSEN McIFF & CHAMBERLAIN
OLSON & HOGGAN
Olson, Mark T.
Ong, Luke H.
Orifici, Joseph F.
OSMOND LAW OFFICE
OSWALD & FEIL
Pace, Nathan D.
Packard, Dwight C.
Palacios, Frances M.
PALMER & ASSOCIATES
Palley, Mary Flynn
Park, Michael W.
PARK FIRM
Parker, David W.
PARR WADDOUPS BROWN GEE & LOVELESS
PARRY LAWRENCE & WARD
PARSONS BEHLE & LATIMER
PARSONS DAVIES KINGHORN & PETERS
Patterson, David L.
PATTERSON BARKING & THOMPSON
Pendleton, Gary
PERRETTA & ASSOCIATES
PERRY MALMBERG & PERRY
PETERSON & SIMPSON
Peters, David J.
Peterson, Bennett P.
PETTEY & BRANTLEY
Petty, Ralph C.
Phillips, Delbert R.
PLANT WALLACE CHRISTENSEN & KANELL
Pond, Delwin T.
POWELL & LANG
Preston, Sharon L.
Prince, Frederick S. Jr.
PRINCE YEATES & GELDZAHLER
Prisbey, Aaron J.
Pullan, Derek P.
PURSER, DONALD J. & ASSOCIATES
Ragsdale-Pollock, Candice
Rasmussen, Lee C.
RASMUSSEN & MINER
FAY E. REBER & ASSOCIATIONS
Reeve, Kenlon W.
Reilly, Rosalie
Rice, John K.
Rich, Bradley P.
Richman, Michael F.
RICHARDS BIRD & KUMP
RICHARDS BRANDT MILLER & NELSON
Richardson, Todd S.
RILLING & ASSOCIATES
Ritter, Arthur J.
Robbins, Bicknell C.
Roberts, Thomas P.
Robinson, A. Kurt
ROBINSON & SHEEN
ROBINSON SEILER & GLAZIER
Roe, Bryce E.
Rogan, Thomas F.
Rose, Brent D.
Rose, Robert D.

Ross, David E.
Ross, Yan M.
Rounds, Raymond B.
Rouse, Morna Bowman
Rowe, Del B.
Roybal, Frank A.
Sagers, Joanna B.
Santana, Maria C.
SCALLEY & READING
Scheffler, Hans M.
Schetselaar, Janet Zarbock
Schmid, Gayanne K.
Schmutz, Chris L.
Schneider, Mark N.
Schollian, Jerry
Schumacher, Robert J.
Schwarz, Victor D.
Schneider, Mark N.
SEAL & KENNEDY
Semmel, Jane Pett
Shaffer, Carvel R.
Shaffer, Elizabeth A.
Shapiro, Bruce H.
Shaw, Ryan C.
Shea, Patrick A.
Shields, Joann
Shy, Cindy
SILVESTER & CONROY
Simpson, Steven P.
Singleton, Eric C.
Slater, Rebecca
Smay, E. Craig
Smedley, James J.
Smith, Byron L.
Smith, David K.
Smith, D. Richard
Smith, Duane R.
Smith, Linda D.
Smith, Linda F.
Smith, Scott H.
SMITH KNOWLES & HAMILTON
STACIE SMITH & ASSOCIATES
Smith, Wendell K.
SMITH & ANDERSON
SMITH & FROERER
SMITH & GLAUSER
SNELL & WILMER
Snider, Kent E.
SNIDER & SNIDER
SNIDER PACE & RETALLICK
Snow, V. Lowry
SNOW CHRISTENSEN & MARTINEAU
SNOW NUFFER ENGSTROM DRAKE WADE & SMART
Sonnenreich, David N.
Sorge, John D.
Speciale, George H.
Spencer, Randall K.
Stamos, Thomas E.
Stark, LaVar E.
Steadman, Duncan F.
STEADMAN FAIRBANKS & SHEPLEY
Steffensen, Brian W.
Steffensen, David W.
Stephens, Jeffrey R.
STEVENSON & SMITH
Stewart, Alan R.
Stewart, Steven H.
Stith, James L.
STOEL RIVES BOLEY JONES & GREY
STOKER & SWINTON
STREICH LANG
STRONG & HANNI
STROUD, Beverly M.
SUITTER & AXLAND
SUTHERLAND & ENGLAND
Taggart, Douglas A.
Tanner, James R.
TANNER & TANNER
Tate, Ralph R.
TAYLOR ADAMS LOWE & HUTCHINSON
TAYLOR & TAYLOR
Taylor, Craig L.
Taylor, Marcus
Taylor, Margaret Sidwell
Taylor, Stephen O.
Terry, Douglas T.
TESCH THOMPSON & VANCE
Thompson, Laura K.
Thompson, Michael J.S.
Thompson, Paul
Thompson, Roger H.
THORPE NORTH & WESTERN
Tolbe, Christopher A.
Tran, Thuan V.
TRASK BRITT & ROSSA
Trease, Jory
Trueblood, D. Randall
Trujillo, Jose L.
Tsosie, Harrison D.
Tyler, Lillian Jean
Uipi, Filia H.
Uresk, Roland
UTAH ASSOCIATION OF COUNTIES
UTAH LEGAL CLINIC
UTAH LEGAL SERVICES
UTAH MEDICAL ASSOCIATION
UTAH SCHOOL EMPLOYEES ASSN.
UTAH STATE BAR
UTZINGER & ASSOCIATES
VAN COTT BAGLEY CORNWALL & McCARTHY
Van Wagoner, Mark O.
VAN WAGONER & STEVENS
Vance, Ronald N.
WADDINGHAM & PETERSON
Wagner, Ruth
WAKEFIELD & WRIGHT
Walker, Alexander H. III
Walsh, John
Wamsley, Brent K.
Ward, Darren L.
Wardle, Lynn D.
Warthen, Robert Lee
Washburn, Kimberly D.
Wasserman, Ann L.
Wayment, David
WEISS BERRETT & PETTY
Weggeland, Warren M.
Welsh, Jamie M.
Wenger, Curtis L.
West, David C.
West, David E.
West, Orson
West, Suzanne
WHATCOTT BARRETT & HAGEN
White, Joane Pappas
Wilde, Robert H.
WILDE & LISH
Wilkinson, Jeffrey W.
WILLIAMS TURNER & HOLMES
WILLIAMS & HUNT
Wilson, Benjamin T.
WILSON & WILSON
WINDER & HASLAM
Winters, Donald W.
WINWARD LAW OFFICE
Wolbach, Judith
Woodall, James H.
WOODARD & WOODARD
WOODBURY & KESLER
WORKMAN NYDEGGER & SEELEY
Wray, William B.
Young, J. Winslow
Zager, Mitchel
Zeuthen, Carolyn D.

The Utah Bar Foundation also extends appreciation to the following contributors:

Cameron M. Batjer
Andrew B. Berry
Margaret N. Billings
Thomas E. K. Cerruti
Kathryn Collard
Hon. J. Thomas Greene, Jr.
David R. Hamilton
Camille Hansen
Jackson B. Howard
S. Rex Lewis
Jane A. Marquardt
H. Reed Nielsen
Owen C. Olpin
Richard Richards
Bryce E. Roe
David E. Ross, II
Hon. A. John Ruggeri
Lawrence A. Ruzow
Sidney M.B. Sandberg
D. Richard Smith
Ronald N. Spratling
E. Keith Stott, Jr.
Daniel M. Torrence
John S. Tracy
Carolyn D. Zeuthen

Cowboys, Construction ... AND JUSTICE FOR ALL.

Attorney Cyndi Woodbury Gilbert lives and works on the Diamond "G" ranch in Toquerville, Utah, a town of approximately 800 people near Zion National Park. A generous contributor to the "AND JUSTICE FOR ALL" campaign for civil legal services, Cyndi is corporate counsel for Gilbert Development Corporation and Crusher Rental and Sales, Inc. out of Cedar City. She and her husband, Steve, also own, and she provides legal services for, two rodeo companies, Diamond "G" Rodeos, Inc. and Gilbert's Diamond "G" Rodeos, Inc.

"When I was in private practice I was able to give a lot more time to pro bono legal services. In those days, I took cases that came in off the street, whether the individual could pay or not." As demands on her time have increased, Cyndi feels the need to give financial support as well as continue to provide hands on legal assistance to those in need when she can. "As lawyers, we need to give money as well as time, and time as well as money. We have a responsibility to pay back part of what we have received"

Gilbert feels the suggested contribution of the dollar equivalent of two billable hours to "AND JUSTICE FOR ALL" is a "nice threshold. You just can't walk away from that commitment." When she saw a reasonable dollar amount requested by the Campaign, Cyndi felt it was a "no brainer."

One area of personal concern for Cindy is disability law. Her father became a quadriplegic seven years ago, heightening her awareness of the frustrations people face in dealing with Medicaid, Medicare and the complex issues facing persons with disabilities. "It's amazing the difference being a lawyer makes when you call looking for answers." This personal experience has also increased her appreciation for the work of the Disability Law Center and Utah Legal Services, both of which have offices in Cedar City. Funds raised will go to support direct client services of these agencies and Legal Aid Society, and help ensure equal access to justice by preserving and improving civil legal services for all Utahns.

The campaign is close to meeting its initial goal of $300,000 - which will trigger a matching grant of $100,000 from the Church of Jesus Christ of Latter-day Saints Foundation. An attorney's contribution to "AND JUSTICE FOR ALL" will meet all or a portion of his or her obligation under Rule 6.1 of the Utah Rules of Professional Conduct. All donations are fully tax deductible. Checks should be made payable to "AND JUSTICE FOR ALL," 225 South 200 East, Suite 100, Salt Lake City, Utah, 84111.

Selected Highlights of the 1999 General Session

BUSINESS, LABOR AND ECONOMIC DEVELOPMENT

SB 71: Occupational and Professional Licensure Review Committee (Mansell) – creates a legislative committee to review applications from groups seeking licensure and consider the need for licensure of the occupation or profession. The committee will report its findings and recommendations to the Legislature.

SB 113: Financial Services Amendments (Knudson) – removes caps for certain depository institutions on penalties for dishonored instruments and late credit payments.

SB 237: Utah Credit Union Act Amendments (Mansell) – grandfathers existing credit union members and facilities, places certain limits on credit union membership, and limits member-business loans by credit unions. The bill also addresses the formation of credit unions, mergers, and insurance requirements.

EDUCATION

HB 8: Child Literacy Programs (Allen) – requires the State Board of Education to prepare a public service campaign to educate parents on the importance of providing their children with opportunities to acquire literacy skills through a "Read to Me" program and coordinate its activities with other state and community entities engaged in similar programs. Grants will be provided to entities whose purpose is to work with schools and school districts to accomplish their literacy objectives. The Commission on National and Community Service will establish a community volunteer training program to assist each school district with implementation of the literacy program.

HB 32: Dixie College Status (Hickman) – establishes three baccalaureate programs at the college by the fall semester of year 2000. The Board of Regents will review the role and mission of Dixie College to provide additional options to offer baccalaureate programs at or through the college and consider a name change to Dixie State College.

HB 33: Enhancing Academic Achievement in Public Schools (Frandsen) – provides norm-referenced and criterion-referenced tests to measure and evaluate the effectiveness of programs in public schools. Every year the State Office of Education will require districts to administer a statewide norm-referenced test to students in grades 3, 5, 8, and 11 and criterion-referenced tests in all grade levels. The State Board of Education will also design a basic skills competency test to be given in the tenth grade. Students failing to pass all components of the test may not be awarded a basic high school diploma but may receive a certificate of completion or alternative completion diploma.

HB 109: Educator Licensing and Professional Practices Act (Allen) – establishes prerequisites for taking civil action in court for professional incompetence or poor performance of a licensed public school employee. The State Board of Education may issue and classify licenses for educators and establish criteria for receiving and retaining a license. The bill also establishes a Utah Professional Practices Advisory Commission to assist the board in matters relating to professional practices of educators and a hearing process regarding complaints against educators.

HB 144: Task Force on Learning Standards and Accountability In Public Education (Rowan) – creates a 13-member Task Force on Learning Standards and Accountability in Public Education to study student performance standards and accountability programs, measurable student performance, and adoption of a proven education system that has successfully incorporated standards, testing, and local autonomy to raise student achievement.

HB 312: State Literacy Program (Alexander) – requires the State Board of Education, school districts, and elementary schools to work toward the goal of having every student in the state's public education system reading on or above grade level by the end of the third grade.

HB 329: Alternative Middle Schools (Frandsen) – establishes an alternative middle schools program to improve the school learning climate and help to ensure safety for middle school students. In cooperation with the Serious Habitual Offender Comprehensive Action Program and other state and local agencies that provide services for youth-at-risk middle school students, middle school students may be placed in a alternative public education program established as a transitional setting to prepare them to return to their regular classrooms as responsible and productive students.

SB 90: Higher Education Scholarships (Montgomery) – provides a two-year New Century scholarship to students who complete the requirements for an associate degree by September 1 of the year they qualify to graduate from high school. The scholarship is equal in value to 75% of the tuition costs at any of the state-operated institutions of higher education offering baccalaureate programs.

HEALTH AND HUMAN SERVICES

HB 102: Public Mental Health and Substance Abuse System Reform (Stephens, N.) – increases the accountability, responsibility, and liability of county governing bodies with regard to public funds; provides contract and audit requirements; and increases the authority and responsibility of the Divisions of Mental Health and Substance Abuse over specified federal and state funds allocated for local mental health and substance abuse programs and services.

HB 227: Domestic Violence Dismissal Amendments (Bradshaw) – eliminates the ability of courts to dismiss domestic violence charges solely at the request of the victim.

HB 245: Domestic Violence Amendments (Cox, G.) – clarifies that the charge and punishment for a subsequent domestic violence offense is enhanced.

HB 284: Hospital Provider Assessment Account Amendments (Dayton) – repeals the annual hospital provider assessment of $5,500,000 used to fund the Children's Health Insurance Program upon the receipt of tobacco settlement funds after January 2000.

SB 39: Office of Public Guardian (Hillyard) – creates the Office of Public Guardian to serve as the guardian or conservator of an incapacitated person when no other person is willing and able to do so.

SB 54: Emergency Medical Services Systems Act (Blackham) – rewrites the Emergency Medical Services Systems Act and establishes state regulation of the emergency medical services market by setting maximum prices and creating exclusive geographic service areas for ground ambulance and paramedic providers.

SB 56: Office of Consumer Health Assistance (Knudson) – establishes the Office of Consumer Health Assistance to help consumers understand and navigate the health insurance system.

SB 98: Amendments - Child Abuse Database (Hillyard) – establishes a process for removing "without merit" and "unsubstantiated" reports of child abuse or neglect from the Child Welfare Database. The bill also clarifies when a juvenile perpetrator may be included on the Licensing Database, establishes legal defenses to a substantiated finding of child abuse or neglect, permits a child's hearsay statement to be admitted in accordance with existing legal standards, clarifies in the notice that is sent to an alleged perpetrator that the Division of Child and Family Service's finding of child abuse or neglect is not conclusive, requires a new opportunity to challenge a substantiated finding if the use of the Licensing Database is ever broadened, and limits division-generated information that may be used in a private divorce proceeding.

SB 240: Arbitration for Medical Providers (Waddoups) – requires medical providers to verbally explain the key provisions of an arbitration agreement to a patient and allows a patient to rescind an arbitration agreement within 30 days.

INFORMATION TECHNOLOGY

SB 188: Digital State (Hillyard) – requires state entities to allow certain services to be transacted on the Internet by July 1, 2002; modifies the Chief Information Officer's duties; and creates the Rural Telecommunications Task Force to review how the state may use certain monies, rights-of-way, and access to the Universal Service Fund to promote the development of a rural digital network.

JUDICIARY

HB 48: Approval Required for Marriage of a Minor (Saunders) – raises the minimum marriage age from 14 to 16 but allows 15-year olds to marry when juvenile court judges or commissioners determine the marriage is in the minor's best interest.

HB 64: Youth Court Act (Gladwell) – creates the Utah Youth Court Diversion Act, providing for the creation of youth courts and requiring the voluntary participation of the youth and the youth's parents or guardian.

HB 79: Stalking Amendments - Criminal (Shurtliff) – expands the definition of the crime of stalking to include a person who intentionally or knowingly violates a stalking injunction.

HB 357: Serious Habitual Offender Comprehensive Action Plan Amendments (Chard) – makes conforming amendments necessary to implement the program statewide.

SB 108: Divorce Decree Amendments (Hellewell) – provides that alimony terminates upon the death of the recipient.

LAW ENFORCEMENT AND CRIMINAL JUSTICE

HB 95: Appropriation for Utah Highway Patrol Division (Adair) – appropriates $305,400 from the General Fund for fiscal year 1999-2000 to the Utah Highway Patrol Division to fund the addition of six new field troopers.

HB 131: Private Prison Requirements (King) – creates standards and requirements for a private entity to contract with the Department of Corrections to house and provide correctional services for inmates.

HB 145: State and Local Agencies' Crime Reduction Plans (Swallow) – appropriates $150,000 to the Commission on Criminal and Juvenile Justice to provide strategic planning conferences to aid state and local criminal justice agencies with crime reduction planning and to provide incentive funding to create or implement the plans.

HB 235: Penalty for Drive-By Shootings (Dillree) – imposes an enhanced penalty of a minimum of three years in prison for the discharge of a firearm in the direction of a person, building, or vehicle with intent to intimidate or harass a person or to damage the habitable structure.

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENT

HB 108: Bonneville Shoreline Trail Program (Becker) – creates the Bonneville Shoreline Trail Program and appropriates $200,000 from the General Fund to the Division of Parks and Recreation for the development of the Bonneville Shoreline Trail.

HB 334: Mapping and Documentation of R.S. 2477 Rights-of-Way and Other Structures (Johnson, B.) – creates a committee within the Automated Geographic Reference Center to award grants to counties to inventory and map R.S. 2477 rights-of-way using global positioning system technology and to photograph roads, evidence of valid and existing rights, and other structures on federal lands. An appropriation of $450,000 from the General Fund is provided for the grants.

HCR 5: Resolution Expressing Preferred Approach to Wilderness Designation (Johnson, B.) – finds that a regional strategy is the preferred approach to wilderness designation and urges all parties to work together with the governor to develop a congressional proposal for the designation of wilderness.

OLYMPICS

HB 229: State Olympic Coordination Amendments (Tanner) – modifies the membership and duties of the Utah Sports Advisory Committee and creates the Olympic Coordination Committee to address state issues related to the 2002 Olympics Winter Games. The process of reporting and approving Olympic Organizing Committee budgets is amended. The bill protects the state and Salt Lake City from claims of parties that contract with the Olympic Organizing Committee and clarifies that the state is not responsible or liable for any obligations of the Olympic Organizing Committee.

HB 285: Disclosure of Olympic-related Transactions (Jones) – requires the Salt Lake Olympic Organizing Committee to establish procedures for public access to its records. Certain committee meetings of the Salt Lake Olympic Organizing Committee are to be open to the public with specified exceptions.

SB 122: Amendments for Dangerous Weapons (Waddoups) – provides temporary rulemaking authority from January 25, 1999 to April 1, 1999 governing weapons and explosives at Olympic Venues, allowing the Olympic Law Enforcement Commander to designate secure areas where weapons and explosives are prohibited. The bill also amends uniform laws regarding concealed weapons and allows the restriction of weapons in Houses of Worship and private residences under certain circumstances.

PUBLIC UTILITIES AND TECHNOLOGY

HB 135: Prevention of Unauthorized Telecommunications Provider Change (Allen) – prohibits "slamming," the unauthorized change of telecommunication service, by requiring that requests for change must be in writing or with the approval of a third party.

SB 15: Electric Restructuring Study (Jones) – reauthorizes the Electrical Deregulation and Customer Choice Task Force for two additional years of study.

REVENUE AND TAXATION

HB 25: Income Tax Deduction for Health Care Insurance (Styler) – increases from 60% to 100% the amount of health care insurance premiums that may be deducted from federal taxable income in determining state taxable income.

HB 268: Truth in Taxation – Judgment Levy (Short) – establishes a minimum amount for judgment levies, subjects judgment levies to the requirements of the truth in taxation process, and imposes notice and hearing requirements before an entity may impose a judgment levy.

SB 69: Manufacturing Sales and Use Tax Exemption (Stephenson) – modifies the manufacturing exemption to retain a 100% sales and use tax exemption for normal operating replacements and eliminates a reduction to 80% scheduled to take effect on July 1, 1999.

SB 178: Study on Sales and Use Tax Compact and Agreement (Valentine) – allows the Utah State Tax Commission to conduct preliminary negotiations with other states to develop uniform sales and use tax collection procedures for certain businesses and directs the Revenue and Taxation Interim Committee and the Tax Review Commission to conduct studies.

STATE AND LOCAL AFFAIRS

HB 91: Western States Presidential Primary (Short) – establishes a Western States Presidential Primary. Utah and several surrounding western states would hold a primary on the same day to be more involved in the national nominations for presidential candidates.

HB 119: Quality Growth Act of 1999 (Garn) – establishes a quality growth commission; provides duties and powers of the commission; reestablishes the LeRay McAllister Critical Land Conservation Fund and provides for its administration; expresses legislative intent on quality growth areas; allows part of future increases in the private activity bond volume cap to be used for certain purposes; provides funding sources for the LeRay McAllister fund; provides for the establishment of a state building energy efficiency program, with some of the energy savings funds to go to the LeRay McAllister fund; repeals an existing energy efficiency program; provides exceptions to certain budgetary procedures in certain cases; and appropriates $250,000 from the general fund for technical assistance for local entities.

HB 139: Public Attorneys Act (Curtis) – establishes the governor or county commission (or other governing county body) as the authority in charge of civil litigation policy for the state or county respectively.

HB 192: Native American Remains and Historic Artifacts (Anderson) – amends the crime of abuse or desecration of a dead human body to clarify its application to ancient human remains and increases penalties for antiquities crimes.

HB 290: Budget Cycle of Local Governments (Jones) – allows cities and counties to budget on a biennial basis and requires cities and counties that adopt a biennial budget to identify separately the taxes expected to be collected during each year of the budget cycle.

HR 3: Lobbying Practices Resolution (Koehn)

SR 1: Senate Rules Resolution - Rules Committee and Lobbying Practices (Poulton) – These bills outline a code of ethics for lobbyist conduct and provide a process to initiate and handle complaints against lobbyists.

SB 43: Open Space Near State Prison (Evans, R.) – defines critical land; requires the critical land to be preserved as open land; restricts the transfer of an interest in the critical land with limited exceptions; allows the creation of additional wetlands on the critical land; allows the Department of Corrections access to a certain part of the land; and requires state agencies to cooperate in carrying out legislative intent.

SJR 5: Resolution Amending State and Local Government Provisions (Nielson) – repeals duplicative language prohibiting a property qualification to vote or hold office; modifies general and special election provisions; expands the prohibition against lending public credit to a private individual or corporation; provides for powers of counties, cities, towns, and other political subdivisions of the state; modifies provisions for moving a county seat; modifies special service district provisions; expands prohibition against imposing taxes for local purposes; modifies debt provisions; and modifies highway purposes for which revenue from highway user and motor fuel taxes are to be used.

TOBACCO SETTLEMENT

HB 132: Tobacco Manufacturers Responsibility Act (Arent) – enacts the model tobacco statute to protect the state against a potential reduction in tobacco settlement monies as a result of a decline in the market share of the settling tobacco manufacturers.

HB 375: Tobacco Coordination Provisions (Arent) – as a companion bill to HB 132, HB 375 protects the state's allocation of monies under the national tobacco settlement.

SB 173: Use of Tobacco Settlement Monies (Beattie) – creates a restricted account within the General Fund for tobacco settlement funds.

SB 216: Minimum Pack Size for Tobacco Products (Howell) – prohibits the sale of cigarettes in a package that contains less than 20 cigarettes and roll-your-own cigarettes in a package that contains less than 0.6 ounces of tobacco.

SCR 2: Resolution on Use of Tobacco Settlement Proceeds (Nielson) – urges the federal government not to interfere with states' $206 billion deal to settle lawsuits against major tobacco companies. Utah's portion is $836 million, which is expected to be collected in yearly installments of about $30 million.

TRANSPORTATION

HB 10: Youth Driver Provisions (Bush) – requires a parent or guardian to certify that a minor driver applicant has completed at least 30 hours of driving, 10 hours of which must be at

night. A driver under the age of 17 may not operate a motor vehicle between the hours of 12:00 a.m. and 5:00 a.m. unless the driver is accompanied by a licensed driver at least 21 years old or the driving is for employment, religion-sponsored activities, school activities, agriculture, or emergencies. The period of practice the permit is valid is extended from 90 days to six months.

HB12: Driver Education Requirements (Dillree) – requires at least six hours of driving a motor vehicle for each student in public driver education. Up to three hours may be substituted for range driving and driving simulation. Range driving may be substituted at the rate of two hours of range driving for each hour driving. A maximum of one hour may be substituted for four hours of driving simulation. Driving on the interstate and other multi-lane highways is also required, if feasible.

HB 19: Penalties for Driving Under the Influence (Stephens, N.) – allows a court to require a person convicted of DUI, as an alternative to jail, to participate in home confinement through the use of electronic monitoring that alerts the appropriate agency of the defendant's location. The defendant is required to pay the costs of the electronic monitoring.

HB 278: Driver License Fees (P. Buckner) – increases driver license fees by $5 and increases driver license extension fees and the fee for an identification card by $3.

SB 66: Statewide Highway Criteria (Steele) – establishes statutory criteria for state highways. Highways transferred to local governments between general sessions of the Legislature must be agreed upon by the highway authorities involved. Funding recommendations of each highway authority and a cost estimate from the Office of the Legislative Fiscal Analyst must accompany the transfer and must be submitted to the Transportation Interim Committee. The bill requires that if outdoor advertising is required to be moved because of a reconstruction project on a highway that is a state highway as of July 1, 1999, the owner of the outdoor advertising must be given the option to relocate to another near-by location or to another mutually agreed upon location. The entity causing the relocation is required to pay the cost of the relocation or pay just compensation.

SB 131: Appropriation for Aeronautical Operations of UDOT (Hillyard) – appropriates $500,000 from the General Fund to Aeronautical Operations of the Utah Department of Transportation.

SB 132: Aviation Fuel Tax Amendments (Hillyard) – increases aviation fuel tax on fuel used by airplanes other than federally certificated air carriers over a three-year period and allocates the increased tax revenue to Aeronautical Operations of the Utah Department of Transportation.

SB 138: Design Build Options (Valentine) – extends authority to enter design-build transportation project contracts of at least $50 million to a county of the first or second class, a municipality of the first class, a public transit district with more than 200,000 people, and a public airport authority.

SB 139: Uniform Fee and Registration Fee on Airplanes (Hillyard) – reduces the uniform fee on airplanes required to be registered with the state over a three-year period and increases the registration fee on jet aircraft. Revenue from registration fees on aircraft is allocated to Aeronautical Operations of the Utah Department of Transportation.

SB 150: Utilities in Highway Rights-of-way (Knudson) – requires the Department of Transportation and utility companies to coordinate on utilities within state highway rights-of-way. The department must notify affected utility companies when relocation of utilities is likely to be needed because of a highway reconstruction project. The department is allowed to make rules and adopt a schedule of fees for permits related to utility relocations on state highway rights-of-way. The Department of Transportation is authorized to enter into agreements that allow telecommunication facility providers longitudinal access to the right-of-way of a highway on the interstate system for telecommunications facilities. The department is required to charge compensation for the longitudinal access according to specified requirements for the compensation. Beginning October 1, 1999 the department is required to make rules to establish a schedule of compensation rates. The department is prohibited from paying any cost of relocation of a telecommunication facility granted longitudinal access on a highway on the interstate system. The Utilities in Highway Rights-of-Way Task Force is created; the task force must recommend a schedule of rates of compensation for longitudinal access on a right-of-way on the interstate system before September 1, 1999. The task force must also study relocation of utilities in highway rights-of-way and present a final report on that issue before November 30, 1999.

This summary was prepared by the Office of Legislative Research and General Counsel. For more information see http://www.le.state.ut.us.

CLE Calendar

ALI-ABA SATELLITE SEMINAR: HOW TO DRAFT, ENFORCE AND NEGOTIATE TRADEMARK, COPYRIGHTS, AND SOFTWARE LICENSING AGREEMENTS

Date: Thursday, May 6, 1999
Time: 9:00 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00 per program
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 6.0 HOURS

FAMILY LAW SECTION ANNUAL PRACTICE SEMINAR

Date: Friday, May 7, 1999
Time: 8:30 a.m. to 4:30 p.m. **(NOTE TIME CHANGE)**
Place: Utah Law & Justice Center
Fee: $115.00 for members of Family Law Section; $125.00 for non-members
CLE Credit: 7.5 HOURS includes ONE HOUR IN ETHICS
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

ALI-ABA SATELLITE SEMINAR: ANNUAL SPRING ESTATE PLANNING PRACTICE UPDATE

Date: Thursday, May 13, 1999
Time: 10:00 a.m. to 1:15 p.m.
Place: Utah Law & Justice Center
Fee: $155.00 per program
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 3.0 HOURS

CRIME AND PUNISHMENT: ASSESSING THE STATUS QUO & WHERE WE GO

Date: Thursday, May 13 & Friday, May 14, 1999
Time: 9:00 a.m. to 5:00 p.m. on the 13th, 8:00 a.m. to 6:00 p.m. on the 14th
Place: Westminster College, Gore Auditorium (for parking information access our website at www.utahbar.org, Bar Calendar, May 14th.
Fee: $200.00 Utah State Bar Members; $150.00 non lawyers/government lawyers; $100.00 students
CLE Credit: 15.0 HOURS
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

Visit our website www.utahbar.org/calendar/ **for updated information.**

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. ***Registration is not considered final until payment is received.***

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.

ALI-ABA SATELLITE SEMINAR: ESTATE PLANNING FOR DISTRIBUTIONS FROM QUALIFIED PLANS AND IRAS

Date: Thursday, May 20, 1999
Time: 10:00 a.m. to 1:15 p.m.
Place: Utah Law & Justice Center
Fee: $155.00 per program
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 3.0 HOURS

LAW AND ECONOMICS SOCIETY: THE LAW AND ECONOMICS OF SPORTS WITH ROBERT TOLLISON, PH.D., DEPARTMENT OF ECONOMICS, UNIVERSITY OF MISSISSIPPI

Date: Thursday, May 20, 1999
Time: 12:00 p.m.
Place: Utah Law & Justice Center
Fee: $35.00 includes lunch
CLE Credit: 1.0 HOUR
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

LABOR AND EMPLOYMENT SECTION FIRST ANNUAL PRACTICE SEMINAR

Date: Tuesday, May 25, 1999
Time: 8:00 a.m. to 12:30 p.m. (registration begins at 7:30 a.m.)
Place: Utah Law & Justice Center
Fee: $45.00 for members of Labor and Employment Section; $60.00 for non-members
CLE Credit: 4.0 HOURS
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

ALI-ABA SATELLITE SEMINAR: ACQUIRING PRIVATELY-HELD COMPANY: NEGOTIATING THE KEY PROVISIONS OF THE ACQUISITION AGREEMENT

Date: Tuesday, May 25, 1999
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $165.00 per program
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 4.0 HOURS

ALI-ABA SATELLITE SEMINAR: 1999 HEALTH LAW UPDATE

Date: Thursday, May 27, 1999
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $165.00 per program
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 4.0 HOURS

NLCLE WORKSHOP AND PRIMER: CRIMINAL LAW

Date: Thursday, May 27, 1999
Time: 5:30 p.m. to 8:30 p.m. (sign-in and door registration begins at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: $30.00 for members of the Young Lawyers Division; $60.00 for nonmembers
CLE Credit: 3.0 HOURS CLE/NLCLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

ALI-ABA SATELLITE SEMINAR: ERISA FIDUCIARY RESPONSIBILITY ISSUES UPDATE

Date: Thursday, June 3, 1999
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00 per program
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 4.0 HOURS

LAW AND ECONOMICS SOCIETY: MERGERS IN HIGH TECH INDUSTRIES WITH DUNCAN CAMERON, ECONOMIST, PRIVATE PRACTICE LECG, LOS ANGELES

Date: Tuesday, June 8, 1999
Time: 12:00 p.m.
Place: Utah Law & Justice Center
Fee: $35.00 includes lunch
CLE Credit: 1.0 HOUR
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

NEW LAWYER MANDATORY SEMINAR

Date: Friday, June 11, 1999
Time: 8:00 a.m. to 12:00 p.m.
Place: Westminster College, Gore Auditorium
Fee: $40.00
CLE Credit: *Fulfills New Lawyer Ethics Requirements*
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111. *All New Lawyers in Utah are required to attend one Mandatory Seminar during their first compliance period.*

ALI-ABA SATELLITE SEMINAR: LITIGATION CASE MANAGEMENT FOR LEGAL ASSISTANTS

Date: Thursday, June 17, 1999
Time: 9:00 a.m. to 3:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00
(To register, please call 1-800-CLE-NEWS)
CLE Credit: 5.0 HOURS

NEW SEMINAR SPECTRUM '99: SEEING INSIDE THE SEXUAL OFFENDER

Date: Wednesday, June 23 through Friday, June 25, 1999
Time: 9:00 a.m. to 4:30 p.m. daily
Place: Utah Law & Justice Center
Fee: $375.00 total or $180.00 per day
CLE Credit: 7.0 HOURS per day

NLCLE WORKSHOP AND PRIMER: TAX LAW

Date: Thursday, June 24, 1999
Time: 5:30 p.m. to 8:30 p.m. (sign-in and door registration begins at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: $30.00 for members of the Young Lawyers Division; $60.00 for nonmembers
CLE Credit: 3.0 HOURS CLE/NLCLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

Utah State Bar
ANNUAL MEETING
DATES: June 30 - July 3, 1999
PLACE: Sun Valley, Idaho

Utah State Bar
ANNUAL SECURITIES LAW SEMINAR
DATES: August 20 - 21, 1999
PLACE: Snow King Lodge, • Jackson Hole, Wyoming

NLCLE WORKSHOP AND PRIMER: SECURITIES LAW

Date: Thursday, August 26, 1999
Time: 5:30 p.m. to 8:30 p.m. (sign-in and door registration beings at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: $30.00 for members of the Young Lawyers Division; $60.00 for nonmembers
CLE Credit: 3.0 HOURS CLE/NLCLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

DEFENDING A DUI IN UTAH

Date: Wednesday, September 15, 1999
Time: 1:00 p.m. to 5:00 p.m.
Place: Utah Law & Justice Center
Fee: $60.00 for Utah State Bar members
CLE Credit: 4.0 HOURS CLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

ALI-ABA: "DRAFTING CORPORATE AGREEMENTS: CONVERTING THE DEAL INTO AN EFFECTIVE CONTRACT

Date: Thursday, September 16, 1999
Time: 9:00 p.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 6.0 HOURS CLE

NLCLE WORKSHOP AND PRIMER: FAMILY LAW

Date: Thursday, September 23, 1999
Time: 5:30 p.m. to 8:30 p.m. (sign-in and door registration begins at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: $30.00 for members of the Young Lawyers Division; $60.00 for nonmembers
CLE Credit: 3.0 HOURS CLE/NLCLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

NLCLE WORKSHOP AND PRIMER: LAW OFFICE MANAGEMENT

Date: Thursday, October 21, 1999
Time: 5:30 p.m. to 8:30 p.m. (sign-in and door registration begins at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: $30.00 for members of the Young Lawyers Division; $60.00 for nonmembers
CLE Credit: 3.0 HOURS CLE/NLCLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

ETHICS OPINION DIALOGUE: AN ACTUAL APPLICATION TO ETHICS OPINIONS

Date: Friday, October 29, 1999
Time: 9:00 a.m. to 12:00 p.m.
Place: Utah Law & Justice Center
Fee: $40.00
CLE Credit: 3.0 HOURS CLE/NLCLE ETHICS

NEW LAWYER MANDATORY SEMINAR

Date: Friday, November 5, 1999
Time: 8:00 a.m. to 12:00 p.m.
Place: TBA
Fee: $40.00
CLE Credit: *Fulfills New Lawyer Ethics Requirements*
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111. *All New Lawyers in Utah are required to attend one Mandatory Seminar during their first compliance period.*

LAW & TECHNOLOGY UPDATE: THE LATEST IN TECHNOLOGY AND SOFTWARE DEMONSTRATIONS

Date: Tuesday, November 9, 1999
Time: 8:30 a.m. to 12:00 p.m.
Place: Utah Law & Justice Center
Fee: $60.00
CLE Credit: 4.0 HOURS CLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

NLCLE WORKSHOP AND PRIMER: LITIGATION

Date: Thursday, December 16, 1999
Time: 5:30 p.m. to 8:30 p.m. (sign-in and door registration begins at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: $30.00 for members of the Young Lawyers Division; $60.00 for nonmembers
CLE Credit: 3.0 HOURS CLE/NLCLE
To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

Classified Ads

RATES & DEADLINES

Bar Member Rates: 1-50 words – $35.00 / 51-100 words – $45.00. 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 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

Utah Code Annotated, current; Lawyer's Desk Book, 10th edition; Henson: Secured Transactions; Corbin: Contracts; Clark: Domestic Relations; Lownders et al.: Estate and Gift Taxes; McCormick: Evidence; White et al.z: Uniform Commercial Code; Goodrich et al: Conflicts; Prosser: Torts. Telephone (801) 364-9573

LAW LIBRARY LIQUIDATION –BEST OFFER–

Am Jur 2nd- Complete & Current, Utah Reports- Volumes 1-78, Pac Rep2-Volumes 1-809, Utah Pac Rep2- Volumes 810-862, Complete Utah Law Review-Volumes 1-1998 Pacific Digest. Send all inquiries to Christine Critchley, Confidential Box #64 Utah State Bar, 645 South 200 East, S.L.C., Utah, 84111.

POSITIONS AVAILABLE

Director of Government Affairs – Duties-Research and analyze legislative and regulatory trends and proposals that affect the real estate industry and private property rights during the general and interim legislative sessions. Communicate legislative and regulatory developments to the association's Legislative Committee and Board of Directors for appropriate action. Write association positions, talking points, and articles. Assist local association staff and volunteers with local government relations. Teach members about the legislative process and the impact of legislation on the real estate industry. Some out-of-state and intrastate travel required.
Qualifications- Degree in Law, Political Science, or equivalent. Ability to explain legislation to the layperson. Extensive knowledge of the real estate industry and association policies. Strong written and oral communication skills. Effective networking and motivational skills. Ability to organize time and information. Advanced working knowledge of Microsoft word, electronic mail and the Internet. **Send application to:** Pat Iannone, Executive Vice President, Utah Association of REALTORS®, 5710 South Green Street, Murray, Utah, 84123

INTERNATIONAL LEGAL REFORM- The American Bar Association Central and East European Law Initiative (CEELI) seeks experienced attorneys to work on criminal, environmental, commercial and or civil law reform projects in Central and Eastern Europe and the former Soviet Union. Support includes all housing, transportation, and living expenses. Call 1-800-982-3354 for an application.

THE UTAH HANG GLIDING ASSOCIATION, a non-profit organization active for over 25 years, is seeking pro bono assistance of an experienced, land-use attorney to help us preserve access to Utah's world-famous hang-gliding and paragliding sites. Please call Steve Mayer, UHGA Vice-President, at (801) 553-1834.

Salt Lake Law firm seeking a full time associate attorney with one to two years of experience in litigation, preferably commercial litigation. Send resumé and salary requirements to Christine Critchley, Confidential Box #65, Utah State Bar, 645 South 200 East, S.L.C., Utah 84111

Salt Lake City Law Firm specializing in insurance defense, personal injury, workers compensation and employment law seeks attorney for full time associate position. Applicants should have 3-6 years experience in litigation and case management with strong research background. Position involves significant client contact; excellent written and verbal communication skills are required. Please send resume and references to: Stacey Dunn, 230 South 500 East, Suite 460, S.L.C., Utah, 84102 or fax (801) 521-9998.

Prominent Salt Lake Law firm seeking associate with 3-5 years litigation experience. Firm has broad civil litigation practice. Send resumé and writing sample to Christine Critchley, Confidential Box # 66, Utah State Bar, 645 South 200 East, S.L.C., Utah 84111.

Small Ogden firm has opening for one full time and one part time lawyer. Send resumé, writing sample and salary requirements to Christine Critchley, Confidential Box #68, 645 South 200 East, Salt Lake City, Utah 84111.

DAVIS COUNTY FIRM with general practice seeks associate with 5 years experience in Family Law, Collections, Real Estate, Adoptions and Personal Injury cases. All inquiries will be treated as confidential. FAX resume and Law School Transcript to (801) 298-8950. For further information call 801-298-7200.

BUSINESS ATTORNEY – LANDERHOLM, MEMOVICH, LANSVERK & WHITESIDES, P.S., a 23-attorney firm in Vancouver, Washington, seeks a business law attorney for an associate position in the firm's fast growing business practice. Applicants must have a minimum of two years of experience in the areas of general corporate and business matters, with emphasis on business organizations (corporations, limited liability companies and partnerships), business transactions, and commercial matters. Experience in federal and state tax matters and research is preferred, but not required. Must have an ability to manage rapid practice growth in a thriving business practice, possess a superior academic background and excellent writing and interpersonal skills. Please send resume, law school transcript and a short writing sample to Executive Director, LANDERHOLM, MEMOVIC, LANSVERK & WHITESIDES, P.S., P.O. Box 1086, Vancouver, Washington 98666.

TAX ATTORNEY – LANDERHOLM, MEMOVIC, LANSVERK & WHITESIDES, P.S., a 23-attorney firm in Vancouver, Washington, seeks a business tax attorney with an L.L.M. in taxation for an associate position in the firm's fast growing business practice. Applicants must have a minimum of two years of experience. The attorney's practice will focus on the formation, capitalization and sale of, and tax planning for, closely held corporations, partnerships and limited liability companies and unique state and federal tax issues involving the structuring of cross-border (Washington-Oregon-California) mergers and taxable and tax-free acquisitions. This position involves frequent client contact and responsibility for negotiations and appeals with state departments of revenue and the Internal Revenue Service. Must have strong academic credentials and an ability to manage rapid practice growth in a thriving business practice. Please send resume, law school transcript and a short writing sample to Executive Director, LANDERHOLM, MEMOVIC, LANSVERK & WHITESIDES, P.S., P.O. Box 1086, Vancouver, Washington 98666.

POSITIONS SOUGHT

CONTRACT WORK; Ease your workload and let us help you. Small firm with civil and criminal experience is available for contract work at reasonable rates. Services include research, document drafting, appeals, and court appearances. Overson & Bray, L.L.C., 1366 Murray-Holladay Road, Salt Lake City, Utah 84117 (801) 277-0325

Solo practitioner looking to buy or take over available law practice. Relocation not intended but is possible. Alternative-assisting excess general practice caseload practitioner. Call 533-8020.

ATTORNEY: "Former Assistant Bar Counsel." Experienced in attorney discipline matters. Familiar with the disciplinary proceedings of the Utah State Bar. Reasonable rates. Contact Nayer H. Honarvar, 39 East Exchange Place, Ste. 100, Salt Lake City, Utah, 84111 or CALL (801)994-2675.

LEGAL ADMINISTRATOR. Increase Accounts Receivable; Improve Staff Morale; Streamline and Organize Staff Practice Routines. 20+ Years Experience. Send all inquiries to Christine Critchley, Confidential Box #67, Utah State Bar, 645 South 200 East, Salt Lake City, Utah, 84111.

OFFICE SPACE / SHARING

Restored Mansion 174 East South Temple: available for lease two offices (272 square feet and 160 square feet) with conference room, reception, work room, (total 414 square feet), lavatory, enclosed deck/garden, kitchen, storage, off-street parking. Fireplaces, hardwood floors, stained glass, antique woodwork and appointments. Call 539-8515.

EXCHANGE PLACE HISTORICAL BLDG., LOCATED HALF A BLOCK FROM NEW COURTS COMPLEX, HAS OFFICE SPACE AVAILABLE WITH LARGE SECRETARIAL AREA. RECEPTIONIST, CONFERENCE ROOM, FAX, COPIER, LARGE LAW LIBRARY, PARKING, KITCHEN FOR $1,000.00, ALSO 844 SQ. FT. SUITE INCLUDES SMALL CONFERENCE ROOM AND RECEPTION AREA FOR $975.00 MONTH AND 350 SQ. FT. SPACE FOR $380.00. CONTACT JOANNE BROOKS @ (801) 534-0909.

SPACIOUS OFFICE AVAILABLE- Attorney office sharing with conference room, receptionist, good off-street parking, copier and fax. Close to courts and law library. Call (801) 355-5300.

LARGE CORNER OFFICE available. Small downtown estate planning firm located in classic landmark building. Excellent decor, including wood floors and large windows. Digital phones, fax, copier, small and large conference rooms and receptionist available. Also, free exercise facilities with showers. Prefer attorney or CPA. Call (801) 366-9966

JUDGE BUILDING. Walk to State and Federal Courts. Share office with one established attorney. $398/month. Private office, reception area, copier, fax, receptionist/ secretary. Call Janet or Cortney at 575-6653.

"Class A office sharing space available for one attorney with established small firm. Excellent downtown location, two blocks from courthouse. Complete facilities, including conference room, reception area, library, telephone, fax, copier. Excellent opportunity. Please call Larry R. Keller or A. Howard Lundgren at 532-7282."

Deluxe office space for one attorney. Share with three other attorneys. Includes large private office, reception area, parking immediately adjacent to building, computer networking capability, law on disc, fax, copier, telephone system. Easy client access in the heart of Holladay. Must see to appreciate. 4212 Highland Dr. Call 272-1013.

Office space in Ogden. Will consider rent for legal services. Contact Heather at (801) 621-6119.

SERVICES

LUMP SUMS CASH PAID For Remaining Payments on Seller-Financed Real Estate Notes & Contracts, Business Notes, Structured Settlements, Annuities, Inheritances In Probate, Lottery Winnings. Since 1992. www.cascadefunding.com. **CASCADE FUNDING, INC. 1 (800) 476-9644.**

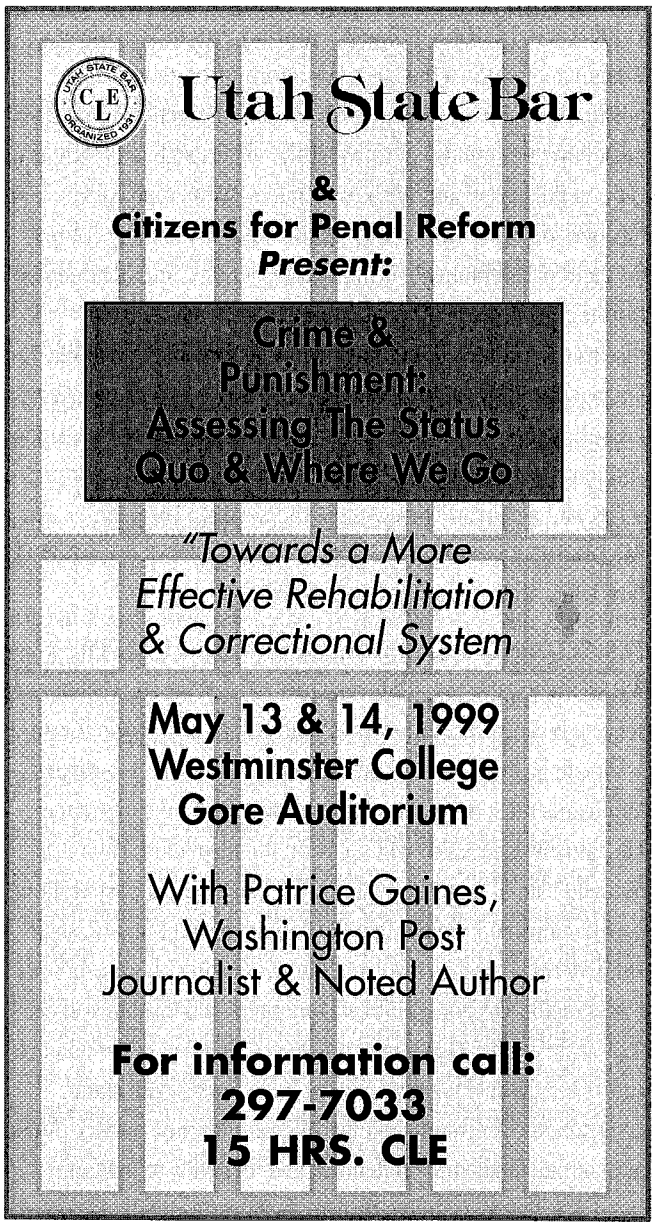
APPRAISALS: CERTIFIED PERSONAL. PROPERTY APPRAISALS/COURT/RECOGNIZED - Estate Work, Divorce, Antiques, Insurance, Fine Furniture, Bankruptcy, Expert Witness, National Instructor for the Certified Appraisers Guild of America. Twenty years experience. Immediate service available, Robert Olson C.A.G.A. (801)580-0418.

SEXUAL ABUSE-CHILD ABUSE/DEFENSE: IMPEACH child's out-of-court testimony. **IDENTIFY** sources of error with interviewer questioning, bias, props, and procedures. **ASSESS** statement reliability and contamination. **DETERMINE** origin of allegations and alternative hypotheses. Bruce Giffen, M.Sc. Evidence Specialist. American Psychology-Law Society. (801) 485-4011.

Swimming Pools/Spas- Former Industry Expert Witness for California Contractor's License Board, licensed California contractor, and licensed Utah attorney now available as expert witness, or to assist with case preparation, co-counsel or available as referral. Pete Stevens (801) 262-1279

FIDUCIARY LITIGATION: Consultant and expert witness. Charles M. Bennett, 77 W. 200 South, Suite 400, Salt Lake City, Utah, 84101; (801) 578-3525. Fellow and Regent, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

BACKGROUND VERIFICATIONS – Zaeplex, Inc. Background Checks & Public Record Retrieval Nationwide. Call 1(800) Background or (800) 222-5476.



Get To Know Your Bar Staff

JULIET ALDER

Juliet Alder was raised in Ogden, Utah, and graduated from Ogden High in 1993. In 1998 she graduated from B.Y.U. with a Bachelors degree in English and a business minor.

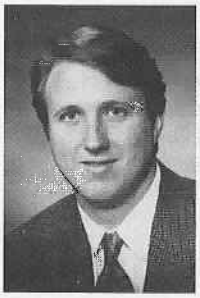
A self confessed "jock" who loves skiing and roller blading, Juliet's first love is tennis. Playing in high school she competed successfully at a national level. In doing so she also earned herself an opportunity to play in Japan, as well as a full scholarship playing tennis for B.Y.U. (Juliet also claims to have been offered a scholastic scholarship, but no one from B.Y.U. would return our calls).

Besides her trip to Japan, Juliet has traveled extensively throughout the U.S. and spent five weeks touring Europe last year. She would like to do more traveling in the future, but has yet to figure out a way to work it into her job description.

As Law & Justice Center Coordinator, Juliet is responsible for the myriad of details involved in both the management of the building's operation, as well as the planning, executing, and clean up of all events held at the Center.

Juliet's position is one in which, if everything goes as planned, and with her in charge it always does, her presence goes unnoticed. Tables and chairs magically appear and disappear as if on cue. Food is served and cleared with no hint that there are three other events taking place in the building at the same time.

So the next time you call the Bar to schedule a meeting, and Juliet confirms your reservation, you now have a person to put with that relentlessly cheerful voice.



CHARLES STEWART

Since January, Charles has been working at the Bar as the Pro Bono Coordinator. He acts as a liaison between the general public and legal service organizations as well as the private Bar. Much of his time is spent reviewing cases for issue, merit, and income eligibility. In addition, he focuses on building the pro bono program by working with law firms, judges, and the courts to develop more pro bono resources within the private Bar.

Charles came to the Bar from Utah Legal Services where he worked as a paralegal. He served as a public benefit advocate and represented clients at administrative hearings such as social security. At the Bar, Charles enjoys continuing his service with public interest law, but now with larger numbers.

Born and raised in Huntington Beach, California, Charles expressed interest in the law since childhood. His first job was a runner with Strong & Hanni where he later became a paralegal after earning his certificate from Salt Lake Community College. He also attends the University of Utah where he is pursuing a bachelors degree in psychology.

In his spare time, Charles likes to travel with his wife Kim, who is a flight attendant. Together they are able to travel frequently to their favorite places – Hawaii and Europe. His other interests include sailing, cars, and writing.

DIRECTORY OF BAR COMMISSIONERS AND STAFF

BAR COMMISSIONERS

James C. Jenkins
President
Tel: 752-1551

Charles R. Brown
President-Elect
Tel: 532-3000

John Adams
Tel: 323-3301

Theresa Brewer Cook
Tel: 352-1384

Scott Daniels
Tel: 583-0801

Sharon Donovan
Tel: 521-6383

Calvin Gould
Tel: 544-9308

Randy S. Kester
Tel: 489-3294

Debra J. Moore
Tel: 366-0132

David O. Nuffer
Tel: 674-0400

Ray O. Westergard
Public Member
Tel: 531-6888

Francis M. Wikstrom
Tel: 532-1234

D. Frank Wilkins
Tel: 328-2200

***Ex Officio**
(non-voting commissioner)

***Brian W. Jones**
President, Young Lawyers Division
Tel: 594-8177

***H. Reese Hansen**
Dean, Law School,
Brigham Young University
Tel: 378-6383

***Marji Hanson**
Women Lawyers Representative
Tel: 378-4276

***Sanda Kirkham**
Legal Assistant Division Representative
Tel: 263-2900

***James B. Lee**
ABA Delegate
Tel: 532-1234

***Scott M. Matheson, Jr.**
Dean, Law School,
University of Utah
Tel: 581-6571

***Charlotte L. Miller**
Immediate Past President
Tel: 269-1532

***Paul T. Moxley**
State Bar Delegate to ABA
Tel: 363-7500

***Narda Beas-Nordell**
Minority Bar Association
Tel: 495-7446

***Steven M. Kaufman**
Representative to Judicial Council
Tel: 394-5526

UTAH STATE BAR STAFF

Tel: 531-9077 • Fax: 531-0660
E-mail: info@utahbar.org

Executive Offices
John C. Baldwin
Executive Director
Tel: 297-7028

Richard M. Dibblee
Assistant Executive Director
Tel: 297-7029

Maud C. Thurman
Executive Secretary
Tel: 297-7031

Katherine A. Fox
General Counsel
Tel: 297-7047

Access to Justice/Pro Bono Department
Toby J. Brown
Administrator
Tel: 297-7027

Charles R.B. Stewart
Pro Bono Coordinator
Tel: 297-7049

Continuing Legal Education Department
Toby J. Brown
Administrator
Tel: 297-7027

Connie Howard
CLE Coordinator
Tel: 297-7033

Marie Gochnour
Section Support
Tel: 297-7032

Technology Services
Toby J. Brown
Administrator
Tel: 297-7027

Lincoln Mead
Manager Information Systems
Tel: 297-7050

Summer Shumway
Web Site Coordinator
Tel: 297-7051

Admissions Department
Darla C. Murphy
Admissions Administrator
Tel: 297-7026

Sadie Eyre
Admissions Assistant
Tel: 297-7025

Bar Programs & Services
Christine Critchley
Bar Programs Coordinator
Tel: 297-7022

Monica N. Jergensen
Conventions
Tel: 297-7024

Finance Department
J. Arnold Birrell
Financial Administrator
Tel: 297-7020

Joyce N. Seeley
Financial Assistant
Tel: 297-7021

Lawyer Referral Services
Diané J. Clark
LRS Administrator
Tel: 531-9075

Law & Justice Center
Juliet Alder
Law & Justice Center Coordinator
Tel: 297-7030

Consumer Assistance Coordinator
Jeannine Timothy
Tel: 297-7056

Lawyers Helping Laywers
Tel: 297-7029

Receptionist
Marie Van Roosendaal (Mon., Tues. & Thurs.)
Kim L. Williams (Wed. & Fri.)
Tel: 531-9077

Other Telephone Numbers & E-mail Addresses Not Listed Above

Bar Information Line: 297-7055
Web Site: www.utahbar.org

Mandatory CLE Board:
Sydnie W. Kuhre
MCLE Administrator
297-7035

Member Benefits: 297-7025
E-mail: ben@utahbar.org

Office of Professional Conduct
Tel: 531-9110 • Fax: 531-9912
E-mail: oad@utahbar.org

Billy L. Walker
Senior Counsel
Tel: 297-7039

Carol A. Stewart
Deputy Counsel
Tel: 297-7038

Charles A. Gruber
Assistant Counsel
Tel: 297-7040

David A. Peña
Assistant Counsel
Tel: 297-7053

Kate A. Toomey
Assistant Counsel
Tel: 297-7041

Katie Bowers
Receptionist
Tel: 297-7045

Gina Guymon
Secretary
Tel: 297-7054

Dana M. Kapinos
Secretary
Tel: 297-7044

Shelly A. Sisam
Paralegal
Tel: 297-7037

CERTIFICATE OF COMPLIANCE

For Years 19_____ and 19_____

Utah State Board of
Continuing Legal Education
Utah Law and Justice Center
645 South 200 East
Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 • FAX (801) 531-0660

Name:_____ Utah State Bar Number:_____

Address:_____ Telephone Number:_____

Professional Responsibility and Ethics — **Required: a minimum of three (3) hours**

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

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

Continuing Legal Education — **Required: a minimum of twenty-four (24) hours**

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

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

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

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

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

**EXPLANATION OF TYPE OF ACTIVITY

A. Audio/Video Tapes. No more than 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.

The Best Solution for All Law Firms

Whatever the size of your firm, you want the professional liability insurance that meets your needs, at the best price.

Let us make your job easier: choose the experience, quality and financial strength of Westport. Our innovative coverage options and responsive, proven claim handling are combined with competitive pricing:

- **Coverage options to fit your need:** Customized Practice Coverage℠ offers Professional Liability Insurance plus options for Employee Dishonesty, Employment Practices, Nonprofit Director & Officer and Public Officials' Liability coverage at low, risk-related pricing.
- **Stability:** For 25 years, firms have relied on our staff.
- **Experience to lean on:** Over 25,000 small, mid-size and large firms trust us to insure and defend them, because we have the industry's best claim management.
- **Your best choice:** More bar associations endorse us than any other insurance company.
- **Financial strength:** A.M. Best A++ (XV) and Standard & Poor's AAA – the highest ratings.
- **Increase your purchasing power:** Our Business Services program provides insured law firms with the same high-quality goods and services we use, at price levels normally available to only the largest corporate customers – office furniture, equipment, computers and supplies, business records management, storage and retrieval, and more.

Endorsed by the Utah State Bar

Utah State Bar

Westport

Westport Insurance Corporation
www.WestportLawyer.com

Program Administrator:

CONTINENTAL INSURANCE AGENCY, L.L.C.

1-801-466-0805

Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111

MR. WILLIAM D. HOLYOAK
PARSONS BEHLE & LATIMER
201 SOUTH MAIN STREET, SUITE 1800
P. O. BOX 45898
SALT LAKE CITY UT 84145-0898

BULK RATE
U.S. POSTAGE
PAID
SALT LAKE CITY, UT
PERMIT NO. 844