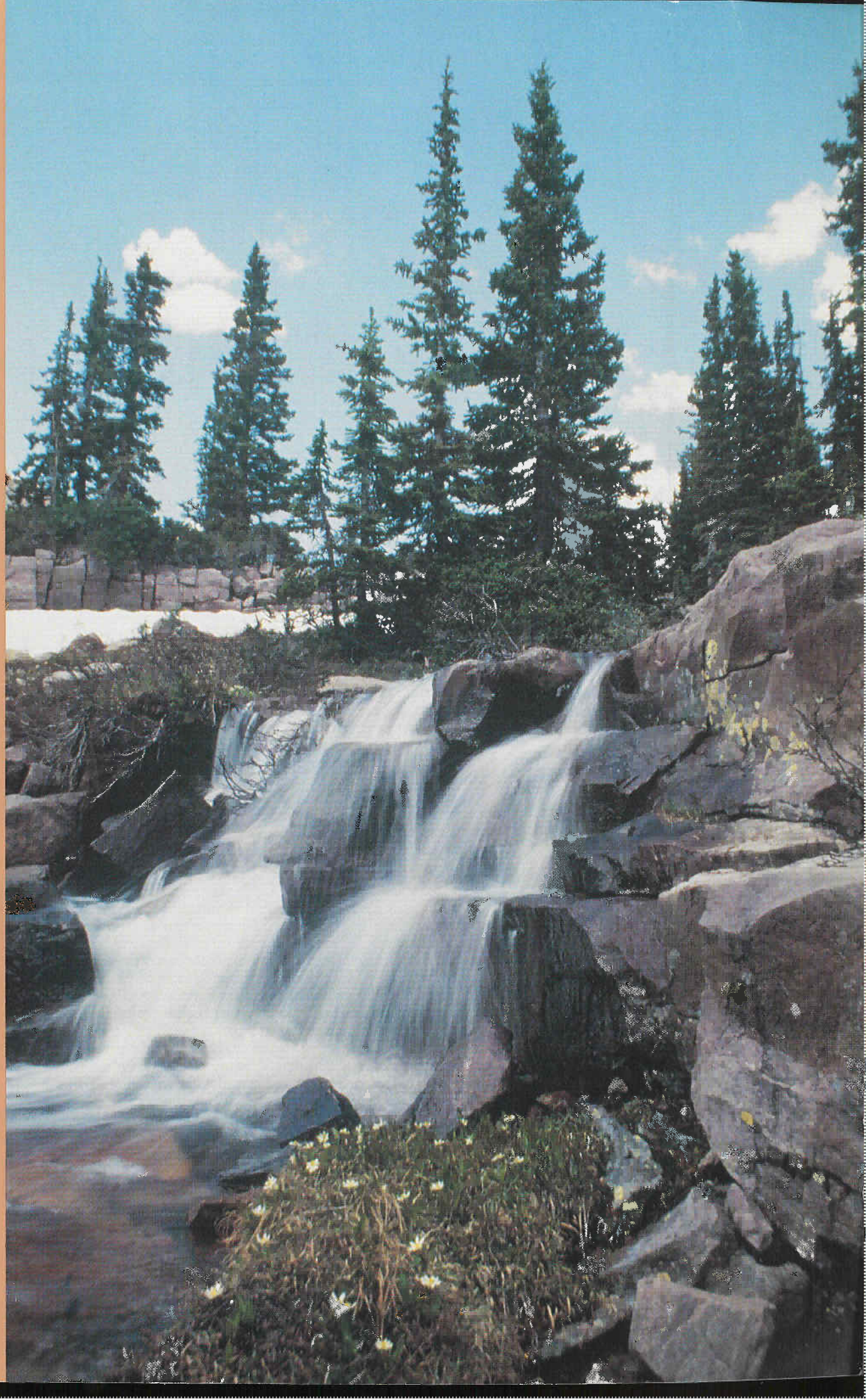
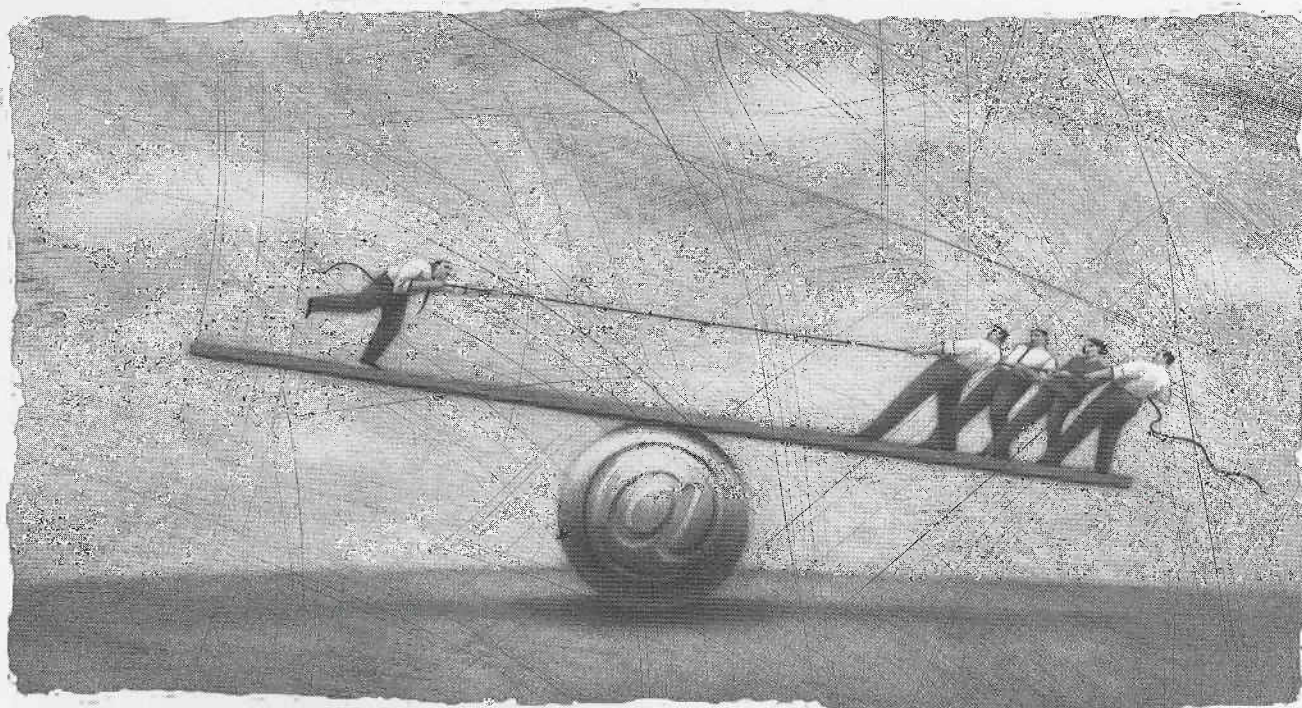


# Utah Bar Journal

Volume 13 No. 4  
April 2000







# Web site v. FirmSite®

*from West Legal Directory®*

Building a Web site for your practice can attract potential clients. But with a FirmSite, you'll have more pull.

Constructing a site and getting on the Internet is only the beginning. A FirmSite® from West Legal Directory offers legal professionals a comprehensive Internet marketing solution.

- **Build & maintain your site**

Unlike generalists, we construct sites only for the legal profession. We maintain your site, making changes as needed, and provide monthly usage reports.

- **Create compelling content**

Our unique experience with legal information offers you more than just an Internet brochure. We help you develop the persuasive content that can make all the difference.

- **Pull people to your practice**

We usher prospective clients to your site, not just traffic. Unlike any other provider, we connect you to one of the nation's leading legal help sites.

Every FirmSite can be found at [Lawoffice.com](http://Lawoffice.com) – the Web address people go to for legal information and help. And that's why your practice needs to be there too.

**Lawoffice.com™**  
*from West Legal Directory®*

For more information, call your West Group representative  
at 1-800-762-5272, or go to: [www.westgroup.com/marketingsolutions](http://www.westgroup.com/marketingsolutions)





Utah State Bar



# Spring Practice Seminars

---

Updates & Practice Tips  
in Specific  
Practice Areas

---

## DATES

April 20 Real Property

April 21 Collection Law

May 5 Corporate Counsel

May 12 Family Law

May 17 Labor & Employment

June 16 Legal Assistant Division





## Real Property 4-20-00



## Collection Law 4-21-00

- 8:00 a.m. Registration and Continental Breakfast
- 8:30 a.m. Annual Business Meeting
- 8:45 a.m. Local Government Subdivision Approval Process From the Perspective of Counsel and the Governmental Agency
- 10:05 a.m. Review of Real Estate Cases from the Utah Supreme Court
- 10:20 Break
- 10:35 a.m. Developments in Recent Utah Legislative Sessions
- 10:50 a.m. Review of Real Estate Cases from the Utah Court of Appeals
- 11:40 a.m. Ethical Issues
- 12:30 p.m. Program Adjourns

**4 hrs. CLE, Including 1 hr. ethics**

\*Exact times subject to change.

- 8:30 a.m. Registration
- 9:00 a.m. Default Attorney Fees
- 10:00 a.m. \*FDCPA Issues
- 11:00 a.m. Legislative Update 2000
- 12:00 p.m. Annual Business Meeting And Lunch

**3 hrs. CLE**

\* Subject to change



## Corporate Counsel 5-5-00

- 8:00 a.m. Registration & Continental Breakfast
- 8:30 a.m. Ethical Issues of Concern to In-House Counsel
- 9:30 a.m. Employment Law Update
- 10:30 a.m. Outcome of the Year 2000 Utah Legislative Session
- 11:30 a.m. Lunch Panel: Litigation Management Responsibilities of In-House Counsel
- 12:30 a.m. Annual Business Meeting

**4 hrs. CLE. Including 1 hr. ethics**





## Family Law 5-12-00

8:00 a.m. Annual Business Meeting  
*Marcie Keck, Chair*

8:30 a.m. Ethics - Attorney Liens  
*Bart Johnsen*

9:30 a.m. Case Law & Legislative  
Update  
*Helen Christian, Terry Cathcart*

**10:00 a.m. Break**

10:15 a.m. Something About Alimony II:  
The Judges' Turn  
*Judge & Commissioner Panel*  
*Moderator: Harry Caston*

**12:00 p.m. Lunch Provided**

1:00 p.m. Recent Changes &  
Commonly Encountered  
Issues  
*Commissioners: Michael S. Evans,  
David S. Dillon, Daniel W. Garner*

**2:45 p.m. Break**

3:00 p.m. Untangling the Confusion of  
Premarital Property  
*Howard Lundgren*

3:45 p.m. Tool Box  
*Members of the Family Law Section*

**7.5 hrs. CLE, Including 1 hr. ethics**



## Labor & Employment 5-17-00

7:30 a.m. Registration and Breakfast

8:00a.m. **WORKERS' COMPENSATION:**  
Overview & Hot Issues  
*Keo Chai*

9:00 a.m. **EMPLOYMENT CONTRACTS &  
EMPLOYEE RIGHTS:** A  
Bundle of Sticks, One of  
Which Might Hit Unsus-  
pecting Employers, Not  
Just at Termination  
*Roger Hoole*

10:00 a.m. **EMPLOYER LIABILITY FOR  
SUPERVISOR MISCONDUCT:**  
Discrimination, Harassment  
and Retaliation—When are  
employers liable for such  
misconduct? Recent U.S.  
Supreme Court & Circuit  
Court Decisions  
*Mark Gavre*

11:00 a.m. **EMPLOYMENT TORT CLAIMS:**  
Creative Lawyers Are  
Finding New Theories for  
Suing Employers  
*Elizabeth Dunning*

12:00 p.m. Program Adjourns

**4 hrs. CLE**

## Registration

Seminars are at the Law & Justice Center  
unless otherwise indicated.

- |  |          |         |
|--|----------|---------|
| <input type="checkbox"/> Real Property     | \$60.00  | members |
|  | \$75.00  | nonmbrs |
| <input type="checkbox"/> Collection Law    | \$40.00  | members |
|  | \$55.00  | nonmbrs |
| <input type="checkbox"/> Corporate Counsel | \$45.00  | members |
|  | \$75.00  | nonmbrs |
| <input type="checkbox"/> Labor & Empl.     | \$60.00  | members |
|  | \$75.00  | nonmbrs |
| <input type="checkbox"/> Family Law        | \$110.00 | members |
|  | \$120.00 | nonmbrs |
| <input type="checkbox"/> LAD               | \$65.00  | members |
|  | \$75.00  | nonmbrs |

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Office Phone \_\_\_\_\_ Bar No. \_\_\_\_\_

Please send to:  
Utah State Bar

Attn: CLE Department  
645 South 200 East #310  
Salt Lake City, UT 84111

[ ] Check Enclosed [ ] Visa  
[ ] MasterCard [ ] AmEx  
Credit Card # \_\_\_\_\_

Exp. Date \_\_\_\_\_

Signature \_\_\_\_\_

### ⇒ REGISTRATION & CANCELLATION POLICIES:

Door registration accepted, if space is available, on a first-come, first-serve basis. Cancellations must be confirmed by letter at least 48 hours prior to the seminar date for a refund, minus a \$20 nonrefundable fee. No refund for "no-shows" or cancellations made after the 48 hour cancellation period.



## Legal Assistant Division 6-16-00

**South Hampton Inn,  
10690 S. Holiday Park Dr.**

8:00 a.m. Registration, Welcome &  
Breakfast

***Shelly Sisam, Chair***

8:30 a.m. "U of U Law Library  
Research"

***Felise Thorpe-Moll***

10:30 a.m. Break

10:45 a.m. How to Survive as a Family  
Law Paralegal

11:45 a.m. Division Annual Meeting:  
CLE for assistants, the need  
for Brown Bag Lunches

12:15 p.m. Lunch Provided

1:30 p.m. New Rules for the Notary  
***Fran Fish***

3:30 p.m. Break

3:45 p.m. "New State Appellate Court  
Citation Rules Effective 3-1-00"

**6.5 hrs. CLE**

**Registration for this seminar needs to  
be made on or before 6/2/00 to avoid  
a \$10.00 late fee.**



# Table of Contents

Letter to the Editor	4
The President's Message: and Justice for all – A Challenge to Our Members by Charles R. Brown	6
Revised Article 9 – Secured Transactions in the 21st Century by Robert Palmer Rees	8
What Every Attorney Ought to Know About Patent Law by David R. McKinney	18
State Bar News	24
Per Curious by Just Learned Ham	43
Utah Bar Foundation	45
Case Summaries	47
CLE Calendar	52
Classified Ads	54

**VISION OF THE BAR:** *To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.*

**MISSION OF THE BAR:** *To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of, the law.*

**COVER:** Scene from High Uintahs, Utah, by Brett P. Johnson, McKay Burton & Thurman LC, Salt Lake City.

The *Utah Bar Journal* is published monthly by the Utah State Bar. One copy of each issue is furnished to members as part of their Bar dues. Subscription price to others, \$50.00; single copies, \$5.00. For information on advertising rates and space reservation, call or write the Utah State Bar offices.

Statements or opinions expressed by contributors are not necessarily those of the Utah State Bar, and publication of advertisements is not to be considered an endorsement of the product or service advertised.

Copyright © 2000 by the Utah State Bar. All rights reserved.

## Letter to the Editor

Dear Editor:

I don't often see my name in the *Utah Bar Journal*. When I do, I would rather hope that it would be in a positive light. In the December issue of the *Bar Journal*, however, there was a substantial write-up of one my cases, *Salt Lake City v. Wood*, 1999 UT App. 323. In that case, the Court of Appeals affirmed a conviction under a Salt Lake City ordinance regulating "professional dancers." In fact, the Court split three ways, leaving much room for further discussion.

The *Wood* case was one of eight cases pending in the District Court. The others were stayed, pending an Appellate Decision. Upon receiving the Decision, I added to my research, and filed a 35 page Memorandum in support of Motions to Dismiss on the other seven cases. I am pleased to note that the City promptly moved to dismiss all cases "in the interest of Justice."

I thought the Bar would be interested in the follow up on this. As far as I can tell, the ordinance under which my client was charged is now, for all practical purposes, defunct.

W. Andrew McCullough

## UTAH LAWYERS CONCERNED ABOUT LAWYERS

*Confidential\* assistance for any Utah attorney whose professional performance may be impaired because of emotional distress, mental illness, substance abuse or other problems. You may call the digital pager "Helpline" @ 219-8220, or call the number listed below.*

**(801) 297-7029**

LAWYERS HELPING LAWYERS COMMITTEE  
UTAH STATE BAR

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

## The Utah Bar Journal

### Published by The Utah State Bar

645 South 200 East • Salt Lake City, Utah 84111  
Telephone (801) 531-9077 • [www.utahbar.org](http://www.utahbar.org)

### Bar Journal Editorial Board

#### Editor

William D. Holyoak

#### Managing Editor

Todd Zagorec

#### Art/Design Editor

Randall L. Romrell

#### Utah Law Developments Editor

J. Craig Smith

#### Judicial Advisor

Judge Gregory K. Orme

### Bar Journal Committee Members

Brett J. DelPorto  
Cameron S. Denning  
Andrea J. Garland  
Mark J. Gregersen  
H. Craig Hall  
David Hartvigsen

Victoria Kidman  
Carolyn Nichols  
Lorena P. Rizzo  
Betsy L. Ross  
Cherie P. Shanteau  
Daniel M. Torrence

**Young Lawyer  
Representatives**  
David R. McKinney  
Catherine E. Roberts  
Victoria Bushnell

**Legal Assistant  
Representatives**  
Mary H. Black  
Tamara Cole

**Bar Commission Liaison**  
Denise Dragoo

**Bar Staff Liaison**  
Christine Critchley



### Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar 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.

### Cover Art

Members of the Utah State Bar who are interested in having their photographs of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Esq, Regence BlueCross BlueShield of Utah, 2890 East Cottonwood Parkway, Mail Stop E70, Salt Lake City, Utah 84121, (801) 333-5691. Send a print, transparency, or slide of each scene you want to be considered. If you would like your photograph returned, enclose a self-addressed, stamped envelope.

### Interested in writing an article for the *Bar Journal*?

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

If you have an article idea or would be interested in writing on a particular topic, contact the Editor at 532-1234 or write *Utah Bar Journal*, 645 South 200 East, Salt Lake City, Utah 84111.

## Submission of Articles for the *Utah Bar Journal*

The *Utah Bar Journal* encourages Bar members to submit articles for publication. The following are a few guidelines for preparing your submission.

1. Length: The editorial staff prefers articles having no more than 3,000 words. If you cannot reduce your article to that length, consider dividing it into a "Part 1" and "Part 2" for publication in successive issues.
2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.
3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.
4. Content: Articles should address the *Bar Journal* audience, which is composed primarily of licensed Bar members. The broader the appeal of your article, the better. Nevertheless, the editorial staff sometimes considers articles on narrower topics. If you are in doubt about the suitability of your article for publication, the editorial staff invites you to submit it for evaluation.
5. Editing: Any article submitted to the *Bar Journal* may be edited for citation style, length, grammar, and punctuation. Content is the author's responsibility—the editorial staff merely determines whether the article should be published.
6. Citation Format: All citations should at least attempt to follow *The Bluebook* format.
7. Authors: Submit a sentence identifying your place of employment. Photographs are discouraged, but may be submitted and will be considered for use, depending on available space.

### *and Justice for all – A Challenge to Our Members*

by Charles R. Brown

I had the good fortune to be invited to attend the kick-off breakfast for the year 2000 "and Justice for all" campaign on February 24, 2000. What I learned there inspired me to become more active in the campaign. As most of you know "and Justice for all" is a collaborative fund raising effort of the Disability Law Center, Legal Aid Society and Utah Legal Services. The campaign as originally established was a response to dwindling funding sources for those agencies which provide legal services for the poor and persons with disabilities in Utah. Each year it is estimated that there will be 75,000 new legal needs for those persons in Utah. Thus, adequate funding is essential to assure that those persons of need have access to civil legal services.

The "and Justice for all" campaign asks that each member of the Utah State Bar make an annual financial contribution equal to two billable hours. In its inaugural year, the campaign successfully raised \$410,000. In 1998, fewer than 5% of our members provided financial support to the agencies. Through the "and Justice for all" campaign that number increased to 23% in 1999, more than 1,200 members. The goal for the year 2000 is to increase participation to 2,000 lawyers.

The people who are the moving force in this campaign, including the Leadership Committee and others, cover a diverse cross-section of our profession. They include Democrats and Republicans, liberals and conservatives. This is not a politically controversial issue. It is right and appropriate. I would hope that each of us will undertake some level of commitment.

Through the efforts of committed members of our Bar, the campaign has obtained two grants which will act as incentives for contributions by our members. The George S. and Delores Dore Eccles Foundation has pledged a grant of \$100,000 to the campaign. That contribution will be made when 2000 lawyers have made a financial contribution to the campaign. The Dr. W.C. Swanson Family Foundation has pledged a grant of \$25,000. That contribution will be made when the campaign has obtained \$25,000 in donations from solo and small firm practitioners, particularly those in Northern Utah.

During my term as President I have received many communications from members of our Bar who have expressed their concern regarding the Bar Commission's use of mandatory dues to fund pro bono activities. As you may recall, the January *Bar Journal* published a letter from sixteen Northern Utah attorneys on this issue, together with my response. My response made it clear that the Bar Commission has not made a decision to permanently contribute mandatory dues to pro bono efforts or the legal services agencies. Pursuant to recommendations of the Access to Justice Task Force the Bar did confirm a one-time commitment of a grant of \$60,000 to evaluate a central intake system in order to improve the coordination of the agencies and the provision of services to the disadvantaged in Utah. I also am not philosophically comfortable with a continuing commitment to use mandatory Bar dues for what should be a voluntary charitable effort. However, I am totally in favor of strong encouragement and incentives towards voluntary efforts by our members.

Although objecting to the use of mandatory dues to fund pro bono legal services, the letter from those Northern Utah members did agree with the proposition that it is the Bar's duty to encourage members to perform pro bono legal services or voluntarily contribute funds towards those efforts. Implicit in that letter was, I believe, a commitment by the signatories that they would consider making individual voluntary contributions to pro bono activities, either through direct performance of services or contributions to appropriate agencies.

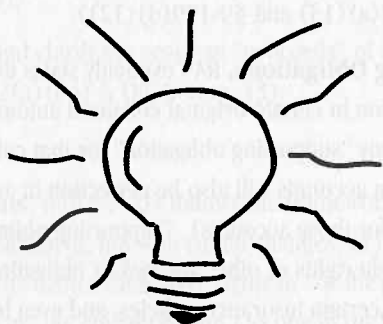
We do have a monopoly on the provision of legal services in the State of Utah. People of limited means will not obtain justice without a significant voluntary commitment by our members to provide services and assist in the funding of those agencies who do a thankless job in providing those essential services. My firm has made a contribution and I and other attorneys in my firm will separately





make individual contributions for the year 2000. We need all of you. However, as one who has spent most of my time in private practice in a small firm, I reserve a special challenge for solo and small firm practitioners. This would include the 16 attorneys who signed the letter to me published in the January *Bar Journal*. A contribution by each solo or small firm attorney, especially those from Northern Utah, will have a double benefit. Each attorney who contributes will add to the number necessary to meet the total of 2,000 members in order to obtain the matching grant from the Eccles Foundation. In addition, the dollars those solo and small firm attorneys contribute will assist the campaign in reaching that separate goal of \$25,000, which will result in the matching contribution from the Swanson Foundation.

Please take the time to seriously evaluate and consider this. The support of each of us is essential to the success of this effort.



## Great idea.

Advertising in the *Utah Bar Journal* is a really great idea. Reasonable rates and a circulation of approximately 7,000!

Call for more information:  
Laniece Roberts • (801) 538-0526  
Lorie Ng • (801) 530-4971


**60% more  
evidence  
can be  
retained  
with effective  
graphic  
exhibits**

**"jurors will remember what they see  
and the verdict will follow."**

Harvey A. Moore, Ph.D.  
"Developing Effective Trial Graphic Communications"  
Presented at the Defense Research Instituted Seminar  
on Public Liability, San Diego, CA 1997

**Custom designed presentations  
that make a difference.**

**801.544.1066**  
(tel and fax)

Elite  Visual Communications

A Not-for-profit  
Community  
Mediation  
Service



*4 Day Seminar*

## **32 Hour Basic Mediation Training**

**May 4, 5, 8, 9, 2000**  
8:00 AM - 5:00 PM

**27 Hours CLE Credit  
1 Hour Ethics Credit  
or  
27 Hours NLCLE Credit**

\$500 Early Registration by April 14<sup>th</sup>, 2000  
\$550 After April 14<sup>th</sup>, 2000  
(seminar limited to 24 participants)



*5 Day Seminar*

## **Basic & Family Mediation Training**

**June 1, 2, 5, 6, 7, 2000**  
8:00 AM - 5:00 PM

William W. Downes  
Diane Hamilton  
Marcella Keck  
Sue Petty

Cost: \$750 Basic & Family  
\$450 Family only (June 5-7)  
Registration due by May 15<sup>th</sup>

(seminar limited to 24 participants)

**Law & Justice Center  
645 South 200 East, SLC, UT. 84111  
(801) 532-4841**

# Revised Article 9 – Secured Transactions in the 21st Century

by Robert Palmer Rees

**A**rticle 9 of the Uniform Commercial Code governs the attachment, perfection, priority and enforcement of security interests in personal property and fixtures. Upcoming fundamental revisions to Article 9 will significantly affect attorneys' practices and parties' rights. Under SB 168, passed in the Utah Legislature's 2000 Session, Chapter 9 of Utah's Title 70A will be wholly repealed and replaced with a new Chapter "9a."

The nature of "Revised Article 9" makes national adoption very important (*e.g.*, changes in where to file financing statements). To allow time for national passage, Revised Article 9 has a *uniform effective date of July 1, 2001*. Article 9 practitioners will need that time to absorb the changes. In the meantime, even today's transactions should be structured with Revised Article 9 in mind. (*See* "Transition Rules", *infra*).

Revised Article 9's changes are very extensive. Only some of the most significant are discussed below. (In this discussion, "CA" and "CA9" will refer to Title 70A of the *current* Utah code, and "RA" and "RA9" will refer to the *revised* uniform code. Be warned that Utah often reverses the uniform subsections. *E.g.*, RA §9-109(a)(1) will get translated into §70A-9a-109(1)(a) when adopted.)

## Expanded Scope of Revised Article 9

RA9 will govern many kinds of transactions and property that are not subject to CA9.

**More True Sales.** Most security interests are granted in consensual security agreements. CA9, however, also defines "security interest" to include a buyer's interest in a *true sale* of accounts or chattel paper. RA9 will expand coverage of true sales in two significant ways:

- RA §9-102(a)(2) will broaden the definition of "accounts." (*E.g.*, software license fees are currently "general intangibles" that can be sold outside of CA9, but they will become "accounts" whose sale is governed by RA9).
- RA9 will also cover most true sales of promissory notes and payment intangibles. A "payment intangible" is any "general intangible under which the account debtor's principal obligation is a monetary obligation." The impact of this

change is lessened by provisions for automatic perfection of such sales. (RA §1-201(37), §9-102(a)(61), §9-109(a)(3) and §9-309(3)-(4). *But see* RA §9-109(d)(4)-(7) excepting certain sales from RA9).

**Deposit Accounts.** RA9 will govern security interests in deposit accounts – except in consumer transactions. (*E.g.*, RA §9-104 and §9-109(d)(10)(A) & (13)).

**Commercial Tort Claims.** RA9 will govern security interests in "commercial tort claims." If the claimant is an individual, the claim must not include damages for personal injury or death. (RA §9-102(a)(13) and §9-109(d)(12)).

**Supporting Obligations.** RA9 explicitly states that attachment and perfection in certain original collateral automatically extends to any "supporting obligation" for that collateral. (*E.g.*, perfection in accounts will also be perfection in any personal guarantees for those accounts). "Supporting obligations" are letter of credit rights or other *secondary* obligations such as guarantees, certain insurance policies, and even liens on real estate. The original "supported" collateral must be accounts, chattel paper, documents, general intangibles, instruments, or investment property. (RA §9-102(a)(77), §9-203(f), §9-308(d) and §9-310(b)(1)).

**Consignments.** RA9 will govern most true *consignments* (whereas CA9 only covered consignments intended as security). Consignments will be deemed purchase money security interests in inventory. (*E.g.*, RA §1-201(37), §9-102(a)(20), §9-103(d), §9-109(a)(4) and §9-319. Article 2's §2-326 will also be amended accordingly.)

**Agricultural Liens.** RA9 adds provisions governing "agricultural liens" on farm products where such liens are statutory, do not require possession for effectiveness, and secure obligations for goods, services or rent relating to a debtor's farming operations. (*E.g.*, RA §9-102(a)(5), §9-302 and §9-310(a)). This

*ROBERT PALMER REES is a shareholder at Fabian & Clendenin, concentrating in transactional and litigation matters under the Uniform Commercial Code.*



author has not identified any qualifying agricultural lien statutes in Utah.

**Miscellaneous.** RA9 will also:

- Govern security interests in “health care insurance receivables,” an exception to CA9’s and RA9’s exclusion of insurance claims. (RA §9-102(a)(2), (46), and §9-109(d)(8)).
- Govern security interests granted by governmental debtors, unless such interests are specifically governed by another statute. (RA §9-109(c)(2)-(3)).
- Create a new subcategory of collateral called “electronic chattel paper.” (E.g., RA §9-102(a)(31), §9-105 and §9-314).
- Distinguish between “software” that retains its identity as software (deemed a general intangible), and software that is embedded in goods (deemed goods). (RA §9-102(a)(42), (44) & (75)).
- Expand and clarify the scope of “proceeds” of collateral. (RA §9-102(a)(64) & Off. Comm. 13).

#### Attachment

**Basic Elements.** RA9 §9-203 follows the framework of CA9 §9-203 for attachment, but with subtle changes: (1) value must be given, (2) the debtor must have rights in “or the power to transfer rights in” the collateral, and (3) one of the following evidentiary conditions must be met:

- (a) The debtor “authenticates” a security agreement. (All of RA9 generally speaks of “authenticated records” rather than “signed writings” in order to accommodate electronic transactions and record keeping. See RA §9-102(a)(7) & (69) and Off. Comm. 9.)
- (b) The secured party obtains “possession” of the collateral. (*But see* modified meaning in “Perfection By Possession,” *infra*.)
- (c) The secured party obtains “control” of deposit account, electronic chattel paper, investment property or letter of credit rights collateral. (CA9 limited the role of control to investment property. See also “Perfection By Control,” *infra*.)

**Collateral Description.** RA §9-108 provides safe harbors for how security agreements may describe collateral (e.g., by Article 9 “type” of property). More detail than type, however, is required for commercial tort claims, consumer goods, and certain consumer investment property. “Supergeneric” collateral descriptions (e.g., “all the debtor’s personal property”) are

barred in *security agreements* but allowed in *financing statements*. (Compare RA §9-108(c) to §9-504(2)).

**After-Acquired Property Clauses.** These clauses are generally authorized, but barred as to commercial tort claims and consumer goods. (RA §9-204).

**Substituting or Adding a “New Debtor.”** RA9 adds provisions expressly addressing attachment (and perfection) when a “new debtor” is substituted for an “original debtor,” or otherwise becomes bound by an original debtor’s security agreement. (E.g., RA §9-102(a)(56) & (60), §9-203(d)-(e), §9-316(a)(3), §9-326, §9-506(d), §9-508 and §9-512(d)).

**Ineffectiveness of Anti-Assignment Clauses.** RA9 significantly expands CA9’s limitations on contract clauses (and some statutes) that purport to restrict debtors from selling or granting security interests in their general intangibles, promissory notes, letter of credit rights and health care insurance receivables. (RA §9-401 and §9-406(d) to §9-409). These provisions should make more types of property viable collateral, or enhance the collateral value assigned to such property.

#### Perfection by Filing

The means of perfecting a security interest will remain, depending on the type of property: (i) filing a financing statement, (ii) taking possession, (iii) taking control and (iv) automatic perfection by law. Each method, however, will undergo some change.

**Expanded Scope for Perfection by Filing.** RA9 will add *instruments* to the types of property in which security interests can be perfected by filing. (RA §9-312(a). CA §9-304 required possession.) Filing will also be required for commercial tort claims, agricultural liens, and assignments of beneficial interests in trusts. (RA §9-310).

**Where to File – “Debtor Location.”** One of RA9’s biggest changes is the general rule on where to file financing statements (*i.e.*, in which state). CA §9-103’s general rule is to file (i) where the *debtor* is located for *intangible* property, and (ii) where the *collateral* is located for most *tangible* property. RA9’s general rule, however, will specify filing in the single state where the debtor is located for both tangible and intangible property. (RA §9-301(1), §9-307 and §9-501(a)).

An individual will still be located where he resides, and a general partnership will still be located where it keeps its chief executive office. (RA §9-307(b)). RA9, however, adds the concept of a “registered organization” (*i.e.*, corporation, LP, LLP, LLC, etc.). A registered organization will be located in the single

state where it must “maintain a public record showing the organization to have been organized.” (RA §9-102(a)(70) and §9-307(e)). Thus, verifying the debtor’s state of organization is critical under RA9.

**Example of Debtor Location Rule for Registered Organization.** A Nevada LLC grants a security interest in its inventory and accounts. Its chief executive office is in Idaho, but all of its inventory is in Utah and Wyoming. The debtor has no office, personnel or property in Nevada. Where to file?

- CA9 presently calls for three filings: (i) in Utah for inventory, (ii) in Wyoming for other inventory, and (ii) in Idaho (where CA9 says the debtor is located) for accounts. CA9 does not call for filing in Nevada.
- RA9, however, will call for filing in Nevada (where RA9 says the debtor is located) for both the inventory and the accounts. RA9 will not call for filing in Utah, Wyoming or Idaho.

Thus, RA9 should reduce both the number of places to file, and the number of places to search for competing security interests. (*But see* “Transition Rules,” *infra*.) RA9 should also reduce subsequent re-filings because a debtor is less likely to change its state of incorporation than to move its property or chief executive office. (*See* RA §9-316). RA9 should also reduce erroneous original filings because the state of incorporation is easier to verify than where the collateral is kept or where the “chief” executive office is located. Accordingly, both transactional effort and litigation on filings’ effectiveness should be reduced.

**Effect of Debtor Location Rule on Searches.** If the debtor changed its location in the last four months, a searching creditor will also need to search for filings in that prior state. If the debtor acquired the collateral from someone else within the last year, a searching creditor will need to search for filings under the name of the transferor in the state of the transferor’s location. (*See* RA §9-316(a)).

**Exception for Inherently Local Collateral.** Fixture filings, and filings for timber and “as extracted collateral” (*i.e.*, oil, gas, minerals, and related accounts) will still be made at the county level in the state where that collateral is located. (RA §9-301(3)(A)-(B) & (4) and §9-501(a)(1)).

**Other County Filings.** Those states (not Utah) which have county filing systems for property other than inherently local collateral are supposed to convert to central filing. (RA §9-501(a)(2)).

**Debtor’s Exact Name is Critical.** Under RA9, an effective financing statement must state the debtor’s correct name. (RA §9-502(a)(1), §9-503(a), and §9-506(b)). For a registered organization, the financing statement must mirror the name stated in the public record of the debtor’s organization (*e.g.*, certificate of incorporation). (RA §9-503(a)(1)).

Failure to use the debtor’s correct name makes the financing statement “seriously misleading” as a matter of law. (RA §9-506(b)). The only escape hatch for saving a financing statement with an incorrect debtor name is very narrow – the creditor must prove that “a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose” the financing statement with the incorrect name actually used. (RA §9-506(c)).

No one can comfortably predict which erroneous names a filing office’s search software will pick up. (*E.g.*, “Smith Co.” vs. “Smith Company”; or “Jones LLC” vs. “Jones, L.L.C.”). Thus, the debtor’s exact legal name must be carefully verified in advance of filing or searching. While RA §9-506 imposes a harsh rule when a mistaken name is used, it also enhances the certainty of priority for creditors who file and search using the correct name.

**Secured Party’s Name.** RA9 expressly allows a financing statement to name a “representative” in lieu of the true secured party(ies), *e.g.*, a collateral agent for multiple creditors in a syndicated loan. (RA §9-102(a)(72)(E), §9-502(a)(2) and §9-503(d)).

**Who Can File – No Debtor Signature.** RA §9-509 and §9-510 facilitate electronic filing by eliminating the need for a debtor to “sign” a financing statement or amendment. The only requirement is that the debtor has authenticated some record that authorizes the creditor to file. Importantly, whenever a debtor authenticates (or a “new debtor” becomes bound by) a security agreement, the creditor is *automatically* authorized to file against the described collateral and its proceeds. A creditor is also entitled to file a financing statement naming a person who acquires collateral from the debtor. (Penalties are imposed under RA §9-625(e)(3) for making unauthorized filings).

**Who Can File – Debtor.** RA9 empowers a debtor to make two kinds of unilateral filings without the secured party’s consent. First, a debtor can file a “corrective statement” if he believes that a financing statement is inaccurate or was wrongfully filed. A corrective statement will not affect the financing statement, but will make a public objection in the filing office’s records. (RA §9-518).



Second, a debtor can file a true termination statement if the secured creditor fails to do so when obligated by law. The termination statement will reflect that it was filed by the debtor. Moreover, no termination statement filed by *any* person will cause a financing statement to be expunged by the filing office. Rather, both the financing statement and the termination statement will remain of record and appear in search reports for at least 1 year after the financing statement would lapse on its own. (RA §9-509(d)(2), §9-519(g) and §9-522). Thus, a searching creditor (rather than the filing office) is left to decide whether any financing statement is in fact terminated or still effective.

**Creditors' Duties to File Termination Statements.** RA §9-513 specifies when a debtor is entitled to a termination statement. The usual circumstance is that the secured obligation has been satisfied and the creditor has not committed to make further advances. A creditor must generally provide a termination statement within 20 days of a debtor's demand. *In consumer cases, even without a debtor's demand*, the creditor must file a termination within 1 month. RA §9-625(e)(4) imposes penalties on any creditor failing to provide a termination statement under §9-513.

**Miscellaneous.** RA9 will make many other changes to the filing process that are not detailed here. (*E.g.*, new national form for financing statements and amendments; when the filing office must accept tendered statements and how the statements must be maintained; express provisions for electronic filing; and 30-year effectiveness of financing statements for "public finance" and "manufactured-home" transactions).

### Perfection by Possession

Under RA9, possession will still perfect a security interest in goods, instruments, money, negotiable documents, tangible chattel paper and certificated securities. (RA §9-313(a)). Certificated securities also require "delivery" under Article 8. (*Id.*) Perfection by possession is governed by the law of the state where the collateral (not the debtor) is located. (RA §9-301(2)). Some of the changes under RA9 are:

**Letter of Credit Rights.** RA9 eliminates CA9's provision for perfecting in letter of credit rights through possession. (*See* "Perfection By Control," *infra.*)

**Chattel Paper.** RA9 will distinguish between *tangible* and *electronic* chattel paper. Possession (or filing) will still perfect

## Hungry for fast, friendly service?

How may I help you?



### Now Serving:

UCC on a Stick ~~~	7-layer Judgment Dip ~~~
Corporate Work to Go ~~~	Bankruptcy a la Mode ~~~
Tax Liens on a Platter ~~~	Slice of Federal Court ~~~
Registered Agent Special ~~~	Baked Asset Checks ~~~
Homemade Current Owner Searches	Fried Criminal Suits ~~~
	Cajun DMV

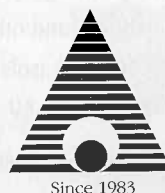
Serving you in Utah and across America

Call now to place your order:

**984-8160**

Toll free: 800-227-3152 • Fax: 984-8170

**ALL-SEARCH**  
& Inspection, Inc.



for the tangible variety, but perfection in the electronic variety will require control (or filing). (RA §9-102(a)(11), (31) & (78), §9-312(a), §9-313(a) and §9-314(a)).

### **Possession Through A Third Party – Acknowledgement.**

“Possession” through a third person will be narrower than under CA9. It will no longer suffice to merely give “notice” of a security interest to a bailee (CA §9-305). Rather, RA §9-313(c) will require the secured creditor to obtain an authenticated record from the third party, *acknowledging* that he holds the collateral for the secured party’s benefit. Third parties are not required to agree to requests for acknowledgements. (RA §9-313(f)).

An “acknowledgement” is not required if the creditor first obtains actual possession of the collateral and then delivers it to a third person with prior or concurrent notice of the security interest. (RA §9-313(h). *E.g.*, a mortgage warehouse lender in actual possession can send instruments to prospective purchasers for approval.) Nor is an acknowledgement required if the third person is a *true agent* of the secured party (*i.e.*, is not a bailee or concurrent agent of the debtor. See §9-313 Off. Comm. 3).

On the other hand, RA9’s provision for constructive possession is broader than CA9 because RA§9-313(c) speaks of third “persons” rather than only “bailees.”

### **Perfection by Control**

Under CA9, control is only available for perfection in investment property. RA9 extends control to perfection in electronic chattel paper, letter of credit rights and deposit accounts. (RA §9-314(a)). For each type of property, “control” has a separate statutory definition. (RA §9-104 to §9-107). For letter of credit rights that are not “supporting obligations,” and for deposit accounts, control will be the *sole* means to perfect. (RA §9-312(b)(1)-(2)).

### **Automatic Perfection**

CA9 already provides automatic perfection in many instances (*e.g.*, purchase money security interests in consumer goods). RA9 extends automatic perfection to (i) assignments of health care insurance receivables when made to the health care provider (RA §9-309(5)); (ii) security interests in “supporting obligations” and other supporting lien rights (RA §9-308(d)-(e)); and (iii) isolated security assignments of payment intangibles (RA §9-309(2)).

Moreover, *true sales* of payment intangibles and promissory notes will be automatically perfected. (RA §9-309(3)-(4)). Thus,

banks can sell portfolios of notes, or participations in commercial loans, without the buyers filing financing statements.

Proceeds will enjoy automatic perfection for 20 days (not 10) under RA9, allowing more time to re-perfect by other means. Moreover, identifiable *cash* proceeds will remain automatically perfected indefinitely, regardless of the type of original collateral and regardless of whether the interest in the original collateral remains perfected. (RA §9-315(d). *Compare* CA §9-306(3)).

### **Purchase Money Security Interests**

RA9 makes some changes to purchase money security interests. A non-inventory purchase money lender under RA9 will have 20 days (not 10) after the debtor’s receipt of delivery to perfect by filing and maintain priority. (RA §9-324(a) and §9-317(e)). RA9 clarifies that purchase money interests can only be obtained in goods and related software (RA §9-103(a)(1)), allows cross-collateralization of successive shipments of inventory to secure multiple advances (RA §9-103(b)(2)), and adds special notice and timing rules for livestock that are similar to those for inventory (RA §9-324(d)-(e)). Also, if a supplier and lender both claim purchase money priority in the same collateral, RA9 gives preference to the supplier. (RA §9-324(g)).

RA9 adopts the “dual status” rule and rejects the “transformation rule” in non-consumer cases. Specifically, purchase money status will not be lost simply because (i) purchase money collateral secures both purchase money and non-purchase obligations, (ii) a purchase money obligation is secured by both purchase money and non-purchase money collateral, or (iii) the purchase money obligation gets renewed or refinanced. (RA §9-103(f)).

Also, the interest of a consignor is deemed to be a purchase money security interest in inventory. (RA §9-103(d)).

### **Priority**

**Generally.** RA9’s priority rules generally follow those of CA9, but are more extensive and do contain some changes. Priority usually turns on specific facts, and surveying RA9’s priority system is beyond the scope of this discussion.

**Choice of Law Governing Priority.** For any given priority question, one must distinguish between RA9’s choice of law rules for (a) the act of perfection, (b) the effect of perfection or nonperfection, and (c) the resulting priority. Those questions must be answered separately in light of the type of collateral, the location of the debtor and/or the collateral, and the method of perfection employed. (RA §9-301 to §9-307).



**Example.** A Nevada LLC grants a security interest in goods it keeps in Utah. (1) If perfection is by *filing*, then Nevada law will govern the act of perfection (*i.e.*, where to file and whether the financing statement was adequate). Utah law, however, will govern both the effect of such perfection and the priority accorded to the creditor. (2) If perfection is by keeping *possession* in Utah, then Utah law will govern the act of perfection, the effect of perfection and priority.

**Variable Priority.** It will be important to remember that the method of perfection selected may result in varying degrees of protection. For example, RA9 will automatically perfect sales of promissory notes, and will allow security interests in instruments to be perfected by filing. Both methods of perfection, without taking possession, will prevail over lien creditors (and therefore bankruptcy trustees) – but priority can be lost to subsequent purchasers or creditors who do take possession. (*E.g.*, RA §9-330(d)). Similarly, automatic perfection in letter of credit rights as a “supporting obligation” is vulnerable to a subsequent creditor that perfects by control. (RA §9-329).

Basing priority on the selected method of perfection is not unique to RA9. (*E.g.*, CA §9-308(a) already favors possession by factors over permissive filing for chattel paper). Nonetheless,

RA9's expanded options will increase the need for caution when deciding how to perfect.

**Effect of Lapsed Financing Statement.** Under RA9, the lapse of a financing statement will no longer retroactively subordinate the security interest to a pre-lapse lien creditor. Since bankruptcy trustees are deemed lien creditors, this is a powerful change in favor of secured creditors. RA9 retains CA9's retroactive subordination to pre-lapse purchasers for value. (RA §9-515(c). *Compare* CA §9-403(2)).

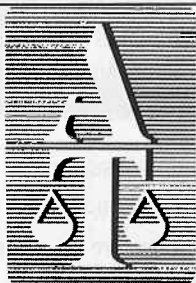
#### **Free Transfer Of Funds Out Of Debtor's Deposit**

**Accounts.** RA §9-332 will state that “a transferee of funds from a deposit account takes the funds free of a security interest in the deposit account” – unless the transferee acts in collusion with the debtor to violate the secured party's rights.

**Double Debtor.** RA9 also explicitly addresses priority in the “Double Debtor Problem,” *i.e.*, when a debtor acquires property that is already subject to a security interest created by another debtor. (RA §9-325. See discussion of “New Debtor,” *supra*).

#### **Enforcement**

RA9 significantly expands upon CA9's rules for enforcing security interests (28 sections rather than 7). Without surveying all



### **Attorneys Title Guaranty Fund, Inc.**

A bar-related® title  
insurance company and  
member of the National  
Association of Bar-Related®  
Title Insurers (NABRTI)

- ★ Supplement your law practice income.
- ★ Issue title insurance from your law office on your real estate transactions, and retain this income rather than letting it slip out the door.
- ★ Retain control of this aspect of your real estate transactions rather than relying on someone else.
- ★ Join the ranks of hundreds of other Utah attorneys taking advantage of this opportunity.

These are just some of the reasons you should become a member of the Fund. Call now for more information at (801) 328-8229.

Attorneys Title Guaranty Fund, Inc.  
Utah Law & Justice Center  
645 South 200 East, Suite 102  
Salt Lake City, UT 84111

## **Join forces with The Salvation Army planned giving professionals in your community.**

- Our gift planning services provide you with gift analysis and document drafting assistance.
- Our trustee services provide your clients with professional investment management and trust administration.
- We recognize and respect your role in providing for a client's future as well as the future support of The Salvation Army.

For more information,  
Contact:

The Salvation Army  
John Stephen Bradford, J.D.  
252 S. 500 East, Salt Lake City, UT 84101  
(801) 322-1253 Ext. 248  
(800) 999-1865 Fax (801) 532-6050



*Need Knows  
No Season™*

© 1999 The Salvation Army

of RA9's enforcement scheme, some of the most noteworthy provisions are below.

**Enforcement Against Third Parties Generally.** RA9 allows secured parties to directly pursue third party obligors on collateral generally (*i.e.*, not just "account debtors" and obligors on instruments. RA §9-607(a)(1) & (3). *Compare* CA §9-502). Expenses and attorneys fees incurred to collect from the third parties can be deducted from the collection proceeds as a matter of statutory right. (RA §9-607(d). That section does not grant a right to fees for collecting from the debtor or the obligor. Those fees are still left to the parties' agreement. RA §9-608(a)(1)(A) and §9-615(a)(1)). A creditor may also apply funds from a deposit account, in which it is perfected by control, directly to the debtor's indebtedness. (RA §9-607(a)(4) & (5)).

**Enforcing Third Party Mortgages.** To facilitate pursuit of a third party obligor, RA §9-607(b) empowers a secured creditor to non-judicially enforce the debtor's rights in a "mortgage."

**Example:** X executes a note and trust deed to Debtor. Debtor later borrows from Secured Party and posts X's note as collateral. X fails to repay Debtor, and Debtor fails to repay Secured Party. RA9 allows Secured Party to record with the county recorder both (i) a copy of its security agreement, and (ii) a sworn recordable statement that a default has occurred. Secured Creditor can thereby become an assignee of record of the trust deed and direct a nonjudicial foreclosure.

**Acceptance of Collateral in Full or Partial Satisfaction.**

RA §9-620 allows partial satisfaction (not just full satisfaction) in cases of "strict foreclosure." Partial satisfaction, however, requires the debtor's *express* consent, and is prohibited in consumer cases. As in CA9, if full satisfaction is proposed, the debtor's consent may be either express or implied by his failure to timely object. RA9 eliminates the requirement that the secured party be in possession (except in consumer cases), and thereby clarifies that intangible property can be strictly foreclosed.

RA §9-620 and §9-621 expand and detail the rules on how a creditor may propose a strict foreclosure, to whom the proposal must be sent, and how parties may object. A strictly foreclosing creditor obtains the collateral free of junior interests. (RA §9-622).

To prevent an obligor from claiming a *constructive* strict foreclosure, no foreclosure will be found unless the secured creditor (i) authenticated a record consenting to acceptance of the collateral, or (ii) sent the debtor a proposal to accept the collateral. Thus, neither a delay in disposition, nor a creditor's

mere acceptance of possession, will constitute a strict foreclosure. (RA §9-620(b)(1)).

**Notice Before Disposition.** RA §9-611(c) will require that notice of intended disposition be sent to (i) the debtor and (ii) any *secondary obligor*. In non-consumer cases, notice must also go to (iii) any person that has notified the secured creditor that he claims an interest in the collateral, (iv) any secured party with a properly filed and indexed financing statement, and (v) any secured party who perfected under specified statutes, regulations or treaties (*e.g.*, automobile title statutes). Thus, creditors will want to conduct searches before giving notice. For identifying creditors with filed financing statements, RA §9-611(e) grants safe harbor protection to a creditor that requests and relies on a search report. Significantly, RA §9-611(c)(3)(B) calls for notice to *all* (not just *junior*) creditors with filed financing statements.

Note that, under RA9's new definitions, not all "obligors" are "debtors." A primary obligor is not entitled to notice unless he is also a debtor. A "debtor" is someone with an ownership interest in the collateral. (RA §9-102(a)(28)(A), (59) & (71). *Compare* to CA §9-105(1)(d)). **Example:** X borrows money and signs an unsecured note, Y executes a personal guarantee, and Z makes a non-recourse accommodation pledge of collateral. X is the primary "obligor"; Y and Z are each "secondary obligors"; Z is neither a primary nor secondary obligor; but Z is the only "debtor." In a foreclosure of Z's property, both Y and Z are entitled to notice of intended disposition, but X is not.

RA §9-612 provides a new safe harbor (in non-consumer cases) that sending notice 10 days before disposition is commercially reasonable. Safe harbor forms of notice are set out in RA §9-613 (non-consumer cases) and RA §9-614 (consumer cases). The notice must state that the debtor is entitled to an accounting of the unpaid debt, and the charge for any such accounting.

**Noncash Proceeds.** RA §9-615(c) acknowledges that the purchase price at foreclosure need not be cash (*e.g.*, the creditor can take a note from the buyer). The creditor is not required to apply noncash proceeds to the debt until they are liquidated (unless failure to make earlier application would be commercially unreasonable).

**Deficiency or Surplus in Non-Complying Dispositions: "Rebuttable Presumption" Rule.** RA §9-626 governs the deficiency or surplus if a foreclosing creditor fails to comply with RA9's rules. If the debtor raises the issue, and the secured



party fails to prove compliance, RA9 makes a *rebuttable presumption* that a complying disposition would have generated proceeds equal to the secured debt (i.e., no surplus or deficiency). The secured party, however, is entitled to prove that even a complying disposition would have yielded a sum less than the debt. RA9 thereby rejects the "absolute bar" and "offset" rules applied by some courts under CA9. (Noncompliance in consumer cases, however, is excluded from §9-626 and left to the courts.)

**Deficiency or Surplus After Disposition to a "Related Party."** An issue of fair price may arise if a disposition is procedurally correct but made to the secured creditor itself, to a "person related to the secured party," or to a secondary obligor. If the actual proceeds are found to be "*significantly*" less than disposition to an unrelated party would have generated, RA9 will recalculate the surplus or deficiency on the basis of a theoretical arms-length disposition. (RA §9-615(f) and §9-626(a)(5)).

**Explanation of Deficiency or Surplus (Consumer Cases).** In consumer cases, RA §9-616 requires the foreclosing creditor to send an "explanation" to the "obligor" of any deficiency, or

to the "debtor" of any surplus, shortly after the disposition and upon request. RA §9-625(e)(5)-(6) imposes penalties for noncompliance.

**Warranties Upon Disposition.** A secured creditor's disposition of collateral *will* carry with it "the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property" of that kind. Implied warranties of merchantability and fitness for particular purpose *may* also arise. Thus, foreclosing creditors will ordinarily wish to affirmatively disclaim all warranties. (RA §9-610(d)-(f) and Off. Comm. 11).

**Transfer Statement.** RA §9-619 empowers a foreclosing creditor to issue a "transfer statement" to the acquiring party. That statement entitles the acquiring party to become a transferee *of record* in any official filing, recording, registration or certificate of title system. The official responsible for that system must accept the transfer statement and amend the system's records accordingly. Also, a secured creditor can first transfer title to itself in order to facilitate the foreclosure, and such transfer alone will not constitute an Article 9 disposition.

# VENTURE CAPITAL

## *for Lawsuits & Litigation*

We provide non-recourse interim financing to plaintiffs and trial lawyers who need money while they pursue litigation. When your lawsuit is settled in your favor, we are repaid from the settlement. If you lose, you are required to pay us nothing.



### **Funding is provided, but not limited, to the following:**

- Personal Injury Claim
- Auto Accident
- Medical Malpractice
- Product Liability
- Sexual Abuse
- Wrongful Death
- Expert Witness Fees
- Advances for Attorneys

**FUTURE FUNDING OF UTAH, INC. • 888-955-2274**  
**P.O. Box 526093 • Salt Lake City, Utah 84152-6093**  
**Fax: 800-783-5542 • FFU@ureach.com**

**Penalties and Exculpatory Provisions.** RA9's sets out new penalties (e.g., RA §9-625 and §9-626(a)(3)-(5)) and exculpatory provisions (e.g., RA §9-605, §9-611(e) and §9-628) for creditors who violate RA9's rules.

### **Transition Rules**

**Generally.** RA9 will generally govern all transactions within its (expanded) scope, even those that close before RA9's July 1, 2001 effective date. However, transactions that were outside the scope of CA9 when entered into may be completed or enforced under either RA9 or CA9. RA9 will not affect cases or proceedings filed before its effective date. (RA §9-701 and §9-702).

RA9 will also generally determine the priorities of conflicting claims, unless the relative priorities were "established" before RA9's effective date. (RA §9-708).

**Attachment and Perfection After RA9 Takes Effect.** RA §9-703 to RA §9-707 address survival of attachment and perfection after RA9's effective date in a series of scenarios. The applicable transition rule depends on a series of questions. (Was the security interest attached, perfected, or both, prior to July 1, 2001? Was perfection under CA9 effected by filing or by other means? Was the filing state specified by CA9 the same as the filing state specified by RA9?) The statutes for each specific scenario should be consulted, but the following *general* rules can be discerned.

**a. Attachment.** Valid attachment under CA9 as of RA9's effective date will automatically continue for 1 year (i.e., from July 1, 2001 until June 30, 2002). If the mode of attachment under CA9 also satisfies RA9's rules, then attachment will continue indefinitely. If the mode of attachment under CA9 does not satisfy RA9's rules, the creditor must comply with RA9 by June 30, 2002 or attachment will expire on that date. (E.g., a security agreement claiming "all securities accounts" of a consumer will validly attach under CA9 but not RA9. The creditor must get a new security agreement describing the collateral by more than type by June 30, 2002).

**b. Perfection (Except By Filing).** Valid perfection under CA9 as of July 1, 2001 will automatically continue under RA9 for 1 year. If the mode of perfection under CA9 also meets RA9's perfection rules, perfection will continue thereafter. If the mode of perfection under CA9 does not satisfy RA9's rules, the creditor must re-perfect under RA9 by June 30, 2002 or perfection will expire on that date. (E.g., sending notice to a bailee is perfection by possession under CA9 but not RA9. The creditor must file a financing statement, or obtain that bailee's acknowledgement, by June 30, 2002).

**c. Attached and Perfected By Filing Under CA9 – When Both CA9 and RA9 Call For Filing In The Same Filing Office.** No action is required if the financing statement filed under CA9 before the effective date also satisfies RA9 (i.e., correct filing office, debtor name and collateral description). The creditor should simply file a continuation statement when it would otherwise do so. Also, that continuation statement should conform to RA9's new categories of property (e.g., RA redefines some CA9 general intangibles to be "accounts").

**d. Attached and Perfected By Filing Under CA9 – But CA9 and RA9 Specify Different Filing Offices.** If a financing statement was filed in the correct CA9 state, but RA9 specifies a different state, take heart. Perfection will continue until the earlier of (i) the CA9 filing's ordinary lapse date, or (ii) 5 years after RA9's effective date. Pending RA9's effective date, the CA9 filing should be renewed with a continuation statement when appropriate in the CA9 state.

After July 1, 2001, continuation statements cannot be filed in the CA9 state. Rather, RA §9-706 and §9-707 empower the creditor to file an "initial financing statement" in the new RA9 state. In essence, the CA9 filing gets transferred to the RA9 state, and its effectiveness is renewed for another 5 years. That filing in the RA9 state can be made before or after RA9 becomes effective, before or during the ordinary 6 month window for filing continuation statements, and without the debtor's consent. To keep the CA9 filing's priority date, the filing in the RA9 state must (i) represent that the CA9 filing is still effective, and (ii) identify the original CA9 filing's state, date, file number, and last continuation. Also, the filing in the RA9 state should conform to RA9's new categories of property (e.g., RA redefines some CA9 general intangibles to be "accounts").

**e. Enhanced Searching Burden During The 5-Year Transition Period.** Because CA9 filings can remain valid for up to 5 years after RA9's effective date, the burden of searching for adverse interests will temporarily increase: until June 30, 2006, creditors will need to search the filing offices specified in *both* CA9 and RA9.

**f. Other.** Other rules govern (1) if an interest is attached but unperfected as of July 1, 2001, or (2) if an interest is not attached as of July 1, 2001 but an act of perfection complying with RA9 was taken before that date (e.g., a pre-filed RA9 financing statement).



The law firm of

# DART, ADAMSON, DONOVAN & HANSON

with offices at

370 East South Temple, Suite 400  
Salt Lake City, Utah 84111  
(801) 521-6383  
Fax (801) 355-2513

**IS PLEASED TO ANNOUNCE THAT**

## AMY E. HAYES

HAS BECOME AN ASSOCIATE OF THE FIRM  
AS OF FEBRUARY 14, 2000



## UTAH LAW AND JUSTICE CENTER

### QUALITY MEETING SPACE

AVAILABLE FOR PROFESSIONAL, CIVIC AND COMMUNITY ORGANIZATIONS

THIS MODERN FACILITY PROVIDES ANY STYLE OF SEATING ARRANGEMENT  
AND FEATURES:

REASONABLE RATES  
CENTRAL DOWNTOWN LOCATION  
AUDIO-VISUAL EQUIPMENT

PERSONAL ATTENTION  
FREE ADJACENT PARKING  
COMPLETE CATERING

**FOR INFORMATION AND RESERVATIONS, CONTACT:**  
THE UTAH LAW AND JUSTICE CENTER COORDINATOR  
(801) 531-9077

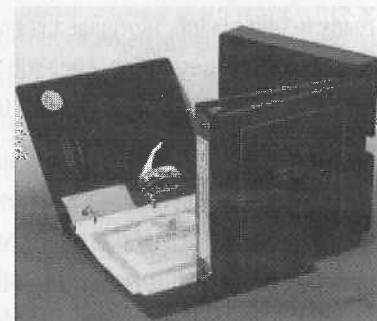
## CORPORATION KITS FOR UTAH \$55.95

Binder & slipcase, index tab set, printed stock certificates w/full page stubs, transfer ledger, embossing seal & pouch, 50 sheets of blank 25% cotton bond paper, corporate ticker.

Same kit with By-Laws, minutes & resolutions package and 6 sheets of blank 25% cotton bond paper plus tax forms for EIN and "S" corporation election.

**\$58.95**

Kit without seal \$44.95



### OTHER PRODUCTS

LTD. LIA. CO. OUTFIT	\$59.95
NON-PROFIT OUTFIT	\$59.95
LTD. PARTNERSHIP	\$59.95
FAMILY. LTD. PART.	\$59.95
SEAL W/POUCH	\$25.00
STOCK CERTS (20)	\$25.00



AVAILABLE ON DISK \$29.95  
FOR  
WORD PERFECT 5,6,7,& 8

ARTICLES PLUS BY-LAWS, MINUTES & RESOLUTIONS PACKAGE FOR CORPORATIONS. OPERATING AGREEMENTS FOR LIMITED LIABILITY COMPANIES (BOTH MEMBER & MANAGER). SIMPLE WILL FORMS & ORDER FORM.

ASK ABOUT  
WILL & TRUST STATIONERY  
\*\*\*  
INDEX TABS & CLOSING SETS  
\*\*\*  
REGISTERED AGENCY SERVICES  
FOR MONTANA

**ORDER TOLL FREE !  
PHONE 1-800-874-6570**

**FAX 1-800-874-6568  
E-MAIL corpkit@digisys.net**

ORDERS IN BY 2:00 PM SHIPPED SAME DAY.  
\$5.00 PER KIT UPS GROUND CHARGE.  
LAW FIRMS: WE WILL BILL WITH YOUR ORDER.  
SATISFACTION GUARANTEED !!!

**CORP-KIT NORTHWEST,  
INC.  
413 E. SECOND SOUTH  
BRIGHAM CITY, UT 84302**

# What Every Attorney Ought to Know About Patent Law

by David R. McKinney

One bright spring morning, Bill, a new client, walks into your office and announces "I've got a great new computer idea! It's going to revolutionize internet commerce, and make millions!" With dollar signs in his eyes, Bill explains that he is ready to quit his job, mortgage his house, and asks you to help him get his business going. After you get him to take a deep breath and slow down, what do you tell him? What should Bill know before he steps into the abyss?

Some time later, Sharon, one of your corporate clients, comes to you and explains that one of her researchers has devised a new surgical device. However, she will need a large chunk of capital and a couple of years to develop and market it. Even if she succeeds, the 800 pound gorillas in the industry are likely to jump on it, and squeeze her right out of the business. How do you advise Sharon? How can she protect her new product while she gears up for production?

Among other things, Sharon and Bill clearly need some advice about patenting their inventions. As a non-patent attorney, you can be of help here if you have some basic knowledge of patent law.<sup>1</sup> Then, when you ultimately refer your client to a patent attorney, they will be that much farther ahead. Given the pervasive influence of technology in today's society, every attorney ought to understand some of the basics of patent law. Moreover, a wide variety of clients, whether individuals, start-ups, or established corporations, may miss valuable opportunities, or worse, blunder into costly patent infringement if not properly advised. This article will present some of the basic principles of U.S. patent law, and provide guidance which all attorneys can use to their clients' benefit.

## What is a Patent?

Patents are a species of intangible personal property. As with other forms of property, patents can be bought, sold, licensed for others' use, and used as collateral for debts. Also like other types of property, patent ownership is generally characterized as a collection of exclusive rights. These rights comprise the right to exclude all others, for a specified term of years, from making, using, or selling in the U.S., or importing into the U.S. for sale, an invention disclosed and claimed in an issued patent.<sup>2</sup> When

the patent term expires, the invention passes into the public domain, and the exclusive rights terminate. Patents are thus often characterized as a limited statutory monopoly,<sup>3</sup> though some academics and jurists strongly object to that characterization.<sup>4</sup>

## Types of Patents

There are two primary types of patents: design patents and utility patents. Design patents cover "any new, original, and ornamental design for an article of manufacture."<sup>5</sup> They do not cover the functional or useful features of the article, but only provide the owner with the right to exclude others from making, using, or selling the same product with the same design. Design patents are typically used to cover such things as stylish consumer products, where the ornamental features are considered important. For example, the design and appearance of the semi-transparent case of Apple's new iMac computer is covered by a design patent.<sup>6</sup> Because their coverage is limited, design patents are relatively inexpensive and easy to obtain.

However, what most patent seekers want is a utility patent. A utility patent covers the functional features of an invention, regardless of their form. It covers any embodiment of the invention that has the claimed functional elements, regardless of what else it includes. Because the coverage is thus broader, utility patents are more expensive and difficult to obtain, but more valuable.<sup>7</sup> Accordingly, the remainder of this article will deal exclusively with utility patents.

## Basis of U.S. Patent Law

The United States patent system is authorized by the U.S. Constitution, which declares that "Congress shall have power . . . to

*DAVID R. MCKINNEY is a registered patent attorney and an associate with the law firm of Thorpe, North & Western in Sandy, Utah. He is currently the Interim Chair of the Young Lawyer's Division Bar Journal Committee.*





promote the progress of science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries."<sup>8</sup> The first U.S. patent law was enacted in 1790. The current law is based upon the Patent Act of 1952.<sup>9</sup> All patent acts, from 1790 to the present, have sought to promote innovation by granting a limited period of exclusive rights in an invention in exchange for full public disclosure. This *quid pro quo* seeks to strike a balance between self interest and public benefit. The lure of exclusive rights encourages innovation, while the duty of public disclosure speeds the publication of useful information and discoveries, allowing inventors to build upon the ingenuity of others.

### Patentable Subject Matter

When seeking a U.S. patent, the first hurdle is to present patentable subject matter. The patent statutes allow patent protection for any "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof . . ."<sup>10</sup> This broad language "include[s] anything under the sun that is made by man."<sup>11</sup> Naturally, it follows that things not made by man are generally unpatentable: the laws of nature, physical phenomena, and abstract ideas themselves are not patentable because they are "manifestations of . . . nature, free

to all men and reserved exclusively to none."<sup>12</sup> For example, "a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter. Likewise, Einstein could not patent his celebrated law that  $E=mc^2$ ; nor could Newton have patented the law of gravity."<sup>13</sup>

### The Requirements for Patentability

If an invention presents facially patentable subject matter, it must also be new, useful, and non-obvious to earn a patent.<sup>14</sup> Federal statutes and a large body of case law explain exactly what is meant by these requirements.

**1) Novelty.** The statutory language quoted above includes the qualifier that the invention must be "new." This novelty requirement is described in detail in 35 U.S.C. §102. Generally, a person will be entitled to patent protection for his or her invention unless it "was known or used by others" in the U.S. before invention by the inventor, or was "patented or described in a printed publication" anywhere, more than one year prior to the person's patent application date.<sup>15</sup> Prior patents, printed publications, or other evidence of prior inventions are called "prior art," and the novelty requirement is usually restated in the negative: to be patentable, a claimed invention cannot have been anticipated by the prior art.

## continuing legal education

# Online

the quickest way to meet your CLE requirements

\* Cyber-Ethics: "Protecting Attorney/Client Confidence in Cyber Space."

\* Legal Ethics & Digital Signatures \*\*

\*\* PLUS: Your own Digital Signature.

Both classes and the Digital Signature  
can be found on the Utah State Bar Web site  
at [www.utahbar.org/cle](http://www.utahbar.org/cle)

2 Utah State Bar CLE Classes  
PLUS *Digital Signature*

# \$29.95

(Over \$100.00 in value)

## USERTrust Inc.

for more information, call  
(801) 363-8748 ext 108  
or visit us on our Web site at  
[www.usertrust.com/cle](http://www.usertrust.com/cle)

Each patent document comprises two major parts: a specification, which includes a detailed explanation of the invention and its various embodiments, and a set of one or more numbered claims. The claims are the heart of the patent, and define the scope of the patent rights. Each claim is a single sentence which follows "What is claimed is," or equivalent language, and then states in detail the exact invention for which legal protection is claimed. For example, a patent claim for a pencil might read:

What is claimed is:

1. A marking instrument comprising:

- an elongate body configured for grasping by a user; and
- an elongate shaft of graphite disposed within the elongate body, whereby a user may make marks on a surface by exposing a portion of the graphite shaft and manipulating the elongate body so as to press and draw the graphite along the surface.

As this example demonstrates, patent claims use unusual language. This odd language has developed because of the need for clear, specific verbal description of the invention. A patent applicant is under the obligation to explicitly verbally claim his invention in such a manner that it is clear what the invention is, and what it is not. Because the scope and validity of the patent will hang upon the claim language, using just the right words is critical. Not surprisingly, a patent is considered to be "one of the most difficult legal instruments to draw with accuracy."<sup>16</sup>

When determining whether an invention is novel, a patent examiner (or a court in a patent lawsuit) will look at the claims to determine whether the prior art anticipates any of them. If each and every element of a claim is found in a single prior art reference, the claim is considered anticipated.<sup>17</sup> Because pencils having the elements described above are well known, the sample claim above is probably not novel, and hence unpatentable.

**2) Utility.** In addition to the list of things considered unpatentable *per se*, there is also a utility requirement: to be patentable the invention must be "useful."<sup>18</sup> This requirement is very minimal. To be useful, an invention simply must be capable of accomplishing at least one of its stated purposes.<sup>19</sup> It need not be the best or only way to accomplish a certain result, and it need only be useful to some extent and in certain applications, but it must be useful in some way.<sup>20</sup>

While the utility requirement is easily satisfied in most cases, there are some purported inventions which fail it. Patent appli-

cations for perpetual motion machines – supposed devices which create more energy than is put into them from all sources – are summarily rejected by the patent office because they cannot work, at least according to all known natural laws, and no one has ever produced one that does.<sup>21</sup> Likewise, supposed inventions for expanding a person's powers of ESP,<sup>22</sup> for reversing aging,<sup>23</sup> for drawing electrical energy out of the ether,<sup>24</sup> or similar "incredulous inventions" are unpatentable without proof that they actually work.

**3) Obviousness.** Even if the exact invention is not identically disclosed somewhere under §102, patent protection is still not available "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which such subject matter pertains."<sup>25</sup> This is the obviousness requirement, and is usually the most difficult hurdle to clear.

Because of the difficulty in defining what is "obvious," Congress has never sought to codify a set of rules for obviousness. Instead, at the initial urging of Thomas Jefferson, this task was left to the courts.<sup>26</sup> Under current legal standards, for an invention to be obvious in light of prior art references, three basic criteria must be met. First, there must be some suggestion or motivation, either in the prior art references themselves or in knowledge generally available to one of ordinary skill in the art, to modify a given reference or to combine the teachings of several references. Second, there must be a reasonable expectation of success. Third, the prior art reference or references must teach or suggest all the claim limitations.<sup>27</sup>

There are some other general rules which help give guidance as to what is obvious. A new use for a known invention is generally not patentable<sup>28</sup> – it is considered obvious to try to use known things in new ways. A change of material or color is also generally not patentable,<sup>29</sup> nor is a change of shape.<sup>30</sup> There are exceptions to each of these rules, and through creative strategies a skilled patent attorney or agent can frequently obtain some measure of protection for inventions which appear at first glance to be obvious. Nevertheless, these general rules still survive today in some form.

In light of the general rules of obviousness, suppose that a pencil with lead having a square cross section had never been made. If the above example of a claim for a pencil were changed to specify "the graphite shaft having a substantially square cross section," this change would probably not make the invention patentable. It would be considered obvious because



all that has happened is a change of shape, which is not patentable unless it offers some unique functional benefit.

### Other Considerations

**1) Prior Public Use or Sale.** In addition to detailing the novelty requirement for U.S. patents, 35 U.S.C. §102(b) also imposes a condition known as the "on-sale bar." "A person shall be entitled to a patent unless — . . . (b) the invention was . . . in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."<sup>31</sup> This statute presents a sort of two-edged sword. On the one hand, unlike most other nations, inventors can sell their invention in the U.S. for up to a year before filing an application for a patent, without losing U.S. patent rights. This allows them a window to test the market or generate revenue before deciding whether to go to the trouble and expense of seeking a patent. It also reduces the burden on the PTO for the same reasons. On the other hand, once the invention has been on the market for more than a year, all possibility of patenting it is forever lost.

**2) Prior Disclosure.** The "on-sale bar" notwithstanding, most foreign nations have an "absolute novelty" requirement. That is, if an invention has been known, used, on sale, etc. anywhere

before a patent application was filed, it is unpatentable. Consequently, *any* publication or disclosure of the invention prior to filing a patent application can make the invention unpatentable abroad. Such simple actions as publishing a brochure, or displaying the invention at a trade show may be sufficient to eliminate foreign patent rights under this rule.

**3) Inventorship.** Finally, under U.S. patent law, only the original and first inventor of an invention may apply for and receive patent protection.<sup>32</sup> When a patent application is filed in the PTO, it must be accompanied by a signed oath or declaration stating that the applicant is the true inventor. The filing of a patent application with an oath or declaration by anyone other than the true inventor, with deceptive intent, constitutes inequitable conduct, and makes any patent granted thereon unenforceable, and may subject one to criminal penalties.<sup>33</sup> This provision of U.S. law should help allay the common fear that someone can steal an invention and rush to the patent office ahead of the actual inventor.

### Conclusion

The entire procedure for obtaining a patent is too involved to be explained here, and is part of the *raison d'être* for patent attor-

### Business Lawyer

First USA Financial Services, an innovative, rapidly growing issuer of commercial credit cards and related products and services, has an opening for a lawyer in its Salt Lake City headquarters. The successful candidate will work directly with the company's senior management to structure and negotiate significant business transactions and provide general legal representation on a variety of matters.

We require four or more years of legal experience. Experience in structuring, negotiating and drafting contracts is preferred. An understanding of federal and state bank regulation is a plus.

We offer competitive salary, first-rate benefits including medical and dental insurance, and an exciting work environment in a company that has become a recognized leader in its industry. Please send your resume to: **First USA Financial Services, Inc., Attn: James W. Baumgartner, President, 3995 South 700**

**FIRST USA**  
Paymentech

Equal Opportunity Employer

**East, Suite 400,  
Salt Lake City, Utah  
84107; Fax (801) 281-  
5858.**

### RELOCATION

### Snell & Wilmer

is pleased to announce that  
our Salt Lake City office  
has relocated to

Gateway Tower West

15 West South Temple, Suite 1200

Salt Lake City, Utah 84101

Telephone: 801.257.1900

Fax: 801.257.1800

[www.swlaw.com](http://www.swlaw.com)

neys. Nevertheless, based upon the above basic principles of patentability, here is a list of legal and business questions that you might pose to Sharon and Bill, or any client to help advise them at the outset:

- What does this invention actually do?
- What is it about this invention that is new?
- Is this invention merely an improvement on something known? If so, is the improvement truly novel?
- Would someone who is knowledgeable about these sorts of things think your invention is obvious?
- Has this invention already been in public use or on sale for more than a year?
- Is there a significant foreign market for this invention? If so, and you desire foreign patent protection, has there been any publication or public disclosure of the invention at any time?
- Who is the true inventor? Did you come up with it yourself, or did you get the idea or part of it from someone else?
- How much is this invention expected to be worth in the marketplace, in light of the cost of patenting it?
- Who will want to buy it?
- How long is this invention likely to be valuable in the marketplace, in light of the time required to patent it?

The answers to these questions should help your client focus on the critical issues that determine whether they have something that is protectable under U.S. patent law. If so, the resulting patent may be extremely valuable, whether for the price it brings on the market, or for the exclusive rights it offers to the applicant, an assignee, or licensee. The next step is probably to refer them to a registered patent attorney. But as a non-patent attorney, you can help guide Bill and Sharon before they gamble with their future.

<sup>1</sup>Naturally, a lawyer is always required to "provide competent representation," which presumes adequate "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." UTAH R. PROF. COND. 1.1. As one of few formal legal specialties, only those with an engineering or science degree (or the equivalent) can take the "Patent Bar" exam and practice before the U.S. Patent and Trademark Office. However, any attorney can handle patent litigation and advise about many aspects of patent law if competent and knowledgeable in the field.

<sup>2</sup>See 35 U.S.C. §271. Utility patents are valid for a term of twenty years measured from the filing date of the patent application. See 35 U.S.C. §154 (b). Design patents are valid for a term of fourteen years from the date of issuance. See 35 U.S.C. §173.

<sup>3</sup>See, e.g. *Sears Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 229 (1964) (Black, J.) ("The grant of a patent is the grant of a statutory monopoly.")

<sup>4</sup>See e.g. *Carl Schenck, A.G. v. Nortron Corp.*, 713 F.2d 782, 786 n.3, (Fed. Cir. 1983) ("A patent, under the statute, is property. 35 U.S.C. §261. Nowhere in any statute is a patent described as a monopoly. . . . It is but an obfuscation to refer to a patent as 'the patent monopoly' or to describe a patent as an 'exception to the general rule against monopolies.'").

<sup>5</sup>See 35 U.S.C. §171.

<sup>6</sup>U.S. Pat. No. Des. 413,105 (issued Aug. 24, 1999).

<sup>7</sup>The total cost of obtaining a utility patent using the services of a registered patent attorney typically ranges from \$7,000 to \$10,000 minimum, depending on the nature and complexity of the invention.

<sup>8</sup>U.S. CONST. ART. I, §8, cl. 8 (original capitalization omitted).

<sup>9</sup>Codified at 35 U.S.C. §§1-376.

<sup>10</sup>35 U.S.C. §101.

<sup>11</sup>See *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 149 F.3d 1368, 1373 (Fed. Cir.), cert denied, 525 U.S. 1093 (1998).

<sup>12</sup>*Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980).

<sup>13</sup>*Id.*

<sup>14</sup>See *Bonito Boats Inc. v. Thundercraft Boats Inc.*, 489 U.S. 141, 150 (1989).

<sup>15</sup>35 U.S.C. §102.

<sup>16</sup>*Topliff v. Topliff*, 145 U.S. 156, 171 (1892).

<sup>17</sup>See *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

<sup>18</sup>35 U.S.C. §101.

<sup>19</sup>See *Carl Zeiss Stiftung v. Renishaw plc*, 20 U.S.P.Q.2d 1094, 1100 (Fed. Cir. 1991).

<sup>20</sup>See *id.*

<sup>21</sup>See, e.g., *Ex Parte Payne*, 1904 Comm'n Dec. 42; *Newman v. Quigg*, 877 F.2d 1575, 1581 (Fed. Cir. 1989) (upholding a district court's ruling that an invention claiming an "Energy Generation System Having Higher Energy Output Than Input" was unpatentable for lack of utility).

<sup>22</sup>See *Puharich v. Brenner*, 415 F.2d 979 (D.C. Cir. 1969).

<sup>23</sup>See *In re Eltrogth*, 419 F.2d 918 (C.C.P.A. 1970).

<sup>24</sup>See *In re Perrigo*, 48 F.2d 965 (C.C.P.A. 1931).

<sup>25</sup>35 U.S.C. §103.

<sup>26</sup>Jefferson, Thomas, Letter to Isaac McPherson (Aug. 1813), in VI WRITINGS OF THOMAS JEFFERSON, 180, 181-82 (Washington ed.).

<sup>27</sup>See *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); see also M.P.E.P. §706.02(j).

<sup>28</sup>See Jefferson, Letter to Isaac McPherson, note 26 *supra*, at 181 ("[A] machine of which we are possessed, might be applied by every man to any use of which it is susceptible.")

<sup>29</sup>See *id.* ("[A] change of material should not give title to a patent. As the making of a ploughshare of cast rather than of wrought iron; a comb of iron instead of horn or of ivory . . .")

<sup>30</sup>See *id.* at 181-82 ("[A] mere change of form should give no right to a patent, as a high-quartered shoe instead of a low one; a round hat instead of a three-square; or a square bucket instead of a round one.")

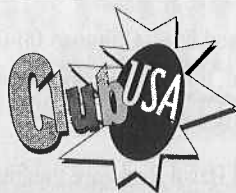
<sup>31</sup>35 U.S.C. §102.

<sup>32</sup>See 35 U.S.C. §§101, 115, 116.

<sup>33</sup>See *Burroughs Wellcome Co. v. Barr Lab., Inc.*, 40 F.3d 1223 (Fed. Cir. 1994); 37 C.F.R. 1.56 (1996); 18 U.S.C. §1001 (federal false statement statute).



# *Make the Annual Convention in San Diego a family trip ...*



## **Your Membership To Adventure!**



Become a Club USA member today!

Enjoy special savings to the  
Anheuser-Busch Adventure Parks®  
as well as hotel, rental car and  
special vacation packages.

To obtain your Club USA  
membership card, contact your  
Human Resources Department or  
Benefits Coordinator.



Orlando, San Antonio, Cleveland & San Diego



Tampa Bay • Williamsburg

## *Take a look at What's New!*



## *Join The Club...*



**PICK UP AN  
ENROLLMENT  
FORM  
TODAY!**

It's the Club that makes you and your family  
a part of the magic with special benefits and  
offers. Now—there's a more personalized  
Magic Kingdom Club, with benefits and magic  
just for members like you.

Ask for an enrollment form today  
at your Personnel or Recreation Office!

(contact)

Please allow three weeks for delivery  
of membership materials, including your Card.

Printed on Recycled Paper

***For discount tickets for these attractions call:  
Maud Thurman at 297-7031***

### ***Commission Highlights***

During its regularly scheduled meeting March 9, 2000, held in St. George, the Board of Bar Commissioners received the following reports and took the actions indicated:

1. After review and discussion, the Commission approved the minutes of the January 28, 2000 meeting as amended.
2. Charles R. Brown discussed the Task Force on Bar Governance and *Ex Officios*, Access to Justice Foundation/"and Justice for all", status of Bar Delegates to the ABA House, reviewed the status of MDP Task Force and the Utah Electronic Law and Commerce Partnership.

### ***Mailing of Licensing Forms***

The licensing forms for 2000-2001 will be mailed during the last week of May and the first week of June. Fees are due July 3, 2000, however fees received or postmarked on or before August 1, 2000 will be processed without penalty.

It is the responsibility of each attorney to provide the Bar with current address information. This information must be submitted in writing. Failing to notify the Bar of an address change does not relieve an attorney from paying licensing fees, late

### ***2000 Annual Meeting Awards***

The Board of Bar Commissioners is seeking nominations for the 2000 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than **Thursday, April 27, 2000**. The award categories include:

1. Judge of the Year.
2. Distinguished Lawyer of the Year
3. Distinguished Young Lawyer of the Year
4. Distinguished Section/Committee
5. Distinguished Non-Lawyer for Service to the Profession.

3. Gary Sackett reviewed Ethic Opinions 00-01, 00-02, and 00-03. After discussion, the Commission voted to adopt all three opinions.

4. John T. Nielsen and David Bird gave the final legislative report.
5. The Bar approved the Unauthorized Practice of Law complaint.

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

fees, or possible suspension for non-payment of fees. You may check the Bar's web site to see what information is on file. The site is updated weekly and is located at [www.utahbar.org](http://www.utahbar.org).

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

### ***Notice of Proposed Amendments to Rules for Integration***

The Utah Bar Commission is proposing several amendments to the Supreme Court Rules for Integration and Management of Utah State Bar to formalize proposals made by the Court's 1991 Task Force on the Management and Regulation of the Practice of Law and to update policies. Copies of the proposals are available for comment on the Bar's web site, at the Bar offices, or may be mailed upon request. Contact Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111. Comments should be received by May 1, 2000.



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

**PUBLIC NOTICE**

**REAPPOINTMENT OF INCUMBENT FULL-TIME  
UNITED STATES MAGISTRATE JUDGE**

The current term of United States Magistrate Judge Samuel Alba, serving at the Salt Lake City headquarters of the United States District Court for the District of Utah, will expire on October 15, 2000. The Court is required to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term as provided by law.

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

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

Markus B. Zimmer

Clerk of Court

United States District Court

Suite 120, United States Courthouse

350 South Main Street

Salt Lake City, Utah 84101

Comments must be received no later than Friday, June 2, 2000.

***Ethics Opinions Available***

The Ethics Advisory Opinion Committee of the Utah State Bar has produced a compendium of ethics opinions that is available to members of the Bar in hard copy format for the cost of \$20.00, or free of charge off the Bar's Website, [www.utahbar.org](http://www.utahbar.org), under member benefits and services. 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 the current calendar year.

**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, Suite 310, Salt Lake City, Utah 84111.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Please allow 2-3 weeks for delivery.

***Utah State Bar Ethics Advisory  
Opinion Committee***

**Opinion No. 99-03R**

(Approved October 29, 1999)

On May 28, 1999, the Utah State Bar Board of Bar Commissioners (the Commission) approved Utah Ethics Advisory Opinion No. 99-03, which held that nothing in the Utah Rules of Professional Conduct prohibits a defense lawyer from making an *ex parte* contact with plaintiff's treating physician in a personal-injury or medical-malpractice matter.

The typical fact situation that was addressed by Opinion No. 99-03 involves a plaintiff who files suit against a physician who has performed medical services for her. The attorney for the defendant-physician makes an *ex parte* contact with another physician who had previously treated the plaintiff (the "treating physician"). The factual background for the analysis assumes that the treating physician (a) is not represented by counsel in the matter, and (b) has not been retained or designated to testify as an expert by the plaintiff.

After review of all information presented and considerable additional research, we affirm the opinion as originally written.

## Notice of Amendments to Rules

The following rule changes have been adopted by the Supreme Court or Judicial Council with an effective date of April 1, 2000 (unless otherwise noted). The information is intended to alert Bar members to changes that may be of interest and is not an inclusive list of all changes made. Further information may be found in the following sources:

- Code-Co. Web Site: <http://www.code-co.com>
- *Intermountain Commercial Record* (February 11, 2000)
- Pacific Reporter Advance Sheets
- 2000 Utah Court Rules Annotated
- Utah State Courts Web Site:  
<http://courtlink.utcourts.gov/rules/>

### DIGEST OF AMENDMENTS

#### Rules of Appellate Procedure

**Rule 28A. Appellate Mediation Office.** Adds new rule governing Appellate Mediation Office.

#### Rules of Juvenile Procedure

**Rule 4. Time.** Changes rule to mirror changes to other bodies of Supreme Court rules.

**Rule 8. Rights of minor while in detention.** Clarifies rule.

**Rule 29A. Visual recording of statement or testimony of child victim or witness of sexual or physical abuse – Conditions of admissibility.** Adopts rule for admission of recorded statement or testimony in a room other than the courtroom in delinquency cases.

**Rule 31. Initiation of truancy proceedings.** Amends rule to comport with legislative change.

**Rule 37A. Visual recording of statement or testimony of child victim or witness of sexual or physical abuse – Condition of admissibility.** Adopts rule for admission of

recorded statement or testimony in a room other than the courtroom in abuse, neglect, and dependency cases.

#### Code of Judicial Administration

**Rule 4-202.08. Fees for records, information, and services.** Amends provision for waiving fees for governmental entities.

**Rule 4-510. Alternative dispute resolution.** Changes types of cases which are exempt from ADR requirements. Removes exemption for cases where the claim is less than \$20,000 and adds exemption for actions pursued by an assignee of a claim.

**Rule 4-908. Committee on Children and Family Law.<sup>†</sup>** Adopts rule establishing new Judicial Council Standing Committee.

#### Rules of Professional Conduct

Removes all Model Code Comparisons from the Rules of Professional Conduct.

#### Other Amended Rules

**Rule 1-205. Standing and ad hoc committees.<sup>†</sup>**

**Rule 3-304. Official court reporters.**

**Rule 3-305. Official court transcribers.**

**Rule 3-306. Court interpreters.**

**Rule 3-415. Auditing.**

**Rule 4-202.02. Records classification.**

**Rule 4-205. Security of court records.**

**Rule 7-101. Juvenile Court Board, Executive Committee and Council Representatives.**

**Rule 7-303. Truancy referrals.**

<sup>†</sup>These amendments were approved as emergency rules and are currently in effect.

## Utah Bar Foundation Seeking Part-Time Executive Director

The Utah Bar Foundation is accepting applications to fill the part-time position of Executive Director. The Foundation is a non-profit corporation which administers funds received from gifts, donations, bequests, contributions and interest on lawyers' trust accounts, and annually awards grants to support legal services to the disadvantaged, improve the administration of justice, aid in law-related education and to support other law-related purposes. The Executive Director

performs administrative responsibilities under the direction of a seven-member board of trustees.

Salary is negotiable and experience with non-profit groups is desirable.

Applications should be sent c/o Maud Thurman, 645 South 200 East, Suite 204, Salt Lake City, Utah 84111. Applications must be received by Wednesday, April 28, 2000. The Utah Bar Foundation is an equal opportunity employer.



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
PUBLIC NOTICE**

**REAPPOINTMENT OF INCUMBENT PART-TIME  
UNITED STATES MAGISTRATE JUDGE**

The current term of part-time United States Magistrate Judge Clark B. Allred serving the United States District Court for the District of Utah at the Vernal, Utah duty station will expire on December 31, 2000. The Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term or such other term as provided by law.

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

Comments from members of the Bar and the public are invited as to whether incumbent part-time Magistrate Judge Allred should be recommended by the panel for reappointment by the Court. Comments should be directed to:

Markus B. Zimmer  
Clerk of Court

United States District Court  
Suite 120

Frank E. Moss United States Courthouse  
350 South Main Street  
Salt Lake City, Utah 84101

Comments must be received no later than Friday, June 2, 2000.

**The 2000 Tenth Circuit Judicial Conference**

The 2000 Tenth Circuit Judicial Conference will be held in Santa Fe, New Mexico from Thursday, June 29 through Saturday, July 1. The headquarters hotel is the Santa Fe Hilton with some meetings being held at the neighboring Eldorado Hotel. There are blocks of hotel rooms being held under the name of the conference at both hotels, as well as the Hotel St. Francis.

The conference is entitled "Law and Federal Practice in the New Millennium" and that theme will be carried out by speakers and interactive breakout sessions. An exciting array of speakers, including novelist Scott Turow, will discuss law at a Renaissance Legal Luncheon on June 30 and explore topics of law and international legal practice, econom-

ics, and literature. CLE credits will be offered. A range of activities are included in the program to appeal to spouses and children, and families are welcome to attend.

Registration is open to all attorneys and judges who are members of the Judicial Conference of the Tenth Circuit. To become a member and also to register for the conference, please go to [www.ck10.uscourts.gov](http://www.ck10.uscourts.gov) and click on "Tenth Circuit Judicial Conference." Alternatively, for additional information, you may contact Ms. Chris Lighthall in the Circuit Executive's Office of the Tenth Circuit Court of Appeals by phone (303-844-2070); fax (303-844-2079); or email: [christine\\_lighthall@ca10.uscourts.gov](mailto:christine_lighthall@ca10.uscourts.gov).

## ***From the Utah Supreme Court Notice of Corrections***

On June 11, 1999, the Utah Supreme Court released the opinion *State of Utah v. Kirk Scott Saunders*, 1999 UT 59, 371 Utah Adv. Rep. 6. The case considered, among others, the issues of juror unanimity under Article I, Section 10 of the Utah Constitution and the plain error doctrine. When the opinion was initially released, it showed Judge Tyrone E. Medley as the trial court judge. While Judge Medley was the judge who sentenced Saunders, he was not the judge who presided over Saunders' trial on the merits. The opinion has since been corrected to clarify Judge Medley's role.

On January 28, 2000, the Utah Supreme Court released the opinion *State of Utah v. Eugene Reed Bennett*. This opinion addressed the issue of a defendant being tried before a jury in jail clothes. Due to clerical error, the opinion incorrectly identified Judge Tyrone Medley as the trial judge. In fact, Judge Jay E. Banks presided over the trial on the merits, and Judge Richard H. Moffat signed the final judgment. On February 11, 2000, the court issued an amended opinion to correct this error.

The Utah Supreme Court regrets these errors and apologizes for the confusion created.

## **United States District Court for the District of Utah Office of the Clerk of Court**

**150 Frank E. Moss U.S. Courthouse**

**350 South Main Street**

**Salt Lake City, Utah 84101-2180**

### **POSITION VACANCY ANNOUNCEMENT**

The Office of the Clerk solicits applications for the position of Records and File Management Clerk. This is a full-time temporary position with federal government benefits and possible eventual conversion to permanent status. The position is classified as CL-22 with an annual starting salary range of \$18,257-22,819 depending on experience. Federal government benefits apply.

**DUTIES AND RESPONSIBILITIES:** Incumbent will sort, classify and file case records; maintain integrity of the filing system by monitoring proper access to records. Incumbent will also retrieve and copy files for court personnel, attorneys and others and will be responsible for preparing and shipping records to the Federal Records Center.

**QUALIFICATIONS:** Applicants must be detail-oriented with good research and organization skills, familiarity with PCs. Prefer mature self-starters who can work independently. Must be a U.S. citizen.

**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. Finalist may be subject to a background check and drug test. AO 78 Forms are available for pickup at the address listed below from 8:30 a.m. to 4:30 p.m. Monday-Friday or for downloading at <http://www.utd.uscourts.gov> under "Form." Application should be submitted (i) in person at or by mail to the address listed below, (ii) by fax to the Personnel Specialist at 801-526-1166, or (iii) by e-mail to [jobs\\_resume@utd.uscourts.gov](mailto:jobs_resume@utd.uscourts.gov). Position open until filled.

**United States District Court for the District of Utah**

**Attn: Records Clerk**

**Office of the Clerk of Court**

**Room 150 U.S. Courthouse**

**350 South Main Street**

**Salt Lake City, Utah 84101-2180**

**EQUAL OPPORTUNITY EMPLOYER**

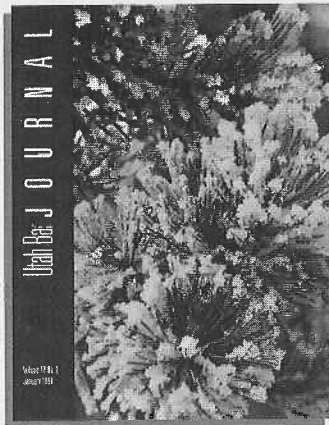


## 1999 Cover of the Year Ballot

Please cast your vote for the 1999 Utah Bar Journal cover of the year. Please indicate in the boxes below your 1st, 2nd and 3rd favorite covers. If you would like to see these covers in color, please visit the Bar's website at [www.utahbar.org](http://www.utahbar.org). Thank you for taking the time to vote. Please return this page by April 20, 2000 to:

Utah Bar Journal • Attn: Christine Critchley • 645 South 200 East • Salt Lake City, Utah 84115

*Please indicate your first, second and third place covers.*


☐

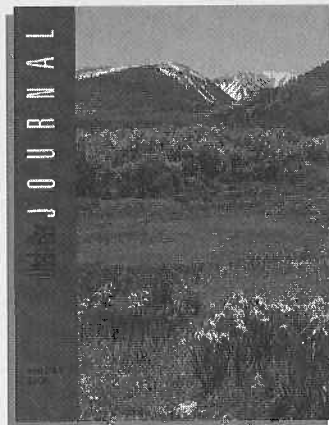
January


☐

February


☐

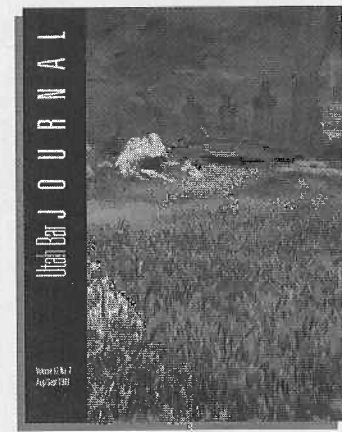
March


☐

May


☐

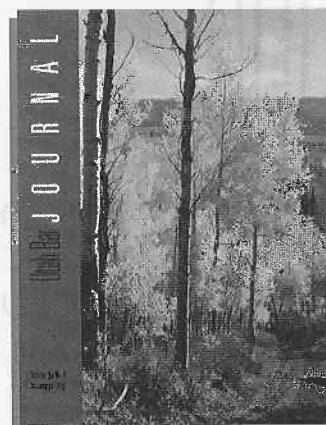
June/July


☐

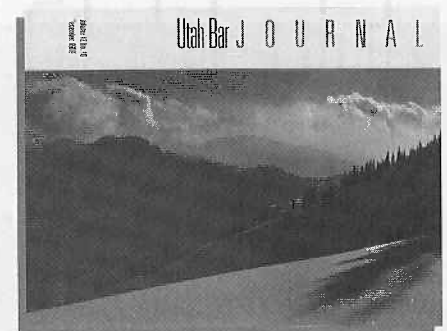
Aug/Sept


☐

October


☐

November


☐

December





# Utah State Bar 2000



July 12-15, 2000

San Diego — Hotel del Coronado



# Annual Convention

Up to 12 hours of  
CLE credit available

Don't miss this one!  
Mark your calendars now  
& watch your mail for  
more information.

[www.utahbar.org/sites/annual/](http://www.utahbar.org/sites/annual/)



The Hotel del Coronado is a family paradise. With lush gardens, two pools, an award-winning beach, a full-time activities department, and sunshine almost every day, fun is a year-round experience.



The Hotel del Coronado's picturesque gingerbread castle by the sea, with its magnificent red-roofed spires, has played host to royalty, U.S. Presidents, and countless celebrities on vacation.



The Hotel del Coronado's Beach Bungalow is a private oceanfront cottage with a spacious living room and fireplace, dining area, sun-splashed deck on the beach. This villa is where Marilyn Monroe stayed while filming *Some Like It Hot*.



The legendary Hotel del Coronado was recently honored by *Gourmet* magazine readers for the second year in a row as "one of the top beach destinations in the United States."



The Crown Room, one of the Hotel del Coronado's signature restaurants, has been the site for many historical events. In 1927, Charles Lindbergh was the guest of honor at a dinner to celebrate his flight across the Atlantic. In 1970, President Richard Nixon held the first State Dinner outside Washington, D.C., for Mexican President Diaz Ordaz.

# CLE Program Schedule

**Wednesday, July 12, 2000**

6:00 p.m. – 8:00 p.m.

## **Opening President's**

**Reception and Registration – Sun Deck**

Sponsored by: PARSONS BEHLE & LATIMER  
SNOW, CHRISTENSEN & MARTINEAU  
WORKMAN, NYDEGGER & SEELEY  
KIPP & CHRISTIAN

**Thursday, July 13, 2000**

7:30 a.m. – 8:00 a.m.

## **Registration and Continental Breakfast**

Sponsored by: BALLARD, SPAHR, ANDREWS & INGERSOLL  
LEBOEUF, LAMB, GREENE & MACRAE

8:00 a.m. – 9:00 a.m.

## **Opening General Session and Business Reports**

### **Welcome and Opening Remarks**

H. Dickson Burton, 2000 Annual Convention Program  
Co-Chair

Maxwell A. Miller, 2000 Annual Convention Program Co-Chair

### **Report on the Utah State Bar**

Charles R. Brown, President, Utah State Bar

### **Report on State Judiciary**

Chief Justice Richard C. Howe, Utah Supreme Court

### **Report on Federal Judiciary**

Chief Judge Dee V. Benson, Federal District Court,  
State of Utah

### **Report on the Utah Bar Foundation**

Randy L. Dryer, President, Utah Bar Foundation

## **HON. ALEX KOZINSKI**

Judge Kozinski was appointed United States Circuit Judge for the Ninth Circuit on November 7, 1985. He graduated from UCLA, receiving an A.B. degree in 1972, and from UCLA Law School, receiving a J.D. degree in 1975. Prior to his appointment to the appellate bench, Judge Kozinski served as Chief Judge of the United States Claims Court, 1982-85; Special Counsel, Merit Systems Protection Board, 1981-82; Assistant Counsel, Office of Counsel to the President, 1981; Deputy Legal Counsel, Office of President-Elect Reagan, 1980-81; Attorney, Covington & Burling, 1979-81; Attorney, Forry Golbert Singer & Gelles, 1977-79; Law Clerk to Chief Justice Warren E. Burger, 1976-77; and Law Clerk to Circuit Judge Anthony M. Kennedy, 1975-76.

9:00 a.m. – 9:50 a.m.

## **Keynote Address: Antitrust Law: Solution in Search of a Problem – (1 CLE hour)**

*Hon. Alex Kozinski, 9th Circuit Court*

Sponsored by: PARR WADDOUPS BROWN GEE & LOVELESS

9:50 a.m. – 10:15 a.m.

## **Refreshment Break**

Sponsored by: GIAUQUE, CROCKETT, BENDINGER & PETERSON  
TRASK, BRITT & ROSSA  
MCKAY, BURTON & THURMAN



10:15 a.m. – 11:05 a.m.

**Session I – (1 CLE hour each)**

<b>LITIGATION TRACK</b>		<b>TRANSACTIONAL TRACK</b>
<b>Who Gets to Visit Your Children and Who Gets to Decide?</b> <i>Panel of Lawyers &amp; Judges</i>		<b>Through the Maze: The Lawyer's Role in the Sale of Real Estate</b> <i>Read R. Hellewell, Kirton &amp; McConkie</i>
<b>GENERAL PRACTICE/ GOVERNMENT TRACK</b> <b>Juvenile Court as a Resource to the Public and the Legal Community</b> <i>Hon. Kimberly K. Hornak, 3rd District Juvenile Court</i> <i>Jan Thompson, Communications Director, Administrative Office of the Courts</i>	<b>TECHNOLOGY TRACK</b> <b>Using the Power of Computers for Winning Courtroom Arguments</b> <i>Francis J. Carney, Anderson &amp; Karrenberg</i> <i>Blake D. Miller, Ballard Spahr Andrews &amp; Ingersoll</i>	<b>BACK TO BASICS TRACK</b> <b>NLCLE: Intellectual Property for the Non-Specialist</b> <i>Jonathan W. Richards, Workman, Nydegger &amp; Seeley</i>

11:05 a.m. – 11:20 a.m.

**Refreshment Break**

Sponsored by: BURBIDGE & MITCHELL  
WILLIAMS & HUNT

11:20 a.m. – 12:10 p.m.

**Session II – (1 CLE hour each)**

<b>LITIGATION TRACK</b>		<b>TRANSACTIONAL TRACK</b>
<b>Successful Strategies for Advocates in Mediation</b> <i>Ralph L. Dewsnap, Dewsnap, King &amp; Olsen</i> <i>James R. Holbrook, Callister, Nebeker &amp; McCullough</i> <i>Larry R. Keller, Keller &amp; Lundgren</i> <i>John R. Lund, Snow, Christensen &amp; Martineau</i> <i>D. Frank Wilkins, Berman, Gaufin, Tomsic, Savage &amp; Campbell</i>		<b>NLCLE: Primer I – Foreclosures</b> <i>Larry G. Moore, Ray, Quinney &amp; Nebeker</i>  <b>Primer II – Mechanic's Liens</b> <i>Darrel Bostwick, Babcock, Bostwick, Scott, Crawley &amp; Price</i>
<b>GENERAL PRACTICE/ GOVERNMENT TRACK</b> <b>ETHICS: The Market vs. Lawyers – The MDP Task Force Report</b> <i>Michael D. Blackburn, MDP Task Force Co-Chair</i> <i>Toby Brown, Utah State Bar</i> <i>David Nuffer, President-elect, Utah State Bar</i> <i>Charles R. Brown, President, Utah State Bar</i>	<b>TECHNOLOGY TRACK</b> <b>Commercial Transactions</b> <i>John R. Morris, Snell &amp; Wilmer</i>	<b>BACK TO BASICS TRACK</b> <b>NLCLE: Primer I – Foreclosures</b> <i>Larry G. Moore, Ray, Quinney &amp; Nebeker</i>  <b>Primer II – Mechanic's Liens</b> <i>Darrel Bostwick, Babcock, Bostwick, Scott, Crawley &amp; Price</i>

12:10 p.m. – 12:30 p.m.

**Refreshment Break**

Sponsored by: STOEL RIVES LLP  
GREEN & BERRY

12:30 p.m. – 1:20 p.m.  
**Session III – (1 CLE hour each)**

<b>LITIGATION TRACK</b>		<b>TRANSACTIONAL TRACK</b>	
<b>Ethical Dilemmas for the Practitioner – Phase II</b> <i>Gregory K. Skordas, Gustin, Christian, Skordas &amp; Caston</i> <i>Michael F. Skonick, Kipp &amp; Christian</i> <i>Harry Caston, Gustin, Christian, Skordas &amp; Caston</i> <i>Stephanie Ames, Gustin, Christian, Skordas &amp; Caston</i> <i>Charls Gruber, Office of Professional Conduct</i>		<b>ENREL: Development of Environmentally Impaired Properties</b> <i>David W. Tundermann, Parsons Behle &amp; Latimer</i> <i>J. Michael Baily, Parsons Behle &amp; Latimer</i> <i>Hal J. Pos, Parsons Behle &amp; Latimer</i>	
<b>GENERAL PRACTICE/ GOVERNMENT TRACK</b>	<b>TECHNOLOGY TRACK</b>	<b>BACK TO BASICS TRACK</b>	
<b>“Miranda”</b> <i>Prof. Paul Cassell, University of Utah</i> <i>College of Law</i> <i>Stephen C. Clark, ACLU of Utah</i> Sponsored by: MBNA AMERICA	<b>Intellectual Property Issues on the Internet</b> <i>H. Dickson Burton, Trask, Britt &amp; Rossa</i> <i>John R. Morris, Snell &amp; Wilmer</i> <i>Gregory D. Phillips, Howard, Phillips &amp; Andersen</i> <i>Jonathan W. Richards, Workman, Nydegger &amp; Selley</i> <i>John C. Stringham, Workman, Nydegger &amp; Seeley</i>	<b>Ethical Dilemmas for the Practitioner – Phase II</b> <i>Gregory K. Skordas, Gustin, Christian, Skordas &amp; Caston</i> <i>Michael F. Skonick, Kipp &amp; Christian</i> <i>Harry Caston, Gustin, Christian, Skordas &amp; Caston</i> <i>Stephanie Ames, Gustin, Christian, Skordas &amp; Caston</i> <i>Charls Gruber, Office of Professional Conduct</i>	

1:20 p.m.  
Meetings Adjourn for the Day

## Friday, July 14, 2000

7:30 a.m. – 8:15 a.m.  
**Section Breakfasts**

8:00 a.m. – 8:30 a.m.  
**Registration and Continental Breakfast**  
Sponsored by: HOLME ROBERTS & OWEN  
RAY, QUINNEY & NEBEKER

8:30 a.m. – 9:15 a.m.  
**General Session**

**Presentation of Annual Awards**  
Charles R. Brown, President, Utah State Bar  
**Swearing in of New Bar Commissioners and President-Elect**  
Chief Justice Richard C. Howe, Utah Supreme Court

9:15 a.m. – 10:05 a.m.  
**General Session – Seize the Future: A View of the Future of the Legal Profession – (1 CLE hour)**  
*William C. Cobb, WCCI, Inc.*  
Sponsored by: DURHAM JONES & PINEGAR

### WILLIAM C. COBB

William Cobb is the Managing Partner of WCCI Inc. (William Cobb Consultants) based in Houston, Texas. Mr. Cobb has been a consultant in strategic issues affecting professional service organizations since 1978. He provides counsel to improve the competitive position of his clients. That counsel includes the assessment of the impact of trends in the market; pricing services and alternative billing; practice management; firm governance and structure; partner review, evaluation, and compensation; and similar subjects of critical importance to law firm and legal department leadership. Since 1992, Mr. Cobb has been chairing the Futurist Task Force for the ABA. He is a frequent speaker and writer on the critical issues of law firm and corporate legal department leadership. He is the author of *A Planning Workbook for Law Firm Management*, and *Win-Win Billing Strategies* among others.



10:05 a.m. – 10:15 a.m.

**Refreshment Break**

Sponsored by: STRONG & HANNI  
SNELL & WILMER

10:15 a.m. – 11:05 a.m.

**Session I – (1 CLE hour each)**

LITIGATION TRACK		TRANSACTIONAL TRACK
<b>Killer Cross-Examination</b> <i>Larry Pozner, Hoffman, Reilly, Pozner &amp; Williamson</i> Sponsored by: THE LITIGATION SECTION, UTAH STATE BAR		<b>Recent Developments &amp; Future Trends Under the American With Disabilities Act</b> <i>Scott A. Hagen, Ray, Quinney &amp; Nebeker</i>
<b>GENERAL PRACTICE/ GOVERNMENT TRACK</b> <b>Killer Cross-Examination</b> <i>Larry Pozner, Hoffman, Reilly, Pozner &amp; Williamson</i> Sponsored by: THE LITIGATION SECTION, UTAH STATE BAR	<b>TECHNOLOGY TRACK</b> <b>Creating Your Future</b> <i>William C. Cobb, WCCI, Inc.</i>	<b>BACK TO BASICS TRACK</b> <b>What Generation X Lawyers Know That You Don't: Trends in the Profession</b> <i>Scott Matheson, Jr., Dean, University of Utah College of Law</i> <i>Panel of Young Lawyers</i>

11:05 a.m. – 11:20 a.m.

**Refreshment Break**

Sponsored by: RICHARDS BRANDT MILLER & NELSON  
ROBERT J. DEBRY & ASSOCIATES  
NIELSEN & SENIOR

**LARRY POZNER**

Larry Pozner began his career as a Public Defender. He is the Immediate Past-President of the National Association of Criminal Defense Lawyers. He is a nationally recognized legal commentator and is frequently seen on such shows as the NBC Nightly News, The Today Show, Larry King Live and MSNBC. He was the NBC Legal Analyst for the Oklahoma City bombing trials and the Jon Benet Ramsey case. Mr. Pozner is listed in The Best Lawyers in America. He served many years on the faculty of the University of Denver College of Law, where he was voted Best Professor. He is a partner in the 10 lawyer litigation firm of Hoffman, Reilly, Pozner & Williamson where he handles protracted commercial and criminal cases, as well as plaintiff defense of class actions.

11:20 a.m. – 12:10 p.m.

**Session II – (1 CLE hour each)**

LITIGATION TRACK		TRANSACTIONAL TRACK
<b>Killer Cross-Examination cont.</b>		<b>Private Offerings of Securities – Tips for the General Practitioners</b> <i>Gary Winger, Ray, Quinney &amp; Nebeker</i>
<b>GENERAL PRACTICE/ GOVERNMENT TRACK</b> <b>Killer Cross-Examination cont.</b>	<b>TECHNOLOGY TRACK</b> <b>E-Filing and E-Commerce for Lawyers</b> <i>Toby Brown, Utah Electronic Law &amp; Commerce Partnership</i> <i>Brent Israelsen, Utah Electronic Law &amp; Commerce Partnership</i>	<b>BACK TO BASICS TRACK</b> <b>Hot Issues in Employment Law</b> <i>David A. Anderson, Parsons Behle &amp; Latimer</i>

12:10 p.m.

Meetings Adjourn for the Day

## Saturday, July 15, 2000

8:30 a.m. – 9:00 a.m.

### Registration and Continental Breakfast

Sponsored by: VANCOTT, BAGLEY, CORNWALL & MCCARTHY

9:00 a.m. – 9:50 a.m.

### ETHICS General Session – Reel Justice: Legal Ethics in the Movies

*Prof. Paul Bergman, UCLA School of Law*

Sponsored by: CALLISTER, NEBEKER & MCCULLOUGH

9:50 a.m. – 10:10 a.m.

### Refreshment Break

Sponsored by: CLYDE, SNOW, SESSIONS & SWENSON

10:10 a.m. – 11:00 a.m.

### Session I – (1 CLE hour each)

### PROFESSOR PAUL BERGMAN

Professor Bergman received his J.D. from UC Berkeley (Boalt Hall) in 1968. He has been a professor of law at UCLA School of Law since 1970, where he currently teaches Evidence, Trial Advocacy, American Legal Education and Law and Popular Culture. His career has also included serving as a law clerk for Judge Oliver Hamlin, 9th Circuit Court of Appeals and associate in the law firm of Mitchell, Silberberg and Knupp. He was the recipient of the "Excellence in Curriculum Development and Teaching of Advocacy" award in 1988 and is the author of *Reel Justice: The Courtroom Goes to the Movies*.

LITIGATION TRACK		TRANSACTIONAL TRACK	
<b>Reel Justice: Trial Tactics in the Movies</b> <i>Prof. Paul Bergman, UCLA School of Law</i>		<b>Current End-of-Life Legal Issues</b> <i>Mary Jan Ciccarello, Utah State Division of Aging and Adult Services</i> <i>Phil Ferguson, Chair, Needs of the Elderly Committee</i> <i>Shirley Rossa, Partnership for End of Life in Utah</i>	
<b>GENERAL PRACTICE/ GOVERNMENT TRACK</b> <b>Reel Justice: Trial Tactics in the Movies</b> <i>Prof. Paul Bergman, UCLA School of Law</i>	<b>TECHNOLOGY TRACK</b> <b>The Convergence of the Internet and Your Law Practice</b> <i>H. Dickson Burton, Trask, Britt &amp; Rossa</i> <i>Toby Brown, Utah State Bar</i> <i>D. Brent Israelsen, Fillmore, Belliston &amp; Israelsen</i> <i>Blake D. Miller, Ballard, Spahr, Andrews &amp; Ingersoll</i>	<b>BACK TO BASICS TRACK</b> <b>NLCLE: Mediation 101</b> <i>Karin S. Hobbs, Utah Court of Appeals, Appellate Mediation</i>	

11:00 a.m. – 11:10 a.m.

### Refreshment Break

Sponsored by: COHNE, RAPPAPORT & SEGAL  
FABIAN & CLENDENIN



11:10 a.m. – 12:00 p.m.  
**Session II** – (1 CLE hour each)

<b>LITIGATION TRACK</b> <b>Significant Legislative Developments from the 2000 Legislative Session</b> <i>John T. Nielsen, Utah State Bar Lobbyist</i>		<b>TRANSACTIONAL TRACK</b> <b>ETHICS: Advocacy Gone Awry – When Does Vigorous Advocacy Overstep the Lines into Unprofessional Conduct?</b> <i>Narda E. Beas-Nordell, Salt Lake County District Attorney's Office</i> <i>Ellen M. Maycock, Kruse, Landa &amp; Maycock</i> <i>Carol A. Stewart, Office of Professional Conduct, Utah State Bar</i>	
<b>GENERAL PRACTICE/GOVERNMENT TRACK</b> <b>State Constitution Issues</b> <i>Justice Christine M. Durham, Utah Supreme Court</i>	<b>TECHNOLOGY TRACK</b> <b>The Convergence of the Internet and Your Law Practice, cont.</b>	<b>BACK TO BASICS TRACK</b> <b>ETHICS: Advocacy Gone Awry – When Does Vigorous Advocacy Overstep the Lines into Unprofessional Conduct?</b> <i>Narda E. Beas-Nordell, Salt Lake County District Attorney's Office</i> <i>Ellen M. Maycock, Kruse, Landa &amp; Maycock</i> <i>Carol A. Stewart, Office of Professional Conduct, Utah State Bar</i>	

12:00 p.m.  
 Breakout Session Adjourn

12:30 p.m. – 3:00 p.m.  
**Salt Lake County Bar Film & Discussion: "Inherit the Wind" – (2 CLE hours)**  
*Hon. Leslie A. Lewis, 3rd District Court*  
*Hon. Ronald E. Nebring, 3rd District Court*

#### **MANDATORY CLE CREDIT**

The State Board of CLE has approved the 2000 Annual Convention for up to 12 hours of CLE credit, which includes up to 4 hours of MCLE credit, up to 4 hours of ethics and 2 hours for the Salt Lake County Bar Film Presentation. In order to ensure that you receive Utah MCLE credit, check in at the registration desk to obtain your packet of materials and name badge. You are encouraged to keep attendance records to be submitted at the end of your reporting period. Certificates of Attendance will be available in your handout materials. Questions regarding MCLE requirements should be directed to Sydnie Kuhre, Utah State Board of CLE Administrator, Utah Law & Justice Center, (801) 297-7035.

## 2000 Annual Convention Sponsors

The Annual Convention Committee extends its gratitude to these sponsors for their contribution in offsetting the costs to registrants and making this an enjoyable Annual Convention. Please be sure to show your appreciation by supporting our sponsors and visiting the exhibit tables.

BALLARD, SPAHR, ANDREWS & INGERSOLL

BURBIDGE & MITCHELL

CALLISTER, NEBEKER & McCULLOUGH

CLYDE, SNOW, SESSION & SWENSON

COHNE, RAPPAPORT & SEGAL

DURHAM JONES & PINEGAR

FABIAN & CLENDENIN

GIAUQUE, CROCKETT, BENDINGER & PETERSON

GREEN & BERRY

HOLME ROBERTS & OWEN

JONES, WALDO, HOLBROOK & McDONOUGH

KIPP & CHRISTIAN

LEBOEUF, LAMB, GREENE & MACRAE

LEXIS PUBLISHING

LITIGATION SECTION, UTAH STATE BAR

MBNA AMERICA

McKAY, BURTON & THURMAN

NIELSEN & SENIOR

PARR WADDUPS BROWN GEE & LOVELESS

PARSONS BEHLE & LATIMER

RAY, QUINNEY & NEBEKER

RICHARDS BRANDT MILLER & NELSON

ROBERT J. DeBRY & ASSOCIATES

SNELL & WILMER

SNOW, CHRISTENSEN & MARTINEAU

STOEL RIVES LLP

STRONG & HANNI

TRASK, BRITT & ROSSA

VAN COTT, BAGLEY, CORNWALL & MCCARTHY

WEST GROUP

WILLIAMS & HUNT

WORKMAN, NYDEGGER & SEELEY

YOUNG LAWYERS DIVISION, UTAH STATE BAR

---

## 2000 Annual Convention Exhibitors

AMERICAN INSURANCE

AON SERVICES

AROSNET

ATTORNEY'S TITLE GUARANTY FUND, INC.

CONTINENTAL INSURANCE AGENCY

DocuTOUCH

JAMES PUBLISHING, INC.

LEXIS PUBLISHING

LOISLAW.COM

SHOAF & ASSOCIATES

US BANK — PRIVATE FINANCIAL SERVICES

UINTA BUSINESS SYSTEMS

UTAH BAR FOUNDATION

WEST GROUP



## Utah State Bar Request for 2000-2001 Committee Assignment

The Utah Bar Commission is soliciting new volunteers to commit time and talent to one or more of 20 different committees which participate in regulating admissions and discipline and in fostering competency, public service and high standards of professional conduct. Please consider sharing your time in the service of your profession and the public through meaningful involvement in any area of interest.

Name \_\_\_\_\_ Bar No. \_\_\_\_\_

Office Address \_\_\_\_\_ Telephone \_\_\_\_\_

### Committee Request

1st Choice \_\_\_\_\_ 2nd Choice \_\_\_\_\_

**Please describe your interests and list additional qualifications or past committee work.**

**Instructions to applicants:** Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday.

### Committees

- 1. Advertising.** Evaluates trends in lawyer advertising and assists Office of Professional Conduct in resolving related offenses.
- 2. Annual Meeting.** Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.
- 3. Bar Examiner.** Drafts and grades essay questions for the February and July Bar Examinations.
- 4. Bar Examiner Review.** Reviews essay questions for the February and July Bar Exams to ensure that they are fair, accurate and consistent with federal and local laws.
- 5. Bar Journal.** Annually publishes editions of the *Utah Bar Journal* to provide comprehensive coverage of the profession, the Bar, articles of legal importance and announcements of general interest.
- 6. Character & Fitness.** Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.
- 7. Client Security Fund.** Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.
- 8. Courts and Judges.** Coordinates the formal relationship between the judiciary and the Bar including review of the organization of the court system and recent court reorganization developments.
- 9. Fee Arbitration.** Holds arbitration hearings to resolve voluntary disputes between members of the Bar and clients regarding fees.

**10. Governmental Relations.** Monitors proposed legislation which falls within the Bar's legislative policy and makes recommendations to Bar Commission for appropriate action.

**11. Law Day.** Organizes and promote events for the annual Law Day celebration.

**12. Law & Technology.** Creates a network for the exchange of information and acts as a resource for new and emerging technologies and the implementation of these technologies.

**13. Lawyer Benefits.** Reviews requests for sponsorship and involvement in various group benefit programs, including health, malpractice, disability, insurance and other group activities.

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

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

**16. Mid-Year Meeting.** Selects and coordinates CLE topics, panelists and speakers, and organizes social and sporting events.

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

**18. Needs of the Elderly.** Assists in formulating positions on issues involving the elderly and recommending legislation.

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

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

**Detach & Mail by May 31, 2000 to  
David O. Nuffer, President-Elect, 645 South 200 East  
Salt Lake City, UT 84111-3834**

# 18th Annual Bob Miller Memorial Law Day Run/Walk

April 29, 2000 • 8:00 a.m.  
University of Utah Campus

Presented by the Utah State Bar Law-Related Education and Law Day Committee

**How do I sign up?** Do it now. Your body will thank you. Try on-line registration at [www.utahbar.org](http://www.utahbar.org). Deadline for preregistration is April 27, 2000 with a registration fee of \$18. Or complete the printed registration form. Send the completed form and registration fee to: Law Day Run/Walk, Utah State Bar, 645 S. 200 East, Salt Lake City, Utah 84111. Race day registration will be held from 7:00 a.m. to 7:45 a.m. with a registration fee of \$20.

**How can I also help in providing legal aid to the disadvantaged?** Make your heart feel good too. Make a charitable contribution. Attorneys are encouraged and challenged to contribute the charge for two billable hours. Everyone, please dig deep! Funds benefit clients of Utah Legal Services, Legal Aid Society of Salt Lake, and Disability Law Center. Who knows — You may be their next client. If you need more incentive, here it is. We will be presenting special awards to the three teams with the greatest number of registrants who contribute to "and Justice for all" as a part of the registration process.

**When is the run/walk?** Saturday April 29, 2000 at 8:00 a.m.

**When should I arrive?** We suggest that you arrive around 7:00 a.m. Enjoy the company of friends.

**Where do I go?** Maybe to heaven if you make a charitable contribution. But for this event we urge you to park in the parking lot next to the Law Library at the University of Utah Law School. This lot (about 1400 East) is accessible on the north side of South Campus Drive, just east of University Street. (It's just a little west of the stadium.) The course starts and finishes here.

**Where do I get my goodies?** T-shirts, race numbers and other goodies should be picked up at the same location between 7:00 a.m. and 7:45 a.m.

**Where is the course?** Due to Olympic-scale construction, we are forced into a loop course this year, beginning and ending at the Law School. For more details, see [www.utahbar.org](http://www.utahbar.org).

**Who will be leading the way?** The Justice Squad. Judges and attorneys on Harleys. Really!

**What can I win?** Self respect, of course. Awards will also go to the top three finishers in each age group (male and female). Other random prizes will be awarded.

**Any refreshments?** You bet! Water, fruit, soft drinks and other good stuff will be waiting for you at the finish line.

**What's this about a Chaise Lounge Division?** OK. So not everybody's a runner or a walker. For some, breaking into a sweat is as enjoyable as breaking an ankle. But we don't want anyone left out. So this year we are introducing a new Chaise Lounge Division for your friends and family who really enjoy supporting their runners and walkers while exercising their behinds. Now they can register, sport a T-shirt, pick up goodies, enjoy refreshments, and win prizes. Such a deal! The Chaises will have their own special start (ready, set, SIT! ), moving mile markers, and a finish line that sweeps across the sitters. Bring your own chair.

**Will there be a team competition this year?** Better believe it! Designed to encourage camaraderie within firms or other organizations in the Utah law community. But not limited to law firms. Any organization can compete. Also designed to raise money for the "and Justice for all" campaign. The 1999 Team Competition Champion was the Salt Lake City law firm of Manning Curtis Bradshaw & Bednar, which had the greatest number of individual contributors to "and Justice for all." Congratulations to Brent and his crew! (They also happen to be pretty fast.) So, how does my team become the champion this year? In 2000, we are focusing on recruiting as many entrants for teams as possible. The greater the number of entrants, the more funds we can donate to "and Justice for all." The team that recruits the most paid entrants wins! It's that simple. Recruit within your organization or outside. Recruit the mailman, the paper girl, or the copy guy. As long as they register, and they fill in your team's name as the recruiter, you get credit. And remember, with the addition this year of the Chaise Lounge Division, nobody has an excuse not to enter.

**By the way, who was Bob Miller?** A partner at Richards, Brandt, Miller & Nelson. During a morning run in 1983 Bob was struck and killed by a car near his home. Bob led the way in many ways, including running. We miss him.



**"and  
Justice  
for all"**

**The legal fine print.** Athletes who participate in this competition may be subject to formal drug testing in accordance with USA Track & Field Regulation 10 and IAAF Rule 55. Athletes found positive for banned substances, or who refuse to be tested, will be disqualified from this event and will lose eligibility for future competitions. **SOME OVER-THE-COUNTER MEDICATIONS CONTAIN BANNED SUBSTANCES. INFORMATION REGARDING DRUGS AND DRUG TESTING MAY BE OBTAINED BY CALLING THE USOC HOT LINE AT 1-800-233-0393.**



# Registration

## 18th Annual Bob Miller Memorial Law Day Run/Walk

April 29, 2000 • 8:00 a.m. • University of Utah Campus

One registration form per entrant, please

Please send this completed form and registration fee to Law Day Run/Walk, Utah State Bar, 645 S. 200 East, Salt Lake City, Utah 84111. Make checks payable to "Law Day Run/Walk". If you are making a charitable contribution, you will receive a receipt for that portion of your payment directly from "and Justice for all".

### Registration Information

Last Name \_\_\_\_\_ First Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Daytime Phone \_\_\_\_\_ E-mail Address \_\_\_\_\_

Age on April 29, 2000 \_\_\_\_\_ Birth Date (DD/MM/YR) \_\_\_\_/\_\_\_\_/\_\_\_\_

**Shirt Size**   ☐ Child M   ☐ Child L   ☐ Adult S   ☐ Adult M   ☐ Adult L   ☐ Adult XL   ☐ Adult XX Large

### Team Competition Recruiting Organization

\_\_\_\_\_ (must be filled in for team competition credit)

### Division Selection

Division	Male	Female	Division	Male	Female	Division	Male	Female
14 & under	A <input type="checkbox"/>	P <input type="checkbox"/>	35-39	F <input type="checkbox"/>	U <input type="checkbox"/>	60-64	K <input type="checkbox"/>	Z <input type="checkbox"/>
15-17	B <input type="checkbox"/>	Q <input type="checkbox"/>	40-44	G <input type="checkbox"/>	V <input type="checkbox"/>	65-69	L <input type="checkbox"/>	AA <input type="checkbox"/>
18-24	C <input type="checkbox"/>	R <input type="checkbox"/>	45-49	H <input type="checkbox"/>	W <input type="checkbox"/>	70-74	M <input type="checkbox"/>	BB <input type="checkbox"/>
25-29	D <input type="checkbox"/>	S <input type="checkbox"/>	50-54	I <input type="checkbox"/>	X <input type="checkbox"/>	75&over	N <input type="checkbox"/>	CC <input type="checkbox"/>
30-34	E <input type="checkbox"/>	T <input type="checkbox"/>	55-59	J <input type="checkbox"/>	Y <input type="checkbox"/>	Chaise Lounge	O <input type="checkbox"/>	DD <input type="checkbox"/>

### Payment Amount

Preregistration (must be received before April 27, 2000) \$ 18.00

Charitable Contribution to "and Justice for all" (you will receive a receipt for tax purposes) \$ \_\_\_\_\_

**Total Payment** \$ \_\_\_\_\_

☐ Check      Charge my ☐ Visa or ☐ MasterCard account

"Law Day Run/Walk"      Name on Card \_\_\_\_\_ Account Number \_\_\_\_\_

Expiration Date    month \_\_\_\_\_ year \_\_\_\_\_

### Waiver and Agreement

In consideration of the privilege of participating in the Law Day Run/Walk, I waive and release from all liability the sponsors and organizers of the Run/Walk, the USATF and USATF-Utah, and all volunteers and support people associated with the Run/Walk for any injury, accident, illness, or mishap that may result from participation in the Run/Walk. I attest that I am sufficiently trained for my level of participation. I also give my permission for the free use of my name and pictures in broadcasts, newspapers, and event publications. I consent to the charging of my credit card submitted with this entry for the charges selected. I understand that the entry fees are not refundable.

Date: \_\_\_\_\_ Signature/Adult Entrant \_\_\_\_\_

Signature/Guardian \_\_\_\_\_ Print name of Guardian for minor entrant \_\_\_\_\_

### 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 of Change \_\_\_\_\_

#### 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 \_\_\_\_\_ State \_\_\_\_\_ 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.



## Per Curious

by Just' Learned Ham

I missed my law school class reunion again this year. I did read the Class Report, though. The class hatched the usual litter of judges and law professors, novelists, and cabinet ministers, and the Report dutifully recounts their exploits to make those of us who still practice law feel . . . really happy for them. The class secretary is now the poet laureate of the State of Oregon. The notes editor of the law review is president of her own country – a small one, but bigger than mine. Did I mention I'm still practicing law? And so darn busy with it I didn't have time for that reunion. Even the guy with the beard who used to lob Marxist slogans from the back bench in Bus. Orgs. runs a center for holistic civil procedure. He and his self-actualized disciples have a grant to study the effect of motions *in limine* on the third and fourth chakras. (Their preliminary results suggest it may be negative.)

My moot court partner is now a website: [www.exparty.net](http://www.exparty.net). Sells writs on-line (along with TRO's, books, cd's, appendectomies, and vinyl siding). Lots easier than trying to track down a judge willing to make a decision. Loses more money every month than Amazon.com in a year, but owns three counties north of Sacramento. She hired some Hell's Angels just to keep the fund managers under control. Pays them in options.

Of course, I've had my chances. Maybe no one's invited me to run their country (and it was a real small one, too, with lots of consonants in the name), but I've had my opportunities. I've heard the sirens. I was recruited to be a consultant once. Heavily recruited. But then they found out I don't live on either coast, so I wasn't qualified. And I've handled a couple of landmark professional malpractice cases. My agent says I might be insurable again in just eight short years.

I wish I could've found time for the reunion, though. People orbiting punchbowls, stabbing the air with little sausages on toothpicks to punctuate their thoughts. Like *bon vivants* in a T.S. Eliot poem. Might've been fun, like a flexible sigmoidoscopy, but without the anesthetic. But I was just too busy. I've got my practice, you know.

The Report put me in a reflective mood, though, reminiscing about the old days. Maybe no one calls me "Madame President" (in a country with one-digit zipcodes), but I've learned a thing or two along the way. And I thought that maybe I could make my

own small contribution. You know, give something back. Maybe my memoirs will never be published in 37 languages on six continents, with jacket comments by Jane Fonda and Salman Rushdie, but surely some young lawyer somewhere could benefit from a little of the light of my own experience.

But first, I have to come clean. While I have never lied about my life, I may have inadvertently misled people in the past (I listened to our President, and I know the difference). And like our next President, I'd like to set the record straight about my past, without boring you with the details, or actually suffering any consequences. There are certain things I may have told people I learned in law school, but really didn't. And I still haven't learned them. Namely:

1. The Rule Against Perpetuities. I could never figure out what a "life in bean" is. And I think that was apparent from my exam.
2. The Rule in Shelley's Case. There's always somebody like Shelley who thinks the rules don't apply to them.
3. To think like a lawyer. I'm really not sure how this works. I think it's something like: Major premise: I am a good lawyer. Minor premise: My clients need to know how good I am. Conclusion: I need a Porsche - they'll never figure out who's paying for it. Or maybe it's more like: "If I write these jury instructions so they read like James Joyce and Bob Dylan on bad mushrooms, rendered into 16th Century English, it will help the jurors to understand their job."
4. There are two sides to every story. I'm afraid I still always think I'm right. Let's face it, you come out of law school looking pretty much the way you looked going in, give or take a few facial tics. It isn't like Earl Scheib. And it costs more, too.
5. To love the law.

That feels good. Unburdened. I don't want to give the impression, though, that I was just wasting my time napping in the library for three years (that was pretty much limited to my third year). Law school proved to be a treasure trove of discovery. I learned a lot of important things. Specifically:

1. How to shoot pool. It would have been a shame to graduate without any practical skills.

2. How to play big-mouth bingo. The spaces on the bingo cards have the names of the more eager members of the class in them. You pass them out before class and then each time one of your names volunteers an insightful comment . . . No, I guess it wasn't a very nice thing to do.
3. Don't wing it if you don't know the answer to the professor's question. "I guess there generally isn't products liability for patent defects because it wouldn't be fair to punish the inventor for defects that the patent office didn't notice." He made me repeat that slowly "in order to preserve the gem-like quality of each word."
4. I could have inserted nursery rhymes in the middle of my third year paper, and my faculty advisor would still have passed me.
5. I could have inserted nursery rhymes in the middle of my third year paper, and it would have been a hell of a much better paper.
6. In moot court, when the first oralist passes out at the podium and hits the floor like a poached rhino, you get easier questions.

Though I learned a lot, when I joined the firm I discovered that there were a few things they might have explained to us in law school - but didn't - which would have made a big difference to my budding career (sort of like that little talk Mom and Dad should have had with me in the fifth grade). To wit:

1. How to draft a complaint.
2. How to operate a Dictaphone.
3. Why isn't this more like the summer clerkship?
4. What do the partners talk about in those meetings?
5. Why does the office manager count my ceiling tiles?
6. How come the harder I try to keep my billables above average, the higher the average gets?
7. We don't pay for parking because that "subsidizes environmentally irresponsible behavior," but we won't hesitate to clear cut the entire Wasatch National Forest to document the lease of a single electronic storage device that will be obsolete in 18 months (a "boat anchor" is what the client called it).
8. How do you pronounce "voir dire?" And why do we even have to try? Latin is supposed to be the lawyer's *lingua franca*, not . . . never mind.

And finally, there are the mysteries I slowly figured out as time rolled by. To half-wit:

1. The reason I don't recognize anybody in the firm brochure is because they're smiling.

2. We don't really own these cars.
3. If you copy cases from the last page to the first, the copies will be in order.
4. The integration clause isn't the 14th amendment.
5. All partners are not equal.
6. Not everyone becomes a partner.
7. Not everyone wants to become a partner.
8. Clients can be pretty smart, even though they didn't go to law school.
9. Vacation means I get up, put on a sweatshirt from some school I didn't go to, and come in to the office.
10. "Opinion practice" isn't something judges do instead of CLE.
11. Like most sequels, the Pacific 2d wasn't as good as the original.
12. When subscriptions start to lag, they always put more sex and violence in the Advance Reports.
13. "Motion practice" has nothing to do with tai chi.
14. "I noticed that new orphanage on the way to the office this morning," is not good news for the orphanage.
15. They call it "Sheppardizing" because if they called it "scutwork" more people would go to medical school.
16. When the judge says, "Counsel, I have neither the time nor the inclination to read your brief," you're going to lose the motion.
17. Soylent green is people!

There it is, my own modest contribution to "bridging the gap." My only hope is that others may profit in some small way from my experience. Which reminds me, did I mention the importance of dietary fiber? The more reunions you get invited to, the more important that seems to become. But that's another story. My own entry in the Class Report is probably about as exciting as white bread with meatloaf and canned gravy, but at least I didn't have to confess to being in the legislature, like some of my other ne'er do well classmates.

<sup>1</sup> Not Justice, just Just.





### *H. James Clegg Community Service Scholarships*

The Utah Bar Foundation will award four \$3,000 Community Service Scholarships this spring – two recipients will be selected from the J. Reuben Clark Law School at Brigham Young University and two from the University of Utah College of Law. The scholarships have been recently designated “H. JAMES CLEGG COMMUNITY SERVICE SCHOLARSHIPS,” in honor of Utah Bar Foundation former president, and well-respected colleague, the late H. James Clegg. To qualify to receive one of these scholarships, the student must have participated in and made a significant contribution to the community by performing community service

for organizations such as Legal Aid Society, Utah Legal Services, Traveler's Aid, Guadalupe Schools, Salt Lake Detention Center, Odyssey House, Bennion Center, Utah Law-Related Education Project or other community groups.

Applicants should send application letters and resumes to the Utah Bar Foundation. Applications should describe the service performed, identify the beneficiary or organization receiving the service and naming individuals who can be contacted concerning that service. The deadline is April 30, 2000.

#### IN LOVING MEMORY OF MAS YANO 1918 - 2000



THOSE WHO CRITICIZE, THOSE WHO VILIFY, OUR PROFESSION, NEVER MET MAS YANO. ONE OF THE FIRST PERSONS OF JAPANESE ANCESTRY ADMITTED TO THE PRACTICE OF LAW IN UTAH, MAS WAS WIDELY RESPECTED FOR HIS EXPERTISE IN ESTATE MATTERS. MORE IMPORTANTLY, MAS WAS A ROLE MODEL AND INSPIRATION TO GENERATIONS OF ATTORNEYS WHO FOLLOWED HIS SHINING EXAMPLE OF CIVILITY, PROFESSIONAL COMPETENCE, AND COMMUNITY INVOLVEMENT. HIS GIFT TO OUR COMMUNITY AND TO OUR PROFESSION EXTENDS BEYOND HIS SON, KENT, WHO IS ALSO A WELL RESPECTED MEMBER OF THE BAR, TO INCLUDE HIS LEGACY AS A PIONEERING TRAILBLAZER, LEARNED ADVISOR, LOVING FATHER, DEVOTED HUSBAND AND FRIEND.

UTAH MINORITY BAR ASSOCIATION  
MULTICULTURAL LEGAL CENTER

#### Utah Bankruptcy Lawyer's Forum

A Forum for Exchange  
and Discussion of  
Bankruptcy Law Issues and Practice

Year 2000 Membership: \$50.00  
3 CLE Presentation, 2 hours each

MAY 16, 2000:  
BANKRUPTCY LAW UPDATE  
4:00-6:00 p.m.  
Moss Federal Courthouse

September 12, 2000 and  
December 12, 2000  
Topics to be announced  
For Membership or  
Presentation Information Contact:

Leslie J. Randolph: (801) 359-3500



## AND JUSTICE FOR ALL

### 2,000 Attorneys in 2000

The "2000 Attorneys in 2000" "and Justice for all" campaign recently reached the half-way point of this year's goal to increase fundraising participation to 2,000 lawyers in the year 2000. Currently there are over 1,200 attorneys contributing over \$250,000 in support of this endeavor to ensure equal access to justice for all Utahns.

When 2,000 lawyers have made a financial contribution to this year's campaign, the George S. and Dolores Doré Eccles Foundation will make an additional contribution of \$100,000.

Campaign chair Alan Sullivan stated, "It is exciting to see the tremendous support of Utah's lawyers in this important fundraising effort. We thank them for their generosity and look

forward to continued strong support from the legal community to obtain contributions from the additional 988 attorneys necessary to reach our goal." "Through our united efforts, we can make a very positive and long-lasting impact on the character of the Utah legal profession."

The campaign, a collaborative effort of the Disability Law Center, Legal Aid Society of Salt Lake and Utah Legal Services raises annual funds to increase the level of civil legal services to the poor and people with disabilities. With the support of the legal community, these agencies will be able to rely on a permanent source of funding to serve more people in need of legal assistance.

### Current List of Law Firms Supporting "2,000 Attorneys in 2000"

ABBOTT, SPENCER & SMITH	DURHAM JONES & PINEGAR	KRUSE, LANDA & MAYCOCK	PLANT WALLACE CHRISTENSEN & KANELL
ALDRICH, NELSON, WEIGHT & ESPLIN	FAMILY LAW SECTION OF UTAH STATE BAR	LEBOEUF, LAMB, GREENE & MACRAE	PRINCE YEATES & GELDZAHLE
ANDERSON & KARREBERG	FARR, KAUFFMAN, SILLIVAN & GORMAN	LEGAL AID SOCIETY	RAY, QUINNEY & NEBEKER
BERMAN, GAUFIN, TOMSIC, SAVAGE & CAMPBELL	GIAUQUE, CROCKETT, BENDINGER, & PETERSON	MANNING, CURTIS, BRADSHAW & BEDNAR	RICHER, SWAN & OVERHOLT
BURBIDGE & MITCHELL	GUSTIN CHRISTIAN SKORDAS & CASTON	MARQUARDT, FADEL HASENYGER & CUSTEN	SMITH KNOWLES & HAMILTON
BURBIDGE, CAARNAHAN, OSTLER & WHITE	HILLIARD, ANDERSON & OLSEN	MCKAY, BURTON & THURMAN	SNELL & WILMER
CHRISTIAN & JENSEN	HOLLAND & HART	MORRIS BATEMAN O'BRYANT & COMPAGNI	SNOW, CHRISTENSEN & MARTINEAU
CALLISTER NEBEKER & MCCULLOUGH	HOLME, ROBERTS & OWEN LLP	OLSON & HOGGAN	STOEL RIVES
CLYDE, SNOW, SESSIONS & SWENSON	JANOVE & ASSOCIATES	OLSEN & OLSEN	STRONG & HANNI
COHNE, RAPPAPORT & SEGAL	JONES, WALDO, HOLBROOK & MCDONOUGH	PARR WADDUPS BROWN GEE & LOVELESS	TRASK, BRITT & ROSSA
CORPORON & WILLIAMS	KIPP & CHRISTIAN	PARRY ANDERSON & MANSFIELD	UTAH LEGAL SERVICES
DEWSNUP KING & OLSEN	KIRTON & MCCONKIE	PARSONS BEHLE & LATIMER	VANCOTT, BAGLEY, CORNWALL & MCCARTHEY
DISABILITY LAW CENTER			WOOD CRAPO

\*Individual, Corporation and Foundation donations will be highlighted in the next issue of the *Utah Bar Journal*.

*An attorney's contribution to "and Justice for all" will meet all or a portion of his or her obligation under Rule 6.1 of the Utah Rules of Professional Conduct. The suggested contribution is the dollar equivalent of two billable hours. All*

*donations are fully tax deductible. Checks should be made payable to "and Justice for all", 225 South, 200 East, Suite 100, Salt Lake City, Utah, 84111.*



### Important Utah Decisions

**EDITOR'S NOTE:** Supreme Court Chief Justice Richard C. Howe and Court of Appeals Judge Gregory K. Orme recently addressed last year's important decisions from both courts at a luncheon sponsored by the Salt Lake County Bar Association. Although the information may be of more limited utility for those not in attendance, the Utah Bar Journal thought its readers might find the case summaries distributed at the luncheon useful. Accordingly, the handouts are reprinted here, with the speakers' permission. Especially because readers will not have the benefit of the narrative commentary provided by the speakers, the "disclaimer" provided at the top of Judge Orme's handout should be taken to heart in reviewing both case summaries.

#### SIGNIFICANT CASES OF THE UTAH SUPREME COURT DECIDED IN 1999

*Prepared by Chief Justice Richard C. Howe*

##### Tort

1. *Overturf v. U. of U. Med. Ctr.*, 973 P.2d 413. Heir excluded from wrongful death settlement has no standing to set aside settlement because she was not a party to it, but she may maintain action against personal representative for his collusion in excluding her.
2. *Craftsman Builders' Supply v. Butler Mfg.*, 974 P.2d 1194. Builders statute of repose upheld against constitutional challenges.
3. *C.T. v. Johnson*, 977 P.2d 479. Section 78-18-1 provides punitive damages may be awarded only if compensatory damages awarded but this does not apply in DUI case; held: this statute does not waive the threshold requirement of no-fault statute for compensatory damages, but punitive damages may be recovered in proportion to compensatory damages proved although not awardable because of threshold.
4. *Patey v. Lainhart*, 977 P.2d 1193. Plaintiff's dentist can testify as to cause of plaintiff's condition based on, but not adopted from consultation with other experts, if it is the type "reasonably relied upon" by experts in that field.

5. *Slisze v. Stanley-Bostitch*, 979 P.2d 317. Strict products liability statute does not preclude a party from jointly bringing common law negligence claim. Manufacturer did not have duty to cease marketing nailer simply because a safer model was available, or to notify consumers of existence of safer model. OSHA standards were admissible as government standards established for industry, and thus to establish a rebuttable presumption for non-defectiveness.

6. *Day v. State*, 980 P.2d 1171. Police officer's duty of care to other motorists in pursuing suspects extends to motorists who are injured by fleeing suspects if those injuries were reasonably foreseeable. Section of Governmental Immunity Act which temporarily barred action against state or its employees violated Open Courts Provision of Utah Constitution.

7. *Tallman v. City of Hurricane*, 985 P.2d 892. Although subcontractor that dug trenches for pipe-laying project had no contractual obligation to shore or protect any of the trenches it dug, it may have had obligation to warn users or even to prevent use of trenches while they remained in dangerous condition known to subcontractor.

8. *Utah Home Fire Ins. Co. v. Manning*, 985 P.2d 243. If a person engages in negligent conduct while serving as an employee, then regardless of whether the injury to the injured worker occurs during the person's employment or after its termination, that person is not a "third person" under the Workers' Compensation Act whom the injured worker can sue, but is a co-employee who cannot be sued.

9. *Tingey v. Christensen*, 987 P.2d 588. If the jury can find a reasonable basis for apportioning damages between a pre-existing condition and a subsequent tort, it should do so; however, if the jury finds it impossible to apportion damages, it should find that the tortfeasor is liable for the entire amount of damages.

##### Criminal

1. *State v. Jaeger*, 973 P.2d 404. Records from treatment facility at which shooting victim had been a resident, containing statements to counselors regarding prior suicide attempt, was

relevant and admissible where defense was that victim committed suicide and had not been murdered.

2. *State v. Cardall*, 982 P.2d 79. Incident in which victim's mother comforted her on the witness stand in front of jury did not warrant mistrial; defendant was entitled to an in camera review of victim's school psychological records by the trial court to determine whether they contained information which may have been material to his defense.

3. *State v. Martin*, 984 P.2d 975. Prosecutor's failure to disclose to defendant that he had warned rape victim that defendant had threatened her prior to trial did not violate defendant's due process rights, where victim's testimony did not change substantially from preliminary hearing to trial and there was little basis to conclude that defendant would have been able to impeach victim with the threat evidence on retrial so as to create reasonable doubt.

4. *State v. Layman*, 985 P.2d 911. Evidence that defendant's passenger looked at him when police who had stopped their car asked to see passenger's pouch and that defendant shook his head was insufficient evidence to establish that defendant constructively possessed drugs and paraphernalia found inside pouch.

5. *State v. Saunders*, 371 Adv. Rep. 6 (not yet in Pacific Reporter). Trial court erred in not excusing a juror for cause who had been sexually molested about three years earlier. When asked if she could be fair and impartial in deciding the case, she replied: "It wouldn't prevent me. It might make me uncomfortable." Trial court also erred in giving instruction to jury that "there is no requirement that the jury be unanimous about precisely which act occurred or when or where the act or acts occurred."

### Real Property

1. *Edgell v. Canning*, 976 P.2d 1193. Owner's picnic table which encroached on neighbor's lot did not establish an easement because it was permissive; burden on claimant to demonstrate when permissive use becomes adverse. Counsel cannot voluntarily submit conclusions of law to trial court and then challenge them on appeal.

2. *Workman v. Brighton Properties, Inc.*, 976 P.2d 1209. Shareholder in non-profit corporation to provide services to two Silver Lake subdivisions is obligated to pay \$300 assessment to fund an engineering study for water even though the water would not benefit the subdivision where owner had lot.

3. *Harper v. Great Salt Lake Council*, 976 P.2d 1213. Holder of first right of refusal must timely exercise right, but once exercised, the parties may waive deadline for closing.

### Administrative Law

1. *Prince v. Collection Div. of Tax Comm.*, 974 P.2d 284. Tax Commission may grant motion for reconsideration at any time even though statute states that motion will be "considered to be denied after 20 days" if Commission does not act.

2. *Airport Hilton v. Tax Comm.*, 976 P.2d 1197. Sales tax and transit room tax not imposed on rent of rooms for 30 days or more; hotel complied even though daily rate charged and different room could be used each day. Two judges dissented.

3. *McBride v. Tax Comm.*, 977 P.2d 467. In determining whether "redskin" license plate was derogatory, the opinion of a reasonable objective person must be employed – not the commissioners or the general public.

4. *Salt Lake City v. Property Tax Div.*, 979 P.2d 346. Levying entity must demonstrate a substantial or tangible nexus of some kind between the ownership or use of property and the territory of the entity itself.

### Miscellaneous

1. *Kaiserman v. Francis Town*, 977 P.2d 464. Obtaining a writ of garnishment against a town in violation of statute does not subject attorney to Rule 11 sanctions because he did not sign any "pleading, motion or paper" in obtaining the writ. Because attorney abandoned this argument in the trial court, and did not argue it on appeal, sanction was reversed but attorney fees imposed.

2. *Utah Farm Bureau Ins. Co. v. Crook*, 980 P.2d 685. Exclusion from fire insurance coverage for intentional loss arising out of any act committed by "an insured" unambiguously barred innocent co-insured from recovering for damage to insured property caused by arson of her co-insured husband. No public policy against such exclusion where exclusion is stated clearly and unambiguously in policy. Two justices recommended that legislature address the problem.

3. *Snow, Nuffer Law Firm v. Tanasse*, 980 P.2d 208. Court found it unnecessary to decide if a legal malpractice claim is assignable; but a legal malpractice claim can be acquired by a creditor through attachment and execution like any other chose in action. However, the law firm against whom the claim is made cannot purchase it.



## SELECTED CASES, 1999

### UTAH COURT OF APPEALS

*Prepared by Judge Gregory K. Orme*

(Case summaries and commentary are provided for the convenience of the reader, to explain what each case generally involves. They do not constitute a definitive statement of the court's holding, nor can they substitute for a careful reading of the opinion.)

#### Criminal Cases

*W.C.P. v. State*, 1999 UT App 35, 974 P.2d 302 (cert. denied 7/20/99). The rape of a child statute, Utah Code Ann. §76-5-402.1 (Supp. 1998), imposes strict liability on anyone having sexual intercourse with child under the age of fourteen. Accordingly, the State need not prove a mens rea. Nor is the statute unconstitutionally vague.

*Dean v. Henriod*, 1999 UT App 50, 975 P.2d 946. District court abused its discretion in dismissing appeal of justice court conviction for defendant's failure to appear at pretrial conference. Defendant's pursuit of extraordinary writ was procedurally correct; appeal not available because case did not involve challenge to the constitutionality of a statute.

*State v. Riggs*, 1999 UT App 271, 987 P.2d 1281. Defendant fled from police while intoxicated, ran a red light, and killed three people. Held: 1) flight instruction bore necessary relationship to evidence as jury was instructed on lesser included offense, which was factually supported by evidence; and 2) asking defendant in hospital if he remembered accident, not *what* he remembered, was not "interrogation" for purposes of Miranda.

*State v. Jarman*, 1999 UT App 269, 987 P.2d 1284. Probationer sought to suppress urinalysis acquired during a scheduled meeting with his probation officer. Held, the exclusionary rule does not apply in probation revocation proceedings.

*Boudreaux v. State*, 1999 UT App 310, 381 Utah Adv. Rep. 11. Case law governing the extradition of fugitives applies, by analogy, to the extradition of non-fugitives. Thus, a non-fugitive extraditee is allowed to present only limited evidence at a habeas corpus hearing.

*Salt Lake City v. Wood*, 1999 UT App 323, 381 Utah Adv. Rep. 33 (cert. denied 2/18/00). Ordinance required "professional dancers" to be at least twenty-one years of age before they could obtain a license to dance in establishments that serve liquor. The majority concluded prior restraint, vagueness, overbreadth and other constitutional issues were not properly

before the court and did not reach them. In unusual 3-opinion resolution, conviction was affirmed, but no consensus whether the ordinance passes muster under the O'Brien intermediate scrutiny test as a content-neutral time, place, and manner restriction tailored to meet legitimate objectives.

#### Civil Cases

*Thiele v. Anderson*, 1999 UT App 56, 975 P.2d 481. Utah Rules of Civil Procedure generally apply to adoption cases, and uncontested adoption petitions may be voluntarily dismissed under Utah Rule of Civil Procedure 41(a)(1).

*Sulzen v. Williams*, 1999 UT App 76, 977 P.2d 497. Trial court should have permitted amendment of complaint to substitute minor tortfeasors for their legal guardians as named defendants. Statute of limitations no bar to minor plaintiff's complaint as it was tolled during his minority even though he had a legal guardian.

*Trujillo v. Utah Dep't of Transp.*, 1999 UT App 227, 986 P.2d 752. UDOT's decision to separate two-way, two-lane traffic in freeway construction zone with plastic barrels rather than concrete barriers was an operational decision, not a discretionary policy decision, and thus UDOT was not immune from suit.

*Pasquin v. Pasquin*, 1999 UT App 245, 988 P.2d 1 (cert. denied 1/26/00). The statute of frauds does not bar enforcement of an oral partnership agreement or an oral promise for lifetime employment because such contracts are not incapable of performance within a year.

*Collins v. Utah State Developmental Ctr.*, 1999 UT App 336, 382 Utah Adv. Rep. 21. Court reversed directed verdict in favor of defendant which was based on plaintiff's failure to provide expert testimony in negligence action. The standard of care owed to plaintiff by defendant in supervising her while swinging fell within the common knowledge of lay jurors, thereby eliminating the need for expert testimony.

*Hebertson v. Bank One*, 1999 UT App 342, 383 Utah Adv. Rep. 15 (cert. filed 1/3/00). Multiple refilings are permitted under Utah's "savings statute," Utah Code Ann. §78-12-40 (1996).

#### Administrative Law

*Burgandy v. State*, 1999 UT App 208, 983 P.2d 586. Utah Code Ann. §35A-1-502, requiring repayment of general assistance benefits which recipient has elected to continue receiving during pendency of an unsuccessful appeal from an ineligibility determination, does not violate the Open Courts Provision of the Utah Constitution. The potential for repayment, of which recipi-

ent was notified before he elected to continue receiving benefits, does not impede "reasonable access" to a hearing.

### Family Law

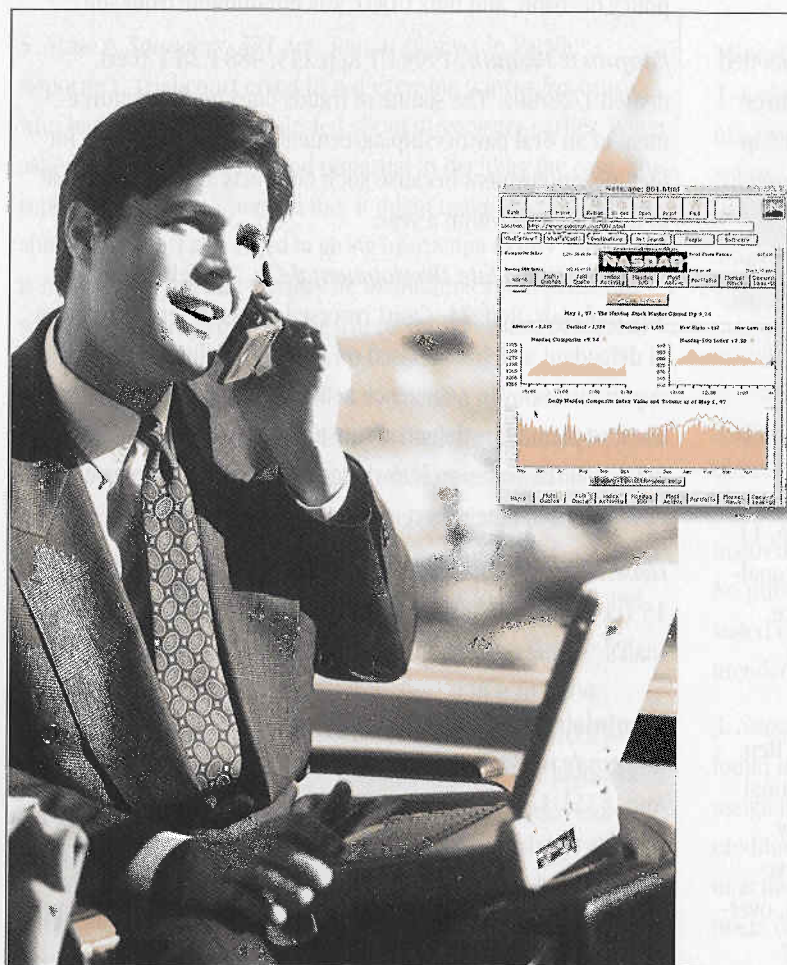
*Marsh v. Marsh*, 1999 UT App 14, 973 P.2d 988 (cert. denied 6/3/99). Former husband's lump sum military separation payment received upon involuntary discharge from Navy was advance on his military retirement pay, and was thus subject to distribution under divorce decree.

*Hudema v. Carpenter*, 1999 UT App 290, 380 Utah Adv. Rep. 3. In changing custody, continuity factor is of less significance where custodial parent had remarried and moved out of state. Religious compatibility, per se, is not an important factor; only religious practices which have a detrimental impact on the child. Child's closer bond to one parent is highly significant.

*H.M. v. State*, 1999 UT App 293, 989 P.2d 76. Held, child was neglected where the mother continually returned to an abusive relationship with father between protective orders. Knowingly placing child in father's presence, given her knowledge of his past abuse and likelihood for future abuse, is sufficient under statute for finding "neglected child."

*In re N.K.C.*, 1999 UT App 345, 383 Utah Adv. Rep. 19. Medical neglect turns on what reasonable parent would have done under the circumstances, not on whether delay in seeking medical assistance resulted in demonstrable harm to child.

*Krambule v. Krambule*, 1999 UT App 357, 384 Utah Adv. Rep. 7. Plaintiff, after separating from her husband, succeeded in getting pregnant through artificial insemination and sought modification of child support on the basis that her husband had a duty to support the child. Held, because the child was born before the divorce decree, there was no "substantial change in circumstances," and res judicata applied because the issue "could and should have been raised previously."



I just wanted to  
get on the Net.  
ArosNet helped me do it.

ArosNet, Inc.  
28 South 400 East  
Salt Lake City, UT 84111

A R O S · N E T

(801) 532-2767  
fax: (801) 531-9966  
e-mail: [info@aros.net](mailto:info@aros.net)  
[www.aros.net](http://www.aros.net)



# Workshops 2000

**3 Hrs CLE/NLCLE each  
\$40.00 YLD/\$55.00 others  
(Door Registrants add \$10.00)**

- **Employment Law: The Hire/Fire Mire (and Other Messy Stuff)**  
April 13, 2000
- **Elder Law: What To Do When Your Client Has Fallen and Can't Get Up!**  
April 20, 2000
- **ADR: Leading Your Horse to Water**  
May 25, 2000
- **Business Planning: Corporate Delecti**  
June 22, 2000
- **Immigration: How to Tear Down Your Berlin Wall**  
August 24, 2000
- **Family Law: "Broken Family" Law**  
September 14, 2000
- **Intellectual Property: Patents, Trademarks, Copyrights & Copycats**  
October 26, 2000
- **Motion Practice: When to Count Weekends and Much More**  
December 14, 2000



## **Law & Economics Society Anti-Trust and the Microsoft Case**

April 17, 2000 • 12:00 – 2:00 p.m.

Craig Romaine, Economist,  
Charles River Associates, Washington D.C.

Enjoy lunch and an interesting discussion on the Microsoft Ruling, on the Department of Justice, Microsoft case. With additional comments from Stephen J. Hill, Snow Christensen & Martineau, Plaintiff's counsel in the *Caldera v. Microsoft* case.

1.5 Hrs. CLE • \$35.00  
R.S.V.P. to Sam @ 531-9077 x 7060,  
Connie @ 297-7033 or Jessica @ 297-7032

DATES	TITLE	PLACE, TIME, CLE CREDIT, PRICE
4-6-00	<b>PLI: Copyright &amp; Trademark Law for the Nonspecialist; Understanding the Basics"</b>	Law & Justice Center: 9:00 a.m.-3:00 p.m.: 6 Hrs. CLE; \$299. To register: 1-215-243-1601
4-6, 7, & 8-00	<b>ADR Symposium: Partisanship, Partnership &amp; Peace: The Role of the Third Side</b>	Law & Justice Center: Workshops April 6, 2000; 9:00 a.m.-4:00 p.m.; 6 Hrs. CLE, \$125, \$110 for the Mediation-Advocacy Workshop for ADR Section Members – Symposium April 7 & 8, 2000; 8:15 a.m.-5:30 p.m.; 15 hrs CLE (up to 3 in ethics) \$200 before 3-31-00 (\$175 UCCR members), \$225/\$195 after 3-31-00 plus \$15 for MCLE fees optional. Ury Lecture 7:00-9:00 p.m. U of U Fine Arts Auditorium. 1 ticket included with symposium price, \$20.00 each additional ticket. Reception following lecture.
4-13-00	<b>Primer: The Hire Fire Mire and Other Messy Stuff – RESCHEDULED from 3/23/00</b>	Law & Justice Center: 3 Hrs. CLE/NLCLE; \$40 YLD, \$55 others. Door registration add \$10.
4-13-00	<b>Ali-Aba: Annual Spring Employee Benefits Law &amp; Practice Update</b>	Law & Justice Center: 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165; To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .
4-17-00	<b>Law &amp; Economics: Anti-Trust and the Microsoft Case</b>	Law & Justice Center: 1.5 hours, \$35, 12:00 p.m.-1:30 p.m. Craig Romaine, Economist, Charles River Associates, Washington, D.C. Pre-registration required for lunch on or before April 13th.
4-20-00	<b>Real Property Annual Practice Seminar</b>	Law & Justice Center: 8:00 a.m. – 12:30 p.m.; 4 Hrs. CLE (1 in ethics); \$75/\$60 for section members.
4-20-00	<b>Primer: What To Do When Your Client Has Fallen and Can't Get Up</b>	Law & Justice Center: 5:30-8:30 p.m.; 3 Hrs. CLE/NLCLE; \$40 YLD, \$55 others. Door registrants add \$10.
4-21-00	<b>First Annual Collections Law Update and Seminar</b>	Law & Justice Center: 9:00 a.m.-1:00 p.m.; 3 Hrs. CLE; \$55.00/\$40 for section members (includes lunch).
5-5-00	<b>Annual Corporate Counsel Seminar</b>	Law & Justice Center: 8:30 a.m.-1:00 p.m.; 4 Hrs. CLE (includes 1 hour in ethics); \$75.00/\$45 for section members. Registration and Continental Breakfast begins at 8:00 a.m.; includes lunch.

For current seminar information and registration, access our Website at [www.utabbar.org/cle](http://www.utabbar.org/cle).

## REGISTRATION FORM

Registration 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 served basis, plus a 25% late charge unless otherwise indicated.

Registration for (Seminar Title(s)):

(1) _____	(2) _____
(3) _____	(4) _____
Name: _____	Bar No.: _____
Phone No.: _____	Total \$ _____
Payment: <input type="checkbox"/> Check    Credit Card: <input type="checkbox"/> VISA <input type="checkbox"/> MasterCard	Card No. _____
<input type="checkbox"/> AMEX	Exp. Date _____



<b>DATES</b>	<b>TITLE</b>	<b>PLACE, TIME, CLE CREDIT, PRICE</b>
5-11-00	<b>Ali-Aba: Health Law Update</b>	Law & Justice Center; 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165, \$85 for government employees, \$50.00 for students. To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .
5-12-00	<b>Annual Family Law Update &amp; Seminar</b>	*Law & Justice Center; 8:30 a.m.-5:00 p.m.; 7.5 Hrs. CLE (1 in ethics); \$120/\$110 for section members. (*Subject to change.)
5-17-00	<b>Annual Labor &amp; Employment Update &amp; Seminar</b>	Law & Justice Center; 8:30 a.m.-12:00 noon; 4 Hrs. CLE; \$75.00/\$65 for section members.
5-18-00	<b>Ali-Aba: Estate Planning for Distributions from Qualified Plans &amp; IRAs</b>	Law & Justice Center; 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165; To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .
5-23-00	<b>Ali-Aba: A 2000 Update: Clean Air Act</b>	Law & Justice Center; 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165, \$125 for government employees, \$50 for students; To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .
5-25-00	<b>ADR Primer: Leading Your Horse to Water</b>	Law & Justice Center; 3 Hrs. CLE/NLCLE; \$40.00 YLD, \$55 others. Door registrants add \$10.
5-31-00	<b>Trial Academy 2000 Part III: Depositions &amp; Examination</b>	Gore Auditorium, Westminster College; 6:00-8:00 p.m.; 2 Hrs. CLE/NLCLE; \$30 YLD; \$40 Litigation Section Members, \$50 nonmember per seminar.
6-1-00	<b>Ali-Aba: ERISA Fiduciary Responsibility Issue Update: Qualified Pension and 401(k) Plans, ESOPs, and Health Plans</b>	Law & Justice Center; 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165; To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .
6-8-00	<b>Ali-Aba: Annual Spring Estate Planning Practice Update</b>	Law & Justice Center; 10:00 a.m.-1:15 p.m.; 3 Hrs. CLE; \$165; To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .
6-8-00	<b>Objections at Trial and How to Deal with a Difficult Lawyer Featured Speaker: Judge Myron Bright, U.S. Court of Appeals, Eighth Circuit</b>	Law & Justice Center; 8:00 a.m. registration, 9:00 a.m.-5:00 p.m.; 7.5 Hrs. CLE (2.5 in ethics); \$205 for Utah State Bar members, \$235 for others; (see website for additional information <a href="http://www.utahbar.org/cle">http://www.utahbar.org/cle</a> ). Attendees receive "Objections at Trial." Co-Authored by Judge Bright, Professor Ronald Carlson, and Professor Ed Imwinkelried. To register call: 800-328-4444 or @ <a href="http://www.npilaw.com">www.npilaw.com</a> for a \$5 discount.
6-16-00	<b>Annual Legal Assistant Division Update &amp; Seminar</b>	South Hampton Inn, 10690th South in Draper, Utah; 8:00 a.m.-4:30 p.m.; 6.5 Hrs. CLE; \$65 for LAD members, \$75 for nonmembers before June 2, 2000. Add \$10 after June 2, 2000.
6-22-00	<b>Business Planning Primer: Corporate Delicti</b>	Law & Justice Center; 3 Hrs. CLE/NLCLE; \$40 YLD, \$55 others, door registrants add \$10.

### ***Pilot Pro Bono Mediation Project for Domestic Cases***

Beginning Tuesday, May 2, and on each Tuesday thereafter for an indefinite trial period, there will be a pilot pro bono mediation project at the Scott Matheson Courthouse. Pro bono mediators and a staff facilitator from Utah Dispute Resolution will be available to mediate cases free of charge at 9:00 a.m. and 10:00 a.m. Tuesday mornings, running concurrently with Commissioner Evans' pre-trial calendars.

Sponsored by:

Utah Dispute Resolution

Administrative Office of the Courts

Utah Legal Services Inc.

## Classified Ads

### RATES & DEADLINES

**Bar Member Rates:** 1-50 words — \$35.00 / 51-100 words — \$45.00. Confidential box is \$10.00 extra. Cancellations must be in writing. For information regarding classified advertising, please call (801)297-7022.

**Classified & Display Advertising Policy:** 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. The publisher may, at its discretion, reject ads deemed inappropriate for publication, and reserves the right to request an ad be revised prior to publication. For display advertising rates and information, please call (801)538-0526.

*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

Copier for sale — Minolta Model #5320, 35 CMP, 20 bin sort, staple, duplex and much more. Excellent condition, has received regular maintenance under service contract, 30 day warranty, service contract available, will deliver. \$1,950. Call Carol at 521-6661.

### POSITIONS AVAILABLE

**ASSOCIATE ATTORNEY** — Full-time position available in medium sized, downtown firm. A minimum of two years experience practicing general law required. Salary negotiable. Good benefits. Please send resume to Office Manager, 341 South Main Street, Suite 201, SALT LAKE CITY, UT 84111, or fax to 801-538-0423.

**WANTED** — Lawyer who doesn't want to be a lawyer in the traditional sense. We are a real estate development company whose four attorneys are business people handling (i) acquisition and sale transactions; (ii) construction coordination; and (iii) anything and everything else it takes to develop commercial real estate. If you don't mind hard work and you'd get a kick driving by a retail development that you helped create (without worrying about billable hours and court dates) send me your resume: Mae Peterson, 2325 San Pedro NE, Ste 2A, Albuquerque, NM 87110.

Small downtown litigation firm seeking attorney with 1 to 3 years experience researching, writing and drafting pleadings. Familiarity with Federal Rules of Civil Procedure. Strong academics and references required. Please send resume and writing sample to: Christine Critchley, Confidential Box #80, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Salt Lake Firm seeking full time Attorney with two to five years experience in Estate and Business Planning. Job description: Organize, supervise and review Business and Estate planning documents. Send a resume to Utah State Bar Box No. 45, 645 South 200 East Suite 310, Salt Lake City, UT 84111.

**Technology & Intellectual Property Attorney** — Preston Gates & Ellis LLP's Portland, Oregon office seeks applicants for its Technology & Intellectual Property Department. Applicants should have 1+ years of Intellectual Property and/or e-commerce transaction experience (Trademarks, Copyrights, NDA, Licensing and E-Commerce). Candidates should have strong academic credentials and professional references. Applicants must submit a cover letter, resume and writing sample to Russell Alexander, Recruitment Coordinator, Preston Gates & Ellis LLP, 222 S.W. Columbia Street, Suite 1400, Portland, Oregon 97201. No telephone inquiries please. Equal Opportunity Employer.

**CONTRACT ATTORNEY** — First USA Financial Services, a leading commercial card provider headquartered in Salt Lake City, is searching for a Contract Attorney. This position will be responsible for the development and negotiation of commercial payment system agreements with Fortune 100 companies and will report to the President of the company. Credit card or banking experience is preferred. First USA is a dynamic, high growth organization with a strong and leading internet presence. First USA provides first-rate benefits, competitive salary, 401k and pension. If you are a dedicated professional with an entrepreneurial outlook, please fax your resume to: (801) 281-5858.

### OFFICE SPACE/SHARING

**HOLLADAY OFFICE SPACE** — Deluxe office space in historic building for up to three attorneys. Facilities include private office, conference room, reception area, fax, copier, telephone system, and free parking. Possible sign on Highland Drive close to Cottonwood Mall. Call Anne at (801) 484-3000.



Choice Sandy Office Space. Approx. 100 sq. ft. Prime Location. 580 East 9400 South. Shared Conference room and reception area available. Contact Dean 576-6414 ext. 103.

Exceptionally nice office available in convenient downtown location in office sharing arrangement. Receptionist, copier, fax, and telephone system available. Call 575-7100.

**MURRAY OFFICE SPACE – INDEPENDENT SQUARE.** Excellent location! Quiet, stylish Colonial Americana – professional ambiance. Second floor corner suite/600 usable square feet. Electronic locks for after-hours access. Building & grounds are in excellent shape. Available immediately. Contact David Bridgeman at 269-1717 to see space or for further information.

**Office Space** – 1024 sq. ft., Millbrook Office Condos, 2120 E. 3900 So., SLC, \$1,200.00 per mo. rent, plus \$87.50 per month CAM charges. 3 yr. triple-net lease, new offices, near I-215 freeway. 2 covered parking stalls and ample parking. Call Lynn Handy 325-6364 or 243-1458 or 966-5569.

#### SERVICES

**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 phone or fax.

**WAS YOUR CLIENT INJURED OR ARRESTED IN LAS VEGAS?** Craig P. Kenny & Associates. A Law Firm Committed to the Client, practices primarily in the areas of Personal Injury, Workers Compensation, Medical Malpractice and Criminal Defense. The firm consists of 5 attorneys with over 30 years combined experience, as well as a GREAT support staff. Call Craig toll free 1-888-275-3369 or e-mail CPKnAssoc@aol.com.

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

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

**CONTRACT RESEARCH AND BRIEFS** – I have 36 years of general practice experience in Utah and am seeking contract work in the area of research and writing briefs at trial and

appellate levels. Contact Jay A. Meservy, 210 Pebblewood Lane, Centerville, UT 84014. Telephone and FAX (801) 298-2069. e-mail: [jameserv@burboyne.com](mailto:jameserv@burboyne.com).

**FIDUCIARY LITIGATION: WILL & TRUST CONTESTS:** Consultant and expert witness, will trust contracts; estate planning, malpractice and ethics, 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.

**Let smart technology make you more efficient!** Lawyerware.com offers a free, searchable database of thousands of law-related software programs and technology products from hundreds of companies to help you save time and increase productivity. Visit [www.lawyerware.com/UT](http://www.lawyerware.com/UT) for products and services designed especially for Utah attorneys. [www.lawyerware.com](http://www.lawyerware.com)

**Need help with legal research and writing?** Utah State Bar licensed. Judicial internship, law review and advanced legal research experience. Call Melanie 435-649-9203.

# NOTICE

## OF LEGISLATIVE REBATE

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

# DIRECTORY OF BAR COMMISSIONERS AND STAFF

## BAR COMMISSIONERS

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

**David O. Nuffer**  
*President-Elect*  
Tel: 674-0400

**John Adams**  
Tel: 532-1500

**Theresa Cook**  
*Public Member*  
Tel: 568-3558

**N. George Daines**  
Tel: 753-4000

**Scott Daniels**  
Tel: 583-0801

**Sharon Donovan**  
Tel: 521-6383

**Denise Dragoo**  
Tel: 237-1998

**Calvin Gould**  
Tel: 544-9308

**Randy S. Kester**  
Tel: 489-3294

**Robert K. Merrell, CPA**  
*Public Member*  
Tel: 583-4939

**Debra J. Moore**  
Tel: 366-0132

**C. Dane Nolan**  
Tel: 531-4132

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

**\*Gus Chin**  
*Minority Bar Association*  
Tel: 535-7767

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

**\*James C. Jenkins**  
*Immediate Past President*  
Tel: 752-1551

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

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

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

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

**\*Mark C. Quinn**  
*President, Young Lawyers Division*  
Tel: 524-2757

**\*Carol A. Stewart**  
*Women Lawyers Representative*  
Tel: 297-7038

## UTAH STATE BAR STAFF

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

### Executive Offices

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

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

Maud C. Thurman  
*Executive Secretary*  
Tel: 297-7031

Katherine A. Fox  
*General Counsel*  
Tel: 297-7047

Phyllis Yardley  
*Assistant to General Counsel*  
Tel: 297-7057

### Access to Justice/Pro Bono Department

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

### Continuing Legal Education Department

Connie Howard  
*CLE Coordinator*  
Tel: 297-7033

Jessica Theurer  
*Section Support*  
Tel: 297-7032

Samantha Myers  
*CLE Assistant*  
Tel: 531-9077 ext. 7060

### Technology Services

Toby J. Brown  
*Communications*  
Tel: 297-7027

Lincoln Mead  
*Manager Information Systems*  
Tel: 297-7050

Diane Kennedy  
*Web Site Coordinator*  
Tel: 297-7051

### Admissions Department

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

Amy Nielson  
*Admissions Assistant*  
Tel: 297-7025

### Bar Programs & Services

Christine Critchley  
*Bar Programs Coordinator*  
Tel: 297-7022

Monica N. Jergensen  
*Conventions*  
Tel: 463-9205

### Finance Department

J. Arnold Birrell, CPA  
*Financial Administrator*  
Tel: 297-7020

Joyce N. Seeley  
*Financial Assistant*  
Tel: 297-7021

## Lawyer Referral Services

Diané J. Clark  
*LRS Administrator*  
Tel: 531-9075

## Law & Justice Center

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

## Consumer Assistance Coordinator

Jeannine Timothy  
Tel: 297-7056

## Lawyers Helping Lawyers

Tel: 297-7029

## Receptionist

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

## Other Telephone Numbers & E-mail Addresses Not Listed Above

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

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

Member Benefits  
Maud C. Thurman  
297-7031

E-mail: mthurman@utahbar.org

## Office of Professional Conduct

Tel: 531-9110 • Fax: 531-9912  
E-mail: oad@utahbar.org

Billy L. Walker  
*Senior Counsel*  
Tel: 297-7039

Carol A. Stewart  
*Deputy Counsel*  
Tel: 297-7038

Charles A. Gruber  
*Assistant Counsel*  
Tel: 297-7040

David A. Peña  
*Assistant Counsel*  
Tel: 297-7053

Kate A. Toomey  
*Assistant Counsel*  
Tel: 297-7041

Shelly A. Sisam  
*Paralegal*  
Tel: 297-7037

Gina Tolman  
*Paralegal*  
Tel: 297-7054

## Ingrid Westphal Kelson

*Legal Secretary*  
Tel: 297-7044

Rosemary Reilly  
*Legal Secretary*  
Tel: 297-7045



## CERTIFICATE OF COMPLIANCE

For Years 19\_\_\_\_ and 19\_\_\_\_

### Utah State Board of Continuing Legal Education Utah Law and Justice Center

645 South 200 East

Salt Lake City, Utah 84111-3834

Telephone (801) 531-9077 • FAX (801) 531-0660

Name: \_\_\_\_\_ Utah State Bar Number: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

#### Professional Responsibility and Ethics

Required: a minimum of three (3) hours

1. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*
2. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*

#### Continuing Legal Education

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

1. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*
2. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*
3. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*
4. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*

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

## **\*\*EXPLANATION OF TYPE OF ACTIVITY**

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

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

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

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

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

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

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

**DATE:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

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



# The Best Solution for All Law Firms

**John Solo**  
Attorney-at-Law

**MIDI  
&  
MIDDLEING,  
P.C.**

**BIGGS,  
MAGNA  
&  
GRANDE,  
LLC**

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

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

- **Coverage options to fit your need:** Customized Practice Coverage<sup>SM</sup> offers Professional Liability Insurance plus options for Employee Dishonesty, Employment Practices, Nonprofit Director & Officer and Public Officials' Liability coverage at low, risk-related pricing.
- **Stability:** For 25 years, firms have relied on our staff.
- **Experience to lean on:** Over 25,000 small, mid-size and large firms trust us to insure and defend them, because we have the industry's best claim management.

- **Your best choice:** More bar associations endorse us than any other insurance company.
- **Financial strength:** A.M. Best A++ (XV) and Standard & Poor's AAA – the highest ratings.
- **Increase your purchasing power:** Our Business Services program provides insured law firms with the same high-quality goods and services we use, at price levels normally available to only the largest corporate customers – office furniture, equipment, computers and supplies, business records management, storage and retrieval, and more.

Endorsed by the Utah State Bar



**Utah State Bar**

Program Administrator:

**CONTINENTAL**  
INSURANCE AGENCY, L.L.C.



1-801-466-0805



**Westport**

Westport Insurance Corporation  
[www.WestportLawyer.com](http://www.WestportLawyer.com)

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

CYCLE 1999 REG CR 33 ETHICS 3  
MR. WILLIAM D. HOLYOAK  
PARSONS BEHLE & LATIMER  
201 SOUTH MAIN STREET, SUITE 1800  
P. O. BOX 45898  
SALT LAKE CITY UT 84145-0898

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

# It's All About Choices



## Every small law firm has its own set of unique research needs.

That's why LEXIS®-NEXIS® MVP for small law firms has so many choices. The choice to work at home, at the office, or on the road (we're conveniently accessible on the Web at [lexis.com](http://lexis.com)). Your choice of custom packages— at your choice of prices (all at fixed monthly rates). Plus, you have a huge choice of value-added products and services (SHEPARD'S®, Matthew Bender®, Martindale-Hubbell® and more). Sweet.

## Choices you can afford.

1.800.356.6548 mention offer 1270

[www.lexis.com](http://www.lexis.com)

A MEMBER SERVICE OF



LEXIS and NEXIS are registered trademarks of Reed Elsevier Properties Inc., used under license.  
The INFORMATION ARRAY logo is a trademark of Reed Elsevier Properties Inc., used under license.  
© 1999 LEXIS-NEXIS, a division of Reed Elsevier Inc. All rights reserved.



**LEXIS®-NEXIS®**

**MVP** for Small Law Firms