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COVER: Looking West from Antelope Island, Great Salt Lake, Utah, by first-time contributor, Ronald G. Russell, Parr, Waddoups, Brown, Gee & Loveless, Salt Lake City.

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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.

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Members of the Utah State Bar or members of the Legal Assistants Division of the Bar who are interested in having photographs they have personally taken of Utah scenes published on the cover of the *Utah Bar Journal* should send their print, transparency, or slide, along with a description of where the photograph was taken to Randall L. Romrell, Esq., Regence BlueCross BlueShield of Utah, 2890 East Cottonwood Parkway, Mail Stop 70, Salt Lake City, Utah 84121. Include a pre-addressed, stamped envelope for return of the photo and write your name and address on the back of the photo.

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

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Sharing, Selecting and Supporting

by David O. Nuffer

In 1999, my wife visited a former Soviet bloc country. She remarked on the efficiency of traffic law enforcement there. If your car is stopped by an officer, you may pay or go to jail until you pay. You are not in jail awaiting trial, because there is no trial; the officer is investigator, witness, prosecutor and judge.

Fortunately, we have more opportunities to be heard and participate under our system of government. This article will summarize three civic opportunities.

"and Justice for all" 2001 - "New Partners"
The 2001 "and Justice for all" fundraising campaign invites us all – but particularly "New Partners" – to help this remarkable effort to fund three agencies providing service to the disadvantaged. Legal Aid Society, Disability Law Center and Utah Legal Services served an additional 4,000 people because of this campaign. Over one-third of Utah's lawyers participated in this groundswell effort led by a committee of forty leading Utah attorneys. It is time to bring in New Partners to show that a majority of Utah's lawyers back efforts to see that legal services are available to all in Utah. When I write out my check for the equivalent of two billable hours, I think of all the times I answer my own legal questions, or help my family members. Then I think about those who do not have a lawyer in the family, and no means to afford to ask the questions or get the help they need. Making legitimate legal service available prevents the unscrupulous from preying on those who really need an answer. We can help people get answers and help them avoid advice from the untrained and unlicensed by supporting "and Justice for all."

The campaign needs to raise an additional $100,000 to obtain a matching grant from the R Harold Burton Foundation. I just sent in my $400 check. (It never hurts to exaggerate your rate for a cause like this!) Send your check to: "and Justice for all," 225 South 200 East, Suite 200, Salt Lake City, 84111.

Electing your Bar President
In mid December, the Utah Supreme Court responded to the report of its Task Force on Bar Governance and the comments on the report from Bar members. The Court determined not to change the composition of the Bar Commission but has directed that the Bar President-elect will be elected by the entire Bar membership in a popular election. The President-elect will then serve as President. The retention election implemented in 1991 has been eliminated.

To implement the new process, the Bar Commission adopted amendments to the Bar Bylaws and proposed an amendment to the Rules for Integration in its meeting on January 26, 2001. A petition is being submitted to the Court for adoption of the revised Rule, and for confirmation of the revised Bylaws.

This new direct election process will be implemented this year for the presidential term July 1, 2002 - June 30, 2003. Highlights of the process are:

• **The Commission will annually nominate two lawyers in good standing to run for President-elect.** Commissioners may announce their intention to seek the office, or suggest the name of any lawyer on active status and in good standing to run. Nomination will occur this year at the Commission Meeting in St. George on March 15, 2001. Two Commissioners have indicated their desire to be nominated by the Commission.

*** All active members of the Bar, including out of state members, are eligible to vote for the President-elect.**

*** The election for President-elect will be conducted concurrently with the election of Commissioners.** Ballots for the President-elect election and for Commissioner elections will be mailed in early April and counted early in May.

You should expect to see a message from each nominee for Bar office with biographical information and photograph in

the April issue of the *Utah Bar Journal* and enclosed with the election ballots which will be sent out in early April.

Lawyers Helping Lawyers Becomes Fully Independent

The Lawyers Helping Lawyers Committee, which provides assistance to lawyers with stress, substance abuse or various other impairments, became convinced over the past year that they will reach more lawyers if they stand completely independent of the Bar. For years this committee has had unique confidentiality protection under Supreme Court rules. No one who contacts the program will ever be disclosed to the Office of Professional Conduct. OPC, however, is permitted to refer lawyers into the program, to help remedy root sources of problems. The Committee has had a remarkable record of helping lawyers by making appropriate referral for rehabilitation or dependency assistance. But now the program will be its own 501 (c)(3) corporation, with part time staff of its own. This will inspire even more confidence and hopefully elevate its visibility.

Lawyers Helping Lawyers still needs volunteers, and it still takes experienced lawyers and law office staff to help a lawyer in distress. If you can help in any way, please contact Richard Dibblee at 801 297-7029 or rdibblee@utahbar.org. If you need help, call the digital pager "Helpline" 801 219-8220 to leave a voice or numeric message.

An Increasingly Violent Profession

by Stephen Kelson

I. Introduction

On August 20, 1986, Patrick Sherrill, a full-time substitute postal carrier, entered the Edmond Post Office in Oklahoma and, in ten minutes, killed fourteen coworkers and injured six others.[1] As a result of that incident, America became acutely aware of the growing problem of workplace violence. As researchers have noted, "[w]hile there had been a small number of limited cases, workers basically vented their anger and frustration in non-violent ways and workplaces were generally free from the threats of intruders. Now, and perhaps permanently, violence has become commonplace."[2] Since the Edmond Post Office incident, serious cases of workplace violence have occurred throughout the United States, touching nearly all professions in one way or another, and have even affected our school system.

Although few Utah attorneys consider violence in the legal profession to be a problem worthy of their attention, violence against the legal profession, as a whole, increased nationwide throughout the 1980's and 1990's. Although the legal profession in Utah has not suffered the same level of violence as has been experienced in many other states, Utah lawyers still face their own dangers. Violence can come from clients, opposing parties, and interested parties, in any field of the legal profession, at anyplace, and at anytime.

II. Studies of Violence Against the Legal Profession

The legal profession has not gone without its own severe problems of violence. If you are working in the legal profession, whether for a city, county or state government, small or large firm, in-house counsel, or in private practice, the potential for work-related violence is an issue that must be addressed. Whereas, violent crimes continually declined during the 1990's, violence against the legal profession has been on the increase.[3] Although no one has attempted to make a complete and detailed study of violence in the legal profession, some informative studies do exist.

In Frederick S. Calhoun's *Hunters and Howlers: Threats and Violence Against Federal Judicial Officials in the United States*, the author uses statistics that were gathered by the U.S. Marshals Service, to provide the most thorough existing study of violence in the legal profession.[4] Although the study only examines violence against federal judicial officials, it provides the legal profession with a telling tale. From October 1, 1980, through September 30, 1993, a total of three thousand and ninety-six inappropriate communications/threats and assaults were reportedly made against federal judicial officials. This was an average of two hundred and thirty-eight inappropriate communications/threats and assaults per year.[5] In comparison, seven hundred and ten inappropriate communications/threats were reported by the U.S. Marshals Service in the twelve months ending in 1998[6] and four hundred and ninety-seven in 1999,[7] totaling one thousand, two hundred and seven inappropriate communications/threats and assaults in only a two year period. Furthermore, of the four federal judges killed over the last two centuries, two occurred in the past thirteen years.[8] Admittedly, the U.S. Marshals Service's statistics are not a complete database, in that it is uncertain what percentage of threats and assaults have actually been reported. However, this study does show that incidents of violence against the legal profession at the federal level are increasing.[9]

Although no detailed study of violence against the judiciary or legal profession has been made at the state or local level, few people would dispute that the amount of violence is phenomenally higher than that experienced at the federal level.[10] The problems that disrupt state and local courts are far more serious and of more frequent occurrence than anything the federal courts face.[11]

The results of an informal 1997 fax survey of members of the ABA Section of Family Law, revealed that sixty percent of the two hundred and fifty-three respondents had been threatened by an opposing party in a case, and seventeen percent reported having been threatened by their own client.[12] Twelve percent reported having been victims of violence at the hands of either a client or an opposing party at least once.[13] Still, only one of four respondents said that they had taken any special precautions to ensure

their own safety.[14] Members of the Utah Bar, as well as all members of the American Bar Association, need to understand that the potential for violence exists and should not be ignored.

III. A Survey of the Davis County Bar Association

In December 2000, a survey, entitled; *Violence in the Utah Legal Profession*, was sent to one hundred and sixty-one members of the Davis County Bar Association. One hundred and thirty members, representing eighty-one percent of the Davis County Bar, responded to the survey. Thirteen percent reported having been physically assaulted at least once. Fifty-nine percent reported having been threatened at least once by a client, opposing party, or other interested persons in a litigation. Forty-one percent of those threatened, considered it serious enough to report to the police. Although these statistics do not necessarily represent the entire state, or what might be found in other Utah bar associations, they do show that violence against lawyers in the Utah legal profession is not as uncommon as one might have thought.

A. Violent Clients

Violence against the legal profession can come from parties in litigation and other participants who become involved in a case. Of the ninety-four incidents of violence reported in the Davis County Bar Association survey, twelve incidents were perpetrated against lawyers by their own clients. For example, following a criminal sentencing, one lawyer's client assaulted him in the court hallway. Although one Davis County attorney took a new client, reopened his divorce case, and won him more money, the client was still unhappy and repeatedly threatened the attorney. In spite of winning a civil action, another client sent a threatening letter to his lawyer, signed in his own blood.

In the same study, sixty-nine incidents of violence were perpetrated against lawyers by the opposing party in a case. In one incident, a man in a domestic matter became angry when his wife's lawyer wouldn't dismiss the case and attacked the lawyer in his office. Following a juvenile case that concerned three counts of felony aggravated assault, the minor's mother assaulted the prosecutor. In November of 2000, one prosecutor received a letter from the Utah State Prison stating that when the prisoner was released, he would kill the prosecutor, his family, and his friends. One lawyer was warned by a child evaluator that the husband in a divorce case was planning to kill him. Yet another member of the Davis County Bar reported that he had been threatened by five different people. Some threatened him more than once, and one man who is now in federal prison, has threatened him more than twenty times. Interestingly enough, the survey also revealed that three assaults and one threat were perpetrated by opposing counsel.

B. "At Risk" Areas of the Profession

Lawyers are in a profession that normally requires them to deal with conflict on a daily basis, and for that reason the occurrence of violence is always a possibility. The Davis County Bar Association survey points out that violence occurs in numerous areas of the profession; however, the majority of incidents involved criminal cases and family disputes. As reported by Pamela Horn, a Kansas Bar Assistant and Director of Membership;

> The most volatile area appears to be the domestic forum. The types of conflicts engendered by divorces, child custody disputes, termination of parental rights, and other highly charged emotional circumstances create a particularly fertile environment for potential violence to occur.[15]

Horn does not identify the domestic forum as the sole area where lawyers are at risk of violence.[16] Violence is prevalent in employment, civil cases, and criminal law as well.[17]

The Davis County Bar Association survey revealed that violence in Utah also occurs in the areas of real estate, medical malpractice, personal injury, collections and bankruptcy. Collected articles from across the United States corroborate the results of this survey and show that violence has touched numerous fields of the legal profession. For example, in Louisiana, a client shot and killed the attorney who was representing him in a job-related injury.[18] In Florida, a judge was gunned down following an alimony hearing.[19] In a sexual assault case, a defendant attempted to hire someone to kill the victim and his attorney.[20] A man involved in a loan dispute in Chicago shot and killed his lawyer.[21] A man pulled a gun in a law office and began shooting due to his frustration in a bank account and property dispute.[22] An attorney who took on child murder and civil right cases was killed as he walked to court.[23] In New York, a man who was awaiting charges of stock fraud conspired to murder a Manhattan judge.[24] Such incidents are becoming more common with each passing year.

C. Where Attacks Occur

No area in the life of a member of the legal profession is left untouched. It is perhaps for this reason that no formal study has been made which focuses on violence against lawyers. It must be kept in mind that the workplace of an attorney is not necessarily just the office. A lawyer might travel to visit clients, investigate facts at the scene of events, take depositions at many locations, and attend various courts. All of these areas could be

target locations. Due to the nature of the profession, a lawyer could become a victim of violence at anyplace at anytime.

Although it seems hard to believe, the courtroom is one of the most dangerous places for lawyers. Securing the courtroom from violent outbursts has been a problem throughout the 1990's, and there still is no easy solution.[25] Because no agency collects data on a statewide or national basis, it is not known exactly how many incidents occur in courtrooms.[26] The only known attempt to study courtroom violence at the state level was made by Barbara E. Smith for the National Sheriffs' Association. In her report, she studied two hundred and forty-three reported cases of court security violations (from 1989 to 1991) that occurred in the one hundred and ninety courthouses that responded to a nationwide survey.[27] Only three surveys were completed and returned by courts in Utah, one each from Salt Lake, St. George, and Uintah County.[28] The results of this survey revealed that most incidents occurred in the criminal court.[29] Of the two hundred and forty-three security violations, one hundred and seven involved individual attacks that resulted in one hundred and twenty-four injuries. Of the one-hundred and seven attacks, twenty-four percent of the intended victims were judges, five percent were prosecution attorneys and three percent were defense attorneys.[30] Seventy-four percent of the assailants were defendants, eight percent were spectators, four percent were Plaintiffs, six percent had another role in the proceeding, and eight percent had no role at all.[31] Of seventy-five suspects who verbalized a reason to officials for the attack, the most frequently stated were revenge, escape, intimidation, and to influence the court.[32] The 1991 study is very informative, but it only represents twenty-nine states and seventy-seven counties nationwide.

Although only three courthouses in three separate Utah counties responded to the 1991 survey, Utah attorneys and judges should not assume that they are safe. A Weapons Report prepared by court security officers at the Second District Court, Farmington Courthouse, summarized the number of weapons taken at the front door during the month of September 2000.[33] In twenty-two working days, the security officers in Farmington took eight hundred and twenty-nine weapons from individuals. This report included pictures of the different kinds of weapons that have been taken from individuals at the door of the courthouse since the new complex opened in April of 1999. These pictures include an extending club, throwing stars, pen knives, pepper mace, razor blades, pocket knives, cork screws, concealed belt-buckle knives, filed-down wrenches and screw-drivers, and home-made self-defense weapons.

I was surprised by the number of weapons that were taken in Farmington during the month of September 2000, so I contacted court security officials in four Utah courthouses in late October 2000 and asked if they would record the number of weapons voluntarily and involuntarily taken from individuals who entered their courthouses during the week of October 30, 2000 to November 3, 2000. A weapon was defined by court security as "any item that is capable of causing death or serious bodily injury." At the end of that week, the Second District, Farmington Courthouse, counted two hundred and twenty-nine weapons, the Second District, Matheson Courthouse counted four hundred and eighty-six weapons, the Fourth District Court in Provo counted one hundred and eighty-nine weapons, and the Second District Court in Ogden counted one-hundred and forty-nine weapons. In total, one thousand and fifty-three weapons were held at the doors of four Utah courthouses in a five day period. Sargent Skogg, head of the Matheson Courthouse security, noted that it was "a light week" and that several judges did not hold court that week. Security at the Ogden Courthouse also counted the kinds of weapons they took at the door from October 30, 2000 to November 3, 2000. They took seventy-six knives, eight pepper sprays, fifty-four key-chain knives, one can of hair-spray, three umbrellas, four mechanic tools, and three pairs of scissors.

The survey of members of the Davis County Bar Association supports the premise that no area of a lawyer's life is untouched. Utah lawyers have been subject to violence in the courtroom, courthouse hallways, parking lots, in their own offices, and even at home. Their experiences are not uncommon to those of other lawyers around the country. For example, in Washington, a defendant punched one of his attorneys unconscious in court.[34] In Alaska, a sixty-nine year old woman who was supporting herself on two canes, entered the office of the lawyer who was representing the opposing insurance company and shot him in the back with a handgun.[35] Violence against attorneys also occurs beyond the courtroom or office. In Tennessee, a lawyer was shot six times on the courthouse lawn as he was on his way to the parking lot.[36] In another situation, a lawyer was killed during a court deposition in Fort Lauderdale.[37] An Eleventh Circuit Judge was killed by a mail bomb that was delivered to his home.[38]

IV. Conclusion

Violence in the legal profession can come from both sides of any given case and reach nearly all aspects of a lawyer's life. Recognizing that the danger exists is the first step for lawyers to

deal with the problem of violence in the profession. Just because there have been relatively few incidents of violence in the Utah legal profession reported in the news, and only one known shooting at a Utah courthouse, it does not mean that violence is not occurring. It is easy to think "it won't happen to me," but the reality is that violent crime in the legal profession is on the increase and may happen in your own workplace. Members of the legal profession in Utah need to address the issue of rising workplace violence and determine what can be done to prevent it from happening to them.

[1] Michael D. Kelleher, Profiling the Lethal Employee: Case Studies of Violence in the Workplace 31 (1997).

[2] *Id.* at 32.

[3] Whereas, there is no system for reporting incidents involving violent threats and attacks in the American Bar Association, the general sense is that violence against lawyers is indeed on the increase. Margret Brady, *Lawyers as Victims: While There are no Recorded Statistics, Violence Against the Legal Profession Appears to be on the Upswing*, Fin Post, Jan 10, 1998, at 24.

[4] Frederick S. Calhoun, Hunters and Howlers: Threats and Violence Against Federal Judicial Official in the United States, 1789-1993 (U.S. Marshals Service, 1998).

[5] *Id.* at 51.

[6] Kim Smith, *Threat Investigator Works to Keep Judges from Harm*, Las Vegas Sun, Aug 10, 1999 (visited Nov. 24, 2000) <http://www.lasvegassun.com/sunbin/...0/509159941.html>.

[7] Andrew Wolfson, Judges, Prosecutors Feel Vulnerable: Capps Killing Illustrates Perils they Face at Work, Home, The Courier-Journal Local News, Jun 13, 2000 (visited Nov. 24, 2000) <http://www.courier-journal.com/localnews/2000/0006/13/000613fear.html>.

[8] Calhoun, *supra* note 6, at 45 (discussing the murders of Judge Richard Daronco of the Southern District of New York, on May 21, 1988, and Judge Robert S. Vance, of the Eleventh Circuit Court of Appeals, in December of 1989).

[9] For additional information from the U.S. Marshals Service, *see* <http://www.usdoj.gov/marshals/>.

[10] Calhoun, *supra* note 6, at 41.

[11] *Id.* at 29.

[12] Kelly McCurry, *Family Lawyers Face Threats, Violence, Survey Says*, Trial, Feb. 1998, at 91.

[13] *Lawyers in Harm's Way*, 84 A.B.A.J. 93.

[14] *Id.*

[15] Pamela Horn, *Violence Against Lawyers*, 63-Aug. J. Kan. B.A. 6 (1994).

[16] *Id.*

[17] *Id.* at 6.

[18] *Client Kills Lawyer*, 69 A.B.A.J., 1622 (Nov. 1983).

[19] *Panhandle Mourns 3 Slain in Courthouse*, The Miami Herald, Jul. 30, 1987.

[20] *Man Accused of Plot to Kill Victim, Lawyer*, Milwaukee J. & Sentinel, Dec. 2, 1995, at A8.

[21] *Client Charged in Lawyer's Death*, Chic. Trib., May 2, 1996.

[22] Neil Steinber, *Man Charged in 2 Slaying at Loop Office*, Chi. Sun-Times, Feb. 28, 1994, at 11.

[23] *Arrest made in Lawyer Shooting*, Albuquerque Trib., Mar. 6, 2000 (visited Nov. 29, 2000) <www.abqtrib.com/archives/news 00/030700_vigil.shtml>.

[24] *Man in Stock Fraud Case is Charged with Plotting to Kill Judge Who Raised His Bail*, N.Y. Times, Aug. 10, 2000.

[25] Douglas P. Shuit, *Deputies Still Best Defense Against Violence in Court; Crime: Despite Screening Devices and Inmate Restraints, Outbreaks Happen. It Falls on Bailiffs to Restore Order*, Los Angeles Times, Dec. 28, 1998 WL 04583035.

[26] *Id.*

[27] William H. Petersen and Barbara E. Smith, Ph.D., Court Security: Training Guidelines and Curricula, National Sheriff's Association (May, 1991), Barbara E. Smith, Ph.D., Appendix: Profiling Court Security Violations: A Guide for Trainers and Court Security Personnel: A Report to the National Sheriff's Association and the State Justice Institute (January, 1991).

[28] *Id.* at 20.

[29] *Id.* at 5.

[30] *Id.* at 12.

[31] *Id.* at 9.

[32] *Id.* at 9-10.

[33] Davis County Sheriff: Court Security: Weapons Report: September 2000 (Preparation and Cooperative Effort of Court Security Officers) (Unpublished).

[34] *Shifflet Defendant Attacks his Lawyer Knocks Attorney Unconscious in Court*, Washington Times, Oct. 20, 2000 WL 2000294018.

[35] *Woman, 69, Gets year for Shooting Lawyer*, Anchorage Daily News, Feb. 18, 1999, at B2.

[36] *Lawyer Shot 6 Times Resumes Work; Man Facing Divorce Held*, Com. Appeal (Memphis, TN), Aug. 19, 1997, at B2.

[37] *Two Shot to Death in Court Office*, Peoria J. Star, May 28, 1994, at A2.

[38] *Mail Bomber Convicted*, *supra* note 30, at A21.

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The Exaggerated Death of the Subchapter S Corporation – Part II

by Matthew V. Hess

This is the second of a two-part series discussing current issues affecting Subchapter S of the Internal Revenue Code of 1986. This second part discusses certain Subchapter S issues that are oft-overlooked by business and estate planning counsel. Part One discussed the added flexibility given the Subchapter S corporation by Congress in 1996.

IV. THE TANGLED WEB OF TRUSTS AS S CORPORATION SHAREHOLDERS - TAX TRAPS FOR THE UNWARY

The following scenario illustrates one of the most common mistakes made by attorneys drafting wills and trusts in the United States today.

> In 1990 Red, White and Blue incorporated their construction business as RWB Construction, Inc. The corporation filed an S election and passed corporate bylaws. Business was good and the corporation earned annual income of $500,000. No shareholder's agreement was executed, however. In 1995 Red retained an attorney to prepare his estate plan, which included a revocable trust into which Red's S corporation shares were transferred. The trust provided for discretionary distributions of income to Red's five sons, with outright distribution of 1/5 of the trust principal when each son reaches age 25. White and Blue were unaware the shares were transferred to Red's trust. In 1996 Red died and the trust became irrevocable. Following an IRS audit in 2000, the IRS found that the corporation's S election had terminated in 1998 because Red's trust was not a valid S corporation shareholder. Accordingly, the corporation became a taxable C corporation in 1998, creating a tax deficiency of $510,000 for the 1998-2000 tax years. White and Blue were shocked by the huge tax bill. Both White and Blue, along with the trustee of Red's trust, are angry at Red's estate planning lawyer, and are considering a malpractice suit.

A Subchapter S corporation may have as a shareholder an individual (except a nonresident alien), an estate, certain tax-exempt organizations, and certain trusts. Ineligible shareholders include partnerships, LLCs, certain trusts, and IRAs. Among the challenges in planning for Subchapter S corporations is preventing the transfer of shares to ineligible shareholders, which terminates the corporation's S election. And, termination of the S election subjects a corporation to income tax at federal rates up to 35 percent. Trusts are the most troublesome S corporation shareholders.

Five types of trusts may be eligible S corporation shareholders: grantor trusts, section 678 deemed owner trusts, testamentary trusts (for the two-year period following the grantor's death only), Electing Small Business Trusts ("ESBT"), and Qualified Subchapter S Trusts ("QSST"). Trusts are a ubiquitous estate planning vehicle, and it is common for such trusts to hold S corporation shares. However, the Subchapter S requirements concerning trusts as S corporation shareholders are exacting. This area is truly a minefield, and estate planning counsel must exercise extreme caution when drafting trusts that hold, or may hold, S corporation shares.

This discussion focuses primarily on the problematic trusts: the ESBT and QSST.

A. The Electing Small Business Trust.

The '96 Act created an entirely new kind of trust for S corporation ownership, the ESBT.[1] The ESBT was created as an alternative to the QSST, whose inflexible requirements make it unattractive for many estate plans. To qualify as an ESBT: (1) an election must be filed, (2) beneficial interests in the trust must have been acquired in the right way, and (3) the trust must have the right beneficiaries.

First, the election to treat a trust as an ESBT is filed by the trustee, and the beneficiaries need not consent to the election.

MATTHEW V. HESS has practiced tax law in both Washington, D.C. and Los Angeles. He earned a J.D. from the University of Utah, where he was a member of the Utah Law Review, and an LL.M. from Georgetown University. He currently practices with the Armstrong Law Offices, P.C. in Salt Lake City, where he practices in the areas of federal and state taxation, business and estate planning, non-profit organizations and real estate transactions.

The trustee makes the ESBT election by filing with the IRS Service Center with which the corporation files its income tax return a statement that: (a) contains the name, address, and TIN of all potential current beneficiaries, the trust, and the corporation; (b) identifies the election as one made pursuant to section 1361(e)(3); (c) specifies the date on which the election is to be effective (not more than two months and 15 days before the filing date); (d) specifies the date(s) on which shares of the corporation were transferred to the trust; and (e) represents that all potential current beneficiaries meet the S corporation shareholder requirements and that the trust meets the ESBT requirements.

Second, the right way for beneficiaries to have acquired their interests in an ESBT is by gift or bequest. No interest in the trust may be acquired by purchase. In contrast, the trust may itself acquire S corporation shares by purchase.

Finally, the right beneficiaries for an ESBT are only individuals, estates, and certain tax-exempt organizations.

The advantage of an ESBT over a QSST is that the ESBT permits the trustee to "spray" income among the trust's beneficiaries (i.e., direct more or less income to one beneficiary at the expense of the others), and more than one person may be a current income beneficiary. Also in contrast to the QSST, the ESBT allows the trustee to accumulate rather than currently distribute income. This flexibility comes at a price, however. The price is trust income is taxed at the trust level, prior to distribution to beneficiaries.[2] *Herein lies the trap for the unwary.* The income tax rates for trusts are highly graduated, reaching the top tax bracket of 39.6 percent at annual taxable income of only $8,900. In contrast, individuals do not hit the top tax bracket until their taxable income reaches $297,300 (single or MFJ).

If the trust's beneficiaries are not currently taxed at the maximum tax rate, and do not expect to be so in the future, it is economically more advantageous to have the individual beneficiaries rather than the trust pay the tax on trust income. The QSST allows such pre-tax pass-through of income to the beneficiaries. The ESBT does not.

Accordingly, upon the creation of a trust that is expected to hold S corporation shares, the trustor must be advised as to the differing tax consequences of qualifying the trust as either a QSST or ESBT, if either is potentially applicable. The failure to so advise a client may expose estate planning counsel to malpractice liability. Moreover, it is advisable for the trust declaration to contain explicit directives to the trustee concerning the trustor's intent to qualify as either an ESBT or a QSST. Of course, the substantive provisions of the trust declaration control whether a trust complies with the ESBT or QSST requirements, respectively; but a statement of the intended qualification will prove extremely helpful in the event future reformation of the trust is needed to bring the trust into compliance with either the ESBT or QSST requirements.

Recently issued proposed regulations contain attractive rules on the taxation of ESBTs. For federal tax purposes, an ESBT may consist of an S portion, a non-S portion, and in some cases a grantor portion. Items of income, deduction, and credit attributable to a portion of an ESBT treated as owned by a person under the grantor trust rules would be taken into account on that person's individual income tax return under the grantor trust rules. Other items may be attributed to either S portion, which includes the S corporation stock, or the non-S portion, which includes all other trust assets. The S portion would be subject to tax under the special ESBT tax rules (i.e., taxation at the trust level), while the non-S portion is subject to the normal trust taxation rules (i.e., possibility of taxation at the beneficiary level).[3]

The proposed regulations appear to offer significant flexibility in drafting trusts intended to qualify as ESBTs. Most significant is the ability to draft trusts that provide for mandatory distributions of income where the income is not attributable to S corporation shares. Special drafting care should be exercised to give trustees specific directions as to the accumulation and distribution of income from the S and non-S portions of an ESBT.

B. The Qualified Subchapter S Trust.

The QSST provisions have existed for many years. Nevertheless, the QSST strictures continue to befuddle many taxpayers and their counsel. A trust's failure to meet the QSST requirements is perhaps the most common Subchapter S tax trap. The price of a trust's failure to meet the QSST requirements is termination of the corporation's S election, making the corporation a taxable C corporation, and making shareholders grumpy. If this occurs, and counsel is at fault because the trust was not drafted in conformity with the QSST requirements, the additional corporate-level tax (and therefore the attorney's malpractice exposure) can be substantial, depending on the corporation's level of taxable income. Accordingly, extreme caution must be exercised when planning estates and drafting trusts intended to be QSSTs.

To qualify as a QSST, the trust instrument must require that: (a) during the life of the current income beneficiary, there be only one current income beneficiary of the trust; (b) any corpus

distributed during the life of the current income beneficiary be distributed only to such beneficiary; (c) the beneficial interest of the current income beneficiary must terminate upon the earlier of that beneficiary's death or the trust's termination; (d) upon the trust's termination during the life of the current income beneficiary, the trust must distribute all its assets to such beneficiary; and (e) all trust income must be distributed currently (at least annually) to only one individual who is a citizen or resident of the United States.[4]

The election to treat a trust as a QSST must be filed with the appropriate IRS Service Center. The current income beneficiary must consent to the election. Failure to file the election usually results in termination of the corporation's S election. Failure to file QSST elections is not uncommon because many taxpayers and their counsel are unaware of the filing requirement. In this situation, however, inadvertent termination relief may be granted, as described below.

The most frequent violations of the QSST rules are the scrivener's failure to provide in the trust instrument for only one current income beneficiary (which is the trap into which Red's attorney fell in the RWB Construction, Inc. illustration above), or the trustee's actual failure to distribute all income to that beneficiary. Strict compliance with the QSST rules prohibits sprinkling powers, discretionary distributions to anyone other than the current income beneficiary, and even use of trust income and principal to pay funeral expenses and death taxes of the deceased trustor.

Of course, the typical trustor wants there to be more than one beneficiary of his trust. A way to circumvent the single-beneficiary rule is for the trust instrument to divide the trust into "substantially separate and independent shares," one for each of the multiple beneficiaries, as if there were a separate trust for each beneficiary.[5] This avoids the cumbersome formality of actually creating separate trusts for each beneficiary. Distributions from the separate shares must be made as if separate trusts had been created for each beneficiary. The trust instrument should strictly allocate a fixed percentage of total trust income, and a corresponding percentage of principal, to each separate share. The trust instrument should also provide that the trustee has no discretion to vary distributions from those fixed percentages.

Another way to bypass the single-beneficiary rule is to make the trust a qualified S corporation shareholder pursuant to the deemed owner rules. Section 678(a)(1) makes clear that a beneficiary with a currently exercisable Crummey power will be treated as owner with respect to the portion of the trust over which the Crummey power is exercisable. If, collectively, all income beneficiaries are deemed owners of the entire trust, the trust will qualify as an S corporation shareholder, even where the QSST requirements are not satisfied.

A Crummey power is the power given a beneficiary to withdraw stated amounts from the trust within a given period. Of course, the trustor hopes the beneficiary will elect not to exercise the Crummey power, though the trustor assumes the risk the beneficiary will take the trust money and run. If the Crummey power lapses due to non-exercise, the former Crummey power holder will continue, pursuant to section 678(a)(2), to be treated as owner of that portion of the trust over which the Crummey power applied.

> For example, suppose beneficiaries A, B, and C, all individuals and U.S. citizens, are the sole beneficiaries of a testamentary trust holding 300 S corporation shares as its sole asset. The trust allows for the accumulation of income, making the trust ineligible for the QSST election. When the trust was funded each beneficiary was given a Crummey power to withdraw 100 shares from the trust, such power to lapse after 30 days. A exercised his power and took the shares free of trust, but B and C allowed their powers to lapse. A became a qualified S corporation shareholder in his own right, while B and C are treated as owners of the entire trust (i.e., the remaining corpus of 200 shares). Accordingly, the trust is treated as a section 678(a)(2) deemed owner trust that is a qualified S corporation shareholder.

If successive or contingent beneficiaries are named by the trust instrument, to continue to qualify the trust as a qualified S corporation shareholder, each beneficiary must be given a Crummey power at the time his present interests become vested.

C. Drafting Tips and Practice Recommendations

To avoid the disastrous results heaped on RWB Construction, Inc. in the illustration above, an S corporation and its counsel should constantly monitor the corporation's shareholders to determine whether their status may terminate the corporation's S election. Moreover, minority and disgruntled shareholders can wreak havoc by intentionally terminating the corporation's S election. For those reasons, shareholder agreements are strongly recommended. Such agreements should: (a) absolutely prohibit the transfer of shares to a person/entity that is not a qualified shareholder pursuant to Subchapter S, (b) grant

injunctive relief for violations of the former, (c) require that all shareholders take all reasonable actions to ensure the corporation strictly complies with Subchapter S, (d) grant the corporation the right to examine trust agreements where trusts hold shares, and (e) require that the corporation receive a copy of any QSST election, as described below.

To follow is an extract of sample language that might be appropriate for inclusion in an S corporation shareholder's agreement or buy-sell agreement.

> Each Shareholder shall prepare and execute a Will or a Codicil to his existing Will, which shall contain a provision substantially as follows:
>
> > "If at the time of my death, I own an interest in shares of ABC, Inc., a Utah corporation, or any corporation which has succeeded to the assets and business of that corporation, and such corporation has in force a valid election under Subchapter S of the Internal Revenue Code of 1986, or the corresponding provisions of future United States Internal Revenue laws, it is my desire that such Subchapter S election continue following my death. Therefore, I direct my Personal Representative to not consent to revocation of such S election; I further direct my Personal Representative take such other steps as may be required by the Internal Revenue Code or regulations promulgated thereunder, to continue in effect that Subchapter S election."
>
> So long as the Corporation's election under Subchapter S continues in effect, all succeeding wills and codicils executed by each Shareholder shall contain such a provision, or one of substantially identical substance.

D. Inadvertent Termination Relief and Trust Reformation

A trust's failure to meet either the QSST, ESBT or any other requirement of a qualified Subchapter S shareholder will cause the termination of the corporation's S election.[6] Such terminations make shareholders grumpy because they convert a flow-through entity into a taxable one. In certain instances, however, it is possible to put the horse back in the barn because the Service grants liberal relief from inadvertent termination of an S election.[7]

Inadvertent termination relief may be granted if: (1) the corporation previously made a valid S election; (2) the termination of that election was inadvertent; (3) within a reasonable time after discovery of the termination the corporation took steps to correct the problem that lead to the termination; and (4) the corporation and shareholders agree to any adjustments the Service may require with respect to the termination period.[8]

The fact that the terminating event was not reasonably within the control of the corporation and was not part of a plan to terminate the election, or the fact that the event took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event, tends to establish that the termination was inadvertent. Accordingly, a corporation having a trust as a shareholder is an ideal candidate for inadvertent termination relief where the trust fails to be a qualified S corporation shareholder.

The request for inadvertent termination relief is made in the form of a request for a private letter ruling from the IRS National Office. The ruling request must contain a detailed explanation of the event causing termination, when and how the event was discovered, and the steps taken to correct the deficiency. The ruling request must precisely follow the form and content outlined in Revenue Procedure 2001-1 (or the first numbered Rev. Proc. of each subsequent year). The filing fee for that ruling request is currently $5,000 (a reduced user fee of $500 is available where the trust's and corporation's annual gross income is less than $1 million). That fee, when coupled with substantial attorney fees for preparing the ruling request make inadvertent termination relief a costly fix. That cost, however, often pales in comparison to the dual layer of taxation associated with becoming a C corporation.

The Service has discretion to grant inadvertent termination relief retroactive to all years affected by the termination, in which case the corporation is treated as if its election never terminated. Alternatively, relief may be granted only for the period starting with the date on which the corporation again became eligible for Subchapter S treatment, in which case the corporation is treated as a C corporation during the period for which the corporation was not eligible to be an S corporation. As to any period for which inadvertent termination relief does not apply, remember that the statute of limitations on assessment of any corporate tax which is found to be due will run from the date the corporation files its S corporation income tax return (Form 1120S), even though a C corporation income tax return (Form 1120) should have been filed for the termination years. This generally means only the last three years' deficiencies may be assessed by the IRS. Tax deficiencies usually cannot be assessed against closed years.

Rosemary J. Beless Receives Distinguished Service Award

Rosemary J. Beless has been selected by the Energy, Natural Resources and Environmental Law Section of the Utah State Bar to receive its Distinguished Service Award for excellence in the practice of natural resources and environmental law for the year 2000.

Beless, a shareholder in the Salt Lake City law firm of Fabian & Clendenin, has practiced environmental and natural resources law for the past twenty years, focusing on environmental, water rights, mining, oil and gas, public land, and condemnation law.

Beless was named Lawyer of the Year by the Section in 1990 and elected President of the Section in 1994. She is a Director of the Utah Mining Association and holds Ph.D. and J.D. degrees from the University of Utah, where she served as senior editor of the *Utah Law Review*.

Beless has represented clients throughout the United States on water quality, air quality, and hazardous/solid waste issues and has successfully obtained insurance coverage for remediation costs at a number of contaminated sites. She has provided the legal support for redevelopment of brownfields sites for new land uses. Ms. Beless specializes in complex water rights title issues and water rights administrative proceedings before the Utah State Engineer. She represented the prevailing parties in the landmark Utah case of *Cowling v. Board of Oil, Gas & Mining*, an oil and gas case defining where the law of capture ends and the law of correlative rights begins in Utah, and she is currently negotiating an assembled land exchange with the Bureau of Land Management.

Inadvertent terminations are not uncommon for trusts intended to be QSSTs in two instances: (a) where the trust instrument fails to prohibit distributions of income or principal to someone other than the current income beneficiary; and (b) where a QSST election was never filed due to ignorance of the filing requirement. In the former case an irrevocable trust may generally be reformed by Utah courts with the consent of the trustee and all current and contingent beneficiaries. Evidence of the trustor's intention that the trust be a qualified S corporation shareholder is also helpful.

The tax regulations indicate that the terms of the trust must satisfy the QSST requirements as of the earlier of the QSST election date or the effective date of the election. A strict reading of the regulations suggests that a reformed trust will not be a valid QSST until the date the reformation order is signed, even if the court's order of reformation indicates the reformation is effective retroactive to either the date the trust was funded or the date the trust failed to meet the QSST requirements. In recent practice, however, the Service has informally adopted a "go thy way and sin no more" approach and liberally granted inadvertent termination relief retroactive to all years for which the trust reformation is effective pursuant to the court's order. In the past year, no rulings have failed to grant inadvertent termination relief.

V. CONCLUSION

In this world of the universal acceptance of the LLC and check-the-box tax classification, the Subchapter S corporation is less desirable that ever before. Nevertheless, legislative additions to Subchapter S such as the QSub and ESBT have helped the S corporation remain a viable and popular business entity. Accordingly, business and estate planning counsel must remain vigilant to both the opportunities and tax traps associated with Subchapter S.

[1] The Small Business Job Protection Act of 1996, P.L. 104-188, § 1302(c).

[2] IRC § 641(c).

[3] Prop. Reg. § 1.641(c)-1.

[4] IRC § 1361(d)(3).

[5] IRC § 1361(d)(3), 663(c).

[6] IRC § 1362(d)(2).

[7] IRC § 1362(f).

[8] Treas. Reg. § 1.1362-4(a).

A Cash Flow Primer for Attorneys

by Steven Chambers

Many years ago in law school I took a class on law firm management. I remember very little about the class other than it was drilled into us that unless we kept accurate billing records, we had no hope of ever being paid. The lesson I learned was that if you keep time records and send out monthly statements, the money will soon flow in. It didn't take long in practice to discover that there is a little bit more to running a financially successful law practice than simply keeping records and sending out bills.

This article is not about how to collect from slow paying clients, nor is it about how to invest the fruits of your labors, nor how to manage your 401(k). What this article does try to do is explain how managing cash flow can help you sleep better at night, and give some tips on how to improve cash flow.

How to Go Broke While Making a Profit

Before beginning, we have to lay some foundation for the non-accountant types. First is the concept of accrual basis accounting. Most businesses, and banks, especially, use accrual basis accounting. Accrual basis means that once you have done everything necessary to earn a fee, that fee is booked as income, whether or not you have actually received the cash. Similarly, when an obligation is incurred, it is booked as an expense, whether or not you actually have written the check. Contrasted to this is cash basis accounting, which says that income isn't recognized until it is received, and expenses aren't incurred until they are paid. As an example, assume your firm uses accrual basis accounting. You have completed a matter for a client and sent a bill for $2,500 on July 1. For the month of July, you would show that $2,500 as income, even though you may not receive it for some time (or never). Similarly, suppose in July you purchased supplies on account for $1,000. That $1,000 becomes an expense for July even though you may not actually pay it until August or later. If you use cash basis accounting, you would not book the $2,500 fee until it was actually received, nor would the expense for supplies be incurred until it was paid.

You can see that the choice of accounting methods has a substantial impact on a firm's income statement. In fact, it is possible to go broke while making a profit! Here's how.

Consider the firm of Bass, Walleye and Pike, a small firm of five attorneys, three partners and two associates. The firm has a support staff of four, a receptionist, two secretaries and one paralegal. In 1998, BW&P typically billed about $85,000 a month. The firm has ongoing monthly expenses of about $78,000.

On an accrual basis, the firm will show a net profit of nearly $7,000 per month, or about 8.2% of billings. Yet the three partners do not feel they are being fairly compensated, and, indeed, they have a valid complaint. Look at their 1998 income statement (*Table 1*). The expense for *Salaries* is the amount paid to the two associates and support staff, plus a modest draw for the partners (less than the associates' salaries); it does not include partners' compensation in the form of distributions. The partners each receive an equal share of the annual net income, a paltry $89,971, or less than $30,000 per partner, assuming all of net income was distributed.

At the partners' meeting held in February, 1999, Bass, Walleye and Pike decided to make a concentrated effort to increase their profitability by the end of the current year. They believed that by increasing advertising, aggressively seeking additional business, and maybe even adding staff they could drastically improve their bottom line. The results of their efforts are shown in *Table 1* under the column *1999*. By December 31, 1999, billings had increased 55%, from $1,028,866 to $1,601,229. Net income had almost tripled, to $262,962. At the partners' meeting in February, 2000, the three partners congratulated themselves on exceeding their goal. Six months later, in August, the firm was out of business and the partners were facing bankruptcy.[1] What happened?

Bigger is not Always Better

Perhaps you've heard it said that a business failed because "it grew too fast." What does that mean? Isn't growth good? After all, more growth means more billings which means more revenue. Even though we've seen that accounting income doesn't always translate into cash in the bank when it's needed, wouldn't it be better in the long run to have billings as high as possible? At some point that money will be collected and become cash. So what's the problem with growth?

The problem lies in another accounting concept called the balance sheet equation. Most people are familiar with this. The balance sheet equation simply says that assets must equal liabilities plus equity (or net worth as it's sometimes called). The

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balance sheet equation cannot be violated; it has to hold. Thus, if assets increase, there must be a corresponding increase in either liabilities or equity, or both. To see how this can cause problems when coupled with uncontrolled growth, consider the same firm's balance sheets at December 31, 1998 and 1999 (*Table 2)*.

In this example, the balance sheet equation is satisfied. Total assets of $292,595 on December 31, 1998, were offset by total liabilities and equity of $292,595. Over the course of the next year the firm increased its assets by $252,982. At the end of 1999, its accounts receivable increased 38% to $348,413. There was a modest increase of $49,347 in other assets as the firm added equipment to handle the extra work. The increase in assets must be equaled by a similar increase in either liabilities or equity. Consider what this means to the firm. If liabilities increase by $252,982, that means either the firm has borrowed another $252,982, increasing notes payable, or it has increased accounts payable, meaning it is stretching creditors more and more, thereby increasing the likelihood of late payments and pressure from those creditors. On the other hand, the firm could increase its equity. There are only two sources for equity: It can come from external sources (firm members) or equity can increase because of retained earnings (less distributions to firm members). Either way, the increase in billings means less money at year end in the members' pockets. In our example, retained earnings increased, meaning the partners withdrew less money in 1999 than in the prior year and liabilities increased as well. Thus, the firm, while becoming much more profitable actually returned less to its owners, the partners. Rather than solving the cash flow shortage, increased billings ended up putting additional financial stress on the firm.

Does this mean that growth is bad? No, only that *uncontrolled* growth is bad. Properly managed growth is both desirable and necessary for a firm's long term financial success. If a firm has current financial statements (income statement and balance sheet) it can use a formula to calculate the *sustainable growth rate* (sgr), which is a number indicating at what rate a business can grow without incurring financial stress. This formula is given as:

> sgr =Profit margin x Retention ratio x Asset turnover x Asset/equity ratio

The profit margin is net profits/net sales or billings, and was $89,971/$1,028,866 for 1998, which equals .087.

The retention ratio is that portion of net income retained (not distributed to members) by the firm. Let us assume that the firm distributed 50% of its profits in 1998, thus retaining 50%. As more profits are distributed to firm members, the retention ratio drops, as does the sustainable growth rate. This is logical, since more distributions to partners means less retained earnings to support further growth.

Asset turnover is a measure of how efficiently assets are used. Capital intensive businesses, such as manufacturing firms, have low ratios. Service businesses, such as law firms, accounting firms and the like, which have relatively little invested in fixed assets, have higher ratios. Asset turnover is the ratio of total sales to total assets, in this case $1,028,866/$292,595, or 3.52, indicating the firm has relatively low investment in capital assets, as would be expected.

The asset to equity ratio is just that, the ratio of total assets to equity. Here it is $292,595/$102,488, or 2.85.

For this firm, the sustainable growth rate is .087 x .5 x 3.52 x 2.85 = .436, meaning the firm could grow at the rate of 43.6% per year without causing itself financial distress. Between 1998 and 1999, it actually grew at the rate of 55.6% based on 1999 billings vs. 1998 billings, or 12% over what it should have grown.[2] No wonder the firm went out of business shortly thereafter.

If your firm does not have current financial statements, don't feel bad. Only one in ten small businesses prepares financial statements regularly (this includes even a simple budget). Most hurriedly throw one together only when they apply for a loan. If you don't have financial statements, get them. Trying to run a firm without current financial statements is a bit like trying to cross examine a witness without a deposition. It can be done, but you're shooting in the dark.

Cash Flow Management

A closer look at the balance sheets for Bass, Walleye and Pike for December 31, 1998 and 1999, reveals an additional reason for its demise. Note how accounts receivable increased. Clearly, this firm was not doing a good enough job of collecting its accounts. This is a common problem many small businesses face. The company is too busy generating new business to worry about collecting from old customers. At the end of 1998, BW&P had $144,778 in accounts unpaid, or 14% of the year's billings. In 1999, it had 21% of its billings uncollected at year end. Had it kept the ratio to 14%, it would have collected an additional $118,243 over the course of the year, or nearly $10,000 more per month.

Again, though, 1998 is not a good baseline because the firm was in distress even then. A more helpful measure for the firm would be its accounts receivable aging. This is a measure of what portion of its accounts receivable are 30, 60 and 90+ days old. Ideally, all accounts should be collected within 90 days;

accounts over 90 days old are generally considered to be uncollectable. Perhaps BW&P could have better spent some of that increased salary expense on a credit manager.

Assume that the firm bills and collects a relatively equal amount in each of the twelve months of the year. Monthly billings for 1999 are, consequently, approximately $133,435. None of December's work was billed as of December 31, 1999. Therefore, in order to end 1999 with $348,413 in accounts receivable, all of November's $133,435 billings were uncollected, all of October's $133,435 billings were uncollected, and $81,543 of September's billings were uncollected. Since September's billings were based on work done in August and earlier, BW&P ended 1999 without having collected for any work performed in the last third of the year!

Suppose that the firm had hired a credit manager, and this person had gotten clients to pay according to this schedule:

Within 30 days	50%
Within 60 days	40%
Within 90 days	5%
Written off as bad debts	5%

Under this schedule, at December 31, the accounts receivable would consist of 50% of November's billing (because 50% was paid in December); 10% of October's billing (because 50% was paid in November and another 40% was paid in December); and 5% of September's billing (because 50% was paid in October, 40% was paid in November and 5% was paid in December).

November billings outstanding (50%)	$ 66,717
October billings outstanding (10%)	$ 13,343
September billings outstanding (5%)	$ 6,671
Total Accounts Receivable at year end	$ 86,731
Additional cash to firm during 1999	$261,682

It is easy to see that a credit manager would have been worth far more than the salary BW&P would have likely paid.

Watch Key Financial Indicators

We just saw how tracking aging of accounts receivable can be useful. There are many other financial indicators. You may want to consult with an accountant or other financial professional to determine which are most useful for your particular situation. The point is, in order to become successful financially as an attorney, you must have financial statements and know how to use them. Then, you must use them. Don't make the mistake of preparing financial statements annually and then not looking at them until the next year. Review your statements at least monthly. Check on your receivables to see if clients are paying on time. Follow billings to make sure you are growing at the right pace. Look at accounts payable. Late payments are usually indications of underlying problems. Compare the same month in different years. You may think that your firm receives its income fairly evenly throughout the year, but you may be shocked to discover that is not the case at all.

Cull the Unprofitable Clients

Perhaps BW&P's accounts receivable were out of line because it picked deadbeat clients. The 80/20 rule applies to the practice of law just as surely as it applies to other businesses. Simply put, the 80/20 rule says that 80% of a firm's revenue comes from 20% of its customers. Looked at conversely, 80% of your clients account for only 20% of your income. Find those unprofitable clients and get rid of them! Obviously, ethical considerations may prevent you from simply sending them a letter telling them you will no longer represent them, but as soon as the matter you've been retained to handle is completed, urge them to go elsewhere for their future needs.

Not all of the 80% will be deadbeats. One of the tricks you must master is how to determine which of those 80% can be moved into the 20% category (and, similarly, which of the 20% might slip into the other group). Watch for signs of trouble, such as bills not being paid for longer periods of time. And, watch for signs of growth. Are they growing, stagnating or shrinking their business? Get to know your clients' business. Not only will you be able to see potential trouble or potential opportunities in time to do something about them, you will also build a relationship with your clients that can serve as the foundation for much more business in the future.

Conclusion

Cash flow management may be one of the most important things you can master to ensure your financial success. If you don't have the skill, time or inclination to do it yourself, give serious consideration to employing an accountant or someone else who understands cash flow. As you can see from the example posed in this article, increasing billings is not always the answer to cash shortages. Unless you are fond of daily conversations with creditors wanting money, neither is juggling accounts payable. And, unless you want to remain perpetually in debt, bank loans aren't the answer either. The answer lies in cash flow management.

[1]The figures in Tables 1 and 2 are from an actual business that filed bankruptcy in August, 2000. It was not a law firm; however, the numbers are real and unmodified.

[2]The rate of 43.6% is suspect to begin with because, as we noted, the firm was already experiencing financial distress which the partners thought could be remedied simply by increasing billings.

TABLE 1

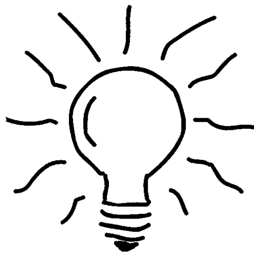
Bass, Walleye and Pike Income Statements

	1998	1999
Billings	$1,028,866	$1,601,229
Rent	$240,500	$240,011
Unreimbursed costs	$180,892	$200,022
Salaries	$251,002	$336,987
Other direct costs	$3,716	$46,282
Total Cost of Services	$676,110	$823,302
Gross Profit	**$352,756**	**$777,927**
General and Administrative		
Library	$31,378	$36,090
Supplies	$30,420	$40,328
Telephone	$23,750	$28,524
Interest	$31,000	$45,000
Taxes	$27,131	$63,474
Depreciation	$17,835	$20,074
Advertising	$75,685	$159,164
Other G & A Expenses	$25,586	$122,311
Total G & A Expenses	$262,785	$514,965
Net Income	**$89,971**	**$262,962**

TABLE 2

Bass, Walleye and Pike Balance Sheets

	1998	1999
Assets		
Current Assets		
Cash	$24,391	$20,099
Accounts Receivable	$144,778	$348,413
Advances Receivable	$17,887	$12,319
Work in Progress	$40,610	$32,459
Library	$16,320	$26,823
Notes receivable	$0	$3,410
Total Current Assets	$243,986	$443,523
Plant & Equipment		
Furniture	$32,903	$30,466
Office equipment and supplies	$17,575	$47,740
Computer equipment	$31,096	$50,693
Other equipment	$0	$4,935
Total Plant & Equip.	$81,574	$133,834
Less Acc. Dep.	$32,965	$46,348
Net Plant & Equip.	$48,609	$87,486
Earnest money deposit	$0	$9,000
Total Assets	**$292,595**	**$540,009**
Liabilities		
Current Liabilities		
Accounts Payable	$17,976	$156,345
Current portion of notes	$31,786	$103,226
Shareholders' loans	$0	$46,469
Total Current Liabilities	$49,762	$306,040
Long Term Liabilities		
Notes payable	$63,573	$0
Shareholders' loans	$76,772	$0
Total long term liabilities	$140,345	$0
Total liabilities	**$190,107**	**$306,040**
Shareholders' Equity		
Common stock	$1,000	$1,000
Retained Earnings	$101,488	$232,969
Total Shareholders' Equity	**$102,488**	**$233,969**
Total Liabilities and Equity	**$292,595**	**$540,009**



Great idea.

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Commission Highlights

During its regularly scheduled meeting January 26, 2001, which was held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Dr. Theresa A. Martinez conducted a racial and cultural diversity training session.
2. The Commission had lunch with the Board of the Minority Bar.
3. The Commission unanimously approved the previously submitted revisions to the Rules Governing the Ethics Advisory Opinion Committee including amendments to Article VII Section (b).
4. Ethics Opinion #01-01 was unanimously approved.
5. Debra Moore gave a report on the Judicial Council meeting.
6. Judge Tyrone E. Medley was nominated for the Raymond S. Uno award and Laura M. Gray was nominated for the Dorathy Merrill Brothers award.
7. Pursuant to a letter from the Utah Supreme Court, the Commission approved the President-elect selection process, with revisions to Article V, Section 12 and Article V, Section 2. One other minor change to subsection 2(c) in the Bylaws was made as follows: A lawyer elected President-elect shall succeed to the office of President and shall *then* serve as President with authority to represent the Bar and preside at all meetings of the Board and the Bar even though the President-elect may not be serving in a term as an elected Commissioner. The Commission also approved applicable policy and procedure changes applicable to new election process.
8. The Commission voted to approve the MDP final report and sent the petition to the Utah Supreme Court

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

Utah State Bar Ethics Advisory Opinion Committee

Opinion No. 01-01

Issued January 26, 2001

Issue: Under the Utah Rules of Professional Conduct, may an attorney representing a client in a divorce case assert a statutory attorney's lien under Utah Code Ann. §78-54-51 against property awarded to the client in the divorce settlement?

Conclusion: First, the invocation of an attorney's lien under Utah Code Ann. §78-51-41 does not require the attorney to meet the requirements of rule 1.8(a) of the Utah Rules of Professional Conduct, which generally governs business transactions between lawyers and their clients. Second, where the Utah courts have not squarely addressed issues concerning the applicability of an attorney's lien on particular types of property awards in domestic-law cases, this Committee does not have the jurisdiction nor the authority to interpret the applicable statute or the holdings of the Utah appellate courts on related issues. Nevertheless, a lawyer is not subject to discipline if she attempts to assert the statutory attorney's lien in a domestic-law situation so long as there continues to be a supportable, good-faith legal basis to do so.

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.

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Discipline Corner

With this issue of the *Utah Bar Journal*, the Utah State Bar's Office of Professional Conduct resumes its publication of the discipline summaries in the monthly feature denominated the "Discipline Corner." Publication of the Discipline Corner ceased in 1999, pending resolution of a defamation action brought against the Utah State Bar by Gary W. Pendleton. The case was recently resolved in favor of the Bar through an interlocutory appeal to the Utah Supreme Court, and the Discipline Corners will once again be published on a regular basis. *See Pendleton v. Utah State Bar*, 2000 UT. 77.

Members should be aware that the Discipline Corner summaries are intended not only to alert members of the Bar and Bench that a particular lawyer has been disciplined, but also to help educate others as to potentially problematic conduct. The entries are, of necessity, summaries, and readers are cautioned that individual cases differ in their particular details and in the weight accorded aggravating and mitigating circumstances.

PUBLIC REPRIMAND

On June 3, 1999, the Honorable J. Dennis Frederick, Third Judicial District Court, entered an Order of Reprimand reprimanding Dwight J. Epperson for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.4 (Communication), 1.5 (Fees), 1.7 (Conflict of Interest: General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), and 8.4 (Misconduct) of the Rules of Professional Conduct.

Epperson was retained to represent a client in an attempt to have a trustee removed from a trust of which the client was a contingent beneficiary. Epperson was successful in having the trustee removed and was appointed as successor trustee. The trust assets were primarily a house which had been the client's late father's home, and the client lived in the house.

To allow the client to remain in the house, Epperson recommended that the client borrow against the equity in it, so that there would be cash available to pay the client's monthly living expenses. The client could not work and was later determined to be disabled, after which she received social security payments as her only source of income other than monthly payments from the trust.

When there were no liquid assets in the trust and the client's social security income was insufficient for her basic needs, Epperson negotiated a loan for $20,000 at 10% interest per annum. The lenders were Epperson's mother-in-law and father-in-law. The terms of the loan were unfair and not beneficial to the trust, and the sale price was below market value. As part of the loan arrangement, the lenders obtained an option to purchase the house, and after two years, the lenders exercised the option. Epperson did not obtain a written waiver of any conflict of interest regarding the sale of the house to his in-laws, and did not tell the client to seek independent counsel regarding the loan arrangement. After Epperson's in-laws exercised their option, the client was forced to move from the house.

During his tenure as trustee and his continued representation of the client, Epperson also made loans from the trust assets to his family's limited partnership and to other clients for personal and business expenses. The borrowers repaid these loans from the trust with interest ranging from 8% to 12% interest per annum. The interest income on all loans made by Epperson to himself, his friends, and his family never exceeded $600 per year. The Office of Professional Conduct found no evidence indicating that Epperson misappropriated trust assets for personal and business use.

Subsequent to the client filing a Bar complaint and a Screening Panel of the Ethics and Discipline Committee voting that there was probable cause for public discipline in this matter, attorneys for the client and Epperson negotiated a civil settlement which resulted in the sale of the house by Epperson's in-laws. The sale proceeds were given to the client as part of the settlement. Epperson also provided a full accounting of trust assets and his billing for legal services.

Mitigating circumstances include: absence of prior record of discipline; timely good faith effort to make restitution or to rectify the consequences of the misconduct; inexperience in trust management; good character and reputation; imposition of other penalties or sanctions; and remorse.

ADMONITION

On June 3, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 1.4 (Communication) of the Rules of Professional Conduct.

The attorney was hired to represent a client in a family law matter. Thereafter, the attorney failed to competently perform services on behalf of the client, failed to diligently represent the client, and failed to adequately communicate with the client.

PUBLIC REPRIMAND

On June 10, 1999, the Honorable Glenn Iwasaki, Third Judicial District Court, entered an Order of Reprimand reprimanding Kathryn Collard for violation of Rules 3.4(a), (c), (d), and (f) (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Collard represented a client in federal litigation involving the termination of the client's employment. The employer fired the client allegedly because she could not perform her duties as a result of having multiple sclerosis. Collard also represented the client in a medical product liability class action lawsuit. As part of the class action, the client was evaluated by a neurologist, whose report stated that the client was disabled. This report was to establish the client's qualification for a class settlement in the medical product liability case.

In the employment action, Collard and opposing counsel held an attorney's planning meeting pursuant to the Federal Rules of Civil Procedure. Collard stated that she would produce, as part of her required initial disclosures, all medical records pertaining to her client's multiple sclerosis condition. Following the meeting Collard and opposing counsel prepared and filed a report that provided that Collard would produce "medical records from date of plaintiff's last work day for defendant."

Thereafter, Collard failed to produce the neurologist's report. Opposing counsel sent a letter to Collard requesting a supplemental production of her client's current medical records prior to taking the client's deposition, but Collard failed to produce any further medical records. The opposing party issued a subpoena duces tecum requiring Collard's client to produce at the deposition all medical records in her possession or control. At the deposition, the client said she had seen no other doctors for any conditions. Following the client's deposition, opposing counsel served a request for production of documents asking Collard's client to produce all medical records from any source for a specified period of time. Collard filed a response on behalf of her client stating that her client had produced all of the medical records in her possession.

The opposing party discovered that Collard had previously mentioned the neurologist's report to an employee of the opposing party, but Collard had stated the report stated the client was without disability.

After being given notice that opposing counsel had subpoenaed the medical records of the neurologist who treated the client, Collard spoke with the neurologist's secretary and requested that a certain letter from the neurologist to Collard not be produced in response to the subpoena. The opposing party filed a Motion for Sanctions in Federal District Court and the court sanctioned Collard.

Mitigating circumstances include: absence of prior record of discipline; imposition of other penalties or sanctions; and remorse.

ADMONITION

On June 30, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7 (Conflict of Interest: General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), and 3.7 (Lawyer as Witness) of the Rules of Professional Conduct.

The attorney represented a client in litigation involving the development of real property. A dispute arose between the client and another person regarding the real estate development, including whether a partnership existed. The attorney also represented a corporate entity of which his client was an officer and which was a third party defendant in the litigation.

At some point the client needed money to complete the real estate development project and was unable to obtain institutional funding. The client asked the attorney if the attorney knew of any source to obtain a loan that would facilitate completing the development project. The attorney referred the client to a Limited Liability Corporation ("LLC") of which the attorney was a member. The LLC issued a construction loan to the client and his wife, secured by a trust deed on the property.

The attorney gave the client and his wife a letter regarding a potential conflict of interest, including a reference to Rule 1.7(b) of the Rules of Professional Conduct. The letter also advised the client to consult with other counsel regarding the loan transaction. The client and his wife waived the potential conflict of interest as disclosed to them in the letter and also waived an independent legal consultation.

Eventually, the client defaulted on the loan and the development company foreclosed on the trust deed on the property. At that point, the attorney acknowledged that an actual conflict of interest existed and withdrew as counsel for the client.

ADMONITION

On July 12, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.15(a) and (c) (Safekeeping Property) and 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct.

The attorney acted as a title agent for a title insurance company, and was to collect insurance premiums and remit thirty percent of the premiums within thirty days. The attorney received funds in which the client had an interest, but failed to promptly notify it of their receipt. The attorney failed to promptly deliver to the client funds to which it was entitled and failed to promptly render a full accounting for the funds being held in trust.

After being contacted by the Office of Professional Conduct, the attorney paid the outstanding title insurance premiums to the client and provided it with an accounting. At all times, the attorney held the funds in a trust account and the balance of the account remained in excess of the amount owed to the client.

DISBARMENT

On July 16, 1999, the Honorable Homer F. Wilkinson, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring Bruce J. Udall from the practice of law for violation of Rules 1.15(a), (b), and (c) (Safekeeping Property) and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

Udall misappropriated client funds and converted them to his own use.

The court found the following aggravating circumstances: prior record of discipline; dishonest or selfish motive; pattern of misconduct; multiple offenses; obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary authority; refusal to acknowledge the wrongful nature of the misconduct involved; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and illegal conduct.

DISBARMENT

On July 21, 1999, the Honorable Darwin C. Hansen, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring David Y. Payne from the practice of law for violation of Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Payne was charged with two second-degree felony counts of giving false or inconsistent statements in both deposition and trial testimony. The charges were reduced to two class A misdemeanors alleging an "attempt," to which Payne pled guilty on April 3, 1998.

On December 10, 1998, Payne was placed on interim suspension pursuant to Rule 19, Rules of Lawyer Discipline and Disability.

The court concluded that Payne knowingly and intentionally engaged in professional misconduct as defined in Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct and that the criminal acts reflected adversely on Payne's honesty, trustworthiness, or fitness as a lawyer. The court further concluded that when Payne knowingly and intentionally engaged in professional misconduct, he did so with the intent to benefit himself and to deceive the court, and his misconduct caused serious or potentially serious harm to a party and the legal system and caused serious or potentially serious interference with a legal proceeding as defined in Rule 4.2(a), Standards for Imposing Lawyer Sanctions.

The court found the following aggravating circumstances: prior record of discipline; dishonest or selfish motive; a pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct involved; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and illegal conduct.

The court found the following mitigating circumstances: personal or emotional problems; good character or reputation; imposition of penalties or sanctions; and remorse.

DISBARMENT

On July 26, 1999, the Honorable Frank G. Noel, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring Robert A. Bentley from the practice of law and ordering him to pay restitution for violations of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.7 (Conflict of Interest: General Rule), 1.15(a) and (b) (Safekeeping Property), 1.16(a) and (d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.4(c) (Fairness to Opposing Party), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Bentley was retained to represent two clients in an eviction matter. Bentley failed to accomplish the eviction and failed to pursue the appropriate remedies. Bentley's check covering the filing fee for the clients' Complaint was returned for insufficient funds, causing the filing to be deemed ineffective. Bentley failed to communicate with the clients and abandoned his representation of them without taking steps reasonably practicable to protect their interests. Bentley's failure to expedite the litigation in the eviction matter ultimately resulted in the dismissal of the case for failure to prosecute. Bentley failed to respond to the

Office of Professional Conduct's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent two clients in a wage and compensation claim against one of the client's brothers while representing the brother in a divorce action, without obtaining the clients' consent thereto. Bentley drafted and filed an inaccurate Complaint and misrepresented to the clients the status of their case. Bentley "misplaced" funds given to him by the clients' former employer, which were intended to be forwarded to the clients. Bentley failed to communicate with the clients.

Bentley was retained to represent a client in obtaining the return of property held in pawn. Bentley failed to obtain the property, and failed to return funds the client had given him to redeem the property. Bentley failed to return the client's telephone calls and terminated the representation without taking steps reasonably practicable to protect the client's interests. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent a client seeking an annulment. Bentley misrepresented to the client that the annulment papers had been filed, when in fact they had not. Bentley failed to return the client's telephone calls and failed to return the money paid to him by the client, despite the client's demand that he do so. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent a client in a quiet title action. Bentley failed to timely file an Answer on the client's behalf, failed to timely respond to discovery, and failed to respond to the opposing party's Motion for Summary Judgment, which was granted by the court. Bentley's inaction resulted in the loss of the client's property. The client was unable to communicate with Bentley for long periods and Bentley abandoned the representation without taking steps reasonably practicable to protect the client's interests. Bentley failed to return the client's retainer fee, despite having failed to earn it.

Bentley undertook representation of a client when the client's initial attorney became incapacitated. Bentley received funds, belonging to the client and intended for use in a settlement, from the client's initial counsel. Bentley cashed the check and failed to apply the funds to the settlement. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent a client in obtaining a restraining order. Thereafter, the client instructed Bentley to desist working on her case, but Bentley ignored her communications and failed to withdraw. Bentley failed to provide a statement of the amount of time he spent on the client's case and failed to return the unused portion of the retainer fee upon request. Bentley failed to communicate with the client. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley failed to complete the domestic law matters for which a client had retained him and failed to appear for a hearing scheduled in the client's case. Bentley failed to return the client's telephone messages, and failed to respond to a letter from the client. Bentley abandoned the representation while a court matter was pending without taking steps reasonably practicable to protect the client's interests. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley undertook representing a client in a personal injury action, but failed to rapidly file and serve the Complaint, contrary to the client's instructions. Bentley failed to file the Complaint until seventeen months after he undertook the representation, and failed to serve it until six months after it was filed. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley undertook representing a client in a child custody action, but failed to provide any meaningful legal services. Bentley failed to communicate with the client. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley represented one of the parties in a paternity action. Bentley failed to obey several court orders requiring him to prepare proposed findings of fact and conclusions of law. Bentley abandoned the representation without taking steps reasonably practicable to protect the client's interests. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley failed to diligently provide meaningful legal services to a client in connection with settling claims made against her by various medical care providers, and in investigating a possible malpractice action against her former attorney. Bentley failed to respond to the client's request for an accounting and misappropriated the unearned portion of the legal fees the client paid him. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley failed to provide meaningful legal services to a client in connection with the client's child support matter. Bentley failed to inform the client of a settlement offer from the opposing party. Bentley failed to respond to the client's request for an accounting of his services and the amount the client paid him. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Additionally, Bentley failed to pay court-ordered restitution, and continued to practice law in violation of an Order of Interim Suspension.

ADMONITION

On August 31, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

The Office of Professional Conduct received a complaint against the attorney and wrote to the attorney on three separate occasions requesting a response to the allegations. The attorney belatedly responded to these requests. Thereafter, the OPC wrote to the attorney requesting specific information related to the complaint, but the attorney failed to respond.

ADMONITION

On September 10, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.4 (Communication) of the Rules of Professional Conduct

The attorney was hired to represent a client in a bankruptcy action. The client told the attorney that the client wanted to reaffirm several of her debts. The attorney did not advise the client to the extent reasonably necessary to enable the client to make informed decisions regarding the client's case, and did not reaffirm the debts the client wanted reaffirmed.

DISBARMENT

On September 14, 1999, the Honorable Timothy R. Hanson, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring Jamis M. Johnson from the practice of law for violation of Rules 1.15(a), (b), and (c) (Safekeeping Property) of the Rules of Professional Conduct.

The court found that Johnson intentionally misappropriated client funds. Johnson held the client's funds in a trust account. Johnson attempted to deliver the funds to the client but the funds were returned to Johnson. There was a dispute about the settlement into which Johnson had entered on behalf of the client, and the client advised Johnson he could do as he wished with the funds. Johnson agreed to hold the client's funds in trust pending a resolution of the dispute. Thereafter, the client requested return of the funds, but Johnson did not return them. Johnson converted his client's funds for his own use. The court found that the removal of the funds belonging to the client from the trust account constituted misappropriation.

The court found the following mitigating factors: no prior record of discipline and good character or reputation. The court found that the mitigating circumstances were not sufficient to warrant something less than disbarment.

Note: This matter is presently on appeal and cross-appeal to the Utah Supreme Court. The District Court stayed Johnson's disbarment pending appeal; the OPC has appealed the stay of judgment pending appeal.

DISBARMENT

On September 23, 1999, the Honorable Guy R. Burningham entered a Default Judgment and Judgment of Disbarment disbarring James L. Thompson from the practice of law for violation of Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

On December 17, 1998, Thompson was found guilty on three counts of felony tax evasion for knowingly and intentionally filing false tax returns with the State of Utah.

The court found that Thompson knowingly and intentionally filed false tax reports with the State of Utah, conduct which involved serious criminal conduct involving dishonesty, fraud, deceit, and misrepresentation. In committing these acts, Thompson violated Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

The court further found that Thompson's acts reflect adversely on his honesty, trustworthiness and fitness to practice law and disbarment is the appropriate and the presumptive discipline in this matter as described in the Standards for Imposing Lawyer Sanctions, Rules 4.2(a), (b), and (c).

ADMONITION

On October 31, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.1 (Responsibilities of a Partner or Supervisory Lawyer) of the Rules of Professional Conduct.

An associate attorney of the law firm of which the attorney was the principal was retained to represent a couple in a custody modification matter. The couple's relationship with the associate and the law firm deteriorated and they unsuccessfully attempted to reach the associate for approximately one month. The attorney eventually informed the couple that the associate would no longer represent them.

The attorney assured the clients that the matter would be investigated and they would be contacted. Despite three visits to the law firm, the clients were unable to obtain their file until approximately two months later, and at that time were only given a partial copy of it.

Although the attorney met with the associate and instructed the associate to return the file to the couple, the associate did not do so. The associate later informed the attorney that the associate had returned the file, but the attorney did not contact the clients to verify that this was the case.

Mitigating circumstances include: lack of dishonest or selfish motive and cooperative attitude toward the disciplinary proceedings.

Aggravating circumstances include: substantial experience in the practice of law.

SUSPENSION

On November 2, 1999, the Honorable Leslie A. Lewis, Third Judicial District Court, entered an Order of Suspension suspending David R. Maddox for a period of three years for violation of Rules 1.15 (Safekeeping Property) and 8.4(a), (b), and (c) (Misconduct).

Maddox was a partner in a law firm. The firm discovered that Maddox misappropriated client funds for his own use and confronted him about it. Maddox acknowledged wrongdoing. The day after the firm confronted him, Maddox contacted the Office of Professional Conduct and informed it he had misappropriated funds.

The OPC believed that even though the presumptive level of discipline was clearly disbarment in this case, the mitigating factors were sufficiently substantial and compelling to warrant a downward departure from the presumptive discipline.

ADMONITION

On November 25, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.4 (Communication) of the Rules of Professional Conduct.

The attorney was appointed to represent someone in an appeal of a criminal conviction. The attorney requested and received an extension of time in which to file the appeal for the purpose of meeting with the client to discuss the matter. The attorney subsequently failed to meet with the client.

While preparing an appellate brief, the attorney determined that the client's concerns regarding ineffective assistance of counsel had no good faith basis. The attorney decided to argue the appeal on a different basis, but failed to inform the client of this decision. The attorney failed to adequately communicate with the client throughout the appeal.

In a second matter, the attorney was appointed to represent someone in an appeal of a criminal conviction. The attorney was provided a copy of the client's Petition for Extraordinary Relief and began researching the issues raised in it. During the course of conducting legal research, the attorney was unable to find case law in support of the client's Petition. The attorney failed to contact the client prior to an evidentiary hearing to inform the client of the results of the legal research and the attorney's position that there existed no good faith basis to pursue the Petition. At the evidentiary hearing the attorney informed the court and the client that no good faith argument could be made to support the client's Petition. The court granted the government's Motion to Dismiss. The attorney failed to afford the client an opportunity to take whatever steps the client felt were necessary to protect his interests.

Mitigating circumstances include: absence of a dishonest or selfish motive; cooperative attitude towards proceedings; inexperience in habeas corpus proceedings.

ADMONITION

On November 25, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 3.2 (Expediting Litigation) of the Rules of Professional Conduct.

The attorney represented a client in a divorce action in which a third party attempted to intervene. The attorney failed to respond to numerous written and oral communications from counsel for the third party.

ADMONITION

On December 20, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 8.4(g) (Misconduct) of the Rules of Professional Conduct.

The attorney agreed to represent a client pro bono in a divorce matter. The attorney and client later engaged in sexual relations. The sexual relationship was brief and began at the urging of the client; the attorney later terminated the sexual relationship with the client. The professional relationship continued for approximately six weeks.

The attorney's professional performance was not affected by the affair; nevertheless, it may have adversely affected the working relationship between the client and the attorney because the attorney may have lost the ability to advise and counsel the client effectively.

Mitigating circumstances include: absence of prior record of discipline; cooperative attitude toward proceedings; good character and reputation; and remorse.

SUSPENSION

On January 31, 2000, the Honorable Homer F. Wilkinson, Third Judicial District Court, entered an Order of Suspension suspending Alan E. Barber for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.7(b) (Conflict of Interest: General Rule), 1.8(a) (Conflict of Interest: Prohibited Transactions), 1.16(a), (b), and (d) (Declining or Terminating Representation), 3.7(a) (Lawyer as Witness), 4.4 (Respect for Rights of Third Persons), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Barber was retained to represent a client in divorce proceedings. He assured the client the divorce should only take six months to complete and would only cost $1000. The divorce took substantially longer than one year, and Barber charged the client more than $12,760. The major property of the marriage was a house, which ended up in foreclosure as a result of Barber's advice to the client. Barber advised the client not to make payments on the house because it was part of the dispute. When the house was sold, the couple had to pay back payments, attorney's fees, and

foreclosure costs. Barber did not keep the client informed of the progress of the case or of the foreclosure. Barber delayed filings with the court because of a dispute over the amount of his legal fees. Barber additionally failed to keep the client advised of what was happening with the client's claim on her husband's 401k plan.

Barber represented a client in a divorce/annulment/separate maintenance matter. During the course of the representation, Barber had an inappropriate and perhaps sexual relationship with his client and that relationship caused many difficulties in the legal matter.

Barber was retained to assist a client in preparation of immigration documents for four of the client's employees. Barber was paid a retainer. After one week the client determined that he did not want Barber to represent the employees, and advised Barber that he had hired another lawyer. Barber told the client that the law firm would return the retainer because he had not begun work on the matters. Thereafter Barber failed to return the unearned fees.

Barber was retained to represent several clients in immigration matters. In one case, Barber filed a Notice of Appearance and on that date the case was set over for a hearing on the merits and a deadline was set for filing a suspension application. Barber did not file a suspension application, nor did he appear at the scheduled hearing. The client tried to contact Barber by telephone but received a recorded message stating that Barber was ill. The client was required to proceed with his case, the asylum application was denied, and the client was granted voluntary departure. In another case, Barber filed a Notice of Appearance and the case was set for a hearing. Barber did not appear for the hearing. The client stated that he tried to reach Barber for three days but was unable to, and was informed that Barber was sick and that a family member had died. The client indicated to the judge that Barber had not spent any time with him to prepare for the hearing. The client was required to proceed with his case, the asylum application was denied, and the client was granted voluntary departure. The judge received a detailed response from Barber explaining the circumstances, and felt the response was satisfactory. After Barber failed to appear for three more hearings with other clients, the judge wrote to him, asking Barber to respond within thirty days. Barber never responded.

Barber was retained to represent a family in an asylum case before the Immigration Court. During the course of the representation, Barber failed to prepare for the hearing, failed to communicate with the clients regarding their asylum applications, and lied to them when he told them that they would qualify for a new amnesty. Barber failed to appear for their hearing and when the judge and the government attorney tracked him down by phone, Barber advised that they were "just pro bono clients" and he had a criminal trial in another state.

Barber was retained to assist a client in the asylum process and to file for suspension of deportation before the Immigration Court. Each time the client made a payment to Barber, Barber claimed he did not have the time or the paper to write the client a receipt, saying he would provide one later. Barber attended the first court appointment with the client and asked that the judge continue the case. Barber continued the second appointment without telling the client until the morning of the hearing. Barber also failed to appear at the trial. The client was ordered to proceed with the trial without counsel, and was ordered to leave the country. When the client returned home after the trial she found her immigration documents had been dropped off at a neighbor's house. Barber failed to keep appointments with the client and failed to respond to the client's telephone call.

Barber was retained by a client to litigate suspension of the client and the client's family's deportation case before the Immigration Court. The client gave Barber the documentation proving the client and his family had been in the United States for ten years. Barber appeared at the scheduling hearing and a trial was scheduled. Prior to trial the client was unable to contact Barber and believed Barber had "just disappeared." Barber failed to appear for the trial. The judge asked if the client was aware that there is no asylum from Mexico, and the client told the judge that they were not asking for asylum. The client was informed that Barber had never filed the request for suspension of deportation. The client has been unable to obtain the file with the family's original documents.

Barber was retained by a client to prepare, file, and litigate the client's suspension of deportation case before the Immigration Court. Barber appeared at the scheduling hearing and the judge told him to file the suspension application. A trial was scheduled. One of the receipts Barber gave to the client showed "Retainer for I-485." Barber was not supposed to file an I-485; rather the judge told the client to file an EOIR-40. On the day of the trial, the client was unable to reach Barber and Barber did not appear. Barber failed to respond to calls from the client requesting the client's file with the client's original documents needed for submission to the INS.

Barber was retained by a client to file and litigate suspension of deportation for the client, his wife, and his four children before the Immigration Court. The client gave Barber the documenta-

tion to support the application, including the children's birth certificates, tax records, and bank records. Barber lost the documentation and told the client to obtain new documentation. After a trial was scheduled, the client unsuccessfully attempted to contact Barber and was told by Barber's secretary not to be concerned, that Barber would be in court. Barber failed to appear for the trial. At the trial the client was told that Barber had never filed the applications. The judge told the client to get a new lawyer and rescheduled the trial. The client was unable to obtain his file with the original documents from Barber.

Barber was retained to represent a client in an asylum claim. The client gave Barber documents in Spanish that proved the facts to establish the client's claim for asylum. Barber and the client appeared at a hearing on the request for asylum. Barber stated that he had lost the documents and, therefore, none were presented to the judge. Thus, the client's request was denied. Barber asked the client for additional fees so that Barber could appeal the denial. The client delivered a check to Barber and was told that he would pursue the appeal. Thereafter, the client had no communication with Barber. The client later applied for extension of his employment authorization. The client received a Notice of Denial denying his employment authorization and advising him that he lost his appeal because it was not timely filed. The client received an order to report to Immigration in Salt Lake City for deportation. The client retained another attorney, but both have been unable to obtain the client's file from Barber. The client continued to receive statements from Barber's former office requesting payment of attorney's fees billed by Barber.

Aggravating circumstances include: pattern of misconduct; multiple offenses; vulnerability of victims; and substantial experience in the practice of law.

Mitigating circumstances include: no prior record of discipline; personal or emotional problems; and cooperative attitude toward proceedings.

DISBARMENT

On February 15, 2000, the Honorable Timothy R. Hanson, Third Judicial District Court, entered an Order of Disbarment disbarring Phillip A. Harding from the practice of law for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5 (Fees), 1.15(b) (Safekeeping Property), 5.5(a) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Harding was retained to represent a client on a contingency fee basis in a personal injury matter. Harding failed to proceed with the representation until more than two years after the client filed a complaint with the Office of Professional Conduct. Approximately one month before the statute of limitations on the client's claim expired, Harding advised the client that governmental immunity would bar suit against the defendants involved, and he should seek alternate counsel if he wanted another legal opinion on the matter.

Harding was retained by a client to complete divorce proceedings. Thereafter, the client paid Harding attorney fees, but Harding failed to render an accounting to her despite repeated verbal and written requests. Harding provided no meaningful legal services to the client. Harding failed to keep the client reasonably informed about the status of her matter and failed to promptly comply with her reasonable requests for information. Harding reported to the client that her divorce matter had been set for trial, even though no date had been scheduled and he had failed to file the paperwork necessary to move the matter forward. The client was forced to retain new counsel to conclude her divorce, and Harding delayed delivering her file to her new counsel, despite repeated requests.

Harding was retained by clients to obtain modification of a divorce decree, to collect unpaid child support and to file suit for trespass and resulting property damages to their residence by a construction company. Although a fee was paid to Harding in the domestic relations matter, he failed to provide any meaningful legal services. Because Harding delayed in obtaining service on the client's ex-spouse in the child support matter, the clients lost a substantial amount of money in child support. In the trespass action, Harding failed to name the correct construction company as defendant, and failed to name the city, county, and state as defendants before the statute of limitations expired. Harding failed to keep the clients reasonably informed about the status of their matters, and did not promptly comply with their reasonable requests for information. Harding made material misrepresentations to the clients regarding the status of their cases. Harding was suspended from practicing law approximately two years after initiating his representation of the clients, but continued to represent them and never informed them of his suspension. When the clients discharged Harding, they were unable to find successor counsel in the trespass matter because of the manner in which the case had been handled, and were advised to renegotiate representation with Harding after reminding him that the statute of limitations was about to expire. The clients did so, but although aware of their

dissatisfaction, Harding allowed the statute of limitations to run without adding the additional parties.

Harding was suspended for failure to meet continuing legal education requirements; he admitted to his law partners that he knew he had been suspended. During the period of his suspension, Harding continued to represent clients and was observed appearing in District Court. Harding failed to respond to the OPC's request for information concerning this matter.

Aggravating circumstances include: prior record of discipline; dishonest or selfish motive; a pattern of misconduct; multiple offenses; obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary authority; submission of false evidence; false statements or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of the misconduct involved either to the client or to the disciplinary authority; vulnerability of the victim; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and illegal conduct.

RESIGNATION PENDING DISCIPLINE

On February 17, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Richard A. Higgins. In the Petition for Resignation Pending Discipline, Higgins admitted that he violated Rules 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct.

Higgins pled no contest in *State v. Higgins* to two counts of unlicensed broker dealer, a third degree felony, and one count of attempted securities fraud, also a third degree felony.

RESIGNATION PENDING DISCIPLINE

On February 17, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Earl S. Spafford. Spafford has been on interim suspension since October 23, 1996. In his Petition for Resignation Pending Discipline, Spafford acknowledged that on January 28, 1997, the Honorable William B. Bohling, Third Judicial District Court, made findings of fact and conclusions of law which Spafford accepted, and could not

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successfully defend against the charges. Spafford also admitted that the findings and conclusions were grounds for disbarment.

The Supreme Court's Order provided that prior to making application for readmission to the Utah State Bar, Spafford must reimburse any money paid out on his behalf by the Utah State Bar's Client Security Fund, and must satisfy any restitution orders or agreements, whether civil or criminal.

ADMONITION

On February 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.5 (Unauthorized Practice of Law) of the Rules of Professional Conduct.

The attorney failed to timely pay annual licensing fees and as a result, was placed on administrative suspension. The Utah State Bar mailed a certified letter to the attorney advising of the administrative suspension, but the certified letter was returned unopened and undelivered after three unsuccessful attempts to deliver it. The attorney filed a civil complaint on behalf of a client while suspended. Shortly thereafter, the attorney was informed of the suspension and on the same day paid the professional dues and the reinstatement fee.

ADMONITION

On March 3, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7 (Conflict of Interest: General Rule) and 2.2(b) (Intermediary) of the Rules of Professional Conduct.

A married couple contacted the attorney regarding possible representation in a divorce action. During the initial meeting the attorney recommended that the husband and wife each hire their own attorney to protect their individual interests in the divorce action. The couple insisted that they agreed on all divorce and custody issues and did not want the expense of retaining separate counsel. The attorney drafted the Divorce Decree containing the language agreed upon by the couple, including child visitation language that differed from the Utah Standard Visitation Schedule. The attorney informed the couple that the language regarding the husband's visitation rights was too vague and recommended that they adopt the Utah Standard Visitation Schedule. The couple insisted on using the visitation language granting the husband visitation "by mutual agreement" as opposed to the Standard Visitation Schedule.

Prior to filing the Divorce Decree the wife instructed the attorney to add language concerning the husband's chronic health problems and to change the language regarding his visitation rights to "restricted visitation." The attorney questioned whether the husband had agreed to the changes and was told that he agreed. The attorney made the changes requested by the wife and the Divorce Decree was filed and subsequently entered by the court. Several weeks later the husband informed the attorney that he had not agreed to the "restricted visitation" language. The attorney prepared and filed a Motion for Relief of Judgment on behalf of the husband. The court denied the motion; nevertheless, the husband's visitation rights do not appear to have been legally altered by the modified language in the Divorce Decree.

Mitigating circumstances include: absence of prior record of discipline and timely good faith effort to make restitution or to rectify the consequences of the misconduct involved.

ADMONITION

On March 9, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7 (Conflict of Interest: General Rule) and 4.4 (Respect for Rights of Third Persons) of the Rules of Professional Conduct.

The attorney's spouse and two brothers-in-law were members of a family who owned and operated a business. The attorney's father-in-law died and an acrimonious family dispute ensued over the ownership and operation of the family business. There was litigation by the family with another relative of the deceased over the family business. Also involved were issues involving dividing the estate of the father-in-law and surviving mother-in-law. In the dispute over the ownership and assets of the family business, the attorney represented the attorney's spouse, both brothers-in-law, and the mother-in-law against another party. During the representation, the attorney prepared a voting trust agreement for the mother-in-law that effectively gave control of the family business to one brother-in-law while effectively evicting the second brother-in-law from the business.

The attorney's representation of the mother-in-law in drafting the voting trust and simultaneous representation of all the beneficiaries was directly adverse to the second brother-in-law's interests. A dispute arose between the second brother-in-law and the other family members creating a conflict of interest. A dispute also arose between the attorney's personal interest in the family dispute and the attorney's role as an attorney for the various family members, which also created a conflict of interest. The attorney failed to consult with the various family members regarding the conflict and failed to explain the implications of the common representation. In the course of dealing

with the second brother-in-law, the attorney used means that had no substantial purpose other than to embarrass or burden the second brother-in-law. The attorney's letters and comments to the opposing party and opposing counsel in the litigation with the deceased's relative were unprofessional and rude.

DISBARMENT

On March 7, 2000, the Honorable Thomas L. Kay, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbarring John M. Bybee from the practice of law for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Bybee represented a client in the sale of a family-owned house. The house was sold, and Bybee was to prepare documents in connection with the sale, collect the profit, and distribute it equally between the client and her two brothers. Bybee deposited the proceeds from the sale of the house into his trust account for safekeeping until they could be distributed. Bybee gave only a portion of the money to the client and represented that the balance was for legal services he had performed. Bybee failed to promptly give the client the proceeds of the house and failed to promptly give her an accounting of the portion of the funds that he kept for legal fees. Bybee gave only a small and undetermined amount of money to the client's brother, but substantially less than the share to which the brother was entitled. An attorney on behalf of the client demanded an accounting of these disputed funds claimed by Bybee, but Bybee failed to keep the disputed funds separate until there could be an accounting and severance of the client's interest and the dispute resolved. Bybee intentionally misappropriated the client's funds for his personal and business use.

Bybee represented one of the brothers and his wife in the sale of another house. After the house sold, an amount of money remained and was to be used to pay debts the clients had accumulated. Bybee was to make sure that those debts were paid from the proceeds of the house. The profit from the sale of the house was deposited into Bybee's trust account but not all of the debts were paid. The clients received only part of the funds from Bybee. Bybee failed to give the clients their share of the proceeds from the house and failed to provide them with an accounting of the legal fees that he deducted. The clients disputed Bybee's distribution of the funds from the sale of their house and claimed an interest in the funds in Bybee's possession. An attorney on behalf of the clients demanded an accounting, but Bybee failed to keep the funds separate until there was an accounting and severance of the clients' interest and the dispute resolved.

Bybee represented a client participating in a class action lawsuit. The client received a letter informing her that a partial settlement check had been sent to Bybee on her behalf, and the client went to Bybee's office to demand that he give her the settlement funds. Bybee had received the settlement check, had endorsed the check with the client's signature, deposited the funds, and disbursed the funds for his personal and business use. Bybee claims he had this authority pursuant to his retainer agreement with the client. Bybee never notified the client of his receipt of the settlement funds. When questioned, Bybee told the client that he did not have her funds, then wrote her two checks on his business account. When the client attempted to cash the checks she was told there were insufficient funds to cover one of them. The client disputed Bybee's distribution of the funds from the partial settlement of the class action litigation. The client claimed an interest in the funds in Bybee's possession. An attorney on behalf of the client demanded an accounting of these disputed funds. Bybee failed to keep the funds separate until there was an accounting and severance of the client's interest and the dispute resolved. Bybee misappropriated the client's settlement funds for his personal or business use, then paid funds to the client that belonged to him or to other clients.

The Office of Professional Conduct received several non-sufficient funds or overdraft notices from the bank that held Bybee's trust account. The OPC requested on numerous occasions that Bybee produce trust account and billing records, but he failed to do so.

Bybee was retained to represent a client in a custody matter and a criminal matter. In the criminal matter the client paid Bybee a retainer. Bybee told the client that if the case went to a jury trial he would charge an additional amount. The client paid Bybee a portion of the additional amount. The case did not go to a jury trial and the client asked Bybee to return the unearned funds. Bybee did not return them, but told the client he would apply the funds to his work on the client's custody matter. Thereafter, Bybee provided no meaningful legal services and refused to return the unearned funds to the client. There was no retainer agreement for the custody matter, and the client never received a bill for services performed.

Bybee was retained to represent a client in a child support and paternity action. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and did not respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in the amendment of a Decree of Divorce. He failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee charged the client an excessive fee and failed to promptly deliver or account for client funds that he was holding. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in divorce proceedings. He failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client regarding modification of support payments. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a divorce modification matter. Thereafter, while refinancing his home, the client discovered that there was allegedly an outstanding unpaid debt owed by him to Bybee. The client and his wife attempted to contact Bybee about this, but Bybee would not respond to their inquiries. Finally, Bybee returned the client's telephone calls. The client requested a detailed billing statement for the alleged debt, but Bybee failed to provide it. Bybee charged the client an excessive fee for the legal services provided. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client regarding paternity issues and child support payments. Bybee failed to adequately, diligently, and competently represent the client, including failure to attend hearings in the paternity matter and failure to communicate with the client. Following termination of the representation, Bybee failed to take steps reasonably practicable to protect the client's interest and failed to surrender papers to which the client was entitled. Bybee charged the client an excessive fee. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a divorce action. Thereafter, Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a lawsuit invoLoving an apartment complex. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a name change action. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to promptly deliver or account for client funds that he was holding. Bybee failed to respond to the OPC's requests for information regarding this matter.

ADMONITION

On March 14, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 4.4 (Respect for Rights of Third Persons) of the Rules of Professional Conduct.

In the hallway of the Federal District Courthouse, the attorney raised his middle finger at a party to litigation.

ADMONITION

On March 15, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.2 (Communication with Person Represented by Counsel) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a civil matter. During the course of the representation, the attorney interviewed the client's minor children without the presence of their Guardian ad Litem.

Mitigating circumstances include: full and free disclosure and cooperative attitude toward proceedings and remoteness of prior offenses.

Aggravating circumstances include: prior discipline.

SUSPENSION

On April 5, 2000, the Honorable Leslie A. Lewis, Third Judicial District Court, entered an Order of Discipline By Consent: One Year Suspension suspending R. LaMar Bishop from the practice of law for one year for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 5.5 (Unauthorized Practice of Law), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Bishop was retained to represent a client in tax matters. Bishop failed to act with reasonable diligence and promptness in representing the client and failed to keep the client reasonably informed about the status of her case. After the client terminated Bishop's legal services, Bishop failed to promptly return the client's file.

Bishop was placed on administrative suspension for failing to pay his Bar dues in 1995, 1996, 1997, and 1999. During some of the time that Bishop was on administrative suspension, he provided legal services to clients.

SUSPENSION

On May 1, 2000, the Honorable Stephen L. Henriod, Third Judicial District Court, entered an Order: Suspension suspending Peter M. Ennenga for six months for violation of Rules 1.4 (Communication), 1.15 (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(b) and (c) (Misconduct) of the Rules of Professional Conduct.

Ennenga violated Rule 8.1 in numerous instances by failing to provide information requested by the Office of Professional Conduct.

Ennenga violated Rule 1.4 by failing to communicate with a client. After filing a Complaint, Ennenga failed to continue to work on the matter and failed to inform the client of that fact.

With respect to Rules 1.15, 8.4(b) and 8.4(c), Ennenga collected funds for a client who requested that Ennenga hold the

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funds in trust. Ennenga never deposited the money into a trust account, but instead deposited part in his personal checking account and had part converted into a cashier's check, all of which he eventually used for himself. Ennenga repaid the client in 1997 after she filed an informal complaint against him with the OPC and retained an attorney to take action against him.

Aggravating circumstances include: prior record of discipline for matters of a different nature; a pattern of misconduct; multiple offenses; obstruction of the disciplinary proceedings; refusal to acknowledge the wrongful nature of the misconduct involved; vulnerability of victim; substantial experience in the practice of law; lack of good faith effort to make restitution; and illegal conduct.

Mitigating circumstances include: absence of prior record of discipline; personal or emotional problems; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; good character or reputation; unreasonable delay in the disciplinary proceedings; interim reform; remorse; and remoteness of prior offenses.

Note: This matter is presently on appeal and cross-appeal to the Utah Supreme Court.

SUSPENSION

On May 2, 2000, the Honorable Frank G. Noel, Third Judicial District Court, entered an Order of Discipline: Suspension suspending Stanford V. Nielson from the practice of law for thirty days for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property), and 8.4(a), (c), and (e) (Misconduct) of the Rules of Professional Conduct.

Nielson was retained to represent a client in a divorce action in the most cost-effective and time-efficient manner possible. The client asked Nielson how funds could be safeguarded from her husband during the pendency of the domestic proceedings. Nielson advised the client to give him two checks, one for the initial retainer fee and one for funds to be held in trust earmarked as legal fees, thus, shielding the money from court review. Nielson assured the client that the second check would not be applied toward fees unless the client first authorized him to do so. Nielson failed to immediately place the funds in trust, and deposited the second check two days after the client claimed she terminated Nielson's services. Nielson denies the client terminated his services at that time. The client alleges she never received the letter Nielson purportedly mailed to her in which Nielson memorialized a telephone conversation he claims he had with her authorizing the use of the funds. The client denies the conversation took place. The client further alleges she did not see a copy of a Retainer Agreement or an itemized billing from Nielson until he forwarded her file to her successor counsel. Nielson failed to advise the client that she could seek an expedited Restraining Order, but instead attempted to procure a Temporary Restraining Order, which was not obtained for more than thirty days.

Aggravating circumstances include: prior record of discipline; dishonest or selfish motive; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of the misconduct involved; vulnerability of the victim; substantial experience in the practice of law; and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

Mitigating circumstances include: the client's acknowledgement that the funds could be used for attorneys fees, if needed.

ADMONITION

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.16(d) (Declining or Terminating Representation) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a custody matter. Two months after the representation began, the attorney transferred the client's file to another attorney without the client's knowledge or consent.

ADMONITION

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.5 (Fees) of the Rules of Professional Conduct.

The attorney was retained to represent an out-of-state client in divorce proceedings. The proceedings were contentious and the parties could not resolve their differences by agreement. The attorney did not have the client sign a written fee agreement, although the attorney knew it was reasonable to believe that the fees for the representation would exceed $750.

ADMONITION

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.5 (Unauthorized Practice of Law) of the Rules of Professional Conduct.

The attorney was suspended for non-compliance with mandatory continuing legal education requirements, but continued to practice law while on administrative suspension.

ADMONITION

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.5 (Unauthorized Practice of Law) of the Rules of Professional Conduct.

The attorney was suspended for failing to pay his annual Bar licensing dues, but continued to practice law while on administrative suspension.

ADMONITION

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.7(b) (Conflict of Interest) of the Rules of Professional Conduct.

The attorney's firm was retained by a client ("Client 1") to represent the client's company ("Company A"). The attorney had knowledge that a second company ("Company B") was affiliated with Company A and was also owned by Client 1. The attorney also represented a second client ("Client 2"), and was unaware that Client 2 was a real estate agent licensed with Company B. The attorney's representation of Client 1's companies was materially limited by his responsibilities to Client 2, in that Client 2 employed the attorney to review a commission contract with Company B.

Mitigating circumstances include: absence of prior record of discipline; absence of dishonest or selfish motive; full and free disclosure to the client prior to the discovery of any misconduct and cooperative attitude toward proceedings; and remorse.

Aggravating circumstances include: substantial experience in the practice of law.

SUSPENSION

On June 2, 2000, the Honorable David S. Young, Third Judicial District Court, entered an Order Revoking Probation, Lifting Stay, and Ordering Suspension of Dean Becker From the Practice of Law for two years for violating his probation.

On May 31, 2000, the Office of Professional Conduct and Becker filed a stipulation in which Becker stipulated that he violated his probation and his probation should be revoked and the two years suspension assessed against him.

ADMONITION

On June 8, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a personal injury matter. The client identified potential expert witnesses, but the attorney failed to timely communicate the names to opposing counsel and they were excluded from testifying at trial.

Mitigating circumstances include: cooperation with the Office of Professional Conduct.

SUSPENSION

On June 14, 2000, the Honorable James R. Taylor, Fourth Judicial District Court, entered an Order of Discipline By Consent: Three Months Suspension and Two Year Probation suspending Jacqueline de Gaston from the practice of law for three months for violation of Rules 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 4.2 (Communication with Persons Represented by Counsel); and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

de Gaston was admitted to practice law in December 1997. Thereafter she commenced practice as a solo practitioner. Although her intent was to limit her practice to simple divorce and adoption cases, de Gaston became involved in more complex, disputed matters and agreed to represent numerous clients in various areas of the law. In some of these matters, de Gaston failed to provide competent representation to clients in that she failed to have the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent these clients. In her representation of some clients, de Gaston failed to act with reasonable diligence and promptness. de Gaston failed to keep some of her clients reasonably informed and failed to explain matters to the extent reasonably necessary to enable the clients to make informed decisions regarding the representation. In some matters, de Gaston inappropriately tried to contact and obtain affidavits from children who were represented by counsel. On one occasion de Gaston attempted to have a District Court clerk back-date the date of filing on pleadings.

Mitigating circumstances include: absence of prior record of discipline; personal or emotional problems; inexperience in the practice of law; interim reform; and remorse.

Following the three month suspension, de Gaston was placed on a term of probation of two years and reports to a supervising attorney.

ADMONITION

On June 28, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.4 (Communication) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a paternity suit. Thereafter, the client moved out of the country. Although the client advised the attorney of current addresses and telephone numbers, the client was unable to communicate with the attorney. The client left several voice mail messages for the attorney, but the attorney failed to return many of the calls. The attorney failed to adequately keep in contact with the client, failed to respond to the client's reasonable requests for information regarding the client's cases, and failed to explain the cases to the extent reasonably necessary to enable the client to make informed decisions regarding the representation.

Mitigating circumstances include: absence of prior record of discipline; absence of dishonest or selfish motive; cooperative attitude toward disciplinary proceedings; good character and reputation; and remorse.

Aggravating circumstances include: vulnerability of victim and substantial experience in the practice of law.

RESIGNATION PENDING DISCIPLINE

On August 11, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline in the matter of Kim David Olsen.

In April 1992, while administratively suspended for failing to pay his Utah State Bar dues, Olsen contacted a member of the Arizona State Bar to request that the Arizona attorney make application on his behalf to appear in a matter in Arizona pro hac vice. Olsen told the Arizona attorney that he was a member in good standing of the Utah State Bar. Olsen later filed an application to appear pro hac vice in the Superior Court of the State of Arizona, Maricopa County. In the application, Olsen represented that he was a member in good standing and admitted to practice in the Utah Supreme Court.

In September 1994, the Supreme Court of Arizona censured Olsen for his conduct and ordered him to pay $401.24, plus interest, for costs. Olsen failed to satisfy this judgment.

In March 1994, Olsen pled guilty to five counts of fraudulently obtaining a controlled substance, a third degree felony; one count of unlawful possession of a controlled substance, a third degree felony; and one count of escape from official custody, a class B misdemeanor.

In March 1998, Olsen held himself out as an attorney during a time he was aware that he was suspended from the practice of law in Utah for non-payment of Bar dues.

In May 1998, Olsen pled guilty to two counts of fraudulently obtaining a controlled substance, a third degree felony, and one count of issuing bad checks, a third degree felony.

On October 8, 1998, Olsen was placed on interim suspension by the Third Judicial District Court.

In October 1999, Olsen pled guilty to one count of attempted forgery, a class A misdemeanor, and one count of attempted theft by deception, a class A misdemeanor.

RESIGNATION PENDING DISCIPLINE

On August 11, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Len R. Eldridge.

Eldridge was retained to represent a client in a suit against the client's employer. Eldridge wrote to the employer, then commenced litigation. During the course of the representation the client moved out of the United States and back, but remained in contact with Eldridge. Thereafter, the client was unable to reach Eldridge to ascertain the status of the litigation. The client later learned that her suit had been dismissed without her knowledge.

Eldridge was retained to assist a client in obtaining agency review of the denial of the client's nursing license. The client only met Eldridge at the initial meeting. Thereafter, with the exception of sending him a copy of one letter, Eldridge failed to return phone calls, failed to respond to the client's written requests for information, and failed to attend scheduled appointments.

Eldridge was retained to represent a client in a divorce and custody dispute. Eldridge prepared an Order to Show Cause and the judge agreed to order the client's ex-husband to pay child support. Eldridge failed to prepare the order, and because the judge did not receive it, the file was sent back to juvenile court.

Eldridge was retained to represent a client in a domestic mater. Eldridge prepared a Service of Protective Order to be served on his client's ex-husband. The client was later notified that Eldridge had not filed the original documents and therefore the documents could not be filed. This resulted in opposing counsel requesting a hearing to vacate the protective order. The client was not informed of the hearing and neither she nor Eldridge

was present. The client's failure to appear at the hearing resulted in an Order of Default being entered. Eldridge failed to inform the client of hearings and orders and failed to respond to the dispute or to discuss the impact with the client. Eldridge misappropriated funds belonging to the client when he endorsed a check made payable to him and the client as her portion of a tax refund. Although the client repeatedly requested an itemized billing statement, Eldridge failed to provide one.

Eldridge was retained to represent a client in an annulment. Eldridge twice prepared divorce documents rather than annulment papers and filed the annulment based on irreconcilable differences. Eldridge verbally agreed to a fee of $340 to $350 if uncontested ($125 per hour and service fees) but then charged the client $200 per hour and billed her $150 to file the annulment (the filing cost is $82). Eldridge failed to communicate with the client and misrepresented on two occasions that he had filed and served the papers in a timely manner, when in fact he had not. Eldridge also misrepresented to the client that her estranged husband was in default and that the default judgment was on the judge's desk, when in fact it was not.

Eldridge was retained to represent a client in a custody matter. During the representation Eldridge failed to return telephone calls or respond to numerous written communications from the client and failed to notify the client of a court hearing. At the hearing the client was ordered to sign over his interest in the marital home. Eldridge failed to inform the client of the court's ruling and the order was not complied with. Opposing counsel brought the matter back before the court and was awarded attorney's fees. Eldridge failed to inform the client that he owed attorney's fees to opposing counsel. Eldridge wrote four post-dated checks to opposing counsel to cover the remaining attorney's fees owed by the client. There were insufficient funds in Eldridge's general business account to cover the fourth check and it "bounced" as a result. The client informed Eldridge of the bounced check and requested that he immediately forward a cashier's check or money order to opposing counsel. Eldridge failed to promptly send payment to opposing counsel.

Eldridge was retained to represent a client in a divorce modification matter. Previously, the client complained to the Office of Professional Conduct about Eldridge's representation of her in the divorce modification and a Screening Panel was convened to review the complaint. At the hearing Eldridge assured the client that he was diligently working on her matter. Following the hearing, the client received a notice from opposing counsel informing her that she needed to obtain new counsel. The client attempted to contact Eldridge by telephone to find out why she needed to retain new counsel, but he failed to return her telephone calls. The client received no notice or explanation from Eldridge regarding the termination. The client retained new counsel and requested that Eldridge return her file, but he failed to do so.

Eldridge represented the plaintiff in a civil matter. During the course of that action, Eldridge submitted a Motion and Order in Supplemental Proceedings although he knew, or should have known, that there was no judgment in effect upon which an Order in Supplemental Proceedings could be issued pursuant to Rule 69(o) of the Utah Rules of Civil Procedure. The court entered the Order and opposing counsel filed a Motion to Set Aside which the court granted.

SUSPENSION

On August 29, 2000, the Honorable Tyrone E. Medley, Third Judicial District Court, entered an Order of Discipline by Consent suspending Margaret E. Hiller-Polster from the practice of law for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.8(j) (Conflict of Interest: Prohibited Transactions), 1.5 (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct. Two years of the suspension are stayed; Hiller-Polster will be on supervised probation during those two years.

Hiller-Polster agreed to open a joint-checking account with her client for the purpose of hiding assets from the client's husband, to pay attorney fees, and to otherwise provide for the client's needs. The client deposited funds into the account. Over a two month period Hiller-Polster withdrew all funds from the joint account without obtaining the client's express consent or providing any billing statements, receipts, or the like, until after the account had been depleted. In addition, Hiller-Polster's fees appeared excessive, and one charge to acquire pleadings from an out-of-state firm was not paid by Hiller-Polster to any out-of-state firm.

In a separate matter, Hiller-Polster was retained to represent a client in a divorce action. Hiller-Polster charged the client fees that the OPC deems excessive. Thereafter, the client terminated Hiller-Polster's legal services and hired another attorney to represent her. Hiller-Polster was contacted by the attorney who requested that the client's file be provided to him. Hiller-Polster made arrangements for the attorney to pick up the original file

at a local copy center. Hiller-Polster had the file photocopied, but left the client to pay the bill, which exceeded $300.

Hiller-Polster was retained to represent a third client in a lawsuit against the client's former employer. Hiller-Polster and the client entered into a fee agreement and Hiller-Polster was given a retainer fee. Thereafter, Hiller-Polster missed a filing deadline. Hiller-Polster was also retained to represent the same client in a divorce action. Hiller-Polster and the client entered into a fee agreement and Hiller-Polster was given a $500 retainer fee. Hiller-Polster knowingly provided inaccurate information to the court concerning the client's hourly wage represented on her child support worksheet.

Hiller-Polster was retained to assist two clients in a dispute between the clients, who are property managers, and the Home Owners Association of a property they managed. Although the representation would cost far in excess of $750, no retainer agreement was provided to the clients. Hiller-Polster improperly withdrew from the case and charged fees that the OPC believes are excessive given Hiller-Polster's experience and abilities in this field of practice. Also, Hiller-Polster placed attorney liens on existing client property that was not the subject of litigation and refused to timely remove the liens.

Mitigating circumstances include: no prior record of discipline.

Aggravating circumstances include: refusal to acknowledge the wrongful nature of the misconduct and lack of good faith effort to make restitution or to rectify the consequences of the misconduct.

SUSPENSION

On August 30, 2000, the Honorable Leon A. Dever, Third Judicial District Court, entered an Order of Discipline suspending David A. Reeve from the practice of law for a period of six months for violation of Rules 4.3(b) (Dealing With Unrepresented Person) and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct. The entire six months of the suspension was stayed upon condition that Reeve pay full restitution and attend Ethics School.

Reeve represented the sellers of real property located out-of-state. A potential buyer was interested in the property and contacted the sellers about purchasing it. Thereafter, Reeve contacted the buyer and an agreement was reached whereby the individual would make an initial down payment, followed by monthly payments.

The buyer sent Reeve a down payment, then made monthly payments directly to the sellers. Thereafter, the buyer decided to pay the remaining balance on the property, and in attempting to do so discovered there was a lien on the property. The buyer had incorrectly assumed there were no liens on the property by virtue of the fact that in the Sale of Real Estate, prepared by Reeve, no liens are noted. Reeve had, however, indicated to the buyer that the sellers would provide first mortgage information.

Unbeknownst to the buyer, the out-of-state property went into foreclosure and was sold at a trustee's sale. The buyer was not represented by legal counsel in the real property matter and misunderstood Reeve's role. Prior to the foreclosure, Reeve contacted the buyer and asked her to loan him money, to be repaid in thirty days. The buyer agreed, and wired the funds to Reeve the following day. Although Reeve told her he would repay the loan within thirty days, he failed to do so.

Mitigating circumstances include: cooperative attitude toward the disciplinary proceedings.

Aggravating circumstances include: selfish motive and substantial experience in the practice of law.

ADMONITION

On August 31, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 3.4(d) (Fairness to Opposing Party and Counsel) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in an employment matter. In responses to interrogatories and in oral responses during the client's deposition, the client failed to disclose a former employer. The client had identified the former employer to the attorney prior to the responses being served, but represented to the attorney that the client's relationship with the former employer had been one other than that of an employer/employee relationship. Based on the client's statements, the attorney told the client that it was not necessary to disclose the identity of the former employer since it did not appear that there was an employer/employee relationship. The attorney should have known that the relationship between the client and the former employer was an employer/employee relationship and should have known that the former employer should have been disclosed both in the interrogatory responses and during the deposition of the client.

Mitigating circumstances include: personal or emotional problems and inexperience in the practice of law.

ADMONITION

On August 31, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.5(b) (Fees) of the Rules of Professional Conduct.

The attorney undertook the legal representation of a new client, and it was reasonably foreseeable that total attorney fees would exceed $750. Although the attorney verbally communicated the hourly rate to the client, the attorney did not communicate in writing the basis for the fee.

Mitigating circumstances include: absence of prior record of discipline; absence of dishonest or selfish motive; timely good faith effort to rectify the consequences of the misconduct involved; and cooperative attitude toward the disciplinary proceedings.

ADMONITION

On September 7, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 5.3 (Responsibilities Regarding Non-Lawyer Assistants) and 1.7 (Conflict of Interest: General Rule) of the Rules of Professional Conduct.

A law firm was retained to represent an individual client in a lawsuit against a city. The attorney had an "of counsel" relationship with the firm. After the firm filed the lawsuit, the attorney brought to the firm the city as a client in another matter. The attorney gave the new client file for the city to a legal assistant to check for conflicts within the firm. The legal assistant failed to correctly perform the conflicts check, resulting in a client number being assigned to the city as a client in the second matter, and a new client file being opened. Other attorneys in the firm commenced working on the second city matter. The attorney essentially turned the matter over to other attorneys in the firm who then performed the legal services for the city. While the firm performed legal work for the city in the second matter, other attorneys in the firm continued to represent the individual client against the city.

When the conflict was brought to the firm's attention, the firm notified both clients. Although the city was willing to waive the

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conflict, the individual client was not willing to waive it. Accordingly, the firm withdrew from the representation of both clients.

SUSPENSION

On September 11, 2000, the Honorable Lyle R. Anderson, Seventh Judicial District Court, entered an Order of Discipline By Consent: Six Months Suspension suspending Natasha Hawley from the practice of law for six months.

In May 1998, Hawley and the OPC entered into a Stipulation for Discipline By Consent, pursuant to which Hawley was placed on a one year probation to be monitored by the OPC. As part of the stipulation, Hawley agreed that if during the one year probationary period she was arrested and convicted of an alcohol-related offense, her license to practice law would be suspended for six months. During the probationary period Hawley was twice arrested and convicted on alcohol-related criminal offenses, but failed to report these arrests to the OPC as required by the terms of her probation. Pursuant to the terms of the 1998 stipulation and order, Hawley was suspended for six months for violating their terms.

RESIGNATION PENDING DISCIPLINE

On September 22, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline in the matter of Scott C. Pierce.

Pierce represented a client in a bankruptcy action. During the course of the representation Pierce signed the client's name on multiple bankruptcy documents, including a sworn Declaration Concerning Debtor's Schedules. Pierce believed he had the authority to sign the documents but acknowledged that without a Power of Attorney, he technically did not. The bankruptcy trustee assigned to the client's action brought the signatures to the court's attention and the bankruptcy was dismissed.

Additionally, Pierce continued to practice law during a period when he was suspended for non-compliance with mandatory continuing legal education requirements.

DISBARMENT

On November 8, 2000, the Honorable Boyd Bunnell, Seventh Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Contempt and Judgment of Disbarment disbarring Wendy L. Hufnagel from the practice of law.

On May 31, 2000, the court entered an Order of Suspension suspending Hufnagel from the practice of law for one year and imposing requirements including the notification requirements of Rule 26, Rules of Lawyer Discipline and Disability. The Order of Suspension provided that Hufnagel's failure to comply with Rule 26 would constitute contempt, and would be punishable with further disciplinary action. The order further required Hufnagel to promptly respond in writing to any further requests from the Office of Professional Conduct concerning alleged unethical conduct. The order also required Hufnagel to file and serve on the OPC an inventory and accounting of all client files and client and third party funds held by her during a specified period. The order also required Hufnagel to submit to binding fee arbitration in the event that any of her clients allege a fee dispute and consent to arbitration.

Hufnagel failed to comply with Rule 26 and the various other requirements set forth in the Order of Suspension, including failing to file the inventory and accounting for client files and funds. After the Order of Suspension had been entered, several of Hufnagel's clients retained new attorneys to represent them, and those attorneys wrote letters and made telephone calls to Hufnagel's office requesting either the client's file or an accounting of retainers paid to her. Hufnagel did not return many of these clients' files and did not refund unearned portions of the clients' retainers.

The court found Hufnagel in contempt for failing to comply with the Order of Suspension pursuant to Rule 26(e), Rules of Lawyer Discipline and Disability and Rule 5.2, Standards for Imposing Lawyer Sanctions. The court also appointed a trustee over Hufnagel's law practice with the authority to take possession of client files and records, and any trust accounts and records.

The court found the following aggravating circumstances: multiple offenses; obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority; and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

SUSPENSION

On November 9, 2000, the Honorable Sandra N. Peuler, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Suspension and Probation suspending Keith Henderson from the practice of law for two years for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.7 (Conflict of Interest: General Rule), 3.2 (Expediting Litigation), 3.4 (Fairness to Opposing Party and Counsel), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(d) (Misconduct) of the Rules of Professional Conduct. All but six months of the two-year suspension is stayed.

Henderson was retained to represent a married couple in a bankruptcy matter. The main purpose of the bankruptcy filing was to discharge tax debts for which the clients were being garnished. Henderson filed the bankruptcy action too early to be able to discharge all of the clients' taxes. During the bankruptcy proceedings Henderson represented the wife against the husband in a divorce action. Henderson did not obtain a written conflict of interest waiver. In the divorce decree the husband was ordered to reimburse the wife for the tax debts which had been the subject of the bankruptcy proceedings. The clients sued Henderson for malpractice and were awarded a judgment; Henderson took more than two years to pay the judgment. During the course of the malpractice litigation, Henderson filed an Affidavit in Opposition to Motion for Summary Judgment in which he alleged that the clients made the decision to file the bankruptcy case early. During the course of the same litigation at a later deposition, Henderson admitted he erred in the filing date. The Office of Professional Conduct sent seven letters to Henderson before he responded to its request for information concerning this matter.

Henderson was retained to represent a client regarding a wage claim based upon termination from employment. The client expected Henderson to file his wage claim, but he failed to do so. Henderson took no action to protect the client from losing his wage claim by operation of the statute of limitations and also refused to return the unearned retainer. Additionally, Henderson failed to return the client's phone calls. Henderson failed to respond to the OPC's requests for information regarding this matter.

Henderson was retained to represent a client regarding a worker's compensation claim. During the four month period of the representation the client called Henderson approximately thirty times, and Henderson only returned two or three of the calls. On two occasions Henderson assured the client that his office was working on the client's file and that the client's file was "getting big." Thereafter, Henderson met with the client, at which time the client saw his file contained only the same three or four papers he had given Henderson months earlier. Henderson failed to respond to the OPC's requests for information concerning this matter.

Henderson was retained to represent a client regarding a worker's compensation matter. The client filled out and signed a form as requested by Henderson. During the four month period of the representation the client telephoned Henderson fifty or more times. Henderson only spoke with the client personally once or twice. During this period, Henderson advised the client that the application for hearing had been filed with the Industrial Commission. The client thereafter contacted the Commission and learned that the forms had not been filed. Upon being contacted by the client, Henderson acknowledged that his secretary forgot to file the application and stated that he would do it immediately. Thereafter, the client again learned that the application for hearing had not been filed. Henderson sent a letter to the client indicating that the application for hearing had been filed; nevertheless, the application was not filed until after the letter was sent. The OPC sent five letters to Henderson regarding this matter before he filed a response.

Henderson represented the defendant in a divorce action. Henderson failed to appear at a pretrial conference held before the commissioner. Opposing counsel telephoned Henderson, who had failed to calendar the conference, and Henderson thereafter appeared late for it. Some months later Henderson failed to appear at a pretrial conference with the judge. Henderson did not appear because he was not able to resolve the case by stipulation and anticipated opposing counsel would simply obtain a trial setting. The judge awarded attorney's fees to opposing counsel as a result of Henderson's failure to appear at the court hearing. Henderson failed to pay the fees until more than one year later. Henderson had difficulty communicating with his client because of the client's out-of-state incarceration. The case was delayed based upon Henderson's inability to communicate with his client, his failure to appear at court proceedings, and his failure to communicate with opposing counsel.

In five other matters, Henderson failed to respond in a timely manner to the OPC's requests for information regarding the substance of the informal complaints.

The court found the following aggravating circumstances: prior record of discipline, pattern of misconduct, multiple offenses, obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary authority, refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or the disciplinary authority, substantial experience in the practice of law, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

The court found the following mitigating circumstances: absence of dishonest or selfish motive; imposition of other penalties or sanctions; remoteness of prior offenses; and time period of the complaints.

SUSPENSION

On November 14, 2000, the Honorable Timothy R. Hanson, Third Judicial District Court, entered an Order of Suspension and Probation suspending Suzanne Benson from the practice of law for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.16 (Declining or Terminating Representation), 5.5(a) (Unauthorized Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c) and (d) (Misconduct) of the Rules of Professional Conduct.

Benson was placed on interim suspension on August 24, 1995, but by agreement with the Office of Professional Conduct and approval by the court, the beginning of the three year suspension was set at August 24, 1997.

Benson was suspended from the practice of law for failure to comply with continuing legal education requirements and later for failure to pay her Bar dues. Although she was suspended, Benson continued to represent a client. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained by a client to draft testamentary documents, but failed to provide the legal services for which she was hired and failed to communicate with the client. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained by a client to obtain support from the client's mother's estranged husband. Benson failed to provide the legal services for which she was retained and failed to communicate with the client. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained to represent a client in a civil action. A judgment was obtained in the client's favor but Benson failed to take sufficient action to collect it, and failed to communicate with the client. Benson also failed to return the client's file. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained by a client to obtain a step-child adoption. Benson received a retainer but failed to provide the legal services for which she was hired and failed to communicate with the client regarding the representation. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained to represent a client in a domestic relations matter. Benson failed to provide the legal services for which she was hired and failed to communicate with the client regarding the representation.

Benson was employed by a law firm that had been retained by a client. Benson was to provide legal services to the client for the law firm, but failed to provide sufficient services.

Benson was retained to represent several other clients but failed to provide the legal services and failed to communicate with these and other clients regarding the representation.

Benson was arrested and charged with misdemeanor counts of criminal trespass and retail theft concerning a shoplifting matter. Benson pled guilty and was fined and placed on probation.

Mitigating circumstances include: personal or emotional problems; mental disability or impairment due to Benson's diagnosed substance abuse problems; and remorse.

ADMONITION

On November 21, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 3.2 (Expediting Litigation) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented the plaintiff in a medical malpractice action. The attorney failed to respond to discovery requests and failed to comply with court orders compelling responses. As a result of the attorney's failure to comply with discovery requests, the District Court dismissed the client's Complaint without prejudice. The attorney appealed the dismissal, but the Utah Court of Appeals upheld it.

Mitigating circumstances include: absence of prior record of discipline; cooperation with the Office of Professional Conduct; the client was unavailable much of the time to respond to discovery because of ill health, and in some instances did not cooperate with the attorney in discovery matters; the attorney did not fail to respond to all discovery requests in the case, which was pending over a long period.

Aggravating circumstances include: substantial experience in the practice of law.

DISBARMENT

On November 22, 2000, the Honorable Donald Eyre, Jr., Fourth Judicial District Court, entered an Order of Disbarment disbarring Mark K. Stringer from the practice of law. This order was entered pursuant to an Affidavit of Consent from Stringer.

PUBLIC REPRIMAND

On November 27, 2000, the Honorable Tyrone E. Medley, Third Judicial District Court, entered an Order of Discipline: Public Reprimand reprimanding Michael L. Labertew for violation of

Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 3.2 (Expediting Litigation), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Labertew was retained to represent a client in a personal injury action concerning injuries suffered in an automobile accident. The client hired Labertew to file claims against the insurance company of the driver of the other vehicle and the government entity responsible for the stoplight at the intersection where the accident occurred. Labertew failed to do the necessary research regarding the requirements of filing a claim against a government entity, and failed to file the necessary notice with the entity responsible for the stoplight. Labertew's failure to timely file notice with the government entity resulted in the client's claim against it being barred by the applicable statute of limitations. During the course of the representation, Labertew failed to promptly return some of the client's telephone calls and failed to keep the client reasonably informed about the status of her case. Labertew failed to promptly obtain the client's disability rating following her surgery, which resulted in an unnecessary delay in her case.

Mitigating circumstances include: no prior record of discipline; and cooperation with the OPC during its investigation.

Aggravating circumstances include: substantial experience in the practice of law.

SUSPENSION

On November 28, 2000, the Honorable Donald J. Eyre, Fourth Judicial District Court, entered an Order commencing November 7, 2000, whereby Wayne B. Watson has been suspended from the practice of law for one year stayed back to nine months arising out of violations of Rules 1.15 and 1.7 of the Utah Rules of Professional Conduct.

ADMONITION

On November 28, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a criminal matter. The attorney did not conduct research to determine whether the prosecution's presentation of the case constituted double jeopardy. The client was convicted on all counts and sentenced to concurrent terms at the Utah State Prison. On appeal, the Utah Court of Appeals found that by failing to research the relevant law concerning whether the client was facing double jeopardy, the attorney provided ineffective assistance of counsel.

SUSPENSION

On November 29, 2000, the Honorable Ronald E. Nehring, Third Judicial District Court, entered an Order of Suspension suspending Isaac B. Morley from the practice of law for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) and (b) (Safekeeping Property), 3.2 (Expediting Litigation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(b), (c), and (d) (Misconduct) of the Rules of Professional Conduct. Morley has been on interim suspension since December 14, 1998.

Morley was retained to represent a client in a personal injury matter. Later, Morley was retained to represent the same client in a divorce and child custody matter. Morley continued a custody hearing on three separate occasions without informing the client or seeking his approval. Morley failed to timely pursue the personal injury matter and the divorce matter, causing unnecessary delays and hardship for the client. Morley provided no meaningful representation after being retained by the client. Morley made misrepresentations to the client concerning the status of the personal injury matter.

Morley cashed a client trust account check at a grocery store and the check was returned for insufficient funds. An attorney for the grocery store contacted Morley about the bounced check but Morley refused to pay the store. There was no proof that Morley misappropriated client funds by these actions.

Morley was retained to represent a client in a divorce matter, but failed to perform any meaningful legal services on the client's behalf. The client made numerous attempts at written and telephonic communication with Morley, but was unsuccessful. Morley refused to refund the unearned fees to the client even after the client demanded that he do so. Morley failed to respond to the Office of Professional Conduct's requests for information regarding this matter.

Morley was retained to represent a client in a bankruptcy and civil matter, but failed to perform any meaningful legal services on the client's behalf. Although the client made numerous attempts to contact Morley regarding his legal matters and to request refund of unearned fees, Morley failed to answer the client's demands and did not refund the unearned fees. Morley failed to respond to the OPC's requests for information regarding this matter.

Morley was retained to represent a client in a child support matter, but failed to perform any meaningful legal services on the client's behalf. The client instructed Morley to prepare and file a stipulation, but he failed to do so. On more than one occasion, Morley informed the client that he had prepared the stipulation and that court dates had been set and subsequently postponed, but Morley had not prepared the stipulation and no court dates had been set. The client made numerous attempts to contact Morley, but Morley failed to respond.

Morley was retained to represent a client in an uncontested, out-of-state divorce matter, but failed to perform any meaningful legal services on the client's behalf. Morley told the client a court date had been set and then said the date was cancelled because a stipulation had been reached when actually there was no stipulation and Morley had preformed no work on the matter. Morley failed to communicate with the client. Morley's failure to pursue the client's divorce resulted in the client having to retain another attorney. Morley failed to respond to the OPC's requests for information regarding this matter.

Morley wrote a check to a Nevada hotel and casino when he knew or should have known that there were no funds in his account to cover the check. Morley left Nevada and failed to appear at a pre-trial conference regarding the check. After threat of forfeiture of Morley's bond, he appeared and pled nolo contendre to the criminal charge of drawing and passing a check without sufficient funds with intent to defraud. Morley failed to respond to the OPC's requests for information regarding this matter.

Morley was charged with two counts of criminal non-support, class A misdemeanors, after becoming grossly delinquent on his court-ordered child support payments. Morley appeared, entered not guilty pleas, and a pretrial conference was set. Morley failed to appear for the first pretrial conference and a bench warrant was issued. Thereafter, Morley failed to appear at three pretrial conferences.

In addition to suspending Morley for three years, the court ordered that Morley cannot be reinstated to the practice of law until he has fulfilled all sanctions relating to the bench warrant and the criminal charges arising from the support issues have resulted in a final disposition, and all sanctions other than probation completed.

SUSPENSION

On December 1, 2000, the Honorable Anne M. Stirba, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Suspension suspending Paul Gotay from the practice of law for six months for violation of Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct. All but the first forty-five days of the suspension were stayed.

Gotay, the owner of an office building, was involved in an altercation with a tenant who was moving out of the building. Gotay witnessed the tenant attempting to dismantle some electronic telephone equipment located in the building. Gotay approached the tenant and questioned him regarding the removal of the equipment and acrimonious words were exchanged. Gotay retrieved a gun from his office and proceeded to brandish it in the presence of others who were there for the purpose of assisting the tenant remove his possessions from the building. Gotay acted in the belief that the tenant would assault him. Following initial questioning by police officers, Gotay disposed of the gun by placing it in a garbage dumpster.

PUBLIC REPRIMAND

On December 4, 2000, the Honorable James R. Taylor, Fourth Judicial District Court, entered an Order of Discipline By Consent: Reprimand reprimanding Earl B. Taylor for violation of Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct.

Taylor was retained to represent a couple in a bankruptcy matter. Taylor filed the bankruptcy on the clients' behalf but it was dismissed at the first creditors' meeting because Taylor failed to timely file the proper pleadings. After the matter was dismissed, Taylor assured the clients that he would meet with the judge and take care of everything. Thereafter the clients attempted to reach Taylor on several occasions but he did not return their calls. Taylor failed to rectify the dismissal of the clients' bankruptcy filing. In the three other client matters, Taylor also violated Rules 1.3 (Diligence) and 1.4 (Communication). Taylor agreed to return fees to one client, and agreed to submit to binding fee arbitration in the three other matters.

Mitigating circumstances include: personal or emotional problems; and remorse.

ADMONITION

On December 20, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.4 (Respect for Rights of Third Persons) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a criminal matter in which the client was charged with sexual abuse of a child. During the

first preliminary hearing, counsel for the government apprised the attorney's co-counsel that using a specific term when referring to the child's undergarments caused the child extreme embarrassment and distress. Immediately before trial, counsel for the government called the attorney's co-counsel to reiterate the request that a specific term not be used when questioning the child. At trial, during his cross-examination of the child, the attorney used language the attorney knew would embarrass the child to obtain information that was already part of the record.

ADMONITION

On December 26, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.2(a) (Communication with Person Represented by Counsel) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented the petitioner in a civil action; the opposing party was also represented by counsel. At the client's request, the attorney drafted legal papers for the opposing party's signature and filing, including a Notice of Dismissal of Counsel and Cancellation of OSC Hearing, whereby the opposing party dismissed the opposing party's counsel.

PUBLIC REPRIMAND

On January 18, 2001, the Honorable David K. Winder, United States District Court, entered an Order of Public Reprimand reprimanding Charles F. Loyd for violation of Rules 1.3 (Diligence), 3.2 (Expediting Litigation), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Loyd represented a client in an appeal of a criminal conviction. After several extensions, Loyd failed to file an opening brief on behalf of the client. The Court of Appeals issued an order requiring Loyd to show cause why the client's appeal should not be dismissed for failure to prosecute. Loyd failed to respond to the order to show cause and to four subsequent orders of the court.

Cover of the Year

E. Craig McAllister, holding winning Cover of the Year for 2000

The winner of the Cover of the Year award for 2000 is the June/July issue, featuring a beautiful photograph taken by E. Craig McAllister of Orem, Utah. The photograph is of Candlestick formation, taken from Potato Bottom, Canyonlands National Park.

This is the fourth photograph by Mr. McAllister that has been featured on a Bar Journal cover. His other photographs appeared in November and December 1993, and March 1997.

Mr. McAllister is one of 39 attorneys or members of the legal assistant division of the Bar whose photographs of Utah scenes have appeared on at least one cover since August 1988. Covers of the year are framed and displayed, along with winners from prior years, on the upper level of the Law and Justice Center. Congratulations to Mr. McAllister, and thanks to all who have participated in this program.

2001 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 2001 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than **Thursday, April 26, 2001.** The award categories include:

1. Judge of the Year
2. Lawyer of the Year
3. Young Lawyer of the Year
4. Section/Committee of the Year
5. Community Member of the Year

To the People of Utah, and Members of the Utah Bar and Judiciary

Aside from the last year of my practice, I was a good lawyer, and honestly dealt with the Courts and my clients. I was not aware at the time, but have become aware, as the "fog has lifted," that during the last year or so of my practice, while under the tremendous pressure of the criminal matters and others, I acted imprudently, despite having the best intentions.

During my years with the Utah Bar, I served in several capacities with great dedication, and not without some distinction.

- Eight years as a Circuit Court Judge Pro Tem
- Three years plus, as a member of the Governor's select Council on Juvenile and Criminal Justice
- Eight years as the Guardian Ad Litem for four counties
- Co-founder of the BYU outreach programs, and teacher of the Family Law practice class at BYU

In addition, I served nearly 200 new clients each year in family, criminal, and civil law matters. Taking into consideration the extended families and business associates of these clients, I had some effect upon the lives of tens of thousands of people.

I do not point out these facts as a matter of bragging, but as a way of achieving some perspective and balance in these disciplinary matters. As I said, I am aware that there are perhaps a half dozen clients who may have some legitimate complaints about how I handled their cases in the last year or so. But, placed against the backdrop of these years of service and tens of thousands of client families, associates, without complaints, the problems take their real place in my professional life.

Mark K. Stringer

Notice of Petition for Readmission to the Utah State Bar by F. Kim Walpole

Pursuant to Rule 25(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of a Petition for Readmission ("Petition") filed by F. Kim Walpole in *In re Walpole,* Second District Court, Civil No. 950900387. Any individuals wishing to do so are requested within thirty days of this publication to file notice with the District Court of their opposition or concurrence to the Petition.

Thank You!

I would like to thank the members of the Bar Examiners, Bar Examiners Review, and Character and Fitness Committees for volunteering their time for the February bar examination. Your time and efforts were very much appreciated.

Thank you again,
Darla C. Murphy, Admissions Administrator

19th Annual Bob Miller Memorial Law Day Run/Walk

April 28, 2001 • 8:00 a.m.
University of Utah Campus

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

HOW DO I SIGN UP? Do it the easy way. Try on-line registration at www.utahbar.org, or call the Utah State Bar at 531-9077 to receive a registration form. **Deadline for preregistration is April 20.** Registration fee is $18. Send the completed registration form with fee to: Law Day Run/Walk, Utah State Bar, 645 S. 200 East, Salt Lake City, UT 84111. Race day registration will be held from 7:00 a.m. to 7:45 a.m. with a registration fee of $20.

HOW CAN I ALSO HELP IN PROVIDING LEGAL AID TO THE DISADVANTAGED? Make a charitable contribution and make your heart feel good, too. Attorneys are encouraged *and* challenged to contribute the charge of two billable hours. Everyone, please dig deep! Funds benefit clients of Utah Legal Services, Legal Aid Society of Salt Lake, and Disability Law Center. Who knows – you may be their next client. If you need more incentive, here it is: We will be presenting a special award to the group with the greatest number of registrants who contribute to "and Justice for all" as a part of the registration process. Can anyone beat Manning Curtis this year?

AND JUSTICE FOR ALL

Third Annual Campaign – "New Partners"

"AND JUSTICE FOR ALL" kicked off its third annual campaign on January 23, 2001 at the Rotunda of the Utah State Capitol. The Campaign took this opportunity to recognize its supporters in the Utah legal community which have helped "AND JUSTICE FOR ALL" preserve and increase the provision of civil legal services to disadvantaged and disabled citizens throughout Utah. After the first two years of the Campaign, a full 36% of the state's attorneys have supported "AND JUSTICE FOR ALL." The Campaign's goal is to increase annual participation to 50% of lawyers state-wide to create a stable source of funding for the provision of legal services to needy individuals and families. Alan Sullivan, a partner with Snell & Wilmer and Chair of the Campaign said, "Guaranteeing equal access to the courts for people without the financial means to hire a lawyer is the obligation of each one of us. Utah's lawyers are making sure the words 'AND JUSTICE FOR ALL' have real meaning in our state."

"AND JUSTICE FOR ALL" funds have helped the Disability Law Center, Legal Aid Society of Salt Lake and Utah Legal Services serve nearly 20,000 individuals in 1999 – 3,750 more individuals than the year before. However, increased outreach to underserved populations and referrals from the private bar have increased the demand for services. In 1999, 11,568 eligible individuals received no or limited assistance due to a lack of resources.

This year, "AND JUSTICE FOR ALL" is focusing on "New Partners" to recognize that the need in our community is far too great to be met solely by the legal community and there are still too many eligible individuals who cannot receive legal assistance. The 2001 Campaign will focus on further expanding access to justice by incorporating "New Partners" – donors and clients. To help inform "New Partners" about the Campaign, we will utilize a short video which features the stories of clients served by the partner agencies using funds generated by the Campaign and several leading members of the state's legal profession speaking on the importance of supporting access to justice for all people. If you would like us to make a presentation at your office or for a special event, please contact the Campaign at (801) 257-5519.

To help in this year's effort the R. Harold Burton Foundation has pledged a generous $100,000 challenge grant which will be awarded to the Campaign when an additional $300,000 is raised from the state's lawyers. To date, we have secured $200,000 in pledges and donations towards this goal. With your support, we will meet this challenge. Rick Horne, Executive Director of the R. Harold Burton Foundation, said he is pleased to make the substantial contribution to this year's campaign. "The Foundation has long been a supporter of the services supported by "AND JUSTICE FOR ALL" and is pleased at the extreme effectiveness with which the entities use every dollar they receive."

An attorney's contribution to "AND JUSTICE FOR ALL" will meet all or a portion of his or her obligation under Rule 6.1 of the Utah Rules of Professional Conduct. The suggested contribution is the dollar equivalent of two billable hours. Donations are tax-deductible. Checks should be made payable to "AND JUSTICE FOR ALL" and remitted to 225 South, 200 East, Suite 200, Salt Lake City, Utah 84111.

☐ YES! I want to join my partners in the legal community in supporting equal access to justice for all Utahns. Enclosed is my tax-deductible charitable gift in the equivalent of two-billable hours.

☐ Individual Contribution ☐ Firm Contribution – Contact: ____________

Number of attorneys in firm: ____________

Amount enclosed: $ ________ Please make checks payable to "AND JUSTICE FOR ALL" -or-

Please charge: $ ________ to my VISA/MC Cardholder Name ____________

Account Number ____________ Exp ___/___ Signature ____________

Please print your name as you wish it to appear on donor recognition lists.

Name: ____________ Phone: (____)________

Address: ____________

City/State/Zip: ____________

"and Justice for all"

☐ Please check here if you wish your donation to remain anonymous.

DATES	TITLE	PLACE, TIME, CLE CREDIT, PRICE
3-15–17-01	**Utah State Bar Mid Year Convention**	St. George, Utah; 9 Hrs. CLE including up to 3 Hrs Ethics and 4 Hrs. NLCLE.
3-22-01	**Employment Law Primer: Sex, Lies and Litigation: Prosecuting and Defending the Workplace Discrimination Claim**	Law & Justice Center; 5:30-8:30 p.m.; 3 Hrs. CLE/NLCLE; $40 New Lawyers, $55 others.
4-19-01	**Annual Real Property Section Seminar**	Law & Justice Center; 8:00 a.m.-noon;4 Hrs. CLE; Price TBA.
4-19-01	**Killer Cross-Examination with Larry Pozner**	Law & Justice Center; 2:00-7:00 p.m.; 6 Hrs. CLE; $125 Litigation Section Members, $150 others.
4-20-01	**Annual Collection Law Section Seminar**	Law & Justice Center; Time, Price and CLE TBA.
4-26-01	**Contracts in Entertainment Law Primer: Lights, Contracts, Action**	Law & Justice Center; 5:30-8:30 p.m.; 3 Hrs. CLE/NLCLE; $40 New Lawyers, $55 others.
5-3-01	**Annual Corporate Counsel Section Seminar**	Law & Justice Center; Time, Price and CLE TBA.
5-10-01	**Annual Business Law Section Seminar**	Law & Justice Center; Time, Price and CLE TBA.
5-11-01	**Annual Family Law Section Seminar**	Law & Justice Center; Time, Price and CLE TBA.
5-16-01	**Annual Labor & Employment Law Section Seminar**	Law & Justice Center; Time, Price and CLE TBA.
5-17-01	**Water Law Primer: Getting Your Feet Wet**	Law & Justice Center; 5:30-8:30 p.m.; 3 Hrs. CLE/NLCLE; $40 New Lawyers, $55 others.

Full agendas can be found for each of the programs on our Website at *www.utahbar.org/cle.*

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

REGISTRATION FORM

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

Registration for (Seminar Title(s)):

(1) ______________________ (2) ______________________

(3) ______________________ (4) ______________________

Name: ______________________ Bar No.: ______________________

Phone No.: ______________________ Total $ ______________________

Payment: ☐ Check Credit Card: ☐ VISA ☐ MasterCard ☐ AMEX Card No. ______________________

Exp. Date ______________________

RATES & DEADLINES

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

Classified Advertising Policy: It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification, or discrimination based on color, handicap, religion, sex, national origin, or age. The publisher may, at its discretion, reject ads deemed inappropriate for publication, and reserves the right to request an ad be revised prior to publication. For display advertising rates and information, please call (801)538-0526.

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

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

FOR RENT

KAUAI vacation rental – 3 bedroom luxury home with ocean and golf course views located in Princeville on Kauai's north shore. 45 holes of championship golf, including Hawaii's #1 rated course. Accommodates up to 10 people. For photos and rates, see www.kauaibalihai.com or contact Arizona attorney owner at steveryan@azis.com.

POSITIONS AVAILABLE

STAFF ATTORNEY – ADMINISTRATIVE OFFICE OF THE COURTS. The Administrative Office of the Courts is seeking an entry level attorney to perform professional legal work including legal research and analysis, preparing and drafting legislation, preparing and reviewing administrative policies and rules and providing staff support to judicial committees and task forces. MINIMUM QUALIFICATIONS: J.D. from an accredited law school and two years of broad based legal experience is required. Experience in policy analysis, research and design as well as drafting policies, rules and legislation in a government environment is preferred. Must be a member of the Utah State Bar in good standing. HIRING RANGE: $37,627–$46,758 plus excellent state benefits. CLOSING DATE: March 9, 2001, at 5:00 p.m. Applications and a complete job description may be obtained from our website: http://courtlink.utcourts.gov/jobs or from the AOC at 450 S. State Street, 3rd Floor North, Salt Lake City, UT. Return applications to: Director of Human Resources, Administrative Office of the Courts, P.O. Box 140241, Salt Lake City, UT 84114-0241. EQUAL OPPORTUNITY EMPLOYER.

COLORADO – Western Colorado law firm seeks associate to work directly with healthcare client/Health Maintenance Organization. Minimum of three years health care practice experience, good writing & analytical skills, excellent communication skills and good academic record required. We offer a competitive salary and comprehensive benefit package. Submit resume to: Firm Administrator, Hoskin, Farina, Aldrich and Kampf, P.C., Post Office Box 40, Grand Junction, CO 31502.

LITIGATION ASSOCIATE – SNOW NUFFER, a St. George based law firm, is seeking an attorney with strong academic credentials to join its litigation practice. Candidates should have 1-4 years of litigation experience. Submit cover letter and resume to: Terry Wade, c/o Snow Nuffer, 192 East 200 North, Third Floor, P.O. Box 400, St. George, UT 84771-0400, Fax: (435) 628-1610, e-mail: terry.wade@utahlaw.com.

CENTRAL STAFF ATTORNEY – UTAH SUPREME COURT, SALT LAKE CITY. Type of position: Full time exempt, with benefits. Salary: $40,830-$56,534 (depending upon qualifications/experience). Closing date: April 2, 2001. Duties: Provide assistance to the court with respect to docketing statements, motions, applications for certificates of probable cause, petitions for interlocutory appeal, petitions for extraordinary writs, and otherwise provide assistance as assigned by the court. Required Qualifications: Graduation from an ABA accredited law school with a juris doctorate degree and four years experience in the practice of law. Must be a member in good standing of the Utah State Bar. Thorough knowledge of principles of the appellate process, Utah statutes, procedural and evidentiary rules, general legal principles and common law procedures. Must possess ability to identify and analyze legal problems within the context of the appellate process and propose sound dispositional recommendations. Excellent writing skills required. Application Procedure: Application form should be obtained from the Administrative Office of the Courts, 450 South State, SLC, the Dept. of Workforce Services, or downloaded off the Internet at http://courtlink.utcourts.gov/jobs. Completed application form, resume, law school transcript, and writing sample should be submitted to: Pat Bartholomew, Clerk of the Court, Supreme Court, 450 South State, P.O. Box 210, Salt Lake City, UT 84114-0210, (801) 238-7974.

Small firm seeks attorneys to handle overflow or provide expertise in general litigation, collection, bankruptcy, tax and/or estate planning. Send resume and a cover letter detailing areas of practice and rates for fellow attorneys (timely payment assured) to Utah State Bar, Attn: Christine Critchley, Confidential Box #10, 645 S. 200 East, Salt Lake City, UT 84111.

PARTNER/OFFICE SHARE. Seeking an attorney experienced in Medical Malpractice, Product Liability, Personal Injury to share deluxe office space or possible partnership. Mark C. McLachlan, First National Bank Building, 480 East 400 South, Salt Lake City, UT 84111. (801) 521-0123.

OFFICE SPACE/SHARING

Creekside Office Plaza, located on NW corner of 900 East and Vanwinkle Expressway (4764 South) has several executive offices located within a small firm, rents range from $600-$1200 per month, includes all amenities. Contact: Michelle Turpin @ 685-0552.

HISTORIC BUILDING ON EXCHANGE PLACE, leasing 1553 square foot office space on garden level with five offices, reception and secretarial areas, storage room and a separate outside entrance, only $1800 monthly. Also on the garden level an individual 310 square foot office space for $360. Available on main level within a law firm is a 264 square foot office space with secretarial area. This space includes receptionist, conference room, copier, fax and library. Parking stalls available. Contact Joanne Brooks @ 534-0909.

OGDEN LAW BUILDING FOR SALE OR LEASE. Tastefully decorated offices for three attorneys; secretary/receptionist; conference room and library; kitchen. Full basement for storage. Off-street parking. Close to courthouse. Attorney retiring. (801) 621-2630.

SERVICES

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

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

CHILD SEXUAL ABUSE/DEFENSE: Case analysis of all issues surrounding child's statements of abuse – Identify investigative errors and objective reliability in video recorded testimony – Assess criteria for court's admission of recorded statement evidence (RCP 76-5-411 and RE 15.5, 1102) – Determine origin of allegations and alternative sources – Evaluate for Sixth Amendment violations. Bruce Giffen, D.Psych., Evidence Specialist, American Psychology-Law Society. (801) 485-4011.

Contract work desired. At-home mom/lawyer seeking contract work on a part-time basis. Nine years experience; references available. Reasonable rates. Please call 518-5988.

PRE-SETTLEMENT FUNDING for plaintiffs. Non-recourse cash advance for plaintiffs where settlement is likely. A program that removes the financial risk for the attorney and his/her firm. We offer advance funding for the purpose of paying plaintiffs personal and legal expenses. This ***is-not*** a loan. (801) 955-6134 or 1 (877) 357-8275.

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