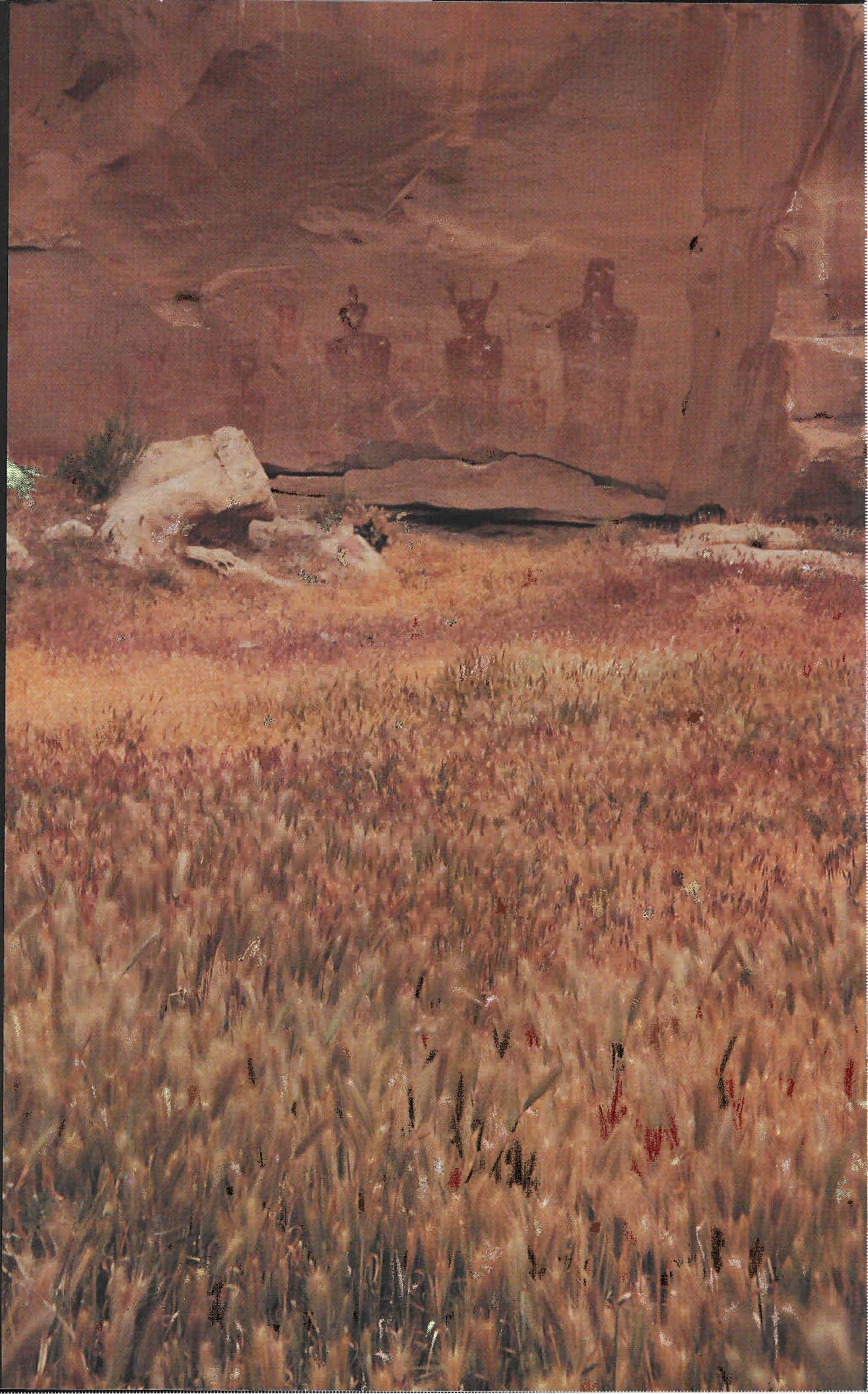


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Aug/Sept 1999



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Letters to the Editor

Dear Editors:

Richard L. Tretheway's letter (May 1999 issues) raises a legitimate issue on the effectiveness of our self-regulating attorney discipline process. I had a similar impression after reading the April case summaries. But Mr. Tretheway's frustration with the seemingly mild punishments is aimed at the wrong target.

After an initial assessment by the Office of Professional Conduct (OPC), each complaint against an attorney must pass through a Screening Panel of lawyers and one lay member. Attorneys from the OPC act only in the capacity of prosecutors – not as judges or a jury. A Screening Panel's decisions aren't subject to appeal by the OPC; for example, if the OPC has asked for formal and public discipline, yet the Screening Panel disagrees, then only a private action, such as a dismissal with caution or a dismissal on condition may be assessed. If an admonition seems too light a punishment for the infraction, the blame usually lies not with the OPC but with the Screening Panel.

The OPC has come a long way under its new director and its levels of competence and professionalism are the highest in its history. Its staff works hard to aggressively yet fairly investigate and prosecute those who step over the line of professionalism. At a time when the numbers of offenders continue to rise, they perform this task well under a tight budget subject to the reductions and revisions of each new Bar Commission.

Anyone concerned about the effectiveness of our system of self-regulation should consider serving on a Screening Panel and getting actively involved in ensuring that our miscreant colleagues are effectively supervised.

Francis J. Carney

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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.

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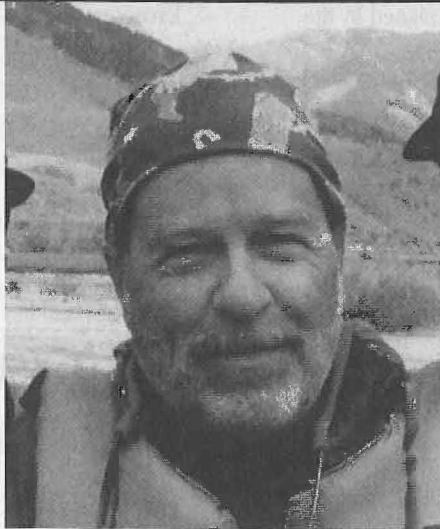
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The President's Message



Communications

by Charles Brown

My principal focus as President during the 1999-2000 year of the Utah State Bar will be to improve the communications process of the Bar Commission. As the first step in the process, for those of you who do not know me, I will tell you a little bit more about your new President.

I am a tax attorney, practicing with the two-person Salt Lake City firm of Hunter & Brown. I grew up in an Idaho farming town. Initially I majored in chemical engineering in college, until I decided that I did not want to be a nerd. I am a member of AARP (not voluntarily) and will celebrate my 30th wedding anniversary with Elke later this year. We have two daughters, Andrea 28 and Sydney 24. Both of them are college graduates and are in the slow process of deciding what to do with the rest of their lives. I also happen to be a confirmed river rat, which explains the picture above. It was taken on the Middle Fork of the Salmon River just prior to the convention in Sun Valley. Former Presidents Randy Dryer and Paul Moxley like to hike in Nepal and Tibet. Dave Nuffer and I run rivers.

Consistent with my goal of better communications, I believe it is important that you know more about each of your Commissioners. Each month in my President's message I will feature one Commissioner. Our newest Commissioner is Robert K. Merrell. Bob was appointed in July by the Supreme Court to replace Ray

Westergard as our second public (non-attorney) member. He is also a CPA and presently serves as Chief Financial Officer for NPS Pharmaceuticals, Inc., a public company located in Research Park. In addition to being a CPA, he has an M.B.A. from Northwestern University. Bob was born and reared in Salt Lake City. He is married and has four children whose ages range from twelve to twenty. Bob informs me that he spends most of his leisure time watching his children participate in their various sporting events.

I will be undertaking four projects over the next year and would appreciate any comments or thoughts you might have. As noted, my principal goal will be to improve the communications process of the Bar. It has been my perception, and that of many of you, that we have not been as effective as we could in communicating with and listening to our members and others regarding the important issues we face. That was the principal topic of our recent Commission Retreat. I have formed a Special Committee on Communications to be chaired by Commissioner Denise Dragoo. It will be the goal of that Committee to recommend a permanent communications plan and process for the Bar. That plan, once implemented, will facilitate our ability to listen and understand the concerns of our members and other interested participants before we make major decisions which may affect them.

Another issue of current concern is Multi-Disciplinary Practice, which deals with the expansion of professional service entities, principally accounting firms, into the practice of law. The American Bar Association has formed a Commission on Multi-Disciplinary Practice which has prepared a detailed report. I have formed a special Utah Committee on Multi-Disciplinary Practice. That Committee will be composed of members of our Bar as well as the accounting profession, including representatives of the Big Five accounting firms. I have asked our Committee to evaluate the ABA Report and the background information utilized in preparing the Report in order to make recommendations on how we might deal with that issue in the context of the larger issue of unauthorized practice.

I have received numerous comments from practicing attorneys, as well as members of the public, regarding the lack of "user-friendliness" in the new Scott M. Matheson Court complex and, most particularly, in Third District Court. I have asked the Courts and Judges Committee to undertake an informal survey to determine what works and what does not work in the new complex and to make constructive suggestions for improve-

ment. If you have any thoughts or comments, send them to me or to the Chairman of the Committee, John R. Lund, c/o Snow, Christensen & Martineau.

Finally, I have appointed a special committee to evaluate the grant process of the Bar. As you may be aware, each year legal-related organizations make requests to the Bar soliciting contributions to assist with their funding. Historically, those requests and contributions have been made on an ad-hoc basis with no formalized process. I believe it will better protect our members and cause less disruption to the budget if we have a formalized process in place. That process will likely require a formal application and will have time deadlines, similar to the requirements of most grant making foundations.

I look forward to the challenges of my upcoming year as President and welcome the opportunity to get to know more of you. As you have comments or recommendations on any issue facing the Bar, please do not hesitate to communicate with me. My address is c/o Hunter & Brown, 201 South Main Street, Suite #1300, Salt Lake City UT 84111; my phone number is 801-532-3000; my fax is 801-532-8736 and my email is chasrbrown@hotmail.com.

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Commissioner's Report

by C. Dane Nolan

While at work, when something interesting happens or when you've had that rare moment of clarity, have you ever said to yourself "one of these days I'm going to write a book?" Of course, for most of us, me included, that'll never happen, but the idea that what happens to us in our professional lives just has to be relevant to some bigger picture is compelling, isn't it? And the desire to connect with the world by telling everyone what we've learned is powerful . . . we want folks to understand and approve.

I've been a prosecutor for eight plus years now (the last five in sex crimes and felony domestic violence) and am certainly still a beginner in many respects, but I've learned a thing or two during my travels and I'm hopeful, even if you've never done a criminal case, you'll see what I'm getting at. In lieu of a book, for which I'm sure you're grateful, here goes:

- Always agree to that first, second, third, and yes, even fourth continuance. Love them, hate them, yell at them, think them stupid. But never forget that your opponent in a case has an immense ability to make your victim's (or client's) life hell and your life hell. Sooner or later you'll need the favor returned.
- No matter what has happened, no matter how a case has gone, no matter what trials and tribulations I've suffered, a jury will never feel sorry for me as the prosecutor. And they shouldn't. Because I represent the community and can employ the immense resources of the government, juries hold me to a higher standard, and they expect me not to make a mistake.
- A case is never better than on the day I file it and never worse than on the day of the preliminary hearing. At the preliminary hearing I don't have all my witnesses, I haven't sorted out all the potential legal issues, the victim and I haven't had a chance to prepare as thoroughly as I'd like — it can make for a most unpleasant day. It's hard to have a good attitude about the case immediately afterwards too. Sometimes after I've covered one for a colleague and they want to know how it went I say "I've got some good news and some bad news for you. The good news is the judge bound the case over. The bad news is the judge bound the case over."

- The first thing I try to do to get ready for a trial is prepare my cross examination of the defendant. Everything else can be done on short notice if need be, but not this.
- A prosecutor doesn't ever win a case, the facts do, but a prosecutor can easily lose a case. Doing a better job than your opponent guarantees nothing, but doing a worse job risks disaster.
- Memorize the opening statement if at all possible. It frees the mind to concentrate on delivery and making that crucial connection with the jury.
- If a prosecutor ever tries to mislead a jury to hide something from a jury, he's dead, he's just lost the case. If I've got a bad fact I always mention it in opening statement and I bring it up first during the presentation of the facts. Juries hate it if they think they're getting tricked.
- In law there is nothing more powerful than the spoken word. The simple act of stating something, a fact, an opinion, an observation, can make it true in the mind of a listener.
- Never apologize during a trial. Period. For anything. It shows weakness and weakness invites attack from your opponent, the judge, and the jury.



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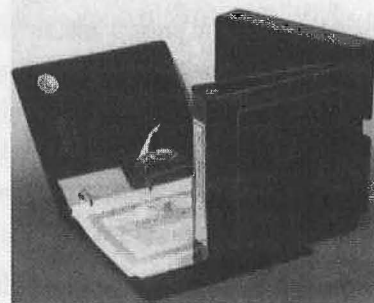
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Report from the Chair

As some of you may recall, the Litigation Section formerly published a bi-annual magazine entitled *Voir Dire*. Due to financial constraints and the enormous amount of work necessary to publish a separate journal, our last issue was published in Summer, 1998. Instead of a separate journal, the Litigation Section will now provide the substantive articles for two issues of the *Utah Bar Journal* per year. This is the first such issue.

While future issues will present articles surrounding a single "theme" per issue, the "big news" for litigators in this issue is the sweeping changes to the Utah Rules of Civil Procedure. The changes are substantial (though somewhat dry reading, I admit), so it will be important for all litigators to be prepared for the new requirements when they become effective, in November, 1999.

We are also pleased to present an article by Kate Toomey of the Office of Professional Conduct on the difficult issue of fee-splitting. Apparently the OPC gets a large number of calls on this issue.

Finally, at the annual meeting in Sun Valley, Domestic Relations Commissioner Lisa Jones presented a list of credibility do's and don'ts. That list contained a number of items that we have all heard many times but of which too many of us have failed to take note. The list (subtitled, by Commissioner Jones, "It's *your* reputation, stupid") follows.

1. DO tell your client in your office when you know that, if you go to court, the answer will be "no."
2. DON'T take on the emotional coloring of your client.
3. DO acknowledge your Achilles heel to the Court (not only is it more honest and straightforward, but it also diffuses your opponent's argument).
4. DON'T take a position with the Court that is without merit (remember that one definition of a prostitute is a person who will assume any position for money).
5. DO negotiate in good faith with your opposition before coming to court.
6. DON'T practice litigation by ambush.
7. DO focus on the facts and the law and don't make personal attacks toward opposing counsel (not only is it wrong; it is counterproductive).

8. DON'T interview minor children [in domestic cases] (not only are most lawyers untrained in conducting such interviews, but it unnecessarily increases the involvement of the children in their parent's dispute. Finally, it may appear that you are attempting to coach the children).

9. DO remember that when you have lost your credibility with a particular judicial officer, it is lost forever with that individual.

10. DON'T become a witness in your case (not only is it against the Rules of Professional Conduct, but it is usually ineffective).

11. DO be not only on time but early and try to avoid scheduling more than one matter at the same time (clients inevitably feel shortchanged if you have to divide your time between several clients).

12. DON'T announce that you have a stipulation and, halfway through, turn to opposing counsel and say, "There's one thing we didn't talk about."

13. DO exchange pleadings with opposing counsel and provide courtesy copies to the Court in advance. It is unfair to both the opposition and the court to walk into the hearing and start handing out paperwork.

14. DON'T interrupt opposing counsel unless it is to state an appropriate objection and don't argue with the Court.

15. DO be prepared for every hearing (it is unfair to the Court to force a matter to be taken under advisement).

16. DON'T use inappropriate body language during the hearing (if you could effectively sigh, roll your eyes, etc., and influence anyone, you'd be an actor).

Thanks, Commissioner Jones, for the reminders!

Cameron S. Denning
Chair of Litigation Section

Significant Changes to the Utah Rules of Civil Procedure

by Cameron S. Denning

The Utah Supreme Court adopted, as this article went to press, significant changes to the Utah Rules of Civil Procedure. On September 24, 1998, the Advisory Committee on Rules of Civil Procedure (the "Committee") promulgated its draft rules changes. After a five-month informal comment period, a second draft was released, setting in motion a four-month formal comment period. On June 24, 1999, the draft rules changes were forwarded to the Supreme Court. The Supreme Court adopted the rules changes, which will apply to all cases filed on or after November 1, 1999.¹

The rules changes were originally modeled on the 1993 amendments to the Federal Rules of Civil Procedure. However, there are major differences between the Federal Rules and the new Utah Rules. Practitioners must not, therefore, conclude that familiarity with the Federal Rules will suffice for the Utah Rules.

In a lengthy Note², the Advisory Committee explains: "The 1999 amendments to Rules 16, 26, 30, 32 and 33 comprise a new model for discovery and case management in state court cases. The objective of the new model is simply to better manage litigation by planning." The "planning" centers on counsel for the adverse parties meeting and developing a discovery plan and a case management order setting forth discovery time frames and parameters. As indicated by Committee member Francis M. Wikstrom³, the changes to the rules will hopefully result in opposing counsel communicating with each other about the case in which they are involved and thereby reducing the amount of discovery in the case, as well as the opportunity for discovery abuses.

CHANGES TO RULE 26

The changes to Rule 26 are the heart of the new procedural rules. The event triggering the provisions of Rule 26 is the filing of the first answer.⁴

A. Planning Meeting.

As soon as practicable after commencement of an action⁵, but not longer than 60 days after the first answer is filed, all counsel must attend a planning meeting. The meeting is to be scheduled by counsel for the plaintiff. The following cases are exempted under Rule 26(a)(2): small contract cases (under \$20,000);

administrative review actions; water rights actions arising under Title 73, Chapter 4; habeas corpus matters under Rule 65B or 65C; actions to enforce arbitration awards; and *pro se* cases, unless the *pro se* party is a member of the Utah Bar. Domestic cases and "simple" cases are not exempt from this requirement.

Rule 26(f)(1) requires that the parties "meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by [Rule 26(a)(1)], and to develop a stipulated discovery plan." Utah R. Civ. Pro. 26(f)(1) (amended).

The discovery plan is to include changes to the default disclosure times, the subjects on which discovery is needed, a schedule for discovery including any changes in the default discovery limitations, and any other proposed orders the parties require. The reason for a "stipulated discovery plan" is that the new rules contain certain default requirements, discussed below, which will not meet the needs of every case. The default requirements will apply only if the parties do not change them by stipulation, pursuant to Rule 29, or the court does not enter an order modifying the requirements.

CAMERON S. DENNING is associated with the law firm of Dart, Adamson, Donovan & Hanson. She worked there as a paralegal for several years before attending law school. After graduating from University of Utah College of Law in 1994, she continued at Dart, Adamson, Donovan & Hanson because the attorneys and staff there are "family."

Ms. Denning graduated Order of the Coif and was named National Association of Women Lawyers Outstanding Woman Law Graduate. She has served on the Lawyers Helping Lawyers Committee, the Annual Conference Committee, the Bar Examiners Committee, and the Editorial Board of Voir Dire magazine, as well as providing pro bono legal services at Tuesday Night Bar. She is currently the Chair of the Litigation Section Executive Committee and a member of the Board of Wasatch Community Gardens (as well as an avid gardener herself).

It is crucial to note that *no* discovery may be served upon an opposing party until after the planning meeting is held and the initial disclosures have been made.

B. Case Management Order.

Rule 26(f) (3) now requires counsel for plaintiff to submit to the court, within 14 days of the planning meeting, a proposed Case Management Order. The order must contain cutoff dates for joining other parties and amending the pleadings, filing of motions, and completion of discovery. Dates for pretrial and trial are to be scheduled with the court either at the time of filing of the Case Management Order or at the close of discovery. Additionally, the order should contain any modifications to the disclosure times and discovery limits resulting from the planning meeting, and any other "appropriate matters." Finally, if the parties are unable to agree to the terms of any part of the discovery plan⁶, the plaintiff⁷ shall include in the Case Management Order a request that the court enter a discovery order on the disputed items. Unless otherwise ordered by the court, the default provisions of the rules govern any subject on which the parties are unable to agree. A later-joined party is bound by the terms of the Case Management Order, unless the court enters an order modifying its terms. Utah R. Civ. Pro. 26(f) (5) (amended). These changes are also reflected in amendments to Rule 16 concerning pretrial conferences.

C. Initial Disclosures.

As previously noted, one of the purposes for the planning meeting is "to make or arrange for the disclosures required" by Rule 26(a) (1). These initial disclosures must be made within 14 days after the planning meeting.

The required disclosures are: (i) the identity (name, address, and telephone number) of each individual likely to have discoverable information supporting the disclosing party's claims or defenses, unless solely for impeachment, identifying the subjects of the information; (ii) a copy of, or a description of, all discoverable documents or tangible things within the possession or control of the party supporting its claims or defenses, unless solely for impeachment; (iii) a computation of damages claimed by the disclosing party; and (iv) any insurance agreements that may apply.

Note the significant departure from the Federal Rules of Civil Procedure. The Federal Rules require the parties to disclose all

information "relevant to *disputed facts alleged with particularity in the pleadings*" Fed. R.Civ. P. 26(a) (1) (A). Utah's rule requires the party to disclose information "*supporting its claims or defenses, unless solely for impeachment*" The obvious message is, disclose information that helps your case, but do not disclose harmful information. Committee members felt this difference supports respect for advocacy in the adversarial system.

Again, small cases, administrative review cases, and the other cases set forth in Rule 26(a) (2) are exempted from the initial disclosure requirement. However, the information subject to disclosure in a non-exempt case may, in an exempt case, be obtained by discovery using traditional methods.

The initial disclosures are to be based on information *reasonably available* and are not excused because the other party has made no or insufficient disclosures or because investigation is not yet complete.

"The 1999 amendments . . . comprise a new model for discovery and case management in state court cases. The objective of the new model is simply to better manage litigation by planning."

The computation of damages claimed must be disclosed by category and must be accompanied by discoverable documents or evidentiary material supporting the computation or bearing on the nature and extent of damages. An obvious example would be medical records and bills supporting a plaintiff's claim for damages from personal injury.

There is an ongoing duty to supplement under Rule 26(e). A party must supplement the initial disclosures if the information disclosed is in some material respect incomplete or incorrect and/or if information has not otherwise been disclosed *in discovery or in writing*.⁸

D. Expert Disclosures.

Under Rule 26(a) (3) (C), expert disclosures must be made within 30 days of the close of "fact" discovery. Rebuttal experts must be disclosed within 60 days after the other party's disclosure of its experts. The disclosures must be *in writing* and must include the identity (name, address, telephone number) of the witness, and, for an expert who is "retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony," the disclosure must be accompanied by a written report prepared and signed by the witness *or party*. This means that the lawyer can sign the expert report.⁹

Expert reports are needed only from *retained and testifying* experts. The parties may stipulate, or the court may order, that no written report need be disclosed. The familiar "exceptional circumstances" required to discover information from *consulting* experts still obtain.

The content of the expert reports under Utah's new rules is significantly different from that required under the Federal Rules. Under Utah R. Civ. Pro. 26(a)(3)(B), the report must contain (i) the subject matter on which the expert will testify; (ii) the substance of the facts and opinions to which the expert is expected to testify; (iii) a summary of the grounds for each opinion; (iv) the qualifications of the expert, including a list of publications in the last ten years; (v) the compensation arrangement between the party and the expert; and (vi) a listing of previous testimony, whether "live" or in deposition, in the prior four years. These requirements are much less stringent than those of the Federal Rules because, as the Committee noted, most experts are deposed regardless of whether a report is provided to the opposing party.

Rule 26(b)(4)(A) allows the deposition of expert witnesses. Contrary to common practice, the "old" rule did not routinely allow for expert depositions. Expert depositions must be completed not later than 60 days after the report is provided (or, if

no report is provided, within 60 days after disclosure of the identity of the expert).

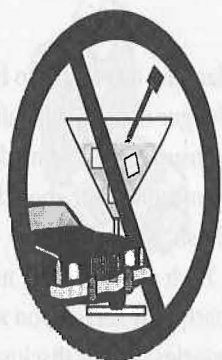
E. Pretrial Disclosures.

In addition to the "discovery" disclosures, new requirements exist for pretrial disclosures. At least 30 days before trial, the parties must exchange a list of witnesses, separated by those the party *will* and *may* call at trial; a list of witnesses whose testimony shall be presented by deposition, together with a transcript of any deposition recorded by non-stenographic means; and an appropriate identification of all exhibits, including summaries, again separated into *will* offer and *may* offer categories. The only exceptions to these pretrial disclosures apply to witnesses or exhibits offered *solely* for impeachment.

Any objections to the pretrial disclosures must be made in writing within 14 days of the disclosure, and must state specific grounds for objections. Failure to object *waives* objections to admissibility, except as to relevance under Rules 402 and 403 of the Utah Rules of Evidence, unless the party can convince the court there was "good cause" for the failure to object.

F. Penalties for Failure to Comply.

Rule 37 has been amended to provide that if a party fails to disclose a witness, document or other material as required by Rule 26(a)(1) (the initial "fact" disclosures), the party "shall



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not be permitted to use the witness, document or other material at any hearing unless the failure to disclose is harmless or the party shows good cause for the failure to disclose." Utah R. Civ. P. 37(f) (amended). Additionally, the court may order any other sanctions allowable under Rule 37(b)(2)(A), (B), or (C), and the court *may inform the jury of the failure to disclose*.

While the language of Rule 37(f) speaks only to the initial disclosures, by implication courts may apply the same sanctions to other failures to disclose. The other sanctions present in the "old" Rule 37 remain in effect.

CHANGES TO RULE 30 (DEPOSITIONS)

Under the new scheme, depositions may not be held until after the Planning Meeting required under Rule 26(f)(1).¹⁰ Additionally, unless the parties stipulate otherwise, no more than 10 depositions per *side* (not per party) can be taken. The rule prohibits repeat depositions of an individual.

The "10 per side" limitation is not designed to fit all cases; it is designed to get the parties to discuss and agree upon the needs of the case. The Committee notes that if the parties cannot stipulate, "courts should consider different deadlines and limits appropriate for specific cases." Additionally, if one party is attempting to use the limits to frustrate the other side's purposes or to take advantage, the court should be asked to intervene.

Rule 30(b)(2) formally recognizes that depositions may be recorded by several means: stenographically, by audiotape, or by videotape. The party noticing up the deposition chooses the form of recordation, and must specify that form in the notice. If another party wishes to have the deposition recorded by some other means, that party may do so at its own expense.

Objections in depositions are clarified in Rule 30(d)(1): "Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under [Rule 30(d)(3)]." Accordingly, if one instructs a witness not to answer under a "bad faith" or "annoyance, embarrassment or oppression" objection, one must immediately file a motion for a protective order.

A witness will have the opportunity to review and sign the deposition transcript only if a request is made by the deponent or a party *prior to the completion of the deposition*.

CHANGES TO RULE 33

Interrogatories are now limited to 25, including "discrete sub-parts," per party directed to any other party. If this default provision does not meet the needs of the case, the parties can stipulate, or the court can order, additional interrogatories. Again, no discovery may be served until after the Planning Meeting.

CHANGES TO RULE 34

There are no limits on the number of requests for production of documents that may be made. Requested documents are to be produced as kept in the ordinary course or business *or* organized and properly labeled to correspond to the categories set forth in the request.

OPERATION OF DEFAULT PROVISIONS

The "default" time frames and discovery limitations may, as previously discussed, be changed by stipulation, except that stipulations extending the time for disclosure or discovery require the approval of the court "if they would interfere with the time set for completion of discovery or with the date of a hearing of trial." Utah R. Civ. P. 29(2). The defaults may also be changed by order of the court.

The default provisions will apply if no Case Management Order is filed. They will apply if the court is uncooperative

and refuses or fails to enter a Case Management Order even if one is submitted, or fails to enter such orders as may be requested.

To recap the default provisions, the planning meeting is to be held "as soon as practicable" but no longer than 60 days after the first answer is filed. The initial disclosures must be made within 14 days of the date the planning meeting is or should be held. Rule 26(d) allows 240 days to finish "fact" discovery unless the parties stipulate otherwise. Each *side* may take no more than 10 depositions, and each party may serve upon any other party no more than 25 interrogatories. Expert disclosures, including reports if necessary, must be made within 30 days of the close of "fact" discovery. Expert depositions must be completed within 60 days of expert disclosures. Pretrial disclosures must be exchanged at least 30 days before trial.

CONCLUSION

The changes to the Utah Rules of Civil Procedure are sweeping. Utah's new rules are significantly different than the Federal rules and should be carefully studied.¹¹ The default time frames and discovery limitations provide the basis for discussion between

"Failure to object [to pretrial disclosures] waives objections to admissibility. . . ."

counsel so that the requirements of the individual case can best be met. The objective of the changes are, in the words of the committee, "to better manage litigation by planning." The committee foresees this objective being achieved by requiring the parties to meet to evaluate the case early in the process and to plan appropriate discovery; by providing a framework, by operation of the default deadlines and limits, for those cases in which the parties cannot agree; and by requiring each party to disclose the basic information that is sought by discovery in virtually every case.

The author is hopeful that the changes to the rules will, in fact, decrease the number of discovery abuses that occur. If lawyers will operate by the rules, and judges will enforce the rules, then meeting these objectives is possible.

¹The Supreme Court adopted, without change, the final version of the amendments to the Rules as promulgated by the Committee.

²The Advisory Committee Note is, according to Committee member Francis M. Wikstrom, the longest the Committee has ever written. It is very helpful in understanding the changes to the rules and the interaction between the various amended rules, and should be carefully reviewed.

³Committee members Wikstrom and Thomas R. Karrenberg, together with Francis J. Carney, provided two breakout sessions on the Rules changes at the Utah Bar Conference in Sun Valley in July, 1999.

⁴Filing a motion to dismiss does not trigger the provisions of the rule. Because a successful motion obviates the need for the planning meeting and initial disclosures, proceedings on the motion to dismiss are allowed to run their course before Rule 26's requirements become effective.

⁵Wikstrom suggests, in a multi-defendant case, that "as soon as practicable" translates to whenever the plaintiff has served as many defendants as she is able to prior to any discovery.

⁶The requirement of the case management order applies even if the defendant(s) refuse to cooperate. In that case, the plaintiff submits the case management order, written to accommodate her wishes, to the court. The uncooperative defendant(s) must then submit an objection to the court in order to alter the terms submitted by the plaintiff.

⁷The amended language provides: "If the parties are unable to agree to the terms of a discovery plan or any part thereof, the plaintiff shall and any party may move the court for entry of a discovery order on any topic on which the parties are unable to agree." Utah R. Civ. Pro. 26(f)(3) (amended).

⁸Therefore, if information is disclosed in a letter from one party's lawyer to the other party's, it has been disclosed "in writing" and a more formal disclosure is unnecessary.

⁹Presumably no lawyer will prepare and sign a report without first having the witness examine at least a draft of the report. To do so would provide fertile ground for cross examination; even if the expert testified on cross examination that the lawyer, and not the expert, prepared the report and that it contained errors, the signing lawyer's case will be negatively impacted. Further, as the Committee Note states, "The expert should not be permitted to testify at variance with the report, regardless whether the expert or the party prepares or signs it. For this reason, the committee believes the expert should prepare and sign the report whenever possible and should always review and approve the report."

¹⁰There are certain exceptions for depositions before the action is filed or pending appeal, as set forth in Utah R. Civ. P. 27.

¹¹The complete text of the proposed changes is available from the Utah Courts website at <http://courtlink.utcourts.gov/rules>. The website will post the new rules on approximately September 1, 1999.



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August 1999

Practice Pointer: Fee Splitting and Referral Fees Under the Rules of Professional Conduct

by Kate A. Toomey

A client retains counsel to represent him in a personal injury action. The client heard from a friend that the attorney is compassionate and hard-working, and in similar situations has obtained favorable settlements in a relatively short period. The attorney knows that she will be unable to effect an advantageous settlement for the client, however, in part because she has no experience as a litigator and the case is almost certain to proceed to litigation. Mindful of her obligation under the Rules of Professional Conduct to provide competent representation, she associates with an attorney from a well-respected litigation firm. Although she performs no work in preparing the case for trial and does not participate in the settlement negotiations that occur immediately before the scheduled trial date, she expects to be paid a share of the anticipated contingency fee. Absent an agreement that she will receive a significant portion of the ultimate fee, the attorney would have taken the case to another litigation firm willing to agree to her terms. After all, she was the one the client initially retained, and if it weren't for her, the litigators wouldn't even be involved in the case. Moreover, from time to time she communicates with the client to promote good client relations, so she feels she has earned a share of the fee.

This is a common scenario – the most respected and otherwise ethical attorneys sometimes accept or refer cases in which they have agreed to share the fees, even though they are aware that by doing so, they may be in violation of the Rules of Professional Conduct. Although it is not inherently unethical to divide fees with attorneys in another firm, there are serious restrictions on doing so, and attorneys should be aware that referral or forwarding fees, “which by their nature involve an economic benefit for little or no actual services performed beyond the referral” are not permitted in Utah. *Phillips v. Joyce*, 523 N.E.2d 933, 939 n.5 (Ill. App. Ct. 1988).

THE POLICY REASONS FOR RESTRICTING FEE SPLITTING

The rule restricting fee splitting is founded on the belief that lawyers should not be compensated merely for referring a client to another lawyer because of the potential harm it causes the client and the harm it inflicts on the image of the profession. The Supreme Court of Kansas put it this way:

The evils of the referral fee have been well recognized. It has been said that admission to the practice of law is something more than admission to an association of business or tradesmen. It is membership in an ancient and honorable profession that has for its goal the furtherance of the administration of justice, and the attorney is an instrument for the achievement of this noble purpose. . . . Members of the public who seek the services of an attorney cannot be treated by him as mere merchandise or articles of trade in the market place. A client is not an article of property in which a lawyer can claim a proprietary interest, which he can sell to other lawyers expecting to be compensated for the loss of a property right.

Palmer v. Breyfogle, 535 P.2d 955, 965-66 (Kan. 1975) (citations omitted).

The Appellate Court of Illinois has also discussed the policy considerations underlying the prohibition against referral fees, with an emphasis on the potential harm to the client.

[A]ttorneys have long been ethically and legally prohibited from sharing with other members of the profession fees generated from the disposal of a legal matter when the only ‘service’ rendered by the claimant attorney is the referral of the case. Profiting from the solicitation of professional employment is injurious to the legal profession and to the public. As the various authorities reveal, this practice is injurious to the legal profession since the public loses confidence in those who treat clients as merchandise in a market place rather than the recipients of the attorneys’ skills and abilities. More importantly, the best interest of the clients is jeopardized by the arrangements when it becomes more profitable for attorneys to sell clients than to give them a legal service.

Kate A. Toomey is an Assistant Counsel with the Office of Professional Conduct. The views expressed in this article reflect Ms. Toomey’s informal opinion, based upon a reading of the Rules of Professional Conduct and the authorities cited herein, and are not necessarily the views of the Utah State Bar or the Office of Professional Conduct.

Corti v. Fleisher, 417 N.E.2d 764, 775 (Ill. App. Ct. 1981).

Instead of prohibiting fee splitting, many jurisdictions have adopted some form of disciplinary rule that safeguards clients' interests by imposing a series of restrictions. Utah is among them. Thus, the Utah Rules of Professional Conduct permit lawyers to divide a fee, but restrict such an arrangement as follows:

A division of fee between lawyers who are not in the same firm may be made only if: (1) The division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; (2) The client is advised of and does not object to the participation of all lawyers involved; and (3) The total fee is reasonable.

Rule 1.5(e), Utah Rules of Professional Conduct ("Utah's rule").¹

Thus, as a formal ethics opinion from the Utah State Bar's Ethics Advisory Opinion Committee explains, two different types of fee splitting arrangements are available to Utah attorneys. See Opinion No. 121, Ethics Advisory Opinion Committee, approved August 26, 1993 ("Ethics Opinion 121").² Ethics Opinion 121

describes the two possible arrangements as follows: "Under one kind of arrangement, the lawyers divide the tasks to be performed for the client and allocate the fee in proportion to the task division. Under the other kind of arrangement, the fee need not be proportional to the lawyers' actual work for the client. Instead, each lawyer must, in writing, assume joint responsibility for the representation." *Id.*

THE PROPORTIONALITY REQUIREMENT

As we have just seen, in Utah an attorney may receive a share of the fees in proportion to the actual services she performs. The proportionality requirement is said to protect clients from having to pay unearned or excessive fees. See *Phillips v. Joyce*, 523 N.E.2d 933, 938 (Ill. App. Ct. 1988). But how can an attorney meet the proportionality requirement?

The case law on the proportionality requirement suggests that although attorneys need not keep precise track of the time they spend on a case in order to receive a share of the fees, they must be able to establish that their contribution was substantial. Merely originating the matter and providing minimal consultation

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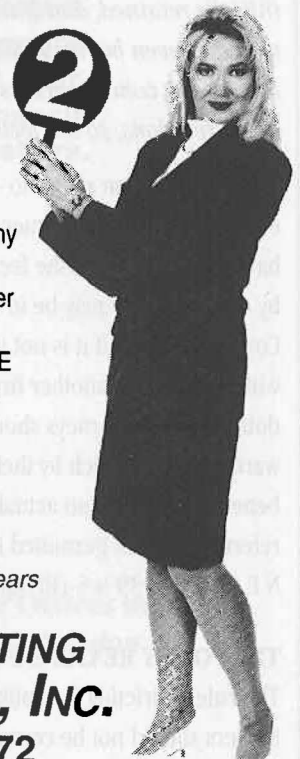
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with the client for client relations purposes, as in the illustrative example cited at the beginning of this article, is not enough, but a lawyer who performs a "substantial" amount of work may be allowed to recover the agreed-upon amount of the fees. *See e.g. Fitzgibbon v. Carey*, 688 P.2d 1367, 1374 (Or. Ct. App. 1984) ("when there is a 'true division of services and responsibility,' a specific agreement to divide a contingency fee between associating attorneys may be enforced, even though it is claimed that the division is not directly proportional to the work performed by each.").

What is a substantial amount of work? The Supreme Court of Kansas described it as follows: "The service and responsibility referred to in [the Model Code], before a lawyer is entitled to a division of fees, must relate to *an actual participation in or handling of the case*. The rule would be meaningless if this were not so." *Palmer v. Breyfogle*, 535 P.2d 955, 967 (Kan. 1975) (emphasis added).

This does not mean that an attorney must keep precise records of the time spent on a case. As several courts have noted, an attorney need not "correlate each minute spent on a case to each penny earned therefrom in order to achieve proportionality between 'the responsibility assumed and services performed' on the one hand and each attorney's share of the fee on the other."

Fitzgibbon v. Carey, 688 P.2d 1367, 1374 (Or. Ct. App. 1984); *see also*

McNeary v. American Cyanamid Co., 712 P.2d 845, 848 (Wash. 1986) (following *Fitzgibbon, supra*).

The fee received need not be in direct or precise proportion to the attorney's contribution. For example, an agreement to divide legal fees on a 50/50 basis would not run afoul of the rule in cases in which there is "a 'true division of services and responsibility,' . . . even though it is claimed that the division is not directly proportional to the work performed by each." *Macurdy v. Sikov & Love P.A.*, 894 F.2d 818, 824 (6th Cir. 1990) (quoting *Fitzgibbon, supra*). Indeed, as the United States Court of Appeals for the Second Circuit indicated,

The intent of the attorneys in the case now before us, as probably with most attorneys who work together on a case, was undoubtedly to have a fixed arrangement with respect to fees and a flexible understanding with respect to work, with the stipulated fee division to be controlling unless one of the attorneys, in effect, should breach his obligation to perform work on the case.

"[T]he court will not permit a division of the fee if the work done is significantly out of proportion to the amount of the fee."

Stissi v. Gerace, 814 F.2d 848, 852 (2d Cir. 1987) (upholding equal division of fees even though attorneys did not contribute precisely equivalent numbers of hours). At the same time, however, "[t]here must be a reasonable correlation between the amount of services rendered and responsibility assumed and the share of the fee received." *In re Potts*, 718 P.2d 1363, 1369 (Or. 1986).

Even so, the court will not permit a division of the fee if the work done is significantly out of proportion to the amount of the fee. This is true even in cases in which the lawyer has performed some services but cannot demonstrate that the fees claimed were based on the amount of work performed. *See Prandini v. National Tea Co.*, 557 F.2d 1015, 1019 (3d Cir. 1977); *In re Potts*, 718 P.2d 1363, 1369 (Or. 1986) ("There must be a reasonable correlation between the amount of services rendered and responsibility assumed and the share of the fee received.").

The case law is replete with examples of how the fee division may not be made. For example, it is not a matter of the proportion of the attorney's contribution to the achievement of the recovery.

See e.g. Burrell v. Sperry Rand Corp., 534 F.Supp. 680, 683 (D. Mass. 1982).

Nor is it up to the client to decide. *See id.* at 682 (no authority permits client to alter terms of referral contract to suit own desires); *In re Waggaman*, 540 A.2d 410, 415-416 (Del. 1988) (fee

that was not based solely on proportional weighing of each lawyer's services but was also based on referral and on referring attorney's work on other matters with recipient attorney was fee based on considerations not authorized by the rule).

In some jurisdictions, the test used to assess whether a fee is reasonable may also be employed to determine whether the proportionality requirement has been met. *See McNeary v. American Cyanamid Co.*, 712 P.2d 845, 848-49 (Wash. 1986) ("as a practical matter, it is extremely difficult for a trial court to independently assess the proportions of work performed and responsibility assumed, after the fact, in cases involving a joint representation agreement"); *In re Potts*, 718 P.2d 1363, 1368 (Or. 1986). However the courts determine whether the work performed was substantial, the nearly uniform position seems to be that courts should not put the exact amount and nature of the attorneys' contribution under a microscope. Indeed, the ABA's position is that "once it becomes clear a lawyer went beyond the act of mere referral, a further weighing of each lawyer's contribution will be avoided." ABA Formal Op. 204 (1940).

THE JOINT RESPONSIBILITY REQUIREMENT

Under Utah's rule, fee splitting is permitted if "each lawyer assumes joint responsibility for the representation . . ." Utah Rule of Professional Conduct 1.5(e)(1). Ethics Opinion 121 instructs us that "[t]he lawyer receiving a referral fee under a joint-responsibility arrangement cannot simply 'hand off' the client to the receiving lawyer." Ethics Opinion 121. Instead, "each lawyer must assume responsibility 'for the representation as a whole.'" *Id.* This in turn implicates Rule 5.1, which identifies a partner's or supervisory lawyer's responsibilities for another lawyer. *See* Utah Rule of Professional Conduct 5.1. Moreover, the assumption of responsibility must be in writing in the form of an agreement with the client. *See* Utah Rule of Professional Conduct 1.5(e)(1).

"Responsibility" in this context has been defined in only a few opinions, perhaps the most thorough of which is from the Supreme Court of Kansas.

' . . . The primary meaning of 'responsibility' as found in the dictionaries is the state of being answerable for an obligation. . . The term 'responsibility' includes judg-

ment, skill, ability and capacity. . . . Legal responsibility is the state of one who is bound or obliged in law and justice to do something. . . . 'One's duty is what one is bound or under obligation to do. One's responsibility is its liability, obligation, bounden duty.' The word 'responsibility' as used in the rules means the doing of something. We agree with the statement of Henry S. Drinker, in his work, *Legal Ethics*, when discussing the rule . . . : 'The service and responsibility must, to be effective, relate to the handling of the case.' If the division of fees is to be placed on the basis of how much service or responsibility each contributed in connection with the legal services rendered in the case, obviously, the responsibility called for under the rule must be related to the legal services rendered in the actual handling of the case.'

Palmer v. Breyfogle, 535 P.2d 955, 967 (Kan. 1975) (quoting *McFarland v. George*, 316 S.W.2d 662 (Mo. Ct. App. 1958)).

Note, however, that the cases interpreting the word "responsibility" do so in the context of a rule that requires an attorney's participation *and* responsibility. Utah's rule requires one or the

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other. On the other hand, Ethics Opinion 121 suggests that something more than assuming a legal obligation is required.

THE DISCLOSURE REQUIREMENT

Utah's rule requires disclosure to the client of a fee-splitting agreement. The policy reasons behind the disclosure requirement are perhaps obvious: "Clients are entitled and required to place confidence in their attorneys. Clients necessarily rely on attorneys' decisions and representations." *Schniederjorn v. Krupa*, 514 N.E.2d 1200, 1202 (Ill. App. Ct. 1987). The client cannot do this if the client is unaware of counsel's identity. The disclosure requirement is also said to preserve the fiduciary relationship by fostering greater accountability, and to preserve the client's right to choose her attorney. *See Phillips v. Joyce*, 523 N.E.2d 933, 938 (Ill. App. Ct. 1988) ("No attorney whom the client has not retained will be entitled to payment from the client via a secret deal with the client's attorney.").

If the attorney is sharing the fee based on her assumption of joint responsibility for the representation, the client must consent in writing. *See* Utah Rule of Professional Conduct 1.5(e)(1). In all cases, the client must be "advised" and the arrangement can proceed only if the client "does not object to the participation of all the lawyers involved" *See id.*

According to case law from other jurisdictions, the disclosure requirement does not require an attorney to disclose the precise amount or proportion of the fee division. As the Supreme Court of Kansas indicated,

It is, of course, usually not feasible at the beginning of litigation for an attorney to advise his client of the exact proportions upon which the attorney fees are to be divided. That, of course, will depend upon the proportion of the legal services performed and the responsibility assumed by each attorney in the course of the litigation. The rule simply requires that before the client consents to employment of the other lawyer he should be made to understand that a division of fees may be made, that the division is to be made in proportion to the services performed and the responsibility assumed by each, and that the total fee to be paid for all lawyers will not exceed what is reasonable compensation for services rendered.

Palmer v. Breyfogle, 535 P.2d at 967-68; *Carter v. Katz*, 465 N.Y.S.2d 991, 997 (N.Y. Trial Term 1983) ("A client is simply to

be made aware that another attorney is jointly or independently representing his or her interests at no additional expense to her therefor. Any further elaboration or specificity regarding the exact arrangement between the collaborating attorneys is not ethically mandated by this code provision [DR 2-107]."); *cf. King v. Housel*, 566 N.E.2d 501, 504 (Ohio 1990) (interpreting DR 2-107(A)(1), which requires "full disclosure", to mean that "the amount to be paid and manner of payment, as well as other relevant fee agreements, [must] be disclosed to the client by his attorney.").

But what of situations in which disclosure is impractical or virtually impossible? For example, in complex litigation attorneys sometimes represent hundreds of class members and it is impractical to notify each of them to obtain informed consent to the fee splitting arrangement of the litigation team. In that instance, some courts recognize that although class attorneys have a fiduciary duty to the class, there is no personal relationship among them. In such cases, the attorneys should at the outset disclose to the court the fee-sharing arrangement so that

"If the attorney is sharing the fee based on her assumption of joint responsibility for the representation, the client must consent in writing."

the court can protect the clients' interests. *See In re Agent Orange Prod. Liab. Litig.*, 611 F.Supp. 1452, 1462-63 (2d Cir. 1985); *Phillips v. Joyce*, 523 N.E.2d 933, 941 (Ill. App. Ct. 1988).

The attorney with the responsibility for disclosing the fee splitting agreement is the attorney whom the client first retained. *See King v. Housel*, 556 N.E.2d 501, 504 (Ohio 1990).

In the absence of the required disclosure, courts often find that the agreement is unenforceable and the attorney may be censured. *See e.g. Lemond v. Jamail*, 763 S.W.2d 910, 914 (Tex. Ct. App. 1988) (agreement unenforceable where client never informed of and did not agree to it); *Fleming v. Campbell*, 537 S.W.2d 118, 119 (Tex. Ct. App. 1976) (same); *Schniederjorn v. Krupa*, 514 N.E.2d 1200, 1202 (Ill. App. Ct. 1987) (same); *In re Kerlinsky*, 546 N.E.2d 150, 154 (Mass. 1989) (fee paid for participation limited to examining file and referring case without disclosure and consent constituted violation of DR 2-107(A)(1)).

THE REASONABILITY REQUIREMENT

Under the Utah rule, the total fee must be reasonable. *See* Utah Rule of Professional Conduct 1.5(e)(3). The reasonability requirement protects clients from what one court characterized as "double dipping." *Phillips v. Joyce*, 523 N.E.2d 933, 939 (Ill.

App. Ct. 1988).

The reasonableness requirement dovetails with another section of the rule governing fees, which provides that "[a] lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee." Utah Rule of Professional Conduct 1.5(a). Many courts employ similar rules to assist in assessing whether the total fee is reasonable. *See e.g. McNeary v. American Cyanamid Co.*, 712 P.2d 845, 849 (Wash. 1986) (factors identified in rule help court establish relative value of services performed and responsibility assumed).

A FEW SUGGESTIONS

Carefully evaluate proposals to share fees with another attorney, bearing in mind that Utah's rule prohibits attorneys from paying or receiving fees for cases in which they have not played a role more substantial than referring the case to someone with sufficient expertise to handle it properly. Remember that if you are unable to perform a substantial portion of the work on the case or assume responsibility for the case in its entirety, you must refer it to someone who can, and the Rules of Professional Conduct prohibit you from taking a referral fee. You must decline to take such cases if you are invited to participate as the attorney to whom the case is referred.

If you determine that, consistent with the Rules of Professional Conduct, you can enter a fee-splitting agreement with another attorney, protect yourself by doing the following:

1. Reduce the arrangement to writing, spelling out your expectations for the division of labor and the basis of the fee.
2. Notify the client in writing of the fee-splitting arrangement and obtain her written consent. Do this even in cases where Utah's rule does not require it.
3. Keep track of the work you perform by maintaining a record of the time you spend on the case and how you spend it, even if it is a contingency fee matter.
4. Retain copies of any pleadings and correspondence you draft or other evidence of the work you perform.
5. Revisit the agreement if it turns out that the referring attorney has performed little or no work on the matter. If the referring attorney has performed a small but verifiable amount of work on the case, it may be appropriate to shift the form of the payment from a percentage of the total fees earned to a quantum meruit recovery. If it ultimately emerges that the attorney has done nothing but make the referral, she should not receive a share of the fee.

¹Although Utah's rule is similar to that of several other jurisdictions, it differs from some in the respect that in some jurisdictions, joint responsibility is required *in addition to* the proportionality requirement, and not merely available as an alternative. A rule with the more stringent requirement is consistent with the Model Code, which permits division of fees only if "[t]he division is in proportion to the services performed and responsibility assumed by each." Model Code of Professional Responsibility, DR 2-107(A)(2) (emphasis added).

²Ethics Opinion 121 is as follows: "A lawyer may not pay referral fees to another lawyer, unless the referral arrangement meets the standards of Rule 1.5(e) for dividing fees and is otherwise consistent with the Utah Rules of Professional Conduct." Ethics Opinion 121. The opinion contains an analysis of this issue. Full copies of all ethics opinions are available for \$20. Mail a check payable to Utah State Bar Ethics Opinions and directed to the attention of Christine Critchley at 645 South 200 East, Salt Lake City, UT 84111. Questions about the propriety of fee splitting in a particular case should be discussed with the Utah State Bar's Office of Professional Conduct.



BALLARD SPAHR ANDREWS & INGERSOLL, LLP

We are pleased to
announce that

Blaine L. Carlton

has been named
Managing Partner
of the firm's
Salt Lake City office.

Mr. Carlton is succeeding
Richard S. Fox, who will
continue to practice as a
partner in the firm's
Public Finance Department.

In addition to his
responsibilities as
Managing Partner,
Mr. Carlton will continue
to represent clients in
virtually all types of
tax-exempt financing
issues, including
general obligation
bonds, revenue bonds,
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Commission Highlights

During its regularly scheduled meeting on June 30, 1999, held at Sun Valley, Idaho, the Board of Bar Commissioners received the following reports and took the actions indicated:

1. The Board approved the minutes of the May 28, 1999 Commission Meeting as amended.
2. Gary Sackett, Chair, Ethics Advisory Opinion Committee, appeared to review Opinion No. 99-04 and No. 99-05. The Commission approved opinion 99-05. Opinion 99-04 was deferred back to the Committee.
3. President's Report: Reviewed and discussed Multi-Disciplinary issue, Supreme Court Task Force on Bar Governance, Access to Justice Foundation, and Lawyer Benefits Committee request to Zions Bank 401(k) Group Benefit.
4. Discussion was held on the 1999-2000 budget, which was adopted by the Commission.
5. The Commission approved the list of July Bar Examination Applicants.
6. Reports were given by the Ex-Officio Commission Members.
7. Commission Appointments: Scott Daniels to Judicial Council, C. Dane Nolan to Judicial Conduct Commission, David O. Nuffer reappointed to Judicial Conduct Commission, and Debra Moore to Judicial Evaluation Committee.
8. Commission was reorganized. Charles R. Brown, President; David O. Nuffer, President-Elect; new Commissioners: N. George Daines, C. Dane Nolan, and re-elected Scott Daniels. New Ex-Officio members: Gus Chin, Minority Bar; Mark Quinn, Young Lawyers Division; Carol Stewart, Women Lawyers.

During its regularly scheduled meeting on July 30, 1999, held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated:

1. The Board approved the minutes of the June 30, 1999 Commission Meeting as amended.
2. Presented a commission plaque to D. Frank Wilkins.
3. President's Report: Welcomed new Commissioners George Daines, Denise Dragoo and Gus Chin, reviewed and discussed

Multi-Disciplinary Special Committee, Supreme Court Task Force on Bar Governance, Long Range Planning Retreat and special committee on communications. A special committee to formalize grant request process was appointed, Commissioner liaison assignments were reviewed and Charlotte Miller has been appointed to the ABA Commission on Women in the Profession. Reviewed report on Courts and Judges Committee Survey.

4. Report was given by ABA Representative Paul T. Moxley & James Lee.
5. Donald Winder, President of the Utah Chapter of ABOTA, appeared to review and discuss the American Board of Trial Advocate's Code of Professionalism and Principles of Civility.
6. John C. Baldwin reviewed year-end financials and discussed 2001 Annual and Mid-Year sites, with the Commission approving to hold Annual meeting 2001 in Sun Valley, Idaho.
7. Billy Walker, Senior Counsel of Office of Professional Conduct, appeared to review and discuss Rules of Professional Conduct Amendments.
8. Scott Daniels reviewed Ethics Advisory Opinion 99-05, which was approved as amended.

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

Thank You!

I would like to thank all the members of the Bar Examiners Committee, Bar Examiners Review Committee and Character and Fitness Committee for a successful July Bar Examination that was given July 27th and 28th. Time volunteered for the Bar examination was very much appreciated.

Thank you again,
Darla C. Murphy, Admissions Administrator

Utah State Bar Ethics Advisory Opinion Committee

The following statements concerning Ethics Advisory Opinions are summaries only. You should obtain a full copy of an opinion before taking any definitive action related to the subject of the opinion. Full-text copies may be obtained by subscription through the Bar offices; on the Bar's website at www.utahbar.org; or from on-line services such as Westlaw.

OPINION NO. 99-03

Issue: May a defense lawyer make *ex parte* contact with plaintiff's treating physician?

Opinion: No ethical rule prohibits *ex parte* contact with plaintiff's treating physician when plaintiff's physical condition is at issue.

OPINION NO. 99-04

Issue: What are the ethical considerations that govern a lawyer who wishes to conduct legal seminars; provide legal information to groups of retirement-home residents; host open houses; set up information booths at trade shows; participate in Bar-sponsored question-and-answer programs; or make in-person contacts with prospective clients at the request of their friends or relatives?

Opinion: This Opinion analyzes and decides a range of related questions that have arisen in connection with lawyers' marketing and solicitation activities. In general, we find that lawyers may make their services known through a variety of methods that do not involve uninvited, one-on-one approaches, discussions or solicitations. On the other hand, where monetary gain is a significant motivation, lawyers may not generally engage in uninvited, direct in-person communications with prospective clients in order to indicate the lawyers' availability to accept professional employment.

Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that is now available to members of the Bar for the cost of \$20.00. Eighty opinions were approved by the Board of Bar Commissioners between January 1, 1988 and June 30, 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)

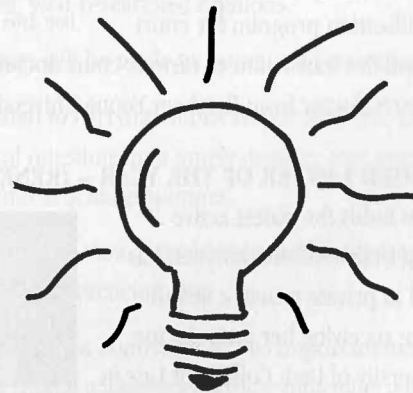
Please make all checks payable to the Utah State Bar
Mail to: Utah State Bar Ethics Opinions, ATTN: Christine Critchley
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.



Great idea.

Advertising in the *Utah Bar Journal* is a really great idea. Reasonable rates and a circulation of approximately 6,000! Call for more information.

Shelley Hutchinsen
(801) 486-9095

Utah State Bar Presents Awards at 1999 Annual Meeting

The Annual Awards of the Utah State Bar are presented by the Board of Bar Commissioners on behalf of the entire Bar membership. Recipients are selected on the basis of achievement, professional service to clients, the public, courts and the Bar, and exemplification of the highest standards of professionalism to which all judges and lawyers aspire. They were presented during the Bar's 69th Annual Meeting.

JUDGES OF THE YEAR –

HON. DAVID SAM AND HON. LYNN W. DAVIS

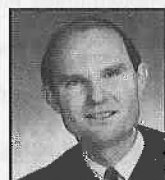
The Board of Bar Commissioners announced a tie for the recognition of Judge of the Year, naming both David Sam and Lynn Davis.

Judge Sam was appointed a U.S. District Judge for the District of Utah by President Reagan in 1985, following nine years on the Fourth Judicial District Bench where he served as Presiding Judge. In 1982 he served as chairman of the State Judicial Conference. He received his juris doctor from the University of Utah College of Law.



Hon. David Sam

Judge Davis was appointed to the Circuit Court in 1987 and to the District Court in 1992. He provided leadership in creating equal access to the courts for minorities. Judge Davis is responsible for the development of a certification program for court interpreters and the translation of various court documents. He received his juris doctor from Brigham Young University.



Hon. Lynn W. Davis

DISTINGUISHED LAWYER OF THE YEAR – IRENE WARR

Ms. Warr, who holds the oldest active license among Utah's women lawyers, has been engaged in private practice in Salt Lake City since receiving her juris doctor from the University of Utah College of Law in 1957. In addition to serving on many Bar committees, she was a trustee and president of the Legal Aid Society and president of the Utah Federation of Business and Professional Women.



Irene Warr

DISTINGUISHED YOUNG LAWYER OF THE YEAR –

KRISTEN JOCUMS

During law school and her practice of law, Ms. Jocums has advanced the interests of blind people in Utah and the nation. As a member of the board of directors of the National Association of Blind Lawyers, she has assisted many blind lawyers and law students in achieving full potential. She received her juris doctor from the University of Utah College of Law.



Kristen Jocums

DISTINGUISHED SERVICE TO THE PROFESSION BY A NON-LAWYER – RAY O. WESTERGARD, CPA

Mr. Westergard is a certified public accountant and partner in the accounting firm of Grant Thornton. He has served on the Utah State Bar Security Advisory Committee and is chairman of the Bar's Finance Committee. He was one of the first non-lawyers to serve on the Board of Bar Commissioners. He received his bachelor and masters degrees from Brigham Young University.



Ray O. Westergard

DISTINGUISHED COMMITTEE OF THE YEAR – CLIENT SECURITY FUND COMMITTEE

Members of this committee consider the claims of individuals who have been damaged by dishonest acts of their attorneys. Although the number of inappropriate acts of victimization of clients is few, the cases are difficult and very time consuming. The committee, under the leadership this year of chairman David R. Hamilton, resolved several large cases.

PRO BONO LAWYER OF THE YEAR –

RICHARD F. BOJANOWSKI

After retiring from a forty year private practice in intellectual property law in 1993, Mr. Bojanowski began volunteering with the Senior Lawyer Volunteer Project of Utah Legal Services. There, he has been instrumental in drafting new rules to allow and encourage "inactive" lawyers to provide pro bono service. He received his juris doctor from the University of Houston.



Richard Bojanowski

**DORATHY MERRILL BROTHERS AWARD –
ROSALIE M. REILLY**

The award for advancement of women in the law is presented to Rosalie Reilly. She is a part-time attorney for Utah Legal Services in Monticello and also maintains a private practice. She often represents women who need protection from abuse and those subject to illegal search and seizure. She received her juris doctor from Southwestern University School of Law.



Rosalie M. Reilly

RAYMOND UNO AWARD – JIMI MITSUNAGA

The award for advancement of minorities in the law is presented to Jimi Mitsunaga. He organized the Salt Lake Legal Defender Office in 1965 and has served as its director. In his legal practice spanning more than four decades, he has worked to assist members of the minority community. He received his juris doctor from the University of Utah College of Law.



Jimi Mitsunaga

ABOTA Trial Lawyers of the Year

The American Board of Trial Advocates (ABOTA) announced that two attorneys share the title of Trial Lawyer of the Year for 1999.

HAROLD G. CHRISTENSEN

Harold G. Christensen is a member of the Salt Lake City firm of Snow, Christensen & Martineau where his 47 years of practice has emphasized commercial litigation. He has served as Deputy Attorney General of the United States and Visiting Professor at law schools here and abroad. He received his juris doctor from the University of Michigan.



L. RICH HUMPHERYS

L. Rich Humpherys is president of the Salt Lake firm of Christensen & Jensen, where his primary practice is insurance law. Mr. Humpherys, a 1976 graduate of BYU law school, is widely known for his numerous million dollar verdicts, including a \$148 million verdict against State Farm based on a nationwide scheme of underpaying and defrauding insureds.



***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. Applications need to be submitted by September 1, 1999.

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

Justice Christine M. Durham Re-appointed to Board of Trustees of the American Inns of Court Foundation

Justice Christine M. Durham of the Utah Supreme Court has been re-appointed to the Board of Trustees of the American Inns of Court Foundation. Appointed by the Board of Trustees at large, Justice Durham will begin her second four-year term on the Board on July 1.



The American Inns of Court, composed of over 20,000 members in 48 states and the District of Columbia, examine issues related to ethics and professional conduct in the field of law. Each chapter, known as an Inn, has members ranging from law students to lawyers and judges with varying degrees of legal experience. Currently, there are more than 300 Inns throughout the United States, each dedicated to enhancing ethics, professionalism and civility within the legal profession.

Justice Durham has been active in the American Inns of Court movement since 1979. She is a charter member of the first-ever American Inn of Court, American Inn of Court I in Salt Lake City and, in addition to her service on the Board of Trustees, has served on the national Foundation's Awards Committee and Judicial Relations Committee.

Justice Durham has served on the Utah Supreme Court since 1982, prior to which she served as District Court Judge in the Third District of Utah from 1978-1982. From 1974-1978, she was a member of the Salt Lake City firm of Johnson, Durham & Moxley while also serving as adjunct professor at the J. Reuben Clark Law School at Brigham Young University. From 1971-1973, she worked in private practice in Durham, North Carolina.

Justice Durham is a former member of the Board of Directors of the National Center for State Courts and the Executive Committee of the American Bar Association's Appellate Judges Conference. Justice Durham is also a former member of the Board of Directors of the American Judicature Society and a past president of the National Association of Women Judges, which in 1997 recognized her as its Honoree of the Year. Currently, she is a member of the ABA Commission on Women in the Profession, a member of the Board of Trustees of the Utah Easter Seal Foundation, and a member of the Board of Overseers of the Institute for Civil Justice.

Also active in judicial education, Justice Durham has taught at the Judicial Education Leadership Institute and the National Judicial College. She is a Fellow of the American Bar Foundation and a member of the ALI Council. Justice Durham also teaches a seminar on state constitutional law at the University of Utah College of Law and serves as a state court representative on the Federal Judicial Conference's Advisory Committee on the Rules of Civil Procedure.

Justice Durham earned her B.A. from Wellesley College in 1967 and her J.D. from Duke University in 1971. She is also currently a member of the Board of Trustees of Duke University.

Court Commissioner Third Judicial District

\$86,200 plus benefits

As a quasi-judicial officer, assists District Court with domestic matters and performs other duties under the direction of the Presiding Judge.

Qualifications: Juris Doctorate, Utah State Bar members, at least 25 years of age, citizen of the United States and a resident of Utah for 3 years, other statutory requirements.

**Closing date: August 31, 1999
at 5:00 pm**

For complete job announcement and application, contact:

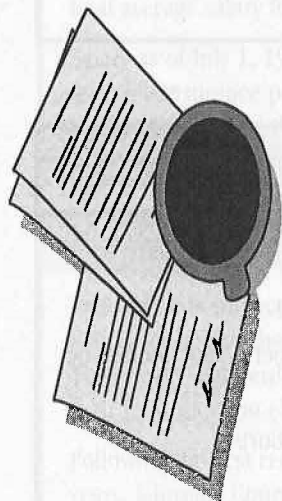
**Administrative Office of the Courts
Human Resources Department
450 South State; P.O. Box 140241
Salt Lake City, Utah 84102
578-3890/3804**

Sign up Today for Lawyer Referral Service

The Bar's Lawyer Referral Service provides you with an inexpensive and continuous means of contact with potential clients. More than 75 clients are referred each day to the 165 lawyers now on the service. The potential client may be charged an initial \$30 fee for a 30-minute consultation after which the lawyer may arrange for additional fees. The enrollment fee is \$200 per year. Lawyers are required to provide proof of current malpractice insurance. For information and sign up, contact Diáne Clark at (800) 698-9077, (801) 297-7023 or email at dclark@utahbar.org.

Children's Justice Board

The Utah State Bar is soliciting applications from criminal defense attorneys to serve as its representative to the State Children's Advisory Board. The Board was created by the legislature to oversee various policy issues involving child abuse. Interested lawyers may send a resume to John C. Baldwin, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111 by September 20, 1999.



BUSINESS LAW UPDATE

October 1st

8:30 – noon

Law & Justice Center

In cooperation with West Group, attend this computer-based case and statutory law update for the business law attorney.

For a complete listing of topics access
www.utahbar.org/cle/

CLE: 3 hrs

Fee: \$50.00

ANNOUNCEMENT OF JUDICIAL VACANCY

August 1, 1999

ANNOUNCING:

That applications are now being accepted for Utah Supreme Court Justice.

The vacancy on the Supreme Court bench is the result of the retirement of Justice Michael D. Zimmerman. Justice Zimmerman will retire from the Supreme Court bench January 31, 2000.

Completed application forms must be received by the Administrative Office of the Courts no later than 5:00 p.m., Friday, September 10, 1999.

TO OBTAIN APPLICATION FORMS AND INSTRUCTIONS:

Copies of forms required in the application process and instructions are available from the Administrative Office of the Courts. Forms and instructions also are available in the following word processing formats:

ASCII Text; Word Perfect 5.x; Word Perfect 6.x; Microsoft Word 5.x; Microsoft Word 6.x.

To obtain the forms and instructions in a word processing format, provide a return Internet E-Mail address or a 3.5" disk to Marilyn Smith at any of the following:

Internet E-Mail: marilysm@courtlink.utcourts.gov
Courts Web Site: Courtlink.utcourts.gov/jobs
FAX: (801) 578-3968

Administrative Office of the Courts
Attention: Marilyn Smith
450 S. State
P.O. Box 140241
Salt Lake City, Utah 84114-0241

When requesting forms and instructions in a word processing format, indicate the requested format. The application form, waiver forms, and instructions are available in all of the above formats to subscribers of the Utah State Court Bulletin Board.

SELECTION PROCESS:

Utah law requires the Judicial Nominating Commission to submit five nominees to the Governor within 45 days of its first meeting. The Governor has 30 days in which to make a selection. The Utah State Senate has 60 days in which to approve or reject the governor's selection. To obtain the procedures of Judicial Nominating Commissions and the names of Commission members call (801) 578-3800.

At its first meeting the Nominating Commission reviews written public comments. This meeting is open to the public. To comment upon the challenges facing Utah's courts in general, submit a written statement no later than October 1, 1999 to the Administrative Office of the Courts, Attn: Appellate Court Nominating Commission.

TERMS OF EMPLOYMENT:

A. BENEFITS:

Minimum Requirements: Under Article VIII, Section 7 of the Utah Constitution, Supreme Court justice must be at least 30 years old, and judges of other courts of records must be at least 25 years old.

Residency: All justices and judges must be United States citizens, Supreme Court justices must be Utah residents for at least five years immediately preceding selection. Judges of other courts of record must be residents of Utah for at least three years preceding selection.

Practice of Law: All justices and judges must be admitted to practice law in Utah, but need not actually engage in the practice of law.

Retirement Program: Judges are able to retire at any age with 25 years service; at age 62 with 10 years service; or at age 70 with 6 years service. Retirement amount is calculated on the basis of years of service and an average of the last 2 years of salary. Judges receive 5% of their final average salary for each of their first 10 years of service, 2.25% of their average salary for each year from 11 to 20 years of service, and 1% of their final average salary for each year beyond 20 years to a maximum of 75%.

Salary as of July 1, 1999 is \$105,500 annually • 20 days paid vacation per year • 11 paid holidays • \$18,000 term life insurance policy (with an option to purchase \$200,000 more at group rates) • Choice of five Medical and Dental Plans. Some plans paid 100% by the state, others requiring a small employee contribution.

B. JUDICIAL RETENTION:

Each judge is subject to an unopposed, nonpartisan retention election at the first general election held more than 3 years after the appointment. To be retained, a judge must receive a majority of affirmative votes cast. This means that newly appointed judges will serve at least 3, but not more than 5 years prior to standing for their first retention election.

Following the first retention election, trial court and appellate judges appear on the retention ballot every 6 years. Supreme Court Justices stand for retention every 10 years.

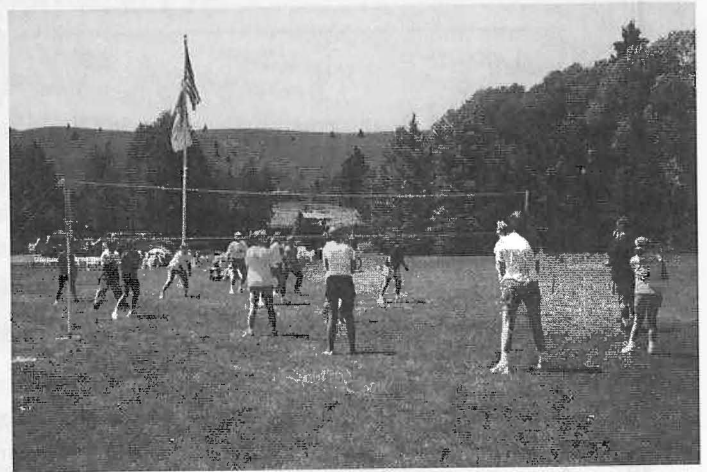
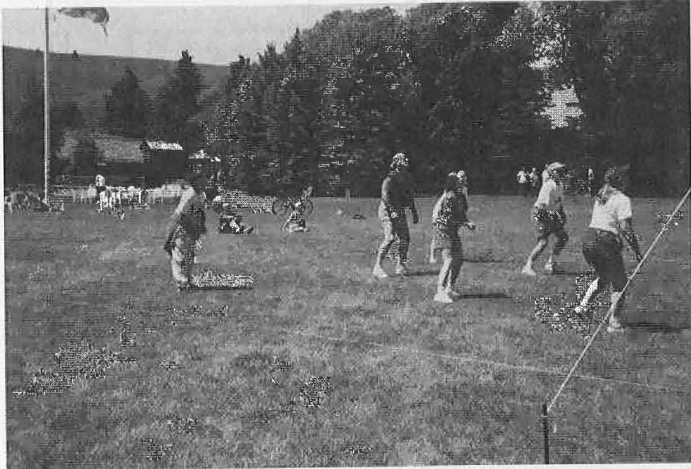
C. PERFORMANCE EVALUATION:

All sitting judges undergo a performance review after the first year in office and biennially thereafter. Judges not up for retention election can use the performance review results (which are confidential) as a guide for self-improvement. Judges up for retention election are subject to Certification Review by the Judicial Council. Prior to the election, the Council publishes the voter information pamphlet whether the judge met or failed to meet the following evaluation criteria:

- Compliance with case delay reduction standards.
- No public sanctions by the Judicial Council Conduct Commission during the term of office and not more than 1 private sanction during the final 2 years of the term of office.
- Completion of 30 hours of approved judicial education each year.
- Self Certification that a judge is physically and mentally able to serve, and complies with the Codes of Judicial Conduct and Administration.
- A satisfactory score on the certification portion of the Council's Survey of the Bar.
- For District Court Judges a satisfactory score on the certification portion of the Council's Survey of jurors.

Those wishing to recommend possible candidates for judicial office or those wishing to be considered for such office should promptly contact Marilyn Smith, Administrative Office of the Courts, 450 South State Street, P.O. Box 140241, Salt Lake City, Utah, 84114-0241. (801) 578-3800. Application packets will be forwarded to prospective candidates.

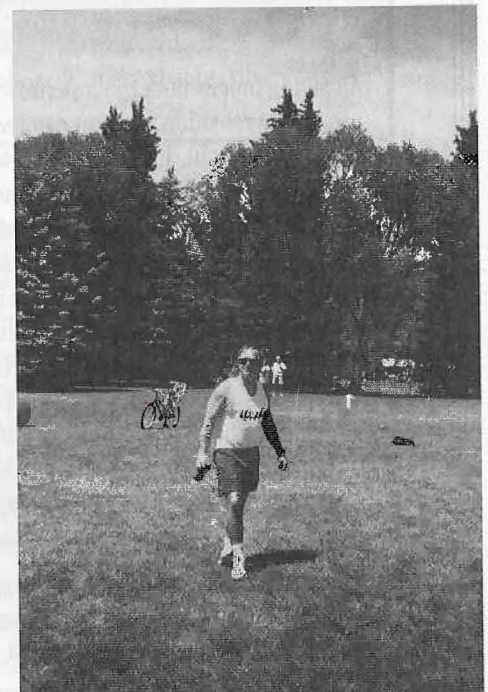
People and Scenes of the 1999 Annual Meeting



A volleyball tournament was served up for volleyball enthusiasts. Chairman of the volleyball competition Frank Pignanelli handed out t-shirts to the winning team which included: Sean Reyes, Sayshen Reyes, Laura Scott, Mike Reske, Shane Hillman, Melanie Hillman, Scott Dubois and Lisa Bell.

Other activities included swimming, fly fishing lessons and trap shooting. The winners of the trap shooting contest were: Medalist – Don E. Olsen, Runner-up – Matthew J. Harmer. Winners of the Annie Oakley Contest were: 1st Place – Judge Frank G. Noel, 2nd place – Christine Hofhine.

Great prizes were given to the winners of the different events.



UTAH STATE BAR FALL CLE

**First Annual
Government Law CLE**

Defending a DUI in Utah

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**Expert Testimony for the
Trial Lawyer**

Business Law Update

**Power Point
Training Part I**

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Law Office Management

**Fall Corporate Counsel CLE:
Internal
Investigations: Dos and Don'ts**

Ethics Opinion Dialogue

**Access our on-line
registration at
www.utahbar.org/cle**



Utah State Bar

For selected seminars,
this calendar may
be the only program
announcement you
receive by mail!

FALL CLE SCHEDULE

SEPTEMBER 1 - OCTOBER 31 , 1999

REGISTRATION FORM FALL CLE

Registrations for each seminar must be received at least 2 days prior to ensure availability. Cancellations must be received in writing 48 hours prior to seminar for refund unless otherwise indicated. Door registrations are accepted on a first come first serve basis plus a 25% late charge unless otherwise indicated.

Registration for (Seminar(s) Title):

+ Detach & Mail To: Utah State Bar
CLE DEPARTMENT
645 South 200 East
Salt Lake City, UT. 84111
OR:

TOTAL AMOUNT ENCLOSED: \$ _____

Access on-line registration

Name _____

www.utahbar.org/cle

Address _____

City _____ State _____ Zip _____

Bar Number _____ Phone Number _____

☐ Check Enclosed ☐ MasterCard ☐ Visa ☐ Am Ex

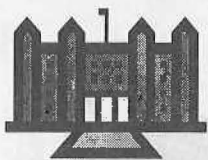
Credit Card Number _____

Expiration Date _____

Signature _____

Access additional information on all
seminars through our web site at
www.utahbar.org/cle

September 10 -



**FIRST ANNUAL
GOVERNMENT LAW CLE**

9:00 a.m. to 3:00 p.m. (registration 8:30 a.m.) Snowbird Utah

This seminar includes special topics of interest which impact governmental attorneys. Topics include a discussion on House Bill 139 and the impact of the 2002 Olympics on governmental agencies,
CLE: 6 hrs
FEE: \$40.00 section members; \$80.00 others

September 15:



DEFENDING A DUI IN UTAH:

1:00 - 5:00 p.m.;

Local DUI defense attorneys, Benjamin Hamilton and Richard Mauro instruct on the salient points to defend a D.U.I. in Utah including discussions on detentions, the *Baker* Rule and, cross examination on standardized sobriety tests & the Intoxilizer 5000.

CLE: 4 Hrs. Fee: \$60.00

September 23rd:



FAMILY LAW: Workshop/Primer
5:30 to 8:30 p.m.

CLE: 3 hrs, \$30.00 Young Lawyers, \$60.00 all others.

Sept 24th:

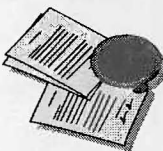
EXPERT TESTIMONY FOR

THE TRIAL LAWYER
with Ed Imwinkelried



CLE: 7.5 hrs,
FEE: \$199.25, to register call
1-800-328-4444, \$5.00 discount for online
reg. at www.npilaw.com

Oct. 1st:



BUSINESS LAW UPDATE:

8:30 - noon

In conjunction with West Group, attend this computer-based case and statutory law update for the business law attorney. For a complete listing of topics access www.utahbar.org/cle/

CLE: 3 hrs

FEE: \$50.00

October 6 -



POWER POINT TRAINING PART I

6:00 p.m. - 9:00 p.m.

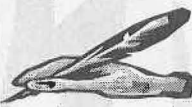
In partnership with the Horizonte School, learn the art to computerized presentations in a customized computer lab. Space is limited.

CLE: 3 hrs,

FEE: \$60.00

Address: 1234 S. Main Street

October 15th:



LEGAL WRITING

8:30 a.m. - 4:15 p.m.

Co-Sponsored with the Appellate & Litigation Sections, Utah State Bar. Featuring Elizabeth Francis, Professor of English, University of Nevada at Reno. Prof. Francis teaches writing to justices around the nation.

CLE: 7 hrs,

FEE: \$110.00

October 21st:



**LAW OFFICE
MANAGEMENT:**

5:30 to 8:30 p.m.

Learn the basics on how to operate and organize a law practice.

CLE: 3 hrs, \$30.00 YLD members, \$60.00 other.

October 28th:



FALL CORPORATE COUNSEL CLE

Internal Investigations:

Dos and Don'ts

8:30 a.m. - 1:00 p.m.

CLE: 4.5 hrs (includes 1 hr. ethics),

FEE: \$40.00 Section Members; \$80.00 all others

October 29th:

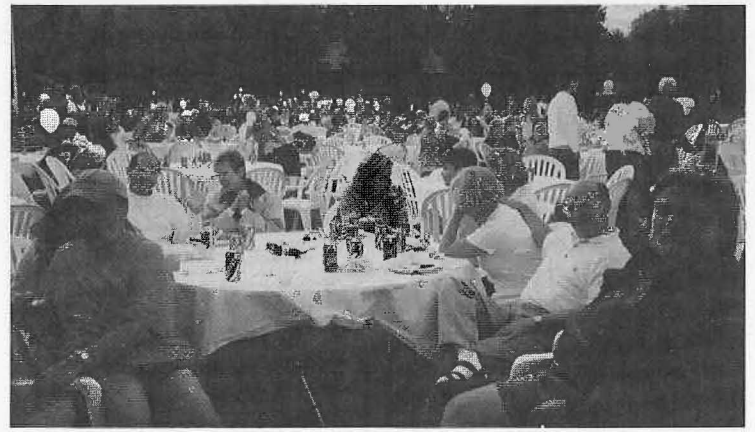


ETHICS OPINION DIALOGUE

An Actual Application to Ethics
Opinions

9:00 a.m.- 12:00 p.m.

CLE: 3 hrs ethics; FEE:\$40.00

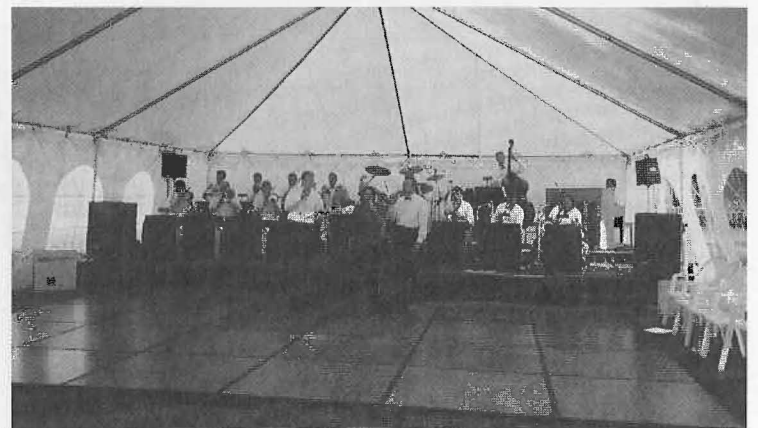


The 69th Annual Meeting held at Sun Valley proved to be successful, informative and fun. While most attorneys attended various interesting and entertaining seminars, there were plenty of activities that appealed to everyone in the family.



Children were pleased to find many activities to participate in at the Family picnic. The staff at Sun Valley provided games, fun and good food to the families that attended.

Charles R. Brown, Bar President, discussing ideas for the new Bar year.



Congratulations John T. Neilsen (Chair of the annual meeting) and Monica Jorgensen (Utah State Bar conventions director) on a successful Utah State Bar Annual Meeting.

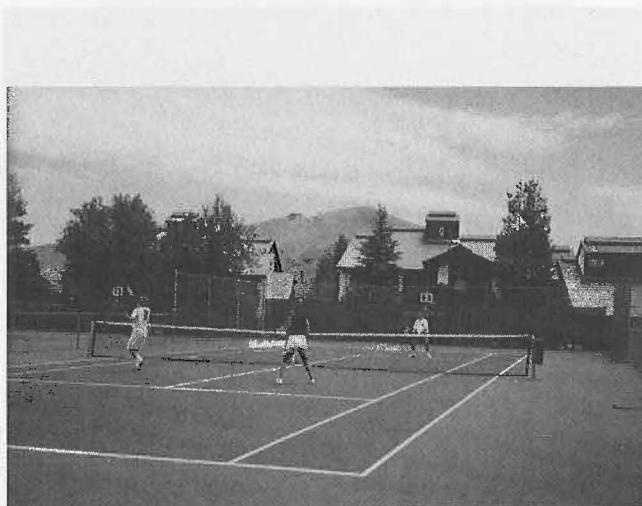
The Crestmark Orchestra from Logan provided music for swing enthusiasts. Whether dancing or just listening, a good time was had by all.



The Utah State Bar Golf Tournament was a popular activity at the Annual Meeting. The tournament included foursomes and couples. The winners of the Foursomes tournament were: 1st place with a score of 57 – James Lund, Thomas Lund, Todd Jensen and Brian Babcock. 2nd place with a score of 63 – Stan Preston, Andrew Morse, Ryan Tibbits and Korey Rasmussen.



The winners of the couples tournament were: 1st place – Stephanie Veasy, Paul Veasy, Linda Holyoak and Bill Holyoak. 2nd place – Shari Johnsen, Bart Johnsen, Barbara Richman and Glen Richman.



The Tennis Tournament of the annual meeting proved to be competitive. The winner of the men's division was Dennis Haslam. The women's division winners were Stephanie Veasy and Zeta Bell.

Pro Hac Vice Revisions

Admission pro hac vice in Utah State Courts is governed by the Code of Judicial Administration Rule 11-302. Effective August 1, 1999, there will be revisions to Rule 11-302. Copies of the revised application can be obtained from any court clerk's office or copies of the application, rule and instructions from the Utah State Bar by mail, fax or via its web site at www.utahbar.org/rules/html/pro_hac_vice.html. The primary changes are as follows:

1. Previously, the original application was filed with the court along with the fee. The original application and fee should now be sent to the General Counsel of the Bar and the Bar will issue a receipt.
2. A copy of the application should be filed with the court along with the receipt for payment of the fee.
3. Applicants are now required to obtain a Certificate of Good Standing from the licensing state in which they reside. The Certificate should be attached to the original application.
4. Sponsoring Utah attorneys are still required to file a motion requesting pro hac vice admission for the out-of-state applicant. The mailing certificate, however, should reflect that the Utah State Bar was sent a copy of the motion.

Pro Hac Vice Application

INSTRUCTIONS

Admission Pro Hac Vice in Utah State Courts is governed by the Code of Judicial Administration Rule 11-302

Application	The attached application form must be filled out completely and legibly. A check for \$75 made payable to "Utah State Bar" and a Certificate of Good Standing from the licensing state in which the applicant resides must accompany each application. Original application and fee must be submitted to the Utah State Bar.
Requirements	<ul style="list-style-type: none">• Motion by member of the Utah State Bar who expressly consents to appearing as associate counsel must be filed in the court along with copies of application and receipt showing payment of the \$75 fee.• Original application, the \$75 fee, and a copy of the motion must be served upon the following: Katherine A. Fox, General Counsel Utah State Bar 645 South 200 East Salt Lake City, UT 84111-3834 Telephone: (801) 531-9077• A separate application must be submitted for each case in which the applicant wishes to appear.• An attorney admitted pro hac vice shall comply with and is subject to Utah statutes, rules of the Utah Supreme Court, including the Rules of Professional Conduct and the Rules of Lawyer Discipline and Disability, the rules of the court in which the attorney appears, and the rules of the Utah Judicial Council.

APPLICATION FOR ADMISSION PRO HAC VICE

APPLICANT:

Name _____

Address _____ Telephone _____

Fax Number _____

E-mail address (if any) _____

Bar Admission

STATE TO WHICH ADMITTED	BAR NUMBER

Case in which Applicant wishes to appear:

Case Name: _____

Court: _____ Case Number: _____

Party on whose behalf Applicant seeks to appear: _____

Other cases in any state or federal court in Utah in which the applicant or member of applicant's firm has appeared pro hac vice in the previous five years (attach additional sheets if necessary):

CASE NAME	CASE NUMBER	COURT

Applicant _____ is _____ is not currently suspended or disbarred from the practice of law in any state.

Applicant ____ has ____ has not been disciplined by any state's or court's Bar organization in the prior 5 years.

Applicant ____ is ____ is not the subject of any pending disciplinary proceedings by any state's or court's Bar organization.

ASSOCIATE COUNSEL:

Name _____ Utah Bar No. _____

Address _____ Telephone _____

Fax Number _____

E-mail address (if any) _____

Applicant certifies the following:

- A. Applicant submits to the disciplinary authority and procedures of the Utah State Bar.**
B. Applicant is familiar with the rules of procedure and evidence, including applicable local rules.
C. Applicant will be available for depositions, hearings, and conferences.
D. Applicant will comply with the rulings and orders of the court.
E. All the information included in this Application is accurate.

Applicant must attach to this application a Certificate of Good Standing from the licensing state in which the applicant resides.

Applicant's Signature _____

STATE OF _____)

COUNTY OF _____)

Signed and sworn to before me on _____ by _____

My Appointment expires: _____

Amendments to Rule 11-302

Amendments to Rule 11-302 were approved effective August 1, 1999 pursuant to the Supreme Court's emergency rulemaking authority in Rule 11-101(4)(E).

RULE 11-302. ADMISSION PRO HAC VICE.

Intent:

To provide a uniform method for the qualification of out of state counsel to practice before the courts of Utah.

Applicability:

This rule shall apply to any attorney who is not a member of the Utah State Bar appearing as counsel before a court of record or not of record.

Statement of the Rule:

(a) An attorney who is not a member of the Utah State Bar but who is admitted to practice law in another state or in any court of the United States or Territory or Insular Possession of the United States shall apply to be admitted pro hac vice in accordance with this rule prior to appearing as counsel in a court of record or not of record.

(b) Nonresident counsel may be permitted to appear in a particular case if the court in which the case is pending determines that admission pro hac vice will serve the interests of the parties and the efficient and just administration of the case. Admission pro hac vice under this rule is discretionary with the court in which the application for admission is made. Admission pro hac vice may be revoked by the court upon its own motion or the motion of a party if, after notice and a hearing, the court determines that admission pro hac vice is inappropriate. Admission pro hac vice shall be denied or, if granted, shall be revoked if the court determines that the process is being used to circumvent the normal requirements for the admission of attorneys to the practice of law in this state.

(c) In determining whether to enter or revoke the order of admission pro hac vice, the court may consider any relevant information, including whether non-resident counsel:

- (1) is familiar with Utah rules of evidence and procedure, including applicable local rules;
- (2) is available to opposing parties;
- (3) has particular familiarity with the legal affairs of the party relevant to the case;
- (4) complies with the rulings and orders of the court;
- (5) has caused delay or been disruptive; and
- (6) has been disciplined in any other jurisdiction within the prior 5 years.

(d) The attorney seeking admission pro hac vice shall complete under oath and submit to the Utah State Bar ~~[clerk of the court]~~ an application form available from the Utah State Bar or court clerks' office ~~[clerk of court]~~. The applicant shall attach to the application form a Certificate of Good Standing from the licensing state in which the applicant resides. The applicant shall complete a separate application for each case in which the applicant wants to appear. The fee for each application is \$75, which shall be paid ~~[made payable to and forwarded by the court]~~ to the Utah State Bar. Fees paid under this rule shall be used for attorney discipline investigations and proceedings.

(e) A copy of the ~~[The]~~ application and a receipt showing payment of the fee shall be filed in the court in which the case is pending, with a motion by a member of the Utah State Bar to admit the applicant pro hac vice and ~~[with]~~ a consent by that member of the Utah State Bar to appear as associate counsel. The application form shall include:

- (1) the name, address, telephone number, fax number, e-mail address, bar identification number(s), and state(s) of admission of the applicant;
- (2) the name and number of the case in which the applicant is seeking to appear as the attorney of record or, if the case has not yet been filed, a description of the parties;
- (3) the name, number, and court of other cases pending or closed within the prior 5 years in any state or federal court of Utah in which the applicant or a member of the applicant's firm appears pro hac vice;
- (4) a statement whether, in any state, the applicant:
 - (A) is currently suspended or disbarred from the practice of law;
 - (B) has been disciplined within the prior 5 years; or
 - (C) is the subject of any pending disciplinary proceedings;
- (5) a statement that the applicant:
 - (A) submits to the disciplinary authority and procedures of the Utah State Bar;
 - (B) is familiar with the rules of procedure and evidence, including applicable local rules;
 - (C) will be available for depositions, hearings, and conferences; and
 - (D) will comply with the rulings and orders of the court;
- (6) the name, address, Utah State Bar identification number, telephone number, fax number, and e-mail address of the

member of the Utah State Bar to serve as associate counsel;
and

(7) any other information relevant to the standards for the admission of the applicant.

(f) Utah counsel associated with nonresident counsel seeking admission pro hac vice shall:

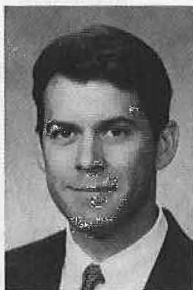
- (1) file a motion for admission of the applicant pro hac vice;
- (2) serve the motion by mail, hand-delivery or facsimile [and application] on the Utah State Bar's General Counsel on or before filing with the court and include a certificate of service with the motion evidencing service on the Utah State Bar's General Counsel and upon the opposing parties, or, if represented, their counsel;
- (3) file a written consent to appear as associate counsel;
- (4) sign the first pleading filed;
- (5) continue as one of the counsel of record in the case unless another member of the Utah State Bar is substituted as associate counsel; and
- (6) be available to opposing counsel and the court for communication regarding the case and the service of papers.

(g) The court may require Utah counsel to appear at all hearings. Utah counsel shall have the responsibility and authority to act for the client in all proceedings if the nonresident attorney fails to appear or fails to respond to any order of the court.

(h) An attorney admitted pro hac vice shall comply with and is subject to Utah statutes, rules of the Utah Supreme Court, including the Rules of Professional Conduct and the Rules of Lawyer Discipline and Disability, the rules of the court in which the attorney appears, and the rules of the Code of Judicial Administration.

Young Lawyer Elected to Office

Daniel E. Garrison, a litigation attorney with Snell & Wilmer L.L.P., was recently elected to serve as President of the Young Lawyer Division of the Utah State Bar. Mr. Garrison will serve as President-Elect during 1999-2000, and as President during 2000-2001. The Young Lawyers Division is a professional service organization of the Utah State Bar that is comprised of every lawyer licensed in the State of Utah who is 36 years of age or younger or who has been admitted to practice law for five years or less.



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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.

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Amy D. Kraus

*Formerly General Counsel to Wardley Better Homes &
Gardens. Ms. Kraus will practice in the area of real property
law, and*

Darwin H. Bingham

Mr. Bingham will practice in the area of commercial litigation.

Ford G. Scalley
J. Bruce Reading
Marlon L. Bates
John Edward Hansen
Scott N. Rasmussen
Steven B. Smith
Lisa A. Jones
Wesley D. Hutchins
Kami L. Peterson
Amy D. Kraus
Darwin H. Bingham

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Telephone: (801) 531-7870 • Facsimile: (801) 531-7968

Case Summaries

by Daniel M. Torrence

CRIMINAL LAW

State of Utah v. Cardall, 370 Utah Adv. Rep. 3 (Utah 1999). Attorneys: Jan Graham, Thomas B. Brunker, and Mark R. Decaria for Plaintiff; Jay D. Edmonds for Defendant.

Cardall was tried for rape of a child. Prior to trial, the State denied Cardall's request to produce the child's school psychological records. Cardall maintained that the records contained information which would be helpful to him at trial. Judge W. Brent West (Weber County) declined Cardall's request to conduct an *in camera* review of the records. During the trial, at one point in the child's testimony, she became upset, so the judge called a recess. Before the jury had exited, and with the child still on the witness stand, the child's mother entered the courtroom, went up onto the witness stand, and comforted her daughter. After conviction, Cardall appealed, arguing (1) the judge erred in not reviewing the psychological records, and (2) the witness stand incident unfairly prejudiced the jury against him.

The Utah Supreme Court held that because the witness stand incident did not include any improper conduct between a juror and a witness, there could be no presumption of prejudice. Also, the incident did not rise to the level of emotional outbursts or disruptive demonstrations that have been held to require new trials in other cases. (In 1914, a Texas defendant was given a new trial after a witness knelt and prayed for guidance while giving her testimony.)

Regarding the psychological records, the Court noted that an exception to the therapist-patient privilege in Evidence Rule 506 exists when the patient's mental or emotional condition is an element of any defense. Because Cardall's defense was largely based on assertions that the child was a habitual liar, had fabricated another rape charge, and was mentally unstable, Cardall should have access to the child's psychological records based on the exception.

However, Utah's exception is limited somewhat by *Pennsylvania v. Ritchie*, a 1987 US. Supreme Court Case. Pursuant to *Ritchie*, specific information from confidential state records may be obtained by the defendant directly from the trial court and then argued as to its admissibility. If a general request for informa-

tion from confidential records is denied by the State, the defendant is entitled to an *in camera* review by the trial judge to determine whether the records contain information which might be material to the case.

In Cardall's case, the trial judge was ordered to review the school psychological records and determine whether or not the information probably would have changed the outcome of the trial. If so, Cardall is entitled to a new trial.

MEDICAL MALPRACTICE

Collins v. Wilson, 370 Utah Adv. Rep. 6 (Utah 1999). Attorneys: John L. Black, Sr. and John L. Black, Jr. for Plaintiffs; David H. Epperson, Jaryl L. Rencher, and Stephen W. Owens for Defendant.

In May, 1989, Plaintiff Collins had abdominal surgery performed by Defendant Dr. Wilson. Following surgery, Collins had multiple severe complications, and was treated for 18 months by two different gastroenterologists. Collins filed his Intent to Sue notice in March, 1993, against Dr. Wilson and LDS Hospital. Medical malpractice actions must be brought within two years of the date the patient discovered, or with reasonable diligence should have discovered, the injury. A jury trial was held solely to decide the statute of limitations issue. Collins objected to the special verdict form used by the court. The jury found for both defendants. After Collins found new evidence against Dr. Wilson, a second trial was held. The second jury also returned a defense verdict. Collins made a motion for judgment notwithstanding the verdict ("j.n.o.v.") after each verdict; both were denied.

Collins appealed, arguing that the trial court erred in (1) refusing to give the jury a "continuous treatment" instruction; (2) denying his j.n.o.v. motions; and (3) refusing the use his special verdict form.

The Utah Supreme Court first noted that the "continuous treatment" rule has not been considered by Utah courts. This rule extends the statute of limitations for medical malpractice actions so that it begins running only after the patient stops treating with the doctor who performed the



procedure at issue. However, even if the "continuous treatment" rule were the law in Utah, the facts of this case would not fit the rule because of the long gap when Dr. Wilson did not treat Mr. Collins following his surgery.

As to Collins' j.n.o.v. motions, the Court noted that Collins admitted he and his wife had suspicions that something had gone wrong with his operation over two years before they brought suit. Also, the gastroenterologists Collins saw in the two years following the surgery suggested to him that Dr. Wilson's surgery may have had abnormal results. This was sufficient evidence for the jury to find that Mr. Collins failed to act with reasonable diligence in filing his claim.

As to Collins' special verdict argument, the Court held that the verdict form need not require the jury to state a specific date or event causing the plaintiff to discover his injury. It is sufficient that the jury find that he discovered or should have discovered the injury by the two-year anniversary of his surgery.

WRONGFUL DEATH

Tallman v. City of Hurricane, 370 Utah Adv. Rep. 31 (Utah 1999). Attorneys: Robert DeBry, Albert W. Grey, Nancy A. Mishmash for Plaintiffs; Tim Dalton Dunn and Glen T. Hale for defendants.

The City of Hurricane hired Progressive Construction Company to install water lines. Progressive subcontracted with Haukos Construction to dig trenches. Tallman, a Progressive employee, was killed when struck by a rock which fell from an unshored trench. Progressive had agreed to provide "all trench protection and shoring." Tallman's heirs sued Haukos based on common

law negligence. Plaintiffs alleged, among other things, that Haukos violated OSHA standards. The trial court found that neither OSHA regulations nor the contract created any duty running from Haukos to Tallman.

On appeal, the Utah Supreme Court held that a common law duty may nevertheless have existed, depending on factual issues still in dispute. First, the Court announced that Utah does follow the foreseeability rule found in the Restatement (Second) of Torts. The relevant sections include (1) Section 385, which provides that a company creating a condition on land belonging to another may be liable to a third person injured on the land by the dangerous character of the condition, even after the company's work has been accepted by the landowner; (2) Section 389, which provides that a chattel supplier who should know that the chattel is unsafe may be liable to those injured by the foreseeable use of the chattel; and (3) Section 395, which states that a manufacturer may be liable if its improperly-manufactured chattel is dangerous unless carefully made.

The Court analogized the digging of the trench to the making of a chattel, and noted that the evidence indicated that Haukos was aware that the trench was unsafe and aware that Progressive did not take appropriate safety measures. If Haukos knew the trench would be dangerous through its careless digging, it might also be liable. Third, if Haukos' trench amounted to an "inherently dangerous" condition, it could be liable. Furthermore, the Court announced that henceforth it would consider failure to comply with OSHA standards as evidence of negligence. Thus, summary judgment was inappropriate on several theories and the district court was reversed.

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- Dealing with a Wolf in Sheep's Clothing: ERISA
- Debunking the Bio-Mechanical Engineer
- Effective Mediation & Arbitration
- Picking a Friendly Jury
- Motions in Limine
- Maximizing General Damages in a Wrongful Death Case
- Using the Utah New Unfair Claims Settlement Practice Rule and Model Regulations
- Maximizing Economic Damages
- Becoming a Better Plaintiff Attorney: Tips from the Defense
- Winning a Slip and Fall Case--Practical Pointers
- Recognizing New Employment Law Issues
- Learning Lessons from the School of Hard Knocks
- Filing Claims Against Governmental Agencies

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- Colin P. King
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- Jack C. Helgesen
- Douglas G. Mortensen
- David W. Parker
- Charles A. Gruber, Jr.
- Alan W. Mortensen
- Brian S. King
- Paul S. Felt
- Lynn C. Harris
- Peter C. Collins
- Susan Black & David R. Olsen
- Rich L. Humphreys
- Warren W. Driggs
- Rick K. Glauser
- Roger H. Hoole
- Dave M. Eckersley
- Norm J. Younker

Luncheon Speaker: Tom Barberi
KALL Radio & Tribune Columnist

For Registration Information, please call Amanda Jespersen

801-531-7514

or Register on-line at www.utla.org

Outrage: The Five Reasons Why O.J. Simpson Got Away with Murder

by Vincent Bugliosi

Reviewed by Betsy Ross

If you heard the lecture by Bugliosi at the Bar Convention, you don't need to read the book (nor this review, I suppose). In an hour at Sun Valley, Bugliosi covered just about everything in his 513-page paperback; all you'll miss are his vituperative descriptions of those unfortunate enough to have blundered into Bugliosi's bulls-eye range.

The major target is the prosecution team, which Bugliosi describes repeatedly (and I mean REPEATEDLY) as "incompetent," or as he writes concerning the prosecution's decision to have Simpson try on the glove found at Simpson's estate: "It's absolutely remarkable what the prosecutors did with the gloves, letting Simpson be in complete control and be the one to decide whether there was a fit. This isn't incompetence. Incompetence is too flattering a term for this kind of conduct." Further, "Voltaire once observed that common sense is not that common. We certainly know it wasn't among the twenty-five prosecutors who represented the state in the Simpson case . . ."

Few escape his poison pen, though. About the jury: "The Simpson jury was not an average jury. If it was, we should start packing our bags for Madagascar. Our jury system is perhaps the most priceless legacy we inherited from our legal ancestors, the British. The Simpson jury defiled that legacy." About Judge Ito: "I blame Ito 100 percent for allowing it all to happen, for permitting race to be a big issue at the Simpson trial." About the press: "[M]any of the media referred to this case as a 'true murder mystery. . . . The real mystery is how people with IQs no higher than room temperature can write for major publications." About *himself*: "The reader should also know that I am, by nature, a critical person. I'd find fault with a beautiful morning sunrise."

Bugliosi attempts to make the issue for the reader simple, as he quotes himself from a Playboy magazine interview before the trial began: "No matter the outcome of the trial, O.J. Simpson is

guilty. There can be no doubt in the mind of any reasonable person." (Well, I, the reader, am certainly reasonable, right?) Bugliosi is, if nothing else, certain about the Brown/Goldman murders, and, I have no doubts, certain about everything in his life. I have met people like him before, and have sometimes wished I could have their gift of certitude. Wouldn't it be nice to be right all the time? Is this a trait of successful prosecutors, I wonder? (Bugliosi notes in his book that "a lawyer can not expect a jury to buy his cause if they detect that he does not believe in it *completely* himself.")

Substantively, Bugliosi does make convincing arguments. His bottom line? "[I]f your blood is found at the murder scene, as Simpson's was conclusively found to be by DNA tests, that's really the end of the ball game. There is nothing more to say. (And in this case, not only was Simpson's blood found at the murder scene, but the victims' blood was found inside his car and home.) I mean, to deny guilt when your blood is at the murder scene is the equivalent of a man being caught by his wife in *flagrante delicto* with another woman and saying to her (quoting comedian Richard Pryor), 'Who are you going to believe? Me or your lying eyes?'"

And the mistakes he points out, indelicately though he does, appear to be valid complaints. Allowing the trial to occur downtown, where the jury pool composition was much more black, and thus arguably more sympathetic to Simpson, than the pool that would exist in the community in which the murders occurred, was certainly unwise. Allowing the race card to be played at all (as Judge Ito did) when, as Bugliosi points out, Simpson had long ago abandoned the black community and was considered by most as an "Uncle Tom," was a huge mistake. Giving great deference to Simpson as a much-loved celebrity in front of



the jury, when he should have been treated as the double murderer he was, Bugliosi argues, was inexcusable. Ultimately, he writes, it was the "weak voice of the people" that allowed a murderer to go free.

Read this book if you must, if you just didn't get enough of the Simpson mania during the trial, or if you hold on to Simpson's innocence, but be prepared to wallow in sarcasm and arrogance. Whew, I'm just happy to put this book behind me; anything interesting was lost, for me, in the exhausting barrage of acerbity.

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Utah Bar Foundation Board of Trustees Grant 1999 Awards

The Utah Bar Foundation Board of Trustees granted the following awards at its June 1999 meeting.

LEGAL SERVICES

Legal Aid Society of Salt Lake – \$110,000. This agency provides legal counsel to indigent members of the community with civil problems. Its focus is exclusively handling family law cases with three programs: The Domestic Relations Program provides legal representation in divorce, custody and visitation, paternity, guardianship, modification of orders and adoption of children. The Domestic Violence Victim Assistance Program provides legal representation to adults and children who are victims of domestic violence. Bridge the Gap Program allows victims of domestic violence in a crisis situation to bypass the Domestic Relations waiting list and have their cases opened immediately.

Utah Legal Services – \$105,000. This nonprofit law firm provides free legal assistance for low-income Utahns in civil matters. IOLTA funds will support the ULS advocacy team of 36 attorneys and paralegals statewide and non-personnel costs of maintaining five offices throughout the state in Cedar City, Monticello, Ogden, Provo and Salt Lake. Priorities focus on the basic needs of the low-income client population: family law/domestic violence, public benefits, and housing. IOLTA funds will support ULS general operations.

Disability Law Center – \$20,000. This agency enforces and strengthens the federal, state and local laws that protect the rights of people with disabilities. A staff of 23 attorneys, paralegals and advocates in Salt Lake City, Logan and Cedar City use direct legal representation, self-advocacy, and training to help create a society where people with disabilities are free from abuse, neglect and discrimination and receive the services needed. IOLTA funds will support the agency's legal director position.

A Welcome Place – \$30,000. This nonprofit agency provides legal assistance to low-income individuals and families seeking benefits from the Immigration and Naturalization Service with direct legal assistance of domestic violence, asylum, and family unification.

AWP also serves as a statewide information center for immigration information. IOLTA funds will support direct representation

to clients, provide outreach and pay administration expenses.

DNA People's Legal Services, Inc. – \$28,000. This corporation provides free legal services to low-income people who live in southeastern Utah. IOLTA funds will pay a portion of the salary of a managing attorney and senior advocate in Mexican Hat, San Juan County.

ULS Senior Lawyer Volunteer Project – \$6,000. This project of Utah Legal Services is an estate planning pro bono legal service program that utilizes retired attorneys, law students and active attorneys to provide estate and health care planning services to low-income Utahns, mostly elderly and disabled. Clients are visited in their homes and in health care facilities when needed. The SLVP also makes presentations and outreach services at senior and community centers.

EDUCATION

Utah Law-Related Education Project – \$40,000. This agency promotes law-related and citizenship education of Utah's youth and communities through interactive educational experiences to create a citizenry that not only understands the law, the legal system and its rights and responsibilities as citizens, but is ready and able to govern itself. The current programs include Statewide Mock Trial Program, Mentor Programs, Teaching Law in the High Schools, Court Tour Program, Conflict Management Program, Salt Lake Peer Court, Utah Youth Summit, and Youth-at-Risk.

ADMINISTRATION OF JUSTICE

Utah Dispute Resolution – \$9,000. This agency provides the residents of Utah with quality mediation and conciliation services to low and middle income disputants. It is the mission of UDR to provide affordable alternatives to the adversarial process to members of our community who are in conflict. IOLTA funds will assist UDR to continue its programs of telephone conciliations, small claims mediations, mediations at the Law & Justice Center and mediation and negotiation training.

2000 Law Student Awards – \$12,000 Community Service Scholarships and \$2,000 Ethics Awards

Total 1999 Grant Awards – \$362,000

Attorneys Needed to Assist the Elderly **Needs of the Elderly Committee Senior Center Legal Clinics**

Attorneys are needed to contribute two hours during the next 12 months to assist elderly persons in a legal clinic setting. The clinics provide elderly persons with the opportunity to ask questions about their legal and quasi-legal problems in the familiar and easily accessible surroundings of a Senior Center. Attorneys direct the person to appropriate legal or other services.

The Needs of the Elderly Committee supports the participating attorneys, by among other things, providing information on the various legal and other services available to the elderly. Since the attorney serves primarily a referral function, the attorney need not have a background in elder law. Participating attorneys are not expected to provide continuing legal representation to the elderly persons with whom they meet and are being asked to provide only two hours of time during the next 12 months.

The Needs of the Elderly committee instituted the Senior Center Legal Clinics program to address the elderly's acute need for attorney help in locating available resources for resolving their legal or quasi-legal problems. Without this assistance, the elderly often unnecessarily endure confusion and anxiety over

problems which an attorney could quickly address by simply directing the elderly person to the proper governmental agency or pro bono/low cost provider of legal services. Attorneys participating in the clinics are able to provide substantial comfort to the elderly, with only a two hour time commitment.

The Committee has conducted a number of these legal clinics during the last several months. Through these clinics, the Committee has obtained the experience to support participating attorneys in helping the elderly. Attorneys participating in these clinics have not needed specialized knowledge in elder law to provide real assistance.

To make these clinics a permanent service of the Bar, participation from individual Bar members is essential. Any attorneys interested in participating in this rewarding, yet truly worthwhile, program are encouraged to contact: John J. Borsos or Camille Elkington, 370 East South Temple, Suite 500, Salt Lake City, Utah 84111, (801) 533-8883; or Joseph T. Dunbeck, Jr., Parsons, Davies, Kinghorn & Peters, 310 South Main Street, Suite 1100, Salt Lake City, Utah 84101, (801) 363-4300.



LEGAL WRITING **October 15th** **8:30 a.m. – 4:15 p.m.** **Law & Justice Center**

Co-Sponsored with the
Appellate & Litigation Sections, Utah State Bar.
Featuring Elizabeth Francis, Professor of English,
University of Nevada at Reno.
Prof. Francis teaches writing skills
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CLE: 7 hrs.

Fee: \$110.00 (lunch provided)



AND JUSTICE FOR ALL

Giving from Government Attorneys

Government attorneys are found in most city, county, state and federal agencies. Typically, agency attorneys practice in narrowly defined specialized practice areas. Few government attorneys venture out of their particular expertise and rarely practice in areas of the law where the pro bono needs are great. Most of these attorneys acknowledge, however, that legal services are crucial to those individuals who are unable to access these services due to costs or location in the community. Unfortunately, institutional constraints such as private practice prohibitions, office policies, bureaucratic procedures, and other factors limit the ability of government attorneys to actually provide pro bono services. By contributing to the "and Justice for all" campaign, government attorneys can lend their support to legal services provided by Disability Law Center, Legal Aid Society and Utah Legal Services. These organizations can, in

turn, efficiently provide high quality legal services in the areas of greatest need.

"A financial contribution to the campaign assists by providing expertise from agencies that specialize in legal issues concerning impoverished persons, child support, custody issues and people with disabilities," according to Craig W. Anderson, Salt Lake County District Attorney's Office.



Craig W. Anderson

The ethical responsibility associated with lawyers to provide charitable work or financial contributions to agencies that provide such services is reaffirmed in the obligations created by Rule 6.1 of the Rules of Professional Conduct.

Bridging the Gap

Legal Aid Society of Salt Lake City represented a woman in obtaining a protective order against her husband. The protective order gave the woman custody of her six children and gave her husband visitation rights with the children. However, under state law, orders for custody and visitation contained in protective orders are valid only for a maximum of 150 days. They are not permanent. In response to client need for permanent orders, Legal Aid Society established the Bridge the Gap Program. This program "bridges the gap" between protective orders and permanent orders. That is, by referring protective order clients directly to the domestic relations program, the Bridge the Gap Program helps clients obtain permanent custody orders before their protective orders expire.

This particular client needed permanent orders of custody, child support and visitation. She transferred to the Bridge the Gap Program where Mary Cline, Staff Attorney and Megan Koontz, Paralegal, took her case. Because the client spoke only Spanish, Mary E. Gunman, Client Coordinator, assisted as her interpreter.

The client called Legal Aid Society on a Monday, reporting her husband had exercised visitation over the weekend with the five eldest children. But he returned only the two youngest children, keeping the three eldest and refusing to return them to the client. After talking with the client and making several phone calls, the staff discovered that the Salt Lake County Sheriff's Department could not enforce the protective custody order because it was not on the state-wide reporting system. The Domestic Violence staff at Legal Aid Society suggested the Bridge the Gap team take a certified copy of the protective order to the Salt Lake City police to attempt enforcement.

The Bridge the Gap team contacted the police. The paralegal, interpreter and client met with them in a parking lot near the husband's home. However, the police officers determined that they could not enforce the civil provisions of the protective order, including custody provisions. Nevertheless, the officers accompanied the client and staff to the husband's home to assist with retrieving the children. Upon arriving at the home of the husband, the officers spoke with the husband and the children. After an hour of discussion about the requirements of the pro-

tective order and the husband's need to return the children, one child asked to go with the client and the husband allowed the child to go.

The next day, the Bridge the Gap team prepared a Writ of Assistance that the staff attorney presented to the judge. The Writ of Assistance directed law enforcement officers to pick up the children and return them to the client's custody. After the judge signed the Writ, the paralegal delivered it to the sheriff's office for enforcement. At the sheriff's request, the paralegal and interpreter accompanied the client to the husband's home to be

there and receive the children. The paralegal, interpreter and client met the officers in a parking lot and together they went to the husband's home. After some resistance, the husband turned the remaining two children over to the officers who then delivered them to the grateful client. Absent the dedication and perseverance of the Bridge the Gap staff and the Client Coordinator who acted as interpreter, this client would have been deprived of custody of her minor children for an extended period of time.

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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 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.

SHAKESPEARE & CLE: NEGOTIATING THE ETHICS MINEFIELD

Date: Friday, August 27, 1999
 Time: 2:00 p.m. to 5:00 p.m. (sign-in and door registration begins at 1:30 p.m.)
 Place: Broadcast to 7 Utah Cities:
 Cedar City – Southern Utah University, Main Floor Library, 351 West Center
 Salt Lake City – University of Utah, Milton Bennion Hall, Room 212
 Vernal – Uintah High School, Room N102, 1880 West 500 North
 Orem – Utah Valley State College, Learning Resources Bldg. 3rd Floor, 800 West 1200 South
 Delta – Delta Applied Technology Center, Room 7, 305 East 200 North
 Richfield – Now South, Ground Floor, Room 129, 800 West 200 South
 Moab – Grand Vocational Center, Between Buildings, 439 South 100 East

Fee: \$65.00 by August 20; \$75.00 after August 20

CLE Credit: 3.0 HOURS CLE

To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

GOVERNMENT LAW SECTION FIRST ANNUAL MEETING

Date: Friday, September 10, 1999
 Time: 9:00 a.m. to 3:00 p.m.
 Place: Snowbird
 Fee: \$40.00 governmental law section members; \$80.00 for others

CLE Credit: Approximately 6.0 HOURS CLE

To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

Access the most current CLE calendar on our web site at www.utahbar.org/calendar.

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.***

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

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

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

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

ALI-ABA: "HOT ISSUES IN EMPLOYMENT LAW AND LITIGATION: HIGHLIGHTING CURRENT DISCRIMINATION, HARASSMENT, AND RETALIATION ISSUES"

Date: Tuesday, September 14, 1999
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$165.00 (*To register, please call 1-800-CLE-NEWS*)

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 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: \$249.00 (*To register, please call 1-800-CLE-NEWS*)
CLE Credit: 6.0 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.

!!!! NEW SEMINAR !!!!

EXPERT TESTIMONY LAW & TACTICS WITH PROFESSOR ED IMWINKELRIED

Date: Friday, September 24, 1999
Time: 8:30 a.m. to 4:30 p.m.
Place: Utah Law & Justice Center
Fee: \$199.25 for members of the Utah State Bar;
\$210.00 for others
CLE Credit: 7.5 HOURS CLE

To Register: Call 800-328-4444 or fax to 612-349-6561, \$5.00 discount for those registering online at www.npi.com

BUSINESS LAW UPDATE: CASE LAW & STATUTORY UPDATE FOR THE TRANSACTIONAL ATTORNEY CO-SPONSORED WITH WEST GROUP

Date: Friday, October 1, 1999
Time: 8:30 a.m. to 12:00 p.m.
Place: Utah Law & Justice Center
Fee: \$50.00
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.

"INVESTIGATION AND PROSECUTION OF OBSCENTITY CASES"

Date: Monday, October 4 thru 5, 1999
Time: October 4 – 1:00 p.m. to 4:30 p.m.;
October 5 – 9:00 a.m. to 4:45 p.m.
Place: Utah Law & Justice Center
Fee: \$15.00 (\$20.00 at the door) Send registration to Marilyn Jaspersen, Utah Prosecution Council, P.O. Box 140841, Salt Lake City, UT 84114-0841

POWER POINT TRAINING PART I

Date: Wednesday, October 6, 1999
Time: 6:00 p.m. to 9:00 p.m.
Place: Horizonte School, 1234 South Main Street, Salt Lake City
Fee: \$60.00
CLE Credit: 3.0 HOURS

To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

ALI-ABA: "ANNUAL FALL ESTATE PLANNING PRACTICE UPDATE"

Date: Thursday, October 7, 1999
Time: 10:00 a.m. to 1:15 p.m.
Place: Utah Law & Justice Center
Fee: \$165.00 (*To register, please call 1-800-CLE-NEWS*)

LEGAL WRITING SEMINAR

Date: Friday, October 8, 1999
Time: 8:30 p.m. to 4:15 p.m.
Place: Utah Law & Justice Center
Fee: \$110.00

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.

FALL CORPORATE COUNSEL CLE: INTERNAL INVESTIGATIONS: DOS AND DON'TS

Date: Thursday, October 28, 1999
Time: 8:30 a.m. to 1:00 p.m.
Place: Utah Law & Justice Center
Fee: \$40.00 Corporate Counsel Members;
\$80.00 all others

CLE Credit: 4.5 HOURS includes 1 HOUR ETHICS

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

To Register: send your name, Bar number and registration fee to 645 S. 200 E., S.L.C., UT 84111.

AN EVENING WITH THE THIRD DISTRICT COURT

Date: Wednesday, November 3, 1999
Time: 6:00 p.m. to 9:00 p.m.
Place: Utah Law & Justice Center
Fee: TBA

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.



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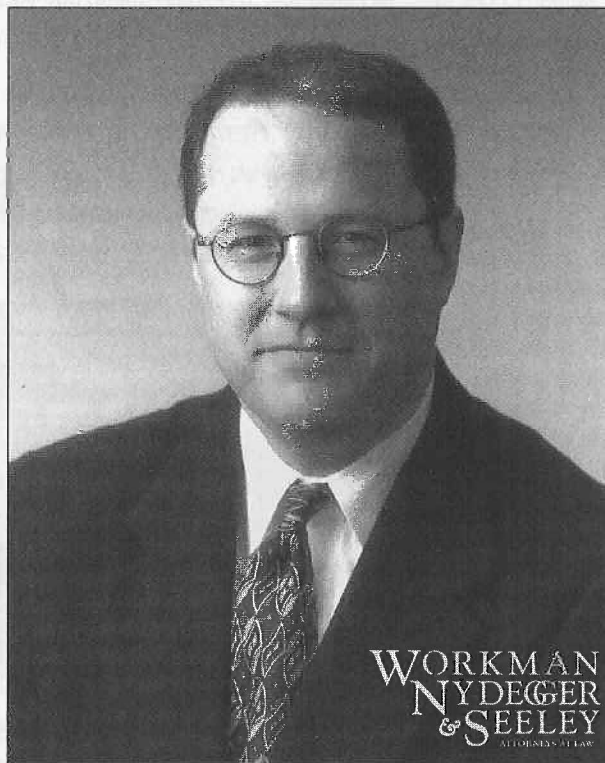
Fee: \$450 early registration (by Sept 24th)
\$500 after Sept 24th



32 Hour Basic Mediation Training November 15, 16, 18, 19, 1999

Fee: \$500 early registration (by Oct 29th)
\$550 after Oct 29th

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The Intellectual Property law firm of Workman, Nydegger & Seeley would like to congratulate John Cannon Stringham, a registered patent attorney and shareholder of the firm, on his election to serve as Chairman of the Intellectual Property Law Section of the Utah State Bar.

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

Date: Thursday, November 4, 1999
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$165.00 (To register, please call 1-800-CLE-NEWS)

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 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

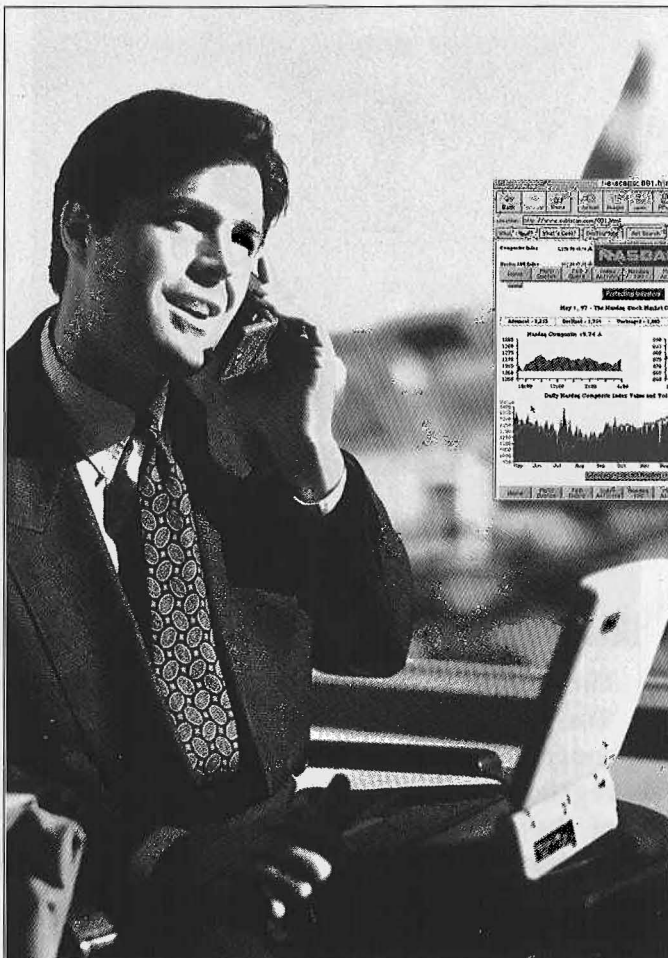
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NLCLE WORKSHOP AND PRIMER: LITIGATION

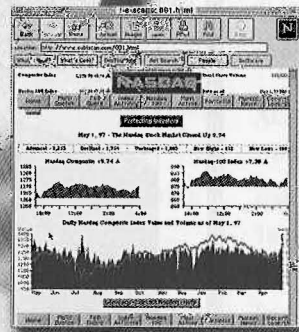
Date: Thursday, December 16, 1999
Time: 5:30 p.m. to 8:30 p.m. (sign-in and door registration begins at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: \$30.00 for members of the Young Lawyers Division;
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Bar Member Rates: 1-50 words – \$35.00 / 51-100 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.

FOR SALE

Attorneys desk, judges chair, secretarial desk, computer table and variety of legal form books for sale, either individually or as a complete set. Contact John K. Johnson, 359-8189.

POSITIONS AVAILABLE

INTERNATIONAL LEGAL REFORM- The American Bar Association Central and East European Law Initiative (CEEI) 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.

Salt Lake City firm seeks attorney with 5-8 years general corporate and transactional experience. Some securities experience a plus. Inquiries will be kept confidential. Please send resume to Christine Critchley, Utah State Bar, 645 South 200 East, Confidential box #63, Salt Lake City, Utah 84111.

BUSINESS ATTORNEY – Seeking 1-2 attorneys with at least 5 years experience and established client base in the areas of corporate, tax, securities, commercial and/or estate planning to form practice group with attorney who has substantial client base, over 16 years experience in corporate, commercial, securities and estate planning, and downtown office space. Send resume to Christine Critchley, Confidential Box # 70, 645 South 200 East, Salt Lake City, Utah 84111.

Cache Valley Firm is seeking an associate with 0-2 or more years of estate planning and transactional experience. Mail resume and cover letter to: Shaun L. Peck, P.O. Box 675, Logan, Utah 84323-0675.

URGENT NEED FOR TITLE OFFICER – Our law firm needs an attorney with a title insurance license. Forming a title company. Large volume of title work guaranteed. Call (801) 366-9966.

Advocate / Paralegal – Public interest law firm seeks paralegal / advocate with a commitment to the rights of citizens with disabilities to run its Logan office. Experience in the areas of disability, public interest and/or civil rights advocacy. Bilingual/Spanish/ASL preferred. Persons of color, women and persons with disabilities are encouraged to apply. Excellent benefits. Progressive, family-supportive agency. Submit resume and letter of application to Legal Director, Disability Law Center, 455 East 400 South, Suite 410, Salt Lake City, Utah 84111. Equal opportunity employer.

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 Legal Defender Association is currently updating its trial and appellate attorney roster. If you are interested in submitting an application, please contact F. John Hill, Director, for an appointment at (801) 532-5444.

STAFF ATTORNEY POSITION: Mortgage loan servicing company specializing in default and loss mitigation servicing for sub performing residential mortgage loans has a mid-level in-house Staff Attorney position available. Five to seven years experience concentrating on drafting and negotiating complex financial transactions, secured credit facilities, servicing agreements and mortgage loan purchase agreements mandatory. Position will also provide advice and counsel on real estate and general corporate matters. Full benefit package and competitive salary available. Please reply with salary requirements to Christine Critchley, Utah State Bar, Confidential Box #71, 645 South 200 East, Salt Lake City, Utah 84111.

Office in Provo. Small firm. 2 blocks from courthouse. Available as association with existing law firm of 15 years with secretarial, telephone, fax, computer, and office supplies or available as office share. Terms to be discussed. Available August 31st. Contact Jim at 374-6272 or fax 374-6282.

LEGAL SECRETARY – Position at the UTAH STATE BAR requires a professional with: 3+ years experience, Word 7.0 with 65+ wpm, excellent writing (grammar, spelling and punctuation skills), and the ability to work with minimum supervision. Exceptionally pleasant work environment and good benefits package. Send resume, cover letter and 3 references to: General Counsel, Utah State Bar, 645 South 200 East, SLC, UT 84111.

ENVIRONMENTAL ATTORNEY – Hawley Troxell Ennis & Hawley LLP seeks an attorney with 2-4 years experience to join our Environmental and Natural Resources Practice Group in our Boise office. Environmental litigation and/or regulatory experience strongly preferred. Strong academic credentials required. Direct confidential inquiries to: Fax: (208) 342-3828, E-mail: pvc@hteh.com, or send to: Hawley Troxell Ennis & Hawley LLP, Attn: Hiring Partner, P.O. Box 1617, Boise, Idaho 83701-1817. www.hteh.com.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

OFFICE OF THE CLERK

150 U.S. Courthouse

350 South Main Street

Salt Lake City, Utah 84101-2180

POSITION VACANCY ANNOUNCEMENT – DEPUTY CLERK

The Office of the Clerk is seeking applications for the position of Deputy Clerk. The position is a Judicial Salary Plan Classification Level 24, with an annual starting salary range of \$23,903 to \$29,900 depending on experience and qualifications. Incumbent may convert to full-time permanent status after successful completion of six-month probationary period and successful performance review. This is a federal government position with potential for upward mobility.

INITIAL ASSIGNMENT: Serve as generalist clerk, reviewing and accepting new case filings and pleadings; receipting filing fees; copying court documents; responding to inquiries concerning legal process and case information and completing data entry and case maintenance. Act as liaison between the court, counsel, litigants, the public, and court-related agencies.

MINIMUM REQUIREMENTS: Applicants must have a minimum of three years administrative experience in government or private sector which provided a thorough understanding of office administrative procedures, automated records-keeping systems and organization of high-volume paperflow. Preference will be given to applicants who have experience in data entry in complex information processing systems. A bachelor's degree may be substituted for clerical experience. The position requires basic understanding of and familiarity with computers/data entry, word processing at 45 corrected words per minute, and the initiative to accomplish assigned work independently and accurately

within time limits for completion. Applicants should be well groomed and professional. Submission of a record of typing ability is required. Applicants should have working knowledge of WordPerfect for Windows and Windows 98. Applicants should have good communication and interpersonal skills.

QUALIFICATIONS: Prior court- or law-related experience in an automated environment highly desirable.

APPLICATION PROCEDURE: Interested applicants who meet the qualifications should prepare a cover letter and Application for Judicial Branch Federal Employment (AO-78) and submit them with relevant supporting documentation and references to the address listed below or via internet e-mail to Kathleen.Johnson@utd.uscourts.gov or via fax to (801) 526-1166. Application Form AO 78 is available via the court's web site <http://www.utd.uscourts.gov> or at the address listed below from 8:30 a.m. to 5:00 p.m. Monday - Friday. Position to be filled asap.

United States District Court for the District of Utah

Office of the Clerk of Court

Attn: Intake

Room 150, Frank E. Moss U.S. Courthouse

350 South Main Street

Salt Lake City, Utah 84101-2180

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Registration is taken by calling 1-800-328-4444. The fee for Utah State Bar Members is 199.25 (209.25 at the door). Seating is limited.

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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.

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: Case analysis- Identify investigative questioning and procedural errors in recorded out-of-court testimony – Evaluate courts' admission of statement evidence and testimony – Determine origin of allegation and alternative sources – Appeal issues. Bruce Giffen, M.Sc. Evidence Specialist. American Psychology-Law Society. (801) 485-4011.

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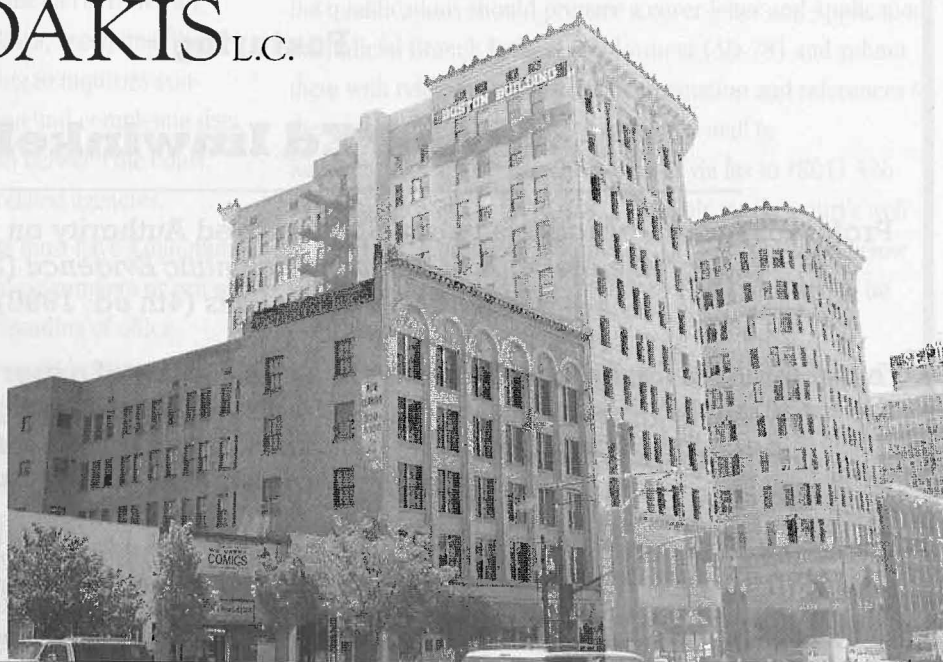
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We are pleased to announce
the opening of our **new office**



Get To Know Your Bar Staff



AMY NIELSEN

Amy Nielsen was born and raised in Salt Lake City, Utah and graduated from Brighton High School in 1998. She is currently attending the University of Utah, where she is majoring in Communication Disorders. After obtaining her undergraduate degree, she plans to go to Graduate School and

receive her Master's Degree in Communication Disorders. A career in Speech Pathology is her goal, and she plans to work with young children in an elementary school setting.

A piano student of seven years, and now a violin student of six months, Amy loves beautiful music. She was involved in many choirs in High School and loves sharing her musical talents with others. Musicals, symphonies, and ballets are her love! Her dream is to sing back up for James Taylor, but he cannot seem to get a hold of her, due to her busy schedule! Amy has also been involved with ZCMI as a runway model for the past two years. She considers this experience one in which she can practice her skills as an actress, wear beautiful clothes, and get paid to do it!

As the Admissions Assistant at the Utah State Bar, Amy works with the many applicants for the Bar Exam. She is responsible for making sure applicant information is updated and correct, and is also responsible for occasionally calming down an extremely agitated and nervous Bar exam applicant. Amy also works with the Bar members, informing them of the Bar member benefits, such as the ever popular Disney Vacation card!

Amy enjoys traveling, especially to big, busy cities. She is planning a study abroad to London in the near future. Although city life is her preference, she loves the mountains, hiking, camping, and is currently improving her fly fishing techniques. She is the youngest of four daughters, and has three great brothers-in-law

who have made certain she knows what it is like to have brothers. With each visit of her married sisters, she is certain to be tackled, or tickled, usually both. Although, she defends herself successfully with her recently acquired skills in Tae Kwon Do and Kick Boxing!



INGRID WESTPHAL KELSON

Ingrid Westphal Kelson was born and raised in Salt Lake City, Utah. The daughter of Chilean immigrants, she is a first generation U.S. citizen.

Ingrid joins the Utah State Bar as a Legal Secretary in the Office of Professional Conduct. Her job duties include assisting

Bar counsel with the progression and completion of cases.

Ingrid came to the Bar after working at the Salt Lake City Attorney's Office, Civil Division. She has also worked for attorneys in private practice, with an emphasis on family law. She holds a Political Science degree from the University of Utah with a Certificate of International Relations. She would like to continue her education by obtaining a Master's degree in Public Administration or perhaps a Ph.D. in Political Science.

Ingrid enjoys traveling and would welcome the opportunity to live and work outside of the United States, preferably in a location where she could utilize her language skills (French and Spanish) as well as her education. Her visit to Chile has been the most memorable vacation thus far. She was able to experience the first election in that country since the end of Pinochet's dictatorship, which began in 1973. More recently, she has traveled to Boston, San Francisco and Seattle where she and her husband (mostly her husband) enjoyed major league baseball games. They hope to travel to Europe to visit friends in the near future.

Other interests include running and tennis.

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CERTIFICATE OF COMPLIANCE

For Years 19____ and 19____

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Name: _____ Utah State Bar Number: _____

Address: _____ Telephone Number: _____

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Required: a minimum of three (3) hours

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Program Title

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

Program Title

Date of Activity CLE Hours Type of Activity**

Continuing Legal Education

Required: a minimum of twenty-four (24) hours

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Date of Activity CLE Hours Type of Activity**
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****EXPLANATION OF TYPE OF ACTIVITY**

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

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

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

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

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

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

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

DATE: _____ **SIGNATURE:** _____

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

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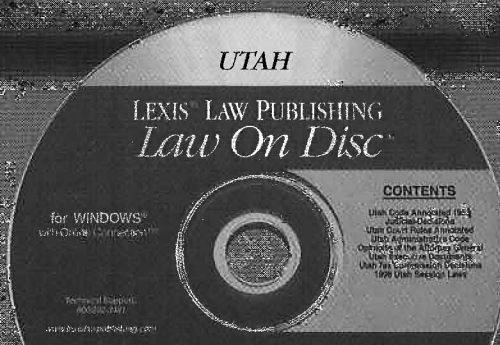
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