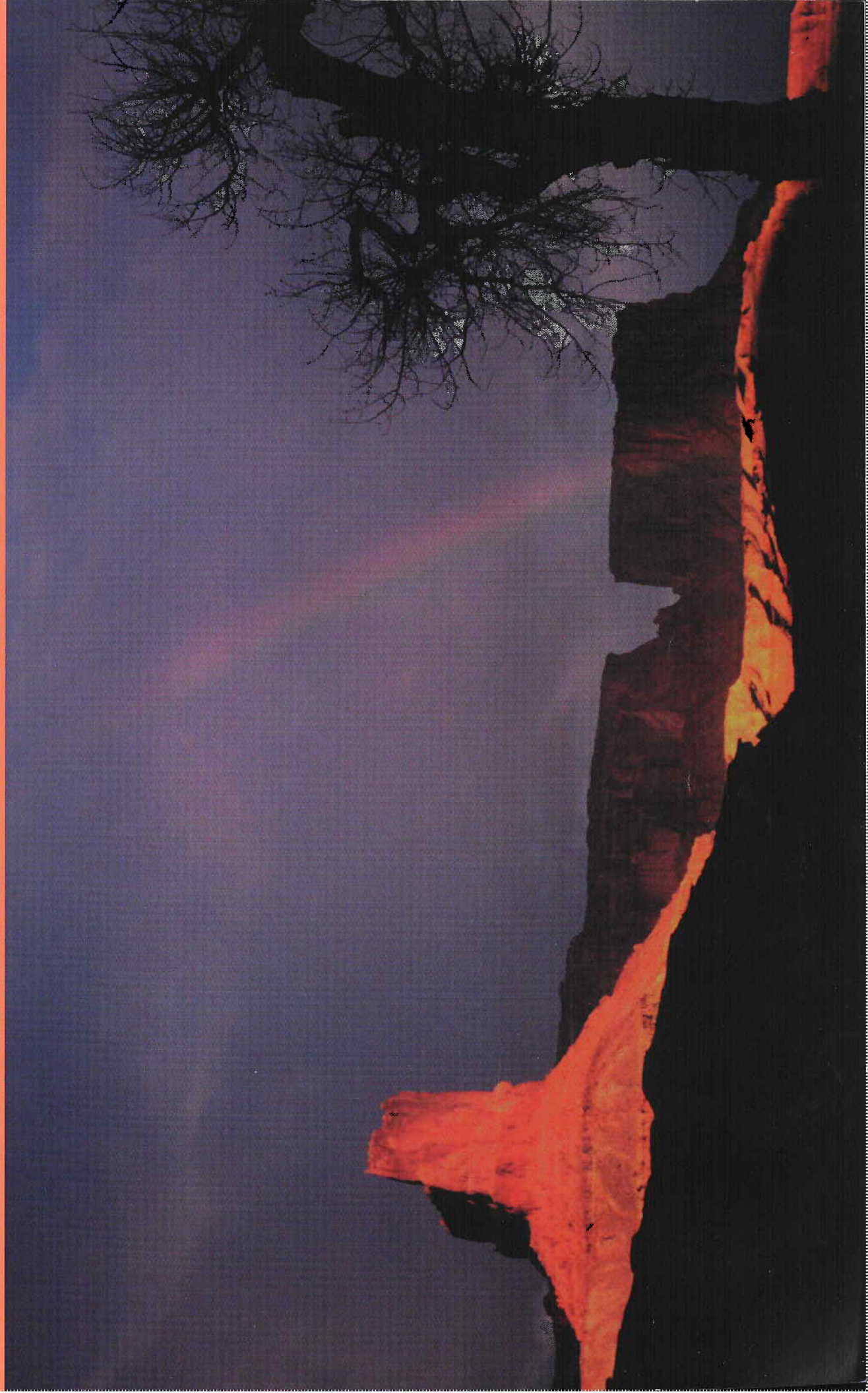
Utah Bar JOURNAL



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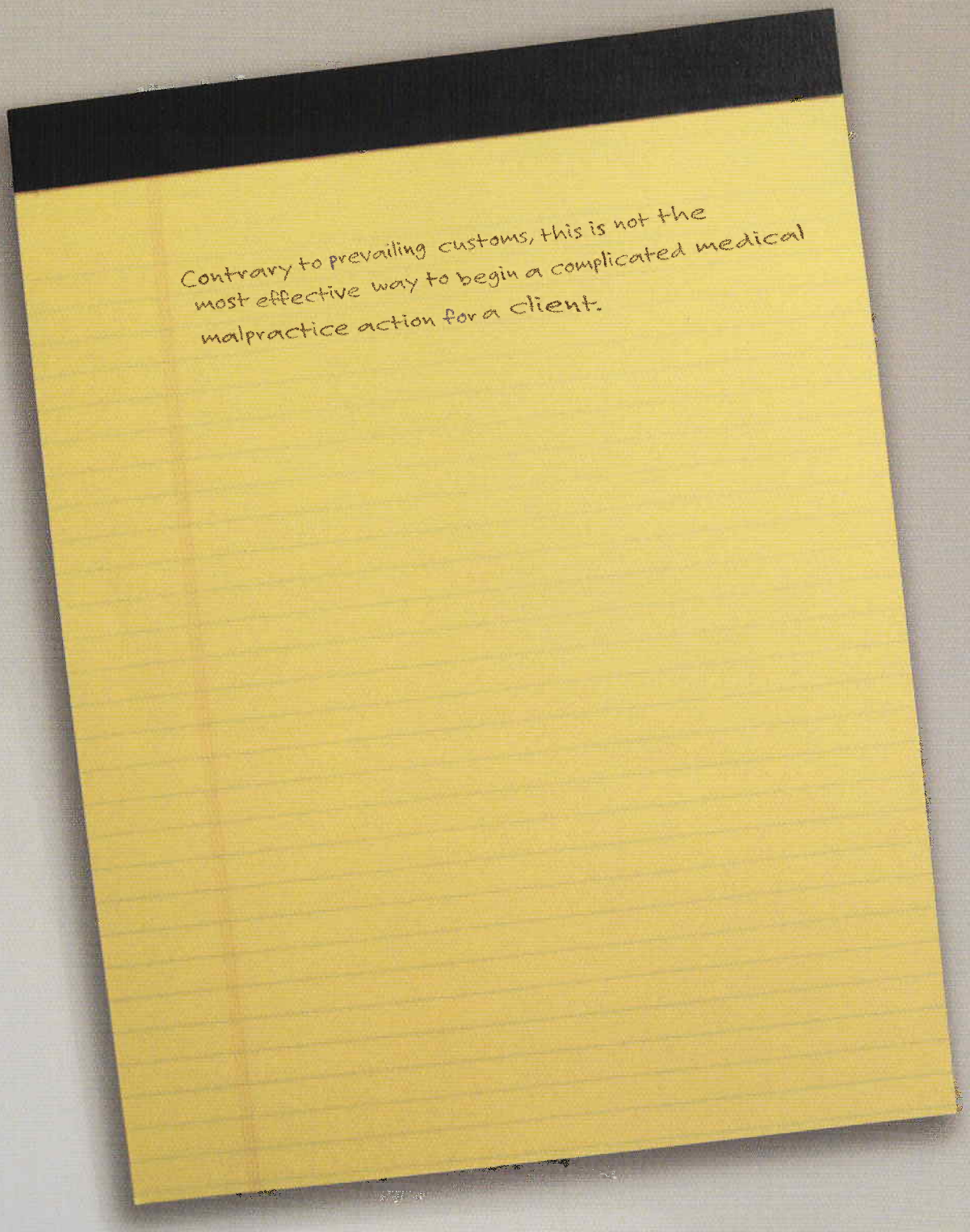

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VISION OF THE BAR: *To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.*

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: Candlestick formation, taken from Potato Bottom, Canyonlands National Park, Utah, by E. Craig McAllister, Orem, Utah

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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 or members of the Legal Assistants Division 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 70, Salt Lake City, Utah 84121, (801) 333-5691. Send a print, transparency, or slide of each scene you want to be considered, along with a description of where the photograph was taken. 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.

The Utah Bar Journal

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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.

Your Bar Association

by Charles R. Brown

This will be my last President's message. As my final communication, I would like to inform you about the current state of the Bar. Financially, the Bar is in great shape. We estimate that for the fiscal year ending June 30, 2000, the Bar will recover a surplus of revenues over expenditures approximately $150,000 in excess of that originally budgeted. Part of that surplus is due to prudent fiscal and money management and part of it is due to extraordinary events. Both the Annual and the Mid-Year Conventions operated at a surplus and, because 1999 was a reporting year, the CLE programs also generated a surplus, which is not the normal course of events. I would like to assure you that the current Bar Commission is committed to being fiscally prudent and is doing everything in its power, within the constraints of the mission and purposes of the Bar, to delay as long as possible any dues increase.

The issues which I wished to emphasize during my year as President were to focus the Bar and its members on the future of the profession and to implement a more formalized program to improve the communications process among the Bar, its members, the public and the courts. We have been successful in commencing implementation of both of those programs. The theme of the Annual Convention in San Diego is the future of the profession. We have scheduled numerous speakers who will discuss changes to the profession anticipated in the next century, both as a result of electronic commerce and the concept of multi-disciplinary practice. Speakers will also discuss how our members may compete effectively and profitably as those changes occur.

Regarding the issue of communications, a Communications Committee was formed. As a result of recommendations of that Committee we held a retreat for section and committee leadership, we have made substantial revisions to the website and *Bar Journal* and we held a Commission meeting with the Supreme Court. Other changes will be forthcoming. The goal is to assure not only that we communicate with our members regarding what is going on, but more importantly that our members are able to communicate with us regarding issues of concern. Through the *Bar Journal*, the website, email, sections and committees, the Commission hopes to be more in tune with and responsive to the needs and concerns of our members.

It may be informative to explain the role of a Bar President. A Bar President is not really a President in the conventional sense. He or she serves a very short one-year term, effectively as Chairman of the Board. The role of the Bar Commission is to formulate policy, similar to the board of directors of a corporation. The role of the Bar President is to lead that policy-making Board in making recommendations and programs which will further the Bar's mission. The implementation of those policy recommendations is left to the Executive Director and staff. The continuity and stability of the organization mandate a more long-term CEO. In everything but name, the permanent Chief Executive Officer of the Bar is our Executive Director, John Baldwin. We are very fortunate to have John as our Executive Director. He has put together a superb staff which I believe is the equal of any in this country. Through the efforts of our staff, the Utah State Bar is now recognized as one of the most efficient, progressive and forward-looking Bars in the country.

Each of you is entitled to know how your $350.00 is spent. The financial results of the 1999-2000 year and the budget for the year 2000-2001 are available for review by any of you who may be interested. The budget explains the overall anticipated revenues and expenditures and breaks these down into subreports for each specific program, such as Admissions and Licensing, Office of Professional Conduct or Continuing Legal Education. A cursory review of the budget will inform you that the most significant source of revenue is licensing and that the function which takes up the largest line item on the budget is the Office of Professional Conduct. As you know, we are an integrated Bar. That means that you must be a member of the Bar in order to be licensed to practice in the State of Utah. In addition to the core functions of admissions and discipline, an integrated Bar performs

many other functions which, in a non-integrated Bar such as Colorado, are performed separately by a voluntary Bar Association. That is the principal reason our dues appear to be higher than those of neighboring non-integrated Bars.

I have enjoyed my tenure on the Commission and my year as President. As a transactional attorney who does not get out much, I have also enjoyed getting to know many of you whom, but for Bar activities, I would not otherwise have had the opportunity to meet. I look forward to continuing those relationships. I would like to personally thank each of the Commissioners and ex-officio Commissioners with whom I have served during my years on the Bar Commission. Although we may have disagreed on policy issues from time to time, all of them were and are dedicated individuals who have donated their own time in order to serve the Bar and make it a progressive organization of service to its members.

Finally, I would like to express my deep gratitude to John Baldwin, Richard Dibblee and the Bar Staff. As I discussed above, they are the principal reason you have one of the best state Bars in the United States. No President, who serves a short one-year term, could succeed or function in any effective fashion without the direction, assistance and guidance of John and the staff.

Although I am now retiring and riding off into the sunset, I will continue to be an active member of the Bar. I will continue to express my views on Bar matters of interest and remain interested in the comments or criticisms any of you may have.

Utah State Appellate Procedure

by Scott M. Ellsworth

Introduction

Every survivor of law school knows that American jurisprudence recognizes three different kinds of law: *legislation* (statutes and ordinances), general provisions enacted by elected representatives; *regulation* (administrative codes), rules formulated by the executive to enforce legislation; and *adjudication* (case law), precepts derived from judicial interpretation or construction of legislation, regulation, or prior adjudication. While legislation and regulation, however, ordinarily become generally applicable law simply by virtue of enactment, adjudication binds only the parties to the dispute until the issue or issues upon which their particular disagreement turns have been placed before and decided by an appellate court, charged with the authority to set binding precedent.

A controversy appropriately raised to the level of an appeal provides a judicial forum in which law – legislation, regulation, or adjudication – may be interpreted or construed, clarified or explained, vindicated, altered, or overturned. Each issue addressed in a published opinion is like a thread in the tapestry of established precedent; a thread which affects, one way or another, the pattern and fabric of the case law – reinforcing or unraveling what went before. In a very real sense, participating in the appellate process is one of the most significant activities in which an attorney may participate.

It seems odd, then, that although most young attorneys have participated at some point in a moot court class or competition, such courses tend to focus heavily on substantive law and rhetorical posture rather than matters procedural, unintentionally depriving the students of a basic understanding of the *mechanism* by which litigation becomes lawmaking.

This article addresses this deficiency by focusing almost entirely on the procedural mechanism of appeal. In partciluar, this article addresses the various considerations and procedures necessary to filing an appeal, and appellate motions. Of course, the brief summary and discussion herein should be used to direct and facilitate research into the statutes, rules, and cases governing appeals, and not as a substitute for them.

1. Filing an Appeal

1.1 A Few Statistics

Obviously, the first consideration in planning an appeal should be the chances of success. An appropriate appeal is an opportunity for careful judicial review and reconsideration of your client's case; an inappropriate appeal, on the other hand, is little more than a waste of resources for all involved. This is not to say that a loss on appeal automatically indicates a pointless appeal; on the contrary, the outcome of an appeal depends upon legal as well as factual considerations, application of settled (or sometimes unsettled) law to peculiar fact scenarios, linguistic and historical factors, and prudent analysis of the ramifications of affirmance or reversal, often requiring scrutiny through the lens of public policy.

In short, an arguable case does not guarantee the desired result. Indeed, in 1998, the Court of Appeals affirmed three quarters of the cases brought before it; the Supreme Court, nearly half:

1998	Supreme Court	Court of Appeals
Affirmed	47%	76%
Affirmed & Reversed	8%	7%
Reversed or Reversed & Remanded	36%	12%
Other Dispositions	9%	5%

Reversals accounted for only 12% of Court of Appeals dispositions, although the Supreme Court reversed 36% of the cases it heard. However, because the jurisdiction of the Supreme Court and the Court of Appeals is complementary rather than hierarchical (i.e., a case before the Supreme Court does not necessarily come from the Court of Appeals, see § 1.2, below), it should not be supposed that the Supreme Court is likely to reverse the Court of Appeals. Quite the opposite is true: between 1992 and 1996, petitions for certiorari averaged 107 per year. On average, 85 of these petitions were denied each year, and of those granted each year, only about 5 ended with a reversal

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(that's less than 5%). And, in fact, in 1996, there were no reversals. Norman H. Jackson, "Tenth Anniversary of the Utah Court of Appeals," *Utah Bar Journal*, March 1997, at 19, 20-21.

Again, however, these numbers should not be read to discourage warranted appeals, but to encourage prudent review of a case prior to appealing.

1.2 Jurisdiction: Which Court?

At present, Utah has two appellate courts: the Supreme Court, established by the State Constitution, Utah Const. Art. VIII, § 1, and the Court of Appeals, created in 1986 by statute, 1986 Utah Laws ch. 47, §§ 44-48; *see* Utah Code Annotated § 78-2a-1 (1999). The appellate jurisdiction of the two Courts is complementary rather than purely hierarchical: certain types of cases must be appealed directly to the Supreme Court; others, to the Court of Appeals. The Supreme Court may, until a case is set for oral argument, assign (or "pour over") most types of cases over which it has original appellate jurisdiction to the Court of Appeals, Utah Code Annotated § 78-2-2(4), URAP Rule 42(a). Reciprocally, the Court of Appeals may, prior to final judgment, certify certain types of cases over which it has original appellate jurisdiction to the Supreme Court, Utah Code Annotated § 78-2a-3(3), URAP Rule 43(a). However, although the Supreme Court has jurisdiction to hear an appeal from a final decision of the Court of Appeals, such an appeal is not of right, but by petition for a writ of certiorari. Utah Code Annotated § 78-2-2(3)(a) & (5), URAP Rules 45 & 46(a).

The following table sets forth the complementary jurisdictional domains of Utah's two appellate courts:

The SUPREME COURT has appellate jurisdiction (including interlocutory appeals) over:	The COURT OF APPEALS has appellate jurisdiction (including interlocutory appeals) over:
☞ Judgments of the Court of Appeals, UCA § 78-2-2(3)(a); BUT The Supreme Court has discretion to either grant or deny a petition for writ of certiorari, UCA § 78-2-2(5); URAP Rules 45 & 46.	
☞ The Supreme Court may transfer ("pour over") to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except: • Judgments of the Court of Appeals; • Cases certified to the Supreme Court by the Court of Appeals; • Matters involving capital felonies; • Election and voting contests; • Reapportionment of election districts; • Retention or removal of public officers; • Matters involving legislative subpoenas; • Discipline of lawyers; and • Final orders of the Judicial Conduct Commission. UCA § 78-2-2(4).	☞ Cases transferred to the Court of Appeals from the Supreme Court. UCA § 78-2a-3(2)(j).
☞ Cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals, UCA § 78-2-2(3)(b) – the Supreme Court must review such cases, UCA § 78-2-2(5).	☞ The Court of Appeals, prior to final judgment, and by vote of four of its judges, may certify to the Supreme Court for determination those cases

	• Which are of such a nature that it is apparent that the case should be decided by the Supreme Court; • Which will govern other pending cases involving the same legal issue or issues; or • Which are cases of first impression which will have wide applicability. UCA § 78-2a-3(3); URAP Rule 43(c).
☞ Final judgments or decrees of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution. UCA § 78-2-2(3)(g).	
	☞ Domestic relations cases from district court, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity. UCA § 78-2a-3(2)(h).
☞ Criminal appeals involving first degree or capital felonies: • Convictions in a district court of a first degree or capital felony; and • Interlocutory appeals from any court of record involving a first degree or capital felony. UCA § 78-2-2(3)(h) & (i).	☞ Criminal appeals, of right or interlocutory, from any court of record, not involving first degree or capital felonies. UCA § 78-2a-3(2)(e). ☞ Orders on petitions for extraordinary writs • Which are sought by persons serving criminal sentences, *except* challenges to convictions or sentences for first degree or capital felonies; and • Which challenge decisions of the Board of Pardons and Parole, *except* in cases involving first degree or capital felonies. UCA § 78-2a-3(2)(f) & (g).
	☞ Appeals from the juvenile courts. UCA § 78-2a-3(2)(c).
	☞ Decisions of the Utah Military Court. UCA § 78-2a-3(2)(i).
☞ Orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction. UCA § 78-2-2(3)(j).	
☞ Final orders and decrees from *formal adjudicative proceedings* originating with any of the following state agencies: • The Public Service Commission; • The State Tax Commission; • The School and Institutional Trust Lands Board of Trustees; • The Board of Oil, Gas, and Mining;	☞ Final orders and decrees resulting from *formal adjudicative proceedings* of any state agency *EXCEPT* those over which the Supreme Court has original appellate jurisdiction. UCA § 78-2a-3(2)(a).

• The State Engineer; or • The Executive Director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands; AND • Final orders and decrees from a district court's review of *informal adjudicative proceedings* of any of these agencies. UCA § 78-2-2(3)(e) & (f).	AND • Appeals from district court review of *informal adjudicative proceedings* of any state agency other than those over which the Supreme Court has original appellate jurisdiction. UCA § 78-2a-3(2)(a).
	☞ Appeals from district court review of • adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and • challenges to agency action under UCA § 63-46a-12.1. UCA § 78-2a-3(2)(b).
☞ Orders, judgments, or decrees of the district court ruling on legislative subpoenas. UCA § 78-2-2(3)(k).	
☞ Discipline of lawyers and final orders of the Judicial Conduct Commission. UCA § 78-2-2(3)(c) & (d).	

This complementary distribution of case types between the courts – although it makes excellent use of judicial resources – can be rather confusing to the advocate, and care must be taken to ensure that an appeal is filed in the appropriate forum. Fortunately, however, erroneous filing in an appellate court lacking jurisdiction is not necessarily fatal. The foresighted drafters of the Rules of Appellate Procedure prudently included language allowing for the transfer of misfiled appeals:

> If a notice of appeal or a petition for review is filed in a timely manner but is pursued in an appellate court that does not have jurisdiction in the case, the appellate court, either on its own motion or on motion of any party, shall transfer the case, including the record on appeal, all motions and other orders, and a copy of the docket entries, to the court with appellate jurisdiction in the case.

URAP Rule 44. Thus, rather than dismissing an otherwise proper appeal, a matter filed in the wrong appellate court will be transferred to the correct forum. So, for instance, were an appeal from an informal adjudicative proceeding of, say, the Division of Air Quality (Chapter 2 of Title 19), incorrectly filed with the Supreme Court (which has no direct appellate jurisdiction over such decisions), the Supreme Court would transfer the case to the Court of Appeals (where jurisdiction is proper)– or even to the appropriate district court, if that necessary review had somehow been omitted. See URAP Rule 44, Advisory Committee Note.

"... [P]articipating in the appellate process is one of the most significant activities in which an attorney may participate."

The transferring court's clerk notifies all parties, as well as the trial court, of the order transferring the case. Once the matter has been transferred, all filing times are calculated under the schedule of the receiving court. URAP Rule 44.

1.3 A Word on Timing, Filing, and Service

In the appellate courts, all papers and/or documents must be filed with the clerk of the court, located in the north wing of the fifth floor of the Scott M. Matheson Courthouse, 450 South State, Salt Lake City, Utah 84111-3101. While filing may be accomplished by mail, filing of anything but a brief is complete upon *receipt* by the clerk, not upon the date of mailing. URAP Rule 21(a). If you must file papers by mail, in other words, give yourself plenty of time. Briefs, on the other hand, are "deemed filed on the date of the postmark if first class mail is utilized." *Id.*

At or before the filing of any paper with the court, copies must be served on all other parties to the appeal. URAP Rule 21(b). Conversely, a copy of any paper required to be served on a party must be filed with the court, accompanied by proof of service, *id.*– acknowledgment of service by the person served, or a certificate of service stating the date and manner of service, the names of those served, and the addresses at which they were served, URAP Rule 21(d). When service is made upon counsel of record, a certificate of service must state the name of the party such counsel represents. *Id.*

Unlike filing, service by mail is complete upon mailing; and personal service "includes delivery of the copy to a clerk or other responsible person at the office of counsel." URAP Rule 21(c).

Computation of time on appeal is governed by URAP Rule 22(a), which provides that the day of the act, event, or default which triggers the running of a designated time is not included in the measurement of that time. When the last day of the prescribed period is Saturday, Sunday, or a legal holiday (federal or state), the time is automatically extended to the next day which is not Saturday, Sunday, or a legal holiday. *Id.* Saturdays, Sundays, and legal holidays are not counted if the time allotted is fewer than 11 days. *Id.* Service by mail adds three days to any prescribed period counted from the date of service. URAP Rule 22(d).

1.4 Appeals as of Right

Appeals are of three sorts: appeals as of right from "final orders and judgments," URAP 3(a), discretionary appeals from interlocutory orders, URAP 5, and review of administrative orders, URAP 14(a).

An appeal as of right may be taken from the final orders and judgments[1] of any district or juvenile court by filing a notice of appeal, along with the appropriate filing fee, with the clerk of the trial court. URAP Rules 3(a) & (f). A notice of appeal, far and away the simplest document in the appellate process, must set forth

- The party or parties taking the appeal;
- The judgment or order, or part thereof, appealed from;
- The court from which the appeal is taken; and
- The court to which the appeal is taken.

URAP Rule 3(d). The notice must generally be filed within 30 days of the entry of the judgment or order appealed – unless that judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice must be filed within 10 days of the entry of the judgment or order appealed. URAP Rule 4(a). If, however, a party timely files in the trial court any of the

following motions, the allotted time to file a notice of appeal runs from the disposition of the motion:

- URCP Rule 50(b) motion for judgment;
- URCP Rule 52(b) motion to amend or to make additional findings of fact;
- URCP Rule 59 motion to alter or to amend the judgment; or
- URCP Rule 59 or URCrP Rule 24 motion for a new trial.

URAP Rule 4(b). Note that a notice of appeal filed *prior* to the disposition of any such motion has no effect; a new notice must be filed within the prescribed time after disposition to bestow jurisdiction on the appellate court. *Id.* (Note also, however, that if a Rule 59 motion to alter or amend a judgment does not result in a change to the substance of the judgment, the time for filing a notice is not enlarged. *Nielson v. Gurley*, 888 P.2d 130, 132-33 (Utah Ct. App. 1994), cert. denied, 899 P.2d 1231 (Utah 1997).) A party filing a Rule 59 motion to alter or amend ought probably to file an early notice of appeal as well, to be on the safe side: in this way, if the motion is denied, the appeal will still be timely.) Where none of these motions is present, however, a notice of appeal is timely if filed after the announcement, but before the entry, of a judgment, decision, or order of the trial court – it is treated as though it had been filed on the day the judgment or order is entered. URAP Rule 4(c).

"... [A]n arguable case does not guarantee the desired result."

A party's filing of a timely notice of appeal confers upon all other parties 14 days in which to file their own notice of appeal; thus, if Party A files a notice of appeal on the 30th day following entry of a final judgment, Parties B and C may file their own appeals or cross-appeals within 14 days of Party A's filing, notwithstanding the fact that the generally applicable 30-day appeal deadline has already elapsed. *See* URAP Rule 4(d).

When the interests of two or more parties are similar enough, they may file a joint notice of appeal; or, having filed a timely notice of appeal, a party may join in the appeal of another. Moreover, the appellate court may consolidate individual appeals upon its own motion, by motion of a party, or by stipulation of the parties to the separate appeals. URAP Rule 3(b).

A notice of appeal is timely only if *filed* within the permitted time; a notice is not timely if *mailed* on the last day, but only if *received* by that day. *Isaacson v. Dorius*, 669 P.2d 849, 850-51

(Utah 1983); *see also Maverik Country Stores, Inc. v. Industrial Comm'n of Utah*, 860 P.2d 944, 950 (Utah Ct. App. 1993) (Rejecting the argument that an appeal is filed when mailed.) The sole exception to this general rule is the so-called "prison delivery rule," which allows as timely a notice of appeal deposited by a confined inmate in the confining institutions mail system on or before the last day for filing with a notarized statement giving the date of deposit and stating that first-class postage has been prepaid. URAP Rule 4(f) (adopted in response to *State v. Parker*, 936 P.2d 1118 (Utah Ct. App. 1997) (dismissing such an appeal as untimely)).

URAP Rule 4(e) permits a trial court, upon motion, to extend the time for filing of a notice of appeal up to 30 additional days (or 10 days from the granting of such a motion, whichever is later). The moving party must show "excusable neglect or good cause," *id.*, but the standard here is stricter than in ordinary "excusable neglect" situations, and is meant to cover only emergencies. *Prowswood, Inc. v. Mountain Fuel Supply Co.*, 676 P.2d 952, 959-60 (Utah 1984).

1.5 Interlocutory Appeals

The term "interlocutory" derives from the Latin term *interlocutio* (*inter* 'between' + *loqui* 'speak') meaning "interruption." An interlocutory appeal, therefore – or more precisely, an appeal from an interlocutory order – is an appeal during litigation from a nondispositive decision of the trial court.

"In an appeal, almost everything derives from the record . . ."

As is implied by its being a separate category from the appeal as of right, the interlocutory appeal is discretionary with the appellate courts: there is no right to such an appeal; permission must be requested through a formal "petition for permission to appeal." URAP Rule 5(a). The petition must be filed with the clerk of the appropriate appellate court within 20 days of the entry in the trial court of the order for which permission to appeal is sought, URAP Rule 5(a), and must include

- A concise statement of material facts;
- A statement of the issue presented, expressed in the terms and circumstances of the case but without unnecessary detail;
- A demonstration that the issue was preserved in the trial court;
- A statement of the applicable standard of appellate review with citations to supporting authority;
- A statement of the reasons that an immediate interlocutory appeal should be permitted, including a concise analysis of the statutes, rules, or cases determinative of the issue;
  - Note that an interlocutory appeal may only be granted if it appears (1) that the order appealed from involves substantial rights and may materially affect the final decision, or (2) that determination of the order's correctness before final judgment will better serve the administration and interests of justice.
- A statement of the reason that the appeal may materially advance the termination of the litigation; and
- a copy of the order of the trial court from which an appeal is sought, and any related findings of fact and conclusions of law and opinion.
- If the appeal is subject to assignment by the Supreme Court to the Court of Appeals the phrase "Subject to assignment to the Court of Appeals" immediately under the title. The petition may then include a concise statement why the Supreme Court should decide the issue in light of the relevant factors:
  - The issue involves a substantial constitutional question not yet decided;
  - The issue is an issue of first impression and of substantial importance in the administration of justice;
  - There exists a conflict in Court of Appeals decisions which needs to be resolved by the Supreme Court; and/or
  - Any other persuasive reason for the Supreme Court to resolve the issue.

URAP Rules 5(c) & (e). Within 10 days of service of such a petition, any other party may file an opposing or concurring answer. If the appeal may be assigned by the Supreme Court to the Court of Appeals, the answer may contain a concise response to any reasons cited for the Supreme Court to retain jurisdiction. URAP Rule 5(d).

If the Supreme Court has jurisdiction over the appeal requested, the original and five copies of the petition must be filed with the Supreme Court clerk, along with the filing fee. If the Court of

Appeals has jurisdiction, the petitioner must file the original and four copies of the petition, together with the requisite fee. URAP Rule 5(b). A copy of the petition must be served upon all other parties, URAP Rules 5(b) & 21(b), and notice of filing the petition must be served upon the trial court, URAP Rule 5(b).

The appellate court clerk will notify the parties by mail of an order granting permission to appeal, and will transmit a certified copy of the order, with a copy of the petition, to the trial court, where it will be filed in lieu of a notice of appeal. URAP Rule 5(b). The appeal is considered filed and docketed by the granting of the petition. URAP Rule 5(e).

1.6 Review of Administrative Orders

Direct review of administrative orders by the Supreme Court or Court of Appeals requires statutory authorization.[2] A petition for review pursuant to such a statute must be filed, with relevant fees, with the clerk of the appropriate appellate court within 30 days after the date of the order or decision from which the petitioner wishes to appeal. URAP Rule 14(a). The petition must state

- The parties seeking review;
- The respondent(s); and
- The order or decision, or part thereof, to be reviewed.

Id. A copy of the petition must be served by the petitioner upon the named respondent(s), upon all other parties to the proceeding before the administrative agency, and, if the state of Utah is a party, upon the state Attorney General. URAP 14(c). Upon filing the petition, the petitioner must file with the appellate court clerk a certificate reflecting service upon all parties. *Id.*

Two or more persons who are entitled to petition for review from an administrative order or decision, and whose interests "are such as to make joinder practicable," may file a joint petition and proceed as a single petitioner. URAP 14(a).

URAP Rule 14(d) permits "[a]ny person who seeks to intervene" in appellate review of the decision of an administrative agency to make a motion for leave to intervene by "serv[ing] upon all parties who participated before the agency, and fil[ing] with the clerk of the appellate court a motion for leave to intervene." The motion must be filed within 40 days of the filing of the original petition for review, and must include a statement of the moving party's interest and the grounds for intervention. Id. (See Section 2.9, below, for procedure.)

1.7 Bond for Costs on Appeal

In all civil appeals from trial court decisions, at the time the notice of appeal is filed, the appellant must file a bond for costs on appeal. The bond must be at least $300.00, but the trial court, upon motion by the appellee, may set the bond at such higher amount as will ensure payment of costs on appeal. URAP Rule 6. The bonding requirement is not applicable if

- A supersedeas bond is filed;
- The appellee waives the bonding requirement in writing; or
- The appellant files an affidavit of impecuniosity under UCA § 21-7-3.

Id. A bond is not required in administrative appeals.

The bond must secure payment of costs if the appeal is dismissed or the judgment affirmed, or, if the judgment is modified, payment of such costs as the appellate court may award. *Id.* The bond must be supported by sufficient sureties to ensure payment, *id.*, and any sureties must consent to personal jurisdiction by the trial court, and must irrevocably appoint the trial court clerk as an agent upon whom any papers may be served which affect liability on the bond. URAP Rule 6 & 7.

1.8 The Record

In an appeal, almost everything derives from the record: all legal theories must be found in it; all arguments must be drawn from it; all facts must be cited therein; and only such evidence as is already bound within it may be adduced before the appellate tribunal.

1.8.1 The Transcript

The appellant's first concern must be the transcript. Within ten days after filing the notice of appeal, the appellant must request, in writing, from the trial court a transcript of any parts of the proceedings (i.e., the trial or the relevant hearings), not already on file, which the appellant believes necessary. URAP Rule 11(e)(1). The request must state that the transcript is needed for purposes of an appeal. *Id.* A copy of the request, or a certificate stating that the appellant will not request any such parts of the proceedings, must be filed with the clerks of both the trial and appellate courts. *Id.*

Of course, the appellant need not request the entire transcript, but only those parts which he or she feels to be necessary. However, if only part of the transcript is ordered, the appellant must file a statement of the issues to be presented on appeal, and serve upon the appellee a copy of the statement and of the transcript request or certificate stating that no request will be made. URAP Rule 11(e)(3). The appellee then has ten days (from service) to file and serve upon the appellant a designation of any portions of the proceedings which the appellee wishes to be included in the transcript. *Id.* Within ten days of service of the appellee's designation, the appellant must request those portions of the proceedings from the trial court executive and notify the appellee of the request. *Id.* In accordance with URAP Rule 11(e)(1), the appellant should probably file a copy of this new request with the clerks of the trial and appellate courts as well, although the rule does not specifically so require.

Regardless of how much of the proceedings the appellant plans to request be transcribed, if the appellant intends to challenge a finding or conclusion as unsupported by or contrary to the evidence, he or she must request a transcript of all evidence relevant to the finding or conclusion to be challenged. URAP Rule 11(e)(2). The rule contains a stern reminder that "[n]either the court nor the appellee is obligated to correct appellant's deficiencies in providing the relevant portions of the transcript." *Id.* Where the appellant fails to provide a complete transcript of the relevant evidence as mandated by URAP Rule 11(e)(2), an appellate court is "unable to review the evidence as a whole and must therefore presume that the verdict was supported by admissible and competent evidence." *Sampson v. Richins*, 770 P.2d 998, 1002 (Utah Ct. App. 1989), cert. denied, 776 P.2d 916 (Utah 1989) (*quoting Smith v. Vuicich*, 699 P.2d 763, 765 (Utah 1985)).

"The appellant's first concern must be the transcript."

Interestingly, if no report of the evidence or proceedings has been made, or if no transcript may be had – if, for instance, the appellant (in a civil case) is impecunious and cannot afford a transcript – the rule permits the appellant to prepare a statement of the evidence and/or proceedings from "the best available means, including recollection." URAP Rule 11(g). This statement must be served upon the appellee, who may, within ten days, serve objections or propose amendments. *Id.* The statement and any objections or proposed amendments are submitted to the trial court for settlement and approval, and included by the trial court clerk in the record on appeal. *Id.*

1.8.2 The Rest of the Record

While the transcript is being requested, prepared, and possibly debated, the trial court clerk prepares the remainder of the record. The record consists of all "original papers and exhibits filed in the trial court, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and the docket

sheet." URAP Rule 11(a). When a notice of appeal is filed, the trial court clerk organizes the entire record in a case file, in the following order:

- a chronological index, prepared by the clerk;
- the docket sheet;
- all original papers in chronological order;
- all published depositions in chronological order; and
- all transcripts prepared for appeal in chronological order.

URAP Rule 11(b)(1). The bottom right corner of each page of the index, docket sheet, and all original pages is stamped with a page number. Record pagination is sequential and follows the chronological order of the record; however, page numbers are stamped on only the cover pages of published depositions and transcript volumes, URAP Rule 11(b)(2)(A), since these are generally numbered separately. The chronological index at the beginning of the record gives the filing date of each paper, deposition, or transcript, as well as the page of the record on which it begins. URAP Rule 11(b)(3).

In lieu of a formal record, the parties may jointly prepare and sign a statement of the case, explaining how the appealed issues arose, and how each was decided by the trial court. URAP Rule 11(f). Such a statement need only set forth those facts – proved or to be proved – essential to a decision of the issued presented. *Id.* The trial court may make such additions to the statement as it may think necessary and approves the statement, whereupon a copy of the index of the record is transmitted to the appellate court clerk. *Id.*

Either way, whether the trial court clerk prepares a formal record or the parties draft a less exhaustive statement of the case, any disputes between (or among) the parties as to the accuracy of the record must be submitted to the trial court for disposition. URAP Rule 11(h). Material omissions or misstatements may be corrected by stipulation or by direction of the trial or appellate courts. *Id.* If necessary, either court may order the preparation of a supplemental record. *Id.* Proposed changes to the record must be served, by the moving party or by the court, if acting on its own motion, upon all parties; and objections may be served within ten days of service. *Id.* Other questions as to the form or content of the record must be submitted to the appellate court. *Id.*

1.9 The Docketing Statement

The docketing statement is due within 21 days after the filing of the notice of appeal (or petition for review). URAP Rule 9(a). No docketing statement is necessary in cases of interlocutory appeal. URAP Rule 9(b). A docketing statement, essentially a summary of the appeal, allows the appellate courts to determine, when both the Supreme Court and the Court of Appeals have jurisdiction, which court should hear the appeal; whether a case over which the Court of Appeals has jurisdiction should be certified to the Supreme Court or a case over which the Supreme Court has jurisdiction should be assigned to the Court of Appeals; the priority of the case; whether summary disposition is appropriate; and in making calendar assignments. *Id.*

A docketing statement must contain all of the following information in the order given:

- The date of the order or decision for which review is sought;
- The date of any motions under URCP Rules 50(a), 50(b), 52(b), 54(b), or 59, or under URCrP Rules 24 or 26; or a statement that no such motions have been filed;
- If any such motions have been filed, the date and effect of all orders disposing thereof;
- The date of the filing of the notice of appeal or petition for review;
- The specific rule or statute conferring jurisdiction upon the appellate court to determine the appeal or petition for review;
- If an appeal is from a case involving multiple issues or parties, and the judgment has been certified final under URCP Rule 54(b),
  - What claims and/or parties remain before the trial court; and
  - Whether the facts underlying the appeal are sufficiently similar to those facts underlying those claims remaining before the trial court to constitute res judicata;
- The amount of any claim for damages, exclusive of court costs, interest, and attorney fees;
- A concise statement of the nature of the proceeding (generally a single sentence);

"A docketing statement . . . allows the appellate courts to determine . . . which court should hear the appeal . . ."

- A concise statement of the facts material to consideration of the questions presented;
- The issues presented by the appeal;
- If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the phrase "Subject to assignment to the Court of Appeals" must appear immediately under the title, and the appellant (or petitioner) may set forth, in no more than two pages, any arguments that the Supreme Court should retain and decide the case:
  - The issue involves a substantial constitutional question not yet decided;
  - The issue is an issue of first impression and of substantial importance in the administration of justice;
  - There exists a conflict in Court of Appeals decisions which needs to be resolved by the Supreme Court; and/or
  - Any other persuasive reason for the Supreme Court to resolve the issue;
- Citations to statutes, rules, and/or cases determinative of the respective issues;
- A reference to all related or prior appeals (with citations to prior appeals);
- A copy of each of the following as attachments (bearing a clear representation of the original date of filing – i.e., the trial court's filing seal or mark or a conformed copy):
  - The final judgment or order appealed from or for which review is sought;
  - Any opinion or findings;
  - Any motions filed under URCP Rules 50(a), 50(b), 52(b), 54(b), and 59, and the orders disposing of such motions; and
  - The notice of appeal (or presumably the petition for review) and any order extending the time for its filing.

URAP Rule 9(c), (d), & (e).

An original and two copies of the docketing statement must be filed with the court. URAP Rule 9(a).

2. Motions

Most attorneys do not associate appellate practice with motion practice, which is admittedly far more common at the trial court level. There is, however, a set of motions peculiar to appeals with which the appellate practitioner should be familiar.

2.1 Motion for Stay Pending Appeal

URAP Rule 8 permits the filing in an appellate court of a motion for the stay of judgments or orders of a trial court, the approval of a supersedeas bond, or the granting (or suspending) of an injunction pending appeal. Similarly, URAP Rule 17 permits the filing of a motion in an appellate court for the stay of an administrative agency decision pending appellate review. Both rules point out that ordinarily, application for stay (or bond, or injunction) pending appeal or review must first be made to the trial court or the agency. Thus, a motion for such relief made to the appellate court must show that application to the trial court or the agency is impracticable, or that application has been made and denied, with the reasons given by the trial court or the agency for the denial. URAP Rules 8(a) & 17.

"There is . . . a set of motions peculiar to appeals with which the appellate practitioner should be familiar."

The motion must also include the reasons for the relief requested and the facts relied upon, supported by affidavits or other sworn statements if disputed, as well as relevant portions of the record. *Id.* Reasonable notice must be given to all parties of the filing and the matter heard by the court, but in exceptional, time sensitive cases, where ordinary procedure would be impractical, the application may be considered by a single judge or justice. *Id.* Relief may be conditioned upon the giving of a bond or other security. URAP Rules 8(b) & 17.

URAP Rule 8(c) declares that a stay in a criminal case pending appeal is governed by Rule 27 of the Utah Rules of Criminal Procedure ("URCrP"). This rule mandates a stay of execution where an appeal or other petition for relief is pending, URCrP Rule 27(a)(1), and a stay of fine, imprisonment, or probation pending appeal if a certificate of probable cause issues.

If the defendant is sentenced to a term of imprisonment – i.e., where a stay involves release – the trial court must, before it can permit release, determine "by clear and convincing evidence that the defendant is not likely to flee during pendency of the appeal and that the defendant will not pose a danger to the safety of any other person or the community if released," URCrP Rule 27(a)(2). Denial of a certificate of probable cause, or a finding that a defendant is likely to flee or poses a danger, "may be appealed to the court in which the notice of appeal of con-

viction has been filed." URCrP Rule 27(c). This, however, is the only circumstance in which a stay in a criminal matter would be heard by an appellate court.

2.2 Motion for Enlargement of Time

As noted above, URAP Rule 26(a) permits the parties to an appeal, by stipulation, to extend up to 30 days the filing deadlines on the various briefs required in an appeal. All other requests for enlargement of time must be made by motion to the Court. Note, however, that "[m]otions for an enlargement of time for filing briefs beyond the time permitted by stipulation of the parties under Rule 26(a) are not favored," URAP Rule 22(b)(1), although parties are permitted to file one motion for enlargement of time, *ex parte* – not to exceed 14 days – on matters besides the filing of briefs "but only if no such enlargement has previously been granted," URAP Rule 22(c).

In any case, however, all motions for enlargement of time must "be filed prior to the expiration of the time for which the enlargement is sought," URAP Rule 22(b)(3), and must state with particularity

- the good cause for granting the motion, including (though not limited to)
  - the complexity of the case on appeal,
  - engagement in other litigation, and
  - extreme hardship to counsel;
- whether the movant has previously been granted an enlargement of time and, if so, the number and duration of such enlargements (plainly inapplicable to 14 day enlargement motions under URAP Rule 22(c), which are permitted only once);
- when the time will expire for doing the act for which the enlargement of time is sought; and
- the date on which the act for which the enlargement of time is sought will be completed.

URAP Rule 22(b)(4). An assertion of complexity as "good cause" requires a statement of reasons that "the appeal is so complex that an adequate brief cannot reasonably be prepared by the due date." URAP 22(b)(5)(B). Asserting engagement in other litigation requires specific identification and description of the other litigation, as well as a statement as to "why the other litigation should take precedence over the subject appeal" and "why associated counsel cannot prepare the brief for timely

filing or relieve the movant in the other litigation." URAP Rule 22(b)(5)(A). An assertion of extreme hardship requires a detailed statement of the nature of the hardship. URAP Rule 22(b)(5)(C).

2.3 Suggestion for Certification

Under URAP Rule 43, the Court of Appeals "may, upon the affirmative vote of four judges of the court, certify a case for immediate transfer to the Supreme Court for determination." URAP Rule 43(a). The Court of Appeals may decide, upon its own motion, whether to so certify a case; but the rule also provides that "any party to a case may . . . file and serve . . . a suggestion for certification . . . setting forth the reasons why the party believes that the case should be certified" to the Supreme Court. URAP Rule 43(b)(1). This "suggestion" may not be made prior to the filing of the docketing statement (see § 1.9, above). The party making the suggestion must file an original and eight copies with the Court of Appeals. *Id.* Within ten days of service, an adverse party may file and serve a "statement" supporting or opposing the suggestion – likewise, an original and eight copies. *Id.* Both the suggestion and the statement in response are limited to five pages.

2.4 Motion for Summary Disposition

Under URAP Rule 10(a), within 10 days of filing the docketing statement or receipt of an order granting a petition for interlocutory appeal, a party may move

- To dismiss the appeal or the petition for review on the basis that the appellate court has no jurisdiction;
- To affirm the order or judgment which is the subject of review on the basis that the grounds for review are so insubstantial as not to merit further proceedings and consideration by the appellate court; or
- To reverse the order or judgment which is the subject of review on the basis of manifest error.

A motion for summary disposition under URAP Rule 10 is dispositive of the appeal, and pending its outcome, the appellate timetable is suspended, URAP Rule 10(d); the reviewing court may, however, defer ruling on a Rule 10 motion "until plenary presentation and consideration of the case," URAP Rule 10(f).

Disposition of the motion (i.e., summary affirmance or reversal) would, of course, terminate the appellate timetable; deference until plenary presentation and consideration, on the other hand, would restart the appellate calendar. Some might be tempted to use an unwarranted Rule 10 motion as a device to enlarge time and circumvent the requirements and restrictions of Rule 22. Such a course, however, is both improper and unethical; but, for those unmoved by either conscience or ethics, URAP Rule 33(a) mandates damages, "which may include single or double costs . . . and/or reasonable attorney fees" to be paid "by the party or the party's attorney," for frivolous or delaying motions. Needless to say, you should be quite certain of your position – that jurisdiction is truly absent, that the appeal is truly insubstantial, or that error is truly manifest – before filing a motion for summary disposition of an appeal.

2.5 Motion to Remand for Findings Necessary to a Determination of a Claim of Ineffective Assistance of Counsel

In criminal cases, a party may move that the case be temporarily remanded to the trial court for entry of findings of fact necessary for the appellate court to determine a claim of ineffective assistance of counsel. URAP Rule 23B(a). Such a motion must be filed prior to the filing of the appellant's brief, although, upon a showing of good cause, the court may permit the motion to be filed thereafter; but the motion may not be filed after oral argument. *Id.* The motion is "available only upon a nonspeculative allegation of facts, not fully appearing in the record, which, if true, could support a determination that counsel was ineffective." *Id.* Of course, the court may remand under Rule 23B at any time upon its own motion if the claim has been raised and the motion would have been available to a party. *Id.*; *see also State v. Vessey*, 967 P.2d 960, 965 n.5 (Utah Ct. App. 1998).

"[F]or those unmoved by either conscience or ethics, URAP Rule 33(a) mandates damages . . ."

The motion must include or be accompanied by affidavits alleging the facts (not fully appearing on the record) which show the claimed deficiency in counsel's performance and the claimed prejudice to the appellant resulting therefrom. URCrP Rule 23B(b). The motion must also be accompanied by a proposed order of remand identifying the ineffectiveness claims and specifying relevant factual issues. *Id.* The opposing party files a response within 20 days, including its own proposed order of remand which likewise identifies the ineffectiveness claims and relevant factual issues (unless the responding party accepts that proposed by the moving party). *Id.* The appellant may reply within 10 days. *Id.*

Filing a Rule 23B motion vacates both oral argument and briefing deadlines, but other procedural steps are not stayed except upon stipulation or motion of the parties or upon the court's own motion. URAP Rule 23B(d).

If remand is granted, the trial court has 90 days to complete proceedings (unless there be good cause for delay), URAP Rule 23B(e), whereupon the record of these supplemental proceedings is transmitted to the appellate court, URAP Rule 23B(f). The appellate court clerk then sets a new briefing and oral argument schedule. URAP Rule 23B(g).

2.6 Motion to File a Brief as Amicus Curiæ or Guardian ad Litem.

Unless the reviewing court requests such a brief, an *amicus curiæ* or guardian *ad litem* representing a nonparty minor may file one only with the written consent of all parties to the appeal, which consent must be filed with the brief, or by leave of the court granted upon motion. URAP Rule 25. A motion for leave to file as an *amicus curiæ* or guardian *ad litem* must identify the applicant's interests and state the reasons that such a brief is desirable. *Id.*

Despite taking part in the briefing, *amici curiæ* and guardians *ad litem* have no automatic right to participate in oral argument, but Rule 25 makes provision for their participation upon motion, to be granted at the court's discretion "when circumstances warrant."

2.7 Motion for Expedited Decision

Once all the briefs in an appeal have been filed, a party may move, under URAP Rule 31(a), for an expedited decision without a written opinion. Such a motion must describe the issues presented, and the party's reasons for desiring an expedited decision. An expedited decision rendered pursuant to Rule 31 is not precedent, but has, in all other respects, the same force and effect as other decisions of the court, URAP Rule 31(f), and is binding for purposes of law of the case, *res judicata*, and claim preclusion.

Only certain types of matters, however, qualify for expedited decision without opinion:

- appeals involving uncomplicated factual issues based primarily on documents;
- summary judgments;
- dismissals for failure to state a claim;
- dismissals for lack of personal or subject matter jurisdiction; and
- judgments or orders based on uncomplicated issues of law.

URAP Rule 31(b). In all such cases, "the substantive rules of law should be deemed settled, although the parties may differ as to their application." URAP Rule 31(c). It goes without saying, of course, that expedited decision will not be granted in cases involving "substantial constitutional issues, issues of significant public interest, issues of law of first impression, or complicated issues of fact or law." URAP Rule 31(d).

When a Rule 31 motion is granted, the case is set for oral argument within 45 to 60 days of the granting order. URAP Rule 31(e). Within two days of oral argument, the court will decide the case and either issue a written order, entry of which by the clerk constitutes entry of judgment, *id.*, or notify the parties that it believes a written opinion should be issued, in which case the two day limitation does not apply, URAP Rule 31(g).

2.8 Motion for Reinstatement of Appeal

One of the more important motions to be familiar with is the URAP Rule 23A motion for reinstatement of an appeal dismissed "for failure to take a step." Ideally, of course, this rule should never be needed; however, when miscommunication, scheduling mistakes, memory lapses, human error, and deception make things less than ideal, Rule 23A offers a hopeful alternative to irremediable dismissal and possible malpractice liability. This motion permits an appellant to revive an appeal after it has been dismissed as a result of his or her having omitted a required procedural action because of "mistake, inadvertence, surprise, or excusable neglect or . . . fraud, misrepresentation, or misconduct of an adverse party." URAP Rule 23A(a) & (b).

". . . [T]he various necessary steps . . . can appear to be a quagmire of minutiæ, rather than the carefully orchestrated mechanism they are meant to be."

The motion must be filed "within a reasonable time after entry of the order of dismissal."While "reasonable time" is not specifically defined, a Rule 23A motion must be filed prior to the appellate court's remittitur of the case to the trial court, which deprives the appellate court of further jurisdiction. *See State v. Clark*, 913 P.2d 360, 362 (Utah Ct. App. 1996) (holding use of the Rule 23A remedy barred by *res judicata* after remittitur: dismissal of appeal became adjudication on the merits which the defendant could no longer challenge).

2.9 Suggestion of Mootness

"It is the duty of each party," declares URAP Rule 37(a), "at all times during the course of an appeal to inform the court of any circumstances which have transpired subsequent to the filing of the appeal which render moot one or more of the issues raised." An issue is mooted if, and apparently only if, "the requested judicial relief cannot affect the rights of the litigants," *R.O.A. General, Inc. v. the Utah Dept. of Transportation*, 966 P.2d 844, 844 (Utah 1998); *Winters v. Schulman*, 1999 UT App 119, ¶11, 977 P.2d 1218: a supervening case, for example, rules on an identical issue, or a legislative enactment effectively disposes of an issue. In any case, should a party determine that an issue has become moot, for whatever reason, "the party shall forthwith advise the court by filing a 'suggestion of mootness' in the form of a motion under Rule 23." URAP Rule 37(a); *see* § 2.11, below.

If the parties to an appeal, on the other hand, agree that a particular issue is moot (having settled that particular point, for instance), the "suggestion of mootness" becomes a "stipulation of mootness," and, "unless otherwise directed by the court, the appeal will then proceed as to the remaining issues." *Id.* Of course, if the parties agree that all of the issues have become moot, the "suggestion of mootness" becomes a voluntary dismissal. *Id.*

2.10 Voluntary Dismissal

An appeal may be voluntarily dismissed by either of two means: by agreement or by motion of the appellant. URAP Rule 37(b). If the parties are in accord, they need only file with the appellate clerk a signed agreement that the appeal be dismissed. *Id.*[3] The agreement must provide specific terms as to payment of costs, and the parties must pay any owing fees, and thereupon, the clerk enters an order of dismissal. *Id.*

Where such an agreement has not or cannot be reached, the appellant may make a motion for dismissal upon such terms of payment of costs and fees as ordered by the court. *Id.* If, however, the appellant has a right to effective assistance of counsel (i.e., criminal defendants and parties to juvenile proceedings), a motion for dismissal must be accompanied by the appellant's personal affidavit, "demonstrating that appellant's decision to dismiss the appeal is voluntary and made with knowledge of the right an appeal and an understanding of the consequences of voluntary dismissal." *Id.*[4]

2.11 Procedure

In addition to the requirements set out in the separate rules governing each of the motions set forth above, URAP Rule 23, which governs appellate motion procedure generally, requires

(besides the usual caption, paging, and font size rules) that all motions "contain or be accompanied by"

- A specific and clear statement of the relief sought;
- A particular statement of the factual grounds;
- a memorandum of points and authorities in support (unless the motion is one for enlargement of time, requirements for which are found in URAP Rule 22(b)(4)); and
- Affidavits and papers, where appropriate.

URAP Rule 23(a).

Within 10 days of service of a motion, any party may file a response in opposition. URAP Rule 23(b). (But note that motions for remand under Rule 23B are given a 20 day response time. See § 2.1, *supra*.) However, for good cause shown – probably also by motion – the court may "dispense with, shorten or extend the time" for filing a response. URAP Rule 23(b). Replies, which may address only new matters raised in a response, get even shorter shrift: "the court shall not postpone action on the motion to await the reply." URAP Rule 23(c). And indeed, a purely procedural motion, such as for instance a 22(b) motion for enlargement, may be disposed of at any time, "without awaiting a response or reply." URAP Rule 23(d).

A single justice or judge may grant or deny a motion, URAP Rule 23(e); but he or she "may not dismiss or otherwise determine an appeal," *id.* The court may order that any motion or class of motions must be acted upon by the court rather than a single judge or justice; and, in any event, the court may review the action of any single justice or judge. *Id.* Certain types of procedural motions, as ordered by the court or provided for in the rules, may be determined by the court clerk, although the court may, of course, review the clerk's disposition of the matter, either sua sponte or upon motion. URAP Rule 23(d).

The number of copies to file varies somewhat according to the type of motion brought:

	Supreme Court	Court of Appeals
Motion for Enlargement of Time	Original Only	Original Only
Motion for Summary Disposition	Original + Seven Copies	Original + Four Copies
Suggestion for Certification	Inapplicable	Original + Eight Copies
Other Motions	Original + Three Copies	Original + Four Copies

URAP Rule 23(f)(1) & 43(b)(1). These numbers are evidently applicable to responses and replies as well, although, so far as responses are concerned, Rule 23(f)(1) specifically discusses only responses to motions other than for enlargement of time or for summary disposition. *Id.*

Conclusion

Although briefing and argument are the *raison d'etre* of appellate procedure, there is, as can be seen, far more involved in an appeal. For one unprepared for or unfamiliar with the mechanics of appellate procedure, the various necessary steps to preparing both the case and the court for proper review can appear to be a quagmire of minutiæ, rather than the carefully orchestrated mechanism they are meant to be. It is my hope that this review of jurisdiction, filing, bonding, preparation of the record, the docketing statement, and many of the critical motions peculiar to appellate procedure – brief though it must of necessity be – will aid beginning appellate advocates (and perhaps provide a reference to their more experienced colleagues) to navigate the archipelago of appellate procedure without grounding on hidden reefs or unexpected sand bars.

[1]Analysis of which sorts of judgments and orders are "final" is beyond the scope of this article. Suffice it here to repeat the basic principle that "[a] judgment is final when it ends the controversy between the parties litigant." *Salt Lake City Corp. v. Layton*, 600 P.2d 538, 539 (Utah 1979).

[2]Note that many agencies' decisions and orders, especially local agencies', are appealable to district court. Such district court review is then appealable to the Court of Appeals under the Court of Appeals' power to review district court decisions.

[3]It should be noted that Rule 37(b)'s provisions concerning voluntary dismissal apply not only to appeals, but to any "other proceeding[s]" before an appellate court as well.

[4]This requirement was added only recently, in November of 1999, "to assure that the decision to abandon an appeal is an informed choice made by the appellant, not unilaterally by appellant's attorney." URAP Rule 37, 1999 Advisory Committee Note.

Belly Up to the Bar

by Just Learned Ham

This month I speak for the silent majority of the Bar, for those of us who have reached the age when one begins to think of doctors as something other than just defendants, for those who are struggling to accept the fact that their children are old enough to be their associates, for those whose body mass seems to be migrating south, or in the case of hair, simply emigrating. Yes, I speak for the middle aged lawyers.

I have to admit that lately I have caught myself fantasizing about voting Republican (I haven't actually done it yet, but according to Jimmy Carter it's almost as bad). I'm starting to spend more time contemplating the Dow than the Tao. In the springtime my thoughts turn to . . . peat moss. And I haven't seen the stacks of a law library in 15 years. (According to Toby Brown, no one else has either. He says they don't even exist anymore – except in "cyberspace." What a joke. That LEXIS thing is never going to catch on.) (Not that I would regret the passage of law libraries. Name any other kind of library where you never find someone just browsing.)

Somewhere between the Golden Age of summer clerkships and the Renaissance of retirement lie the Middle Ages. You know, the Dark Ages. The Rome of our youth has been sacked by barbarian hordes of billables and the relentless assault of metabolism.

With the salad days of our youth behind us, we are truly the sandwich generation of lawyers. Daily we stoke the fires and turn the gears of justice so that we can afford to: (a) support our associates with generous allowances, hoping (in vain, we fear) that they will develop a sense of responsibility and stick around long enough to fund our pensions; and (b) underwrite our senior partners' six month sabbaticals counting rhinos in Tanzania for the World Wildlife Fund. We stash whatever's left in the bank – to avoid spending our golden years answering uncomfortable questions about unfunded retirement plans in a conference room full of our former partners represented by our former associates. We are the generation of lawyers who works. We pay the bills. And we ask nothing in return. Tom Brokaw is probably writing a book about us right now. *The Second Greatest Generation*, or maybe *The Greatest Second Generation*. Something worth browsing for in the law library, anyway.

The other day, while comparison shopping for nose hair trimmers at Fred Meyer, I was struck by an idea. We have suffered too long. A majority, yes, but silent no longer! The time is right. This year in San Diego at the annual convention, instead of sitting around a table with seven other people pretending to enjoy fish while the Young Lawyers Section is off building rope bridges, banging drums in the forest, crystal toning, firewalking, drinking, or whatever it is they do to build esprit de corps, we shall organize! I propose a new section of the Bar: the Middle Aged Lawyers Practice Section, the MALpractice Section.

Membership in the MALpractice Section will depend on how you score on the following exam. Do you remember: (a) the first generation of fax machines (with that smelly, curly thermal paper and randomly elongated words); (b) when the Bar used to distribute a phone directory; (c) when mandatory CLE was something that only lawyers in liberal states were threatened with (and they deserved it, too); (d) that cozy little Victorian fixer-upper that was abandoned for the Law and Justice Center; and (e) waltzing with Belgian royalty in post-war occupied Vienna? If you answered "yes" to all of the foregoing, sorry, but you're not eligible. You're only in the club if you remember (a),(b),(c), and (d). If you also remember (e), you can go back to counting rhinos.

The Section will need activities. After all, if we're going to be the sandwich generation, we should at least get to decide what kinds of sandwiches we'll be (ham, turkey, and baloney come to mind – between law libraries, CLE, and annual conventions, I've come across some of all three). We could have a support group for mortgage anxiety. We could bring in psychologists to help us get in touch with our inner rainmakers. We could compare strategies for keeping junior partners who have left the nest from ever coming back. We could plan cross country trips on riding lawnmowers to visit former partners with whom we've lost touch. We could try out for the Jazz. (That was a low blow and I take it back.)

Being a middle aged lawyer isn't all just about being a draft horse, or even cleaning up after one. It has its advantages, too. There is a certain confidence that comes with middle age, a certain comfortableness with oneself. We are free of pretense. We don't have to prove ourselves. We can be ourselves. We can speak freely. It's such a relief not to have to pretend to like Birkenstock's anymore. The emperor has no clothes. Birkenstock's are not comfortable. They make my feet hurt and they come flying off at weird angles and times. Other than peer pres-

sure, I don't know why anybody wears them. They're awkward, clumpy, and irritating, even by European standards.

Another nice thing about being middle aged is that whole business about the law library, and not having to go there. "Interesting idea Herr Birkenstock, of course it's not right – in fact it's outrageous that some lunatic with a typewriter who's too cowardly even to sign his or her own name can toss defamatory opinions about like so many ill fitting sandals. But whether it's unlawful is the interesting part . . . Well, don't you let it spoil your weekend. I'll just have a couple of my associates research the matter tomorrow and Sunday and I'll get back to you with an answer Monday. Yes, over lunch, that's a great idea, but let's try a different place this time. I don't want to walk that far in these . . . never mind."[1]

I'm afraid I'm going to have to draw this to a close. It's 9:00 already, and I still need to walk the dogs, in my Reeboks. What they're doing in my Reeboks, I'll never know (sorry, I couldn't resist). I probably won't get to bed before quarter to ten. I don't know how Dick Nourse does it. See you in San Diego! This time we will be heard.

[1]On the advice of counsel, I need to point out that my problem with Birkenstock's is probably the result of having oddly shaped feet, and undoubtedly has nothing to do with their fine product, about which millions of people the world over justifiably rave.

Commission Highlights

During its regularly scheduled meeting of May 5, 2000, which was held at the Pack Creek Ranch, Moab, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

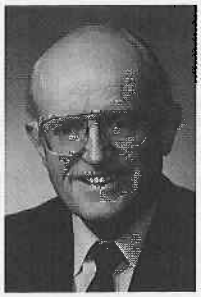
1. The Commission had lunch with local Bar Members.
2. Scott Daniels was nominated to run for retention election as the Bar's President Elect.
3. The Board approved the minutes of March 9, 2000 meeting as amended.
4. Charles R. Brown reviewed the Report of the Supreme Court's Task Force on Bar Governance Issues. This will be discussed in length in the June Commission meeting in preparation for its meeting with the Court in August.
5. James B. Lee will begin his term on the Board of Governors to the ABA after the July ABA meeting in New York. Paul Moxley has been elected as the Utah delegation representative to the ABA, and Charles R. Brown has been appointed as the Bar's ABA representative.
6. Annual award nominations were reviewed. The Board discussed the awards criteria as well as past recipients and nominees. D. Frank Wilkins will be recognized as the Lawyer of the Year, Guy Burningham will be recognized as Judge of the Year, and Jennifer Yim will be recognized as the Distinguished Non-Lawyer of the Year.
7. Dan Garrison reported on the activities of the Young Lawyer Division and brought the Board up to date on discussions in the division of Occupational Professional Licensing regarding the possibility of ADR licensing.
8. Scott Daniels reviewed the Judicial Council report.
9. John Baldwin reviewed the Budget and Finance report.

During its regularly scheduled meeting June 2, 2000, held in Salt Lake City, 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 May 5, 2000 meeting as amended.
2. Charles R. Brown reviewed the Annual Convention and Commission calendar. He also reported on his participation in the ABA Day in Washington D.C. and reviewed the Bar's involvement in the judicial nomination process.
3. Denise Dragoo reviewed the communications plan; it was her recommendations that we add among other suggestions on her handout, a leadership training session to the Mid-Year schedule and provide periodic e-mail to leadership.
4. John Baldwin reviewed the April Financials and the 2000-2001 Budget was approved. Grants of $20,000.00 to Utah Dispute Resolution and Lawyers Helping Lawyers Committee were approved.
5. Gary Sackett reviewed Ethics Opinions 00-04,00-05, and 00-07. After discussion, the Commission approved Opinions 00-04 and 00-07 and they deferred Opinion 00-05.
6. The Commission approved nominations for the Ethics and Discipline Committee appointments, which will be sent to the Supreme Court for final approval.
7. Scott Daniels reviewed the Judicial Council report. It was determined to request the Courts and Judges Committee to develop and implement efforts to educate members of the Bar and the public on the judicial retention process, including a Point/Counterpoint article for the *Bar Journal*.
8. The Board of Commissioners reviewed the report of the Supreme Court Task Force on Bar Governance. Several issues will be discussed with the Commission and the Supreme Court in their joint meeting in August.

A full text of minutes of these and other meetings of the Bar Commission is available for inspection at the office of the Executive Director. June minutes are posted on the web site at www.utahbar.org/news.

Two Utah Bar Members Elected to Board of Governors of the American Bar Association



James B. Lee

Marty Olsen

At the Annual Meeting of the American Bar Association (ABA) in New York in July 2000, James B. Lee and Marty Olsen will be installed as members of the Board of Governors of the ABA. This is the first time that two Utah lawyers have served on the Board simultaneously. They will serve until the Annual Meeting in 2003.

The ABA was founded in 1878. One Utahn has served as president and that was George Sutherland in 1916-1917. Prior to the election of Olsen and Lee, only four Utah lawyers have served on the Board of Governors of the ABA. George H. Smith was on the Executive Committee from 1932-1935. The name of the Executive Committee was changed to the Board of Governors in 1936. Franklin Riter of Salt Lake City was on the Board from 1957-1960. The late Calvin A. Behle (formerly a partner of James Lee) served on the Board from 1972-1975. Federal Judge J. Thomas Greene held a Board seat from 1988-1991.

The ABA is the largest voluntary professional association in the world with over 400,000 members. For the year ended August 31, 1999, 1,733 Utah lawyers were members of the ABA. The ABA House of Delegates, the policy-making body, is comprised of 531 members. Utah is represented in the House of Delegates by Judge Judy Billings, Paul Moxley (Utah State Bar Representative), and Lee (ABA Representative from Utah). The largest contingent of delegates in the House come from state, local, and territorial Bars. The ABA strives for balance in the decision-making and policy-making processes so that all views are represented.

A brief review of Marty Olsen's activities appeared in the February 2000 issue of the *Utah Bar Journal* at page 33. James Lee has practiced law with the firm of Parsons Behle & Latimer for 39 years. He has been president of the Utah State Bar and Salt Lake County Bar Association. Lee served as Chair of the Board of Utah Legal Services and Utah Bar Foundation. He is a life member in the Fellows of American Bar Foundation and has been a member of the ABA since 1961. In 1988, he received the Utah State Bar Outstanding Lawyer of the Year award.

While serving on the Board of Governors of the ABA, Lee will be interested in insuring the continued independence of the judiciary, the issue of amending the Code of Professional Conduct with respect to multidisciplinary practice, and the future of the law practice in the United States.

Feel free to contact Marty Olson or James Lee at any time with respect to their service on the Board of Governors of the ABA.

Notice

The Bar has several hundred copies of the Legal/Medical Interprofessional Code for Utah (third edition - 1993). The 16-page booklet is intended as a guide for physicians and attorneys in the solution of mutual problems encountered by the two professions in connection with physical examinations of litigants and the need for medical testimony. Topics such as physician compensation for court appearances and depositions, physician/patient privilege, and the like are addressed followed by a recommended policy.

You may either pick up a copy from the receptionist at the Bar offices or send a check for one dollar (made payable to the Utah State Bar) to Christine Critchley with a request to mail a copy. We are also in the process of making this information available on the Bar's web site.

Supreme Court Seeks Attorneys to Serve on the Utah State Board of Continuing Legal Education

The Utah Supreme Court is seeking applicants to fill five vacancies for the Utah State Board of Continuing Legal Education. Attorneys should submit a resume and letter indicating interest and qualifications to Brent M. Johnson, Administrative Office of the Courts – Legal Department, 450 South State, 3rd Floor, Salt Lake City, Utah 84114-0241. Applications must be received no later than July 17, 2000. Questions regarding the vacancies may be directed to Sydnie W. Kuhre, MCLE Board Administrator at (801) 297-7035.

High School Students Become Judges for a Day

On April 27, 2000, eleven high school students from Bingham High were sworn in as federal judges pro tem for a special Law Day Program at the court. The students participated in a mock hearing on a motion to suppress the evidence seized in the search of a student's backpack. Over 2,000 students in thirty-four federal courthouses throughout the nation participated in the program which was broadcast over the Federal Judicial Televison Network.

The theme of the Law Day Program was "Judicial Independence is For You." Students were placed in the position of a judge facing extreme media pressure in a high profile case. Salt Lake City was one of twelve sites in the nation which participated by broadcasting the local vote directly to the program. Students in

Salt Lake also had the opportunity to explain their decision rationale to all the participants in the program.

While the national vote heavily favored granting the motion to suppress, the local vote was different, with one student granting the motion and ten voting to deny it. The Utah students had a chance to defend their position before the rest of the nation.

The Federal Bar Association helped sponsor the program locally, providing the necessary refreshments to keep the students energized. FBA President Robert Clark, Chief Deputy Clerk Louise York, and Magistrate Judge David Nuffer joined with Bingham High teacher Scott Crump in facilitating the program.

Mock Trial and Mentor Heroes

Quietly and without fanfare, Utah teens are experiencing the power of our legal system. Using hate-crime, gang shootings and AIDS discrimination as case studies, thousands of junior and senior high school students have learned first hand how to deal with tough issues in a violence-free setting.

Over the last twenty-one years, students in the Mock Trial Program have wrestled with cases that challenge democracy. Each spring, approximately 90 teams of ten students each take the roles of plaintiffs, defendants, witnesses, bailiffs, and attorneys as found in real-life court room situations. Of course, they experience the excitement of TV law drama, but more importantly, they come to understand how our individual rights are protected by the rule of law.

On the first of May – which is designated Law Day – students from Judge Memorial Catholic High School, Salt Lake City, were recognized as the winning senior high school team, and Centennial Middle School students from Orem took the honors in the junior high division. These students competed with more than 1,000 students on a case concerned with parental liability in a Columbine-like situation.

All the participants in the Mock Trials use these experiences as the building blocks to further their education and careers. Some may become lawyers and judges, and others will follow non-legal paths. All of them have a deeper respect and understanding of our legal system.

The entire program rests on a foundation supported by time and monetary contributions from Utah's legal community. This year, 158 attorneys donated over 4,200 hours of their time as coaches and judges. This, added to teachers' donations of more than 3,000 hours, made the Mock Trial Program possible. There also were many parents and community leaders who generously gave time to assist the students and teachers.

Financial support also is a critical factor. Annual grants of more than $50,000 from the Utah State Bar and the Utah Bar Foundation to the Utah Law-Related Education Project, sponsor of the Mock Trials, underwrite the major costs of this program. The only cost to the schools is a registration fee of $65 per team.

The success of the Law-Related Education Project's programs over the last two decades is an example of the best kind of partnership between education and the private sector. Through the Mock Trials and the Mentor Program, where attorneys partner with classrooms to teach legal issues, students learn about conflict resolution, citizenship, constitutional issues and the judicial system. These students are engaged in a unique learning experience which would not be possible without the volunteers in Utah who donate their resources.

Utah Law-Related Education Project
Mock Trial and Mentor Programs
2000
Attorney-Volunteers

Gregory J. Adams	Nanci Snow Bockelie	Val Cox	Kevin Fife	Hon. Burton H. Harris
Stanley Adams	Mary Boudreau	Martin Custen	Ralph L. Finlayson	R. Robert Harris
Robert W. Adkins	Michael Bouwhuis	Melissa Dalziel	Karin Fojtik	Edward Havas
Douglas Ahlstrom	John H. Bowen	William F. Daines	David Frakt	Dana C. Heinzelman
Bernard L. Allen	Elizabeth Bowman	Scott Daniels	Robert B. Funk	Rose Hewitt
Keith Backman	Mary Brady	Mark DeCaria	Daniel E. Garrison	Rien Heymering
S. Junior Baker	Kristin Brewer	Loni Deland	Steven L. Garside	Deborah A. Hill
Bruce R. Baird	Richard Brimhall	Susan M. Denhardt	David W. Geary	Stephanie Hoggan
Diane H. Banks	Mara A. Brown	Leisha Lee Dixon	Barry Gomberg	J. Kent Holland
Audrey Barlow	Richard D. Burbidge	Phillip W. Dyer	Joe A. Greenlief	Michael V. Houtz
Gary W. Barr	Hon. Jeffry R. Burton	Mark W. Dykes	Christopher D. Greenwood	Nathan D. Hult
Hon. William W. Barrett	Augustus G. Chin	Keith Eddington	Douglas E. Griffith	Noel S. Hyde
Lauren R. Barros	Hon. Kevin Christensen	Les F. England	Susan Griffith	Miles P. Jensen
Joseph Bean	Robert J. Church	William T. Evans	Paul D. Greiner	Robin K. Jensen
Kevin Bennett	Thomas W. Clawson	Bruce Evans	Chad Hales	Stephen W. Jewell
David Blackwell	Catherine S. Conklin	John F. Fay	Richard G. Hamp	Brett P. Johnson
Gary Blatter	Glen A. Cook	Joel A. Ferre	David J. Hardy	Christine Johnson

Joseph Joyce
Randy S. Kester
Ronald J. Kramer
Lynda Krause
Catherine Labatte
Sandra Langley
Virginia C. Lee
John R. Lemke
Robert Liebschner
Randy M. Lish
Kim M. Luhn
Frederick MacDonald
Ramona R. Mann
Milo S. Marsden
Scott M. Matheson, Jr.
Addie Maudsley
Craig McArthur
Kathleen McConkie
James McConkie
Samuel D. McVey
Thomas A. Mitchell
Jimi Mitsunaga
Stephen Moffat
John D. Morris
Debra J. Moore
Todd Nilsen
John W. Ogilvie
Patrick J. O'Hara
Joseph O'Keefe
Kristina Kindl Orme
Stephen Owens
Francis Palacios
Steven R. Paul
Michael Petrogeorge
Kathleen S. Phinney
Candice R. Pollock
Randall W. Richards
J. Wesley Robinson
Kristine M. Rogers
Joseph C. Rust
Gayanne K. Schmid
Kimberlee Sellers
Dana C. Serandos
Helen Serassio
Brook J. Sessions
Alan B. Sevison
Jay Shelledy
Sharon S. Sipes
Gregory G. Skordas
Mark Smedley
Sheldon Smith
Clark L. Snelson
Kent Snyder
Jennifer Spangenberg
Sandra L. Steinvoort
Robert Stott
David S. Sturgill
Ashley Swallow
Kevin P. Sullivan
Robert B. Sykes
Patrick Tan
James R. Tanner
Marsha C. Thomas
A. Robert Thorup
David Tibbs
Mary S. Tucker
David Tuckett
Paul D. Wake
Paul Waldron
Ann L. Wassermann
David B. Watkiss
Wendy Weaver
David E. Weiskopf
David A. Westerby
Denise Williamson
Robert G. Wright
Louise S. York
Don Young

Community Volunteers

Lynda Adams
Katherine Astin
Jewell Bezoski
Arrin Brunson
Susan Burke
Frances Butler
Shannon Butler
Spring Dennison
Mary Durtsches
Brandy Farmer
Kathleen Dougherty
Al Forsyth
Juli Genovesi
Linda Gowans
Ritamae Gowen
Leara Hansen
Laurie Hofmann
Karen Hom
Kali Jillette
Donna K. W. Johnson
Rebecca Kimball
James R. Lee, II
Marilyn Loffgren
David R. Lynch
Elsie G. Martin
Nancy N. Mathews
Lynette Maynard
Eloise Morris
Darla Murphy
Mike Norman
Kit Olpin
Russ Osguthorpe
Pat Parker
Michael Richter
Mary J. Schwab
Thora Searle
Mayor JoAnn B. Seghini
Laura Thorpe
Marie Van Roosendaal
Grace Wagner
Beverly White
Judith Whitmer
Dorothy J. Wikstrom
Barbara Williams
Fred Zeuthen

Mailing of Licensing Forms

The licensing forms for 2000-2001 were 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 fees, or possible suspension for non-payment of fees. You may check the Bar's web site to see what information is on file. The site is updated weekly and is located at www.utahbar.org.

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

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.

Summary of Utah State Bar Licensing

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

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

Active, Under Three – A lawyer on Active Status who has taken the Student Bar Examination and was admitted on or after July 1, 1998 qualifies for a reduced licensing fee. (If you took the Attorney Bar Examination you do not qualify for this status.) The current licensing fee is $190 plus the client security fund assessment. You must also satisfy the New Lawyer Continuing Legal Education requirements.

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

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

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

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

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

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

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, 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)

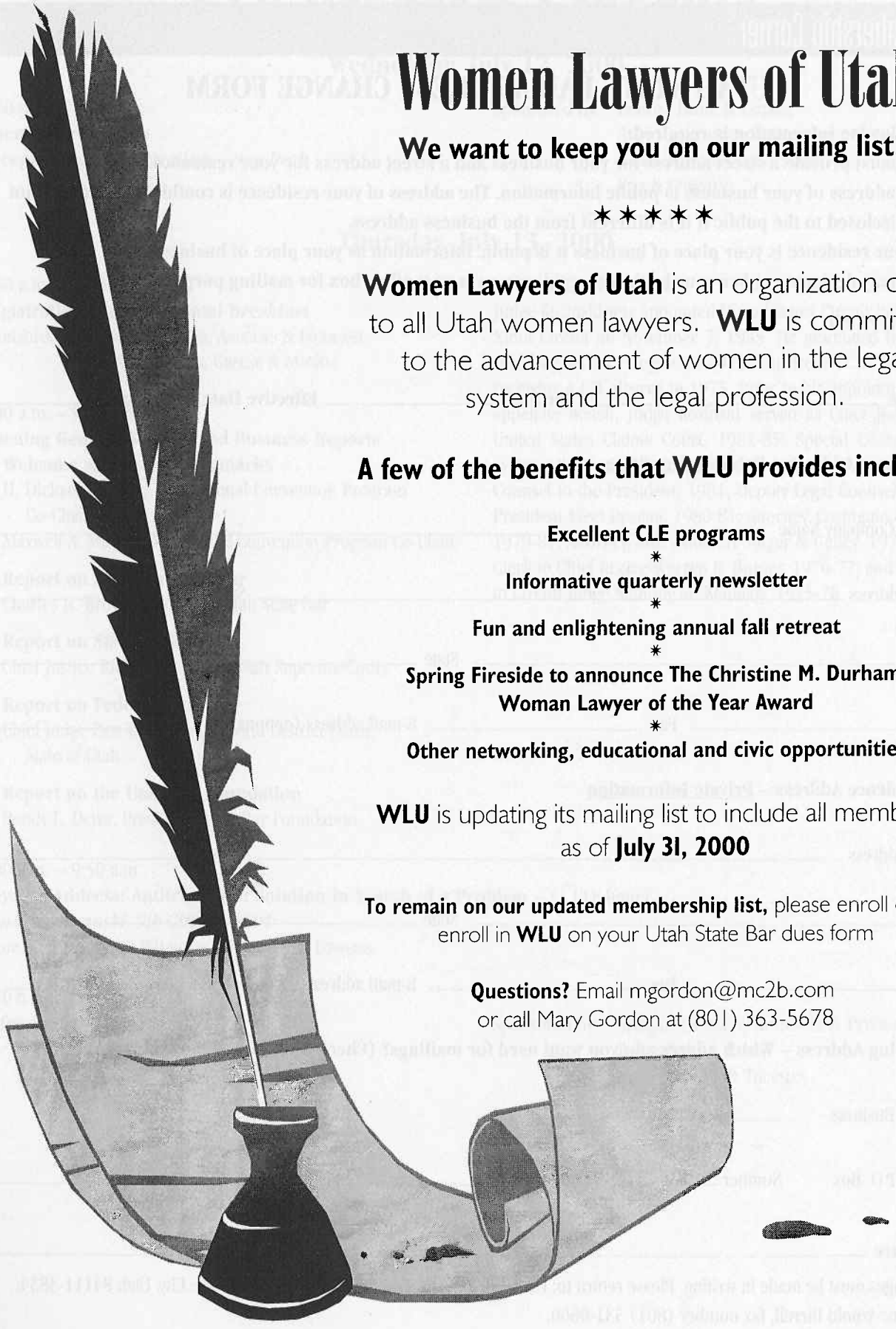
Please make all checks payable to the Utah State Bar
Mail to: Utah State Bar Ethics Opinions, ATTN: Christine Critchley
645 South 200 East, Suite 310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.



Women Lawyers of Utah

We want to keep you on our mailing list!!

*****

Women Lawyers of Utah is an organization open to all Utah women lawyers. **WLU** is committed to the advancement of women in the legal system and the legal profession.

A few of the benefits that WLU provides include:

Excellent CLE programs

*

Informative quarterly newsletter

*

Fun and enlightening annual fall retreat

*

Spring Fireside to announce The Christine M. Durham Woman Lawyer of the Year Award

*

Other networking, educational and civic opportunities

WLU is updating its mailing list to include all members as of **July 31, 2000**

To remain on our updated membership list, please enroll or re-enroll in **WLU** on your Utah State Bar dues form

Questions? Email mgordon@mc2b.com or call Mary Gordon at (801) 363-5678

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.

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

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

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.

9:50 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)

LITIGATION TRACK	TRANSACTIONAL TRACK
Who Gets to Visit Your Children and Who Gets to Decide? *Ellen Maycock, Kruse, Landa & Maycock* *Mary Corporon, Corporon & Williams* *Fredrick Green, Green & Berry*	**Through the Maze: The Lawyer's Role in the Sale of Real Estate** *Read R. Hellewell, Kirton & McConkie*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	BACK TO BASICS TRACK
Juvenile Court as a Resource to the Public and the Legal Community *Hon. Kimberly K. Hornak, 3rd District Juvenile Court* *Jan Thompson, Communications Director, Administrative Office of the Courts*	**Using the Power of Computers for Winning Courtroom Arguments** *Francis J. Carney, Anderson & Karrenberg* *Blake D. Miller, Ballard Spahr Andrews & Ingersoll*	**NLCLE: Intellectual Property for the Non-Specialist** *Jonathan W. Richards, Workman, Nydegger & Seeley*

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)

LITIGATION TRACK	TRANSACTIONAL TRACK
Successful Strategies for Advocates in Mediation *Ralph L. Dewsnup, Dewsnup, King & Olsen* *James R. Holbrook, Callister, Nebeker & McCullough* *Larry R. Keller, Keller & Lundgren* *John R. Lund, Snow, Christensen & Martineau* *D. Frank Wilkins, Berman, Gaufin, Tomsic, Savage & Campbell*	**NLCLE: Primer I – Foreclosures** *Larry G. Moore, Ray, Quinney & Nebeker* **Primer II – Mechanic's Liens** *Darrel Bostwick, Babcock, Bostwick, Scott, Crawley & Price*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	BACK TO BASICS TRACK
ETHICS: The Market vs. Lawyers – The MDP Task Force Report *Michael D. Blackburn, MDP Task Force Co-Chair* *Toby Brown, Utah State Bar* *David Nuffer, President-elect, Utah State Bar* *Charles R. Brown, President, Utah State Bar*	**Commercial Transactions** *John R. Morris, Snell & Wilmer*	**NLCLE: Primer I – Foreclosures** *Larry G. Moore, Ray, Quinney & Nebeker* **Primer II – Mechanic's Liens** *Darrel Bostwick, Babcock, Bostwick, Scott, Crawley & Price*

12:10 p.m. – 12:30 p.m.
Refreshment Break

Sponsored by: Stoel Rives LLP
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12:30 p.m. – 1:20 p.m.
Session III – (1 CLE hour each)

LITIGATION TRACK	TRANSACTIONAL TRACK
Ethical Dilemas for the Practitioner – Phase II *Hon. Leslie A. Lewis, Third District Court* *Gregory K. Skordas, Gustin, Christian, Skordas & Caston* *Michael F. Skonick, Kipp & Christian* *Kirk G. Gibbs, Kipp & Christian* *Stephanie Ames, Gustin, Christian, Skordas & Caston*	**ENREL: Development of Environmentally Impaired Properties** *David W. Tundermann, Parsons Behle & Latimer* *J. Michael Baily, Parsons Behle & Latimer* *Hal J. Pos, Parsons Behle & Latimer*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	BACK TO BASICS TRACK
"Miranda" *Prof. Paul Cassell, University of Utah College of Law* *Stephen C. Clark, ACLU of Utah* Sponsored by: MBNA AMERICA	**Intellectual Property Issues on the Internet** *H. Dickson Burton, Trask, Britt* *John R. Morris, Snell & Wilmer* *Gregory D. Phillips, Howard, Phillips & Andersen* *Jonathan W. Richards, Workman, Nydegger & Selley* *John C. Stringham, Workman, Nydegger & Seeley*	**Ethical Dilemas for the Practitioner – Phase II** *Hon. Leslie A. Lewis, Third District Court* *Gregory K. Skordas, Gustin, Christian, Skordas & Caston* *Michael F. Skonick, Kipp & Christian* *Kirk G. Gibbs, Kipp & Christian* *Stephanie Ames, Gustin, Christian, Skordas & Caston*

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
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10:15 a.m. – 11:05 a.m.
Session I – (1 CLE hour each)

LITIGATION TRACK	TRANSACTIONAL TRACK
Killer Cross-Examination *Larry Pozner, Hoffman, Reilly, Pozner & Williamson* Sponsored by: THE LITIGATION SECTION, UTAH STATE BAR	**Recent Developments & Future Trends Under the American With Disabilities Act** *Scott A. Hagen, Ray, Quinney & Nebeker*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	BACK TO BASICS TRACK
Killer Cross-Examination *Larry Pozner, Hoffman, Reilly, Pozner & Williamson* Sponsored by: THE LITIGATION SECTION, UTAH STATE BAR	**Creating Your Future** *William C. Cobb ,WCCI, Inc.*	**What Generation X Lawyers Know That You Don't: Trends in the Profession** *Scott Matheson, Jr., Dean, University of Utah College of Law* *Panel of Young Lawyers*

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
Killer Cross-Examination cont.	**Private Offerings of Securities – Tips for the General Practitioners** *Gary Winger, Ray, Quinney & Nebeker*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	BACK TO BASICS TRACK
Killer Cross-Examination cont.	**E-Filing and E-Commerce for Lawyers** *Toby Brown, Utah Electronic Law & Commerce Partnership* *Brent Israelsen, Utah Electronic Law & Commerce Partnership*	**Hot Issues in Employment Law** *David A. Anderson, Parsons Behle & Latimer*

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)

LITIGATION TRACK	TRANSACTIONAL TRACK
Reel Justice: Trial Tactics in the Movies *Prof. Paul Bergman, UCLA School of Law*	**Current End-of-Life Legal Issues** *Mary Jan Ciccarello, Utah State Division of Aging and Adult Services* *Phil Ferguson, Chair, Needs of the Elderly Committee* *Shirley Rossa, Partnership for End of Life in Utah* *Kent Alderman, Parsons, Behle & Latimer*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	BACK TO BASICS TRACK
Reel Justice: Trial Tactics in the Movies *Prof. Paul Bergman, UCLA School of Law*	**The Convergence of the Internet and Your Law Practice** *H. Dickson Burton, Trask, Britt* *Toby Brown, Utah State Bar* *D. Brent Israelsen, Fillmore, Belliston & Israelsen* *Blake D. Miller, Ballard, Spahr, Andrews & Ingersoll*	**NLCLE: Mediation 101** *Karin S. Hobbs, Utah Court of Appeals, Appelate Mediation*

11:00 a.m. – 11:10 a.m.
Refreshment Break
Sponsored by: Cohne, Rappaport & Segal
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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.*

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

LITIGATION TRACK	TRANSACTIONAL TRACK
Significant Legislative Developments from the 2000 Legislative Session *John T. Nielsen, Utah State Bar Lobbyist*	**ETHICS: Advocacy Gone Awry – When Does Vigorous Advocacy Overstep the Lines into Unprofessional Conduct?** *Narda E. Beas-Nordell, Salt Lake County District Attorney's Office* *Ellen M. Maycock, Kruse, Landa & Maycock* *Carol A. Stewart, Office of Professional Conduct, Utah State Bar* *Hon. Tena Campbell, U.S. District Court, District of Utah* Sponsored by: WOMEN LAWYERS

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	BACK TO BASICS TRACK
State Constitution Issues *Justice Christine M. Durham, Utah Supreme Court*	**The Convergence of the Internet and Your Law Practice, cont.**	**ETHICS: Advocacy Gone Awry – When Does Vigorous Advocacy Overstep the Lines into Unprofessional Conduct?** *Narda E. Beas-Nordell, Salt Lake County District Attorney's Office* *Ellen M. Maycock, Kruse, Landa & Maycock* *Carol A. Stewart, Office of Professional Conduct, Utah State Bar* *Hon. Tena Campbell, U.S. District Court, District of Utah* Sponsored by: WOMEN LAWYERS

12:00 p.m.
Breakout Session Adjournt

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. Nehring, 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 NLCLE 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.

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Christina Inge Miller, Young Lawyer of the Year

by Dwayne Vance

Half of the failures in life arise from pulling in one's horse as he is leaping.
–Julius Hare

One of the few things that Christina Miller hasn't done in her life is pull in her horse as he is leaping. To the contrary, Christina Inge Miller, this year's recipient of the Young Lawyer of the Year award, presented at the annual Law Day luncheon on May 1st, has galloped her horse at top speed, and leapt any obstacle that stood in her way.

Christina Inge Miller was born in Pocatello, Idaho on July 28, 1971, to Roy and Inge Miller. She received a bachelor of science degree in secondary education from Idaho State University in May of 1994, and her law degree from the University of Idaho in May of 1997. Along the way, Christina tried her hand at ranching as part owner of a cattle ranch in Idaho, and enjoyed competitive barrel racing.

After law school, Christina decided to leave the hustle and bustle of Idaho for the peace and quiet of Park City, Utah. After storing up a veritable treasure trove of experience before, during and after law school working as a legal assistant and law clerk for various private firms in Utah and Idaho, as well as the United States Attorney's Office in Moscow, Idaho, Christina joined Tesch, Thompson & Vance in Park City as an associate in June of 1997. Ever since then, she has been one of the main dogs pulling the law firm's sled.

Christina practices in the areas of criminal defense, domestic, real estate and general litigation, as well as licensing, compliance and other administrative proceedings before the Department of Alcohol Beverage Control. As a new associate, she volunteered to take Spanish classes in the evening so that she would be in a better position to communicate with and serve the growing Hispanic community in Summit County. As the CLE Director for the Park City Bar Association, Christina organized and implemented a Tuesday Night Bar program in Park City in order to reach out and provide legal services for those who otherwise would not be able to afford legal representation, and has personally attended most every Tuesday night session. In recognition of her past service and contributions, Christina currently serves as the Vice-President/President-Elect of the Park City Bar Association.

In addition to her large caseload at the office, Christina still finds time to volunteer for various community organizations. Christina performs pro bono work for the Summit County Domestic Peace Task Force, representing women at hearings regarding ex parte protective orders, and is involved in the annual Peace House Hispanic Outreach Night. Christina also provides pro bono legal representation through the Disability Law Center as well as individually through Tesch, Thompson & Vance. Christina has also served on the boards of various organizations, including The Counseling Center (which provides counseling services on a sliding scale basis for low income households), the Wasatch/Summit County Children's Justice Center (for which she also drafted all of the documentation to apply to the I.R.S. for tax exempt status), and the Make-A-Wish Foundation. In fact, Christina offered herself up as a date to be auctioned off at the annual Make-A-Wish auction in Park City last August, and fetched the highest bid of any date auctioned that evening.

Notwithstanding her many hours of selfless volunteer and charitable work, Christina still carries one of the highest caseloads in her firm in terms of number of cases and hours worked. She has been described as something of a wonder woman. Anyone who has seen her in action in court knows that such a label is more than appropriate. Once she has a witness on the stand, it is almost as if she has them tied up in her golden lasso and they have no choice but to tell the truth.

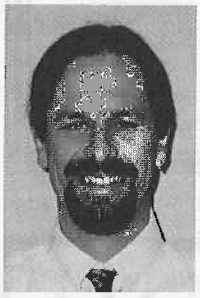
DWAYNE VANCE is a partner with the law firm of Tesch, Thompson & Vance in Park City, Utah.

In her spare time, Christina enjoys many leisure activities, including skiing, mountain biking, and horseback riding. One might wonder how much spare time she actually has in light of her many other activities. As proof positive of her leisure adventures, Christina has blown her knee out twice in the past year, once skiing, and once mountain biking (ironically, the same hill in Deer Valley was the culprit both times).

Christina is truly one of the finest goodwill ambassadors that the legal profession could hope for, and the community has truly been blessed from her selfless service. The Young Lawyers Division offers its hearty congratulations to Ms. Miller on being chosen as Young Lawyer of the Year for 2000.

The Utah Bar Foundation Awards $12,000 in Scholarships to Law Students Committed to Work in Public Interest Law

The Utah Bar Foundation has awarded four scholarships to law students for their commitment and exemplary work in public interest law. Two recipients are chosen from each law school, the J. Reuben Clark Law School at BYU and the University of Utah College of Law. Each recipient receives a $3,000 scholarship award. This year the Utah Bar Foundation received fourteen applications. This year's four recipients are:



Scott C. Cameron a third year law student from the U of U. Mr. Cameron served as the coordinator for the U of U's Public Interest Law Organization for two years. He also served as the co-coordinator for the Monday Symposium at the law school focusing on homelessness and is an active volunteer for the Street Law Project at St. Vincent's homeless shelter. Mr. Cameron is currently involved in setting up the Rocky Mountain Innocence Center that will help to prove the innocence of wrongly convicted individuals in the State of Utah.

Bertie Kee-Lopez is a second year law student at the U of U. Ms. Lopez was born and raised on the Navajo Reservation in Pine Springs, Arizona. She has endured many hardships in her life, including homelessness and financial difficulties. Before starting law school, Ms. Lopez worked as a paralegal for Utah Legal Services in their Native American Law Program. Ms. Lopez has acted as the co-chairperson for the Indian Child Welfare Act ad hoc committee, worked as a court appointed special advocate volunteer and has volunteered in the area of juvenile justice. Ms. Lopez currently serves as President of the Native American Law Student Association and is a member of the Women's Law Caucus.

Paul Tsosie is a third year law student at BYU and is also working towards a Masters degree in Public Administration. He is from the Navajo Nation in Arizona. Mr. Tsosie has been extensively involved in public interest work at the Law Help Office at BYU that matches pro bono attorneys with low-income individuals. This summer, Mr. Tsosie is working for the California Indian Legal Services in Oakland, CA. After graduation, Mr. Tsosie hopes to work for either Utah Legal Services or for the Navajo Nation Attorney General's Office, using both his Law and Masters degrees to protect the rights of the general public.

Emily Warner has just graduated from the BYU Law School. She has volunteered for the Crisis Line and Phone Pals and the Center for Women and Children in Crisis where she helps residents there with the many legal problems that accompany an abusive relationship. She is a certified volunteer victim advocate for Provo and Orem. Ms. Warner has spent summers working for the Jacksonville Area Legal Aid in Florida and for Utah Legal Services in their Legal Center for Victims of Domestic Violence. Ms. Warner is a current member of the Utah County Child Abuse Council and was President of BYU Law School's Public Interest Law Foundation. Ms. Warner is currently studying for the Utah Bar Exam.

Each year the Foundation awards scholarships to law students who have demonstrated a commitment in public interest law work. The Utah Bar Foundation provides continuing, significant support for organizations that provide legal services to low-income individuals. The Foundation has also been a long-time supporter of Utah Law-Related Education. The Utah Bar Foundation receives its funding from Interest on Lawyer's Trust Accounts (IOLTA). The Utah Bar Foundation is governed by a seven member Board of Trustees that is elected from the Utah Bar Association's general membership.

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CLE Calendar

DATES	TITLE	PLACE, TIME, CLE CREDIT, PRICE
7-12–7-15-00	**Utah State Bar Annual Meeting, San Diego, California**	Hotel Del Coronado; Registration before 6-9-00; $250, after $280 for everyone; Legal Assistant Division members $125; non-lawyer $50; For more information access our web site at www.utahbar.org/sites/annual.
7-20-00	**PLI: Litigation Case Management for Legal Assistants**	Law & Justice Center; 9:00 a.m.-4:00 p.m.; 6 Hrs. CLE; $299. To register: 1-800-260-4754 or on www.pli.edu.
7-26-00	**Trial Academy Part IV: Expert Witnesses**	Gore Auditorium, Westminster College; 6:00 p.m.-8:00 p.m.; 2 Hrs. CLE/NLCLE; $30 YLD; $40 Litigation Section Members; $50 non-member per seminar; parking available off 1700 South 1200 East, see map on website at www.utahbar.org/cle. (Subject to change)
8-24-00	**Immigration Law: Tearing Down the Berlin Wall**	Law & Justice Center; 5:30-8:30 p.m.; 3 hrs. CLE/NLCLE; $40 YLD, $55 others, door registrants add $10.
8-25 & 26-00	**Securities Law Annual Meeting: Sun Valley Idaho**	TBA

For current seminar information and registration, access our Website at *www.utahbar.org/cle.*

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