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

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

COVER: Salt Lake City offices and Scott M. Matheson Courthouse, by A. Dennis Norton, Snow Christensen & Martineau, Salt Lake City, Utah.

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Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners or any employee of the Utah State Bar to civil or criminal liability.
6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.
7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.
8. The Editor, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

Cover Art

Members of the Utah State Bar or members of the Legal Assistants Division of the 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.

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

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

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

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We Are Not Alone

by John Baldwin

For over fifty years leaders from the bars of the western states have met together to discuss their common interests and shared concerns. From the Dakotas to California, Alaska to Hawaii, and Texas to Washington, the seventeen state bars of the Western States Bar Conference include an impressive list of former bar officers as well as current bar leaders. All are trying to get their arms around today's issues and prepare for those to come.

As a president of the South Dakota Bar (2,403 members, a budget of $900,000 and a staff of five) addressed the group, he compared the issues faced in South Dakota with the issues faced in Texas (66,000 members, a $25,700,000 budget and 300 staff members) and remarked how, despite the disparity in their size, the issues faced in South Dakota were identical to those faced in Texas.

It struck me as particularly poignant that we are not alone in facing these interests nor are we unique in our approaches to addressing our concerns. Other than the State Bar of California (171,143 members, a $100,315,000 budget and 484 staff members) which seems to have more peculiar problems, the rest of us tend to be facing down the same series of historic concerns and similarly anticipating the same curious future. We are all dealing with varying degrees of success with:

1. Professionalism. We are continuously attempting to balance increasing demands of running our practices like businesses without sacrificing the goals of behaving professionally and adhering to higher standards of fiduciary obligations and broad responsibilities to our system of justice.

2. Multi-Disciplinary Practice (MDP). As market forces change, we are trying to appropriately balance our historic roles and independence with the challenges of increased competition from other businesses and professionals. Should we join together or continue to spurn the attempts of non-lawyers who wish to combine forces? While some states are taking initiatives like Utah's in trying to be responsive to consumers' wants, other states feel threatened and choose to dig in around known practice models.

3. Multi-Jurisdictional Practice (MJP). Again, as market forces, transportation and technology permit greater mobility in our practices, states are struggling to balance the long-standing rights of strictly determining the particular qualifications of each entering applicant with the thought that such provincialism could become barriers for business. About half the states provide a limited type of reciprocity, (Utah is not among those) and currently the states of Oregon, Washington and Idaho are presenting rule changes to their supreme courts which would permit entrance into each state's bars after passing only one of the other's bar examination. Utah has set up a task force to review these issues.

4. Access to Justice. We are all attempting to seek better ways to provide more services to low and middle income people. Most states have adopted programs such as ours, where lawyers may volunteer to provide pro bono help and are matched up with appropriate candidates. Some require reporting. A few are attempting to mandate services. Many states have consortiums similar to our own "and Justice for All" group which solicits donations. One state actually has convinced its legislature to collect funds through the sale of affinity license plates.

5. The Independence of the Judiciary. On both the federal and state level, the third branch of government seems to consistently be faced with challenges from those who seek to influence or predetermine judges' roles and their abilities to act as neutral decision-makers.

6. Finally, Technology. Much of our last conference was devoted to discussing the impact of current technology on the profession and the practice of law and in prognosticating how rapidly increasing technological advances and client expectations will cause us to more rapidly alter the way we practice and deliver our services to the public.

When I began to practice law twenty years ago, our office had one very large com-

puter and each secretary had the latest model IBM electric typewriter. Redrafting was always problematic because it required in most instances an entire re-typing of that individual page and often a re-typing of whole documents. The computer was reserved for the really big stuff. The fax machine was new and seemed but a luxury. Our desks were strewn with square pink sheets letting us know who had called and very briefly what their messages were. A more forward-thinking friend told me that some day each lawyer would have a small computer on her desk where she could access all the firm's files and communicate with our clients. I told her she was nuts.

Well, it seems I was nuts. The future is today and tomorrow gets closer all the time.

• The group talked at length about how the bars may improve their own web sites to increase timely and relevant communications with lawyers. Included in this were discussions on changes in the delivery of continuing legal education and how to provide better education on items of more particular interest to lawyers' desks at times they alone select. Desktop CLE may never replace the need to share ideas in person, but the ability to have individual study and joint on-line seminars is not far away.

• The web is providing increased speed and thoroughness in our own research. Web research providers are continuing to improve their range of services and there is more and more information which is free and currently in the public domain.

• There are increasing numbers of office management packages available through individual groups for customization for lawyers and firms and there are a growing number of services available through web based application service providers (ASP's).

The western states bars, like those elsewhere, are struggling to reinvent themselves in a world which is changing while maintaining the core values which have set us apart and provided a system of justice which, despite its imperfections, works pretty well. In March of 1949, *Popular Mechanics* projected that "where the calculator on the ENIAC is equipped with 18,000 vacuum tubes and weighs thirty tons, computers in the future may only have 1,000 vacuum tubes and perhaps weigh one and a half tons." The president of Digital Equipment in 1977 surmised that "there is no reason for any individual to have a computer in his home."

We don't know exactly what is out there and our guesses may also be a bit off. Whatever discomfort there is to that thought, there may be solace in the knowledge that we are not alone nor are we unique. Perhaps there is also some security in our understanding that great minds are struggling all over. We are all in it together and are collectively trying to do our best.

President-Elect & Bar Commission Candidates

President-Elect Candidates

JOHN A. ADAMS

John A. Adams is a shareholder at the law firm of Ray, Quinney & Nebeker where he has practiced since 1982. Mr. Adams received his B.A. degree in Economics from Brigham Young University and then attended Brigham Young University Law School. Following graduation from law school in 1981, he served as a law clerk to the Honorable George E. MacKinnon of the United States Court of Appeals for the District of Columbia Circuit.

Mr. Adams is currently a Bar Commissioner from the Third District and is a member of the Commission's Executive Committee. He serves on the Bar's Admissions and Communications Committees as well as a special committee reviewing the Rules of Lawyer Discipline and Disability. He also served as a member of the Utah Supreme Court Task Force on Bar Governance. Mr. Adams is a former president of the Young Lawyers' Section and the Salt Lake County Bar Association.

Mr. Adams concentrates his litigation practice on general commercial matters, insurance coverage disputes, natural resources, intellectual property law and environmental litigation. He is a trained mediator and is a member of the Utah federal district court mediation panel. He is married to Lisa Ramsey Adams (J.D., U. of U., 1986) and they have four children.

Few lawyers have extra time. If they do, they wish they didn't because time is money in our profession. Most lawyers don't have a lot of time to think much about the operations of the Bar, but they want to have leaders who take the time to carefully consider decisions, keep an eye on future planning and exercise sound judgment.

Successful bar governance draws on the time and capabilities of a lot of different people. The bar president may set the tone, but the real work is done by many others and must be a well-coordinated team effort. We need to continue to (1) effectively use the time and abilities of our paid, professional bar staff, (2) empower and encourage the activities of our sections, committees and local bar associations, and (3) keep members informed promptly of events and issues that affect them.

I understand bar operations and governance at multiple levels. I served as Young Lawyers President, served ten years on the executive committee and as an officer of the Salt Lake County Bar Association and currently serve as a member of the Bar Commission's five-person Executive Committee.

Please take the time to vote in this first general election. I would appreciate your vote and support.

DENISE A. DRAGOO

DENISE A. DRAGOO, ESQ., is a partner with the law firm of Snell & Wilmer L.L.P., Salt Lake City, Utah. Ms. Dragoo received her Bachelor of Arts from the University of Colorado in 1973 with honors, is a 1976 graduate of the University of Utah, College of Law, and received a Masters of Law in Environmental Law in 1977 from the University of Washington, School of Law, in St. Louis, Missouri. Ms. Dragoo is the Utah State Bar's Trustee to the Rocky Mountain Mineral Law Foundation. Prior to joining Snell & Wilmer, Ms. Dragoo was in private practice for fifteen years and served as a Special Assistant Utah Attorney General for the Department of Natural Resources.

Ms. Dragoo was first elected to the Board of Bar Commissioners in 1991 and is completing her fourth term (9th year) with the Board. Ms. Dragoo is President of the Legal Aid Society of Salt Lake and serves on the Board of Directors of the "and Justice for All" campaign. She has served as President and member of the Executive Committee of Women Lawyers of Utah, Inc. Ms. Dragoo is past Chair and a current member of the Judicial Conduct Commission and a Fellow of the American Bar Foundation.

Dear Colleagues:
Having long advocated the principle that Bar members should select their own leaders, I am eager to participate in the first direct election of the President-Elect. This campaign has moved beyond the Bar Commission to involve all lawyers in a meaningful choice in the direction of Bar affairs.

With this objective in mind, I would appreciate your vote for President-Elect. I am now serving my fourth term (9th year) on the Bar Commission. During my tenure, I have worked toward certain goals which I would continue to seek to achieve as President-Elect:

1. Keep the Composition of the Bar Commission Inclusive: *The Bar Commission should remain inclusive, welcoming the contribution of elected members, public members and ex officio members.*

2. Implement a Communication Plan: *As Chair of the Special Committee on Communications, my Committee has worked with the Commission to develop and implement a communications plan. The plan is interactive, reflecting input from members, section and committee leadership, the Supreme Court and the public at large.*

3. Admissions: *I support the hiring of a law-trained admissions director to improve the professionalism of the admissions process and the need to forge agreements with neighboring state bars to facilitate multi-state practice.*

4. Professional Conduct: *I support rule changes to expedite issuance of "safe harbor opinions" to avoid potential ethical problems and additional funding for the Office of Professional Conduct to reduce the time currently required to process complaints.*

5. Pro Bono Services: *Consistent with member input, the Commission has encouraged voluntary contributions of Bar members to support civil legal services through the "and Justice for All" campaign.*

Please give me a call or send me an e-mail if you would like to discuss these matters. I hope to receive your vote when the ballots come in early April.

Denise A. Dragoo
(801) 257-1998
ddragoo@swlaw.com

Second Division Candidates

DAVID R. HAMILTON

Present Practice: Partner of Smith, Knowles & Hamilton, P.C. Practicing primarily in the areas of litigation, collection/ commercial, insurance and domestic.

Professional Experience: Member of Utah State Bar (1978).

Education: Juris Doctor, University of Utah, 1978. Bachelor of Science, *magna cum laude,* University of Utah, 1975.

Professional Activities: Member of American Bar Association, Litigation, Tort & Insurance Sections. Member of American Collectors Association/MAP. Member and Past President of Weber County Bar Association. Member of Davis County Bar Association. Chair of the Client Security Fund (CSF), Utah State Bar, and principal author of CSF Rules and Regulations.

Other: Layton Rotary Club, 1995-present. 1997 Layton Rotarian of Year. Layton/North Davis Chamber of Commerce, 1995-present. Reported Cases: *Crompton v. Crompton,* 888 P.2d 686 (Utah Ct. App. 1994). *Balls v. Hackley,* 745 P.2d 836 (Utah Ct. App 1994). *Larson v. SYSCO Corp.,* 767 P.2d 557 (Utah 1989). *State v. Auble,* 754 P.2d 935 (Utah 1988).

Personal: Married, four children.

In seeking the position of Commissioner for the Second Division, I have no agenda in mind other than to be the voice for Bar members of the Second Division. Having practiced in the Division for 22+ years in all of the courts and many of the practice areas, I believe I have a sense for those items that are important for us all. Common sense and practicality often turn out to be the basis on how matters are resolved and would represent my basic platform in seeking the position.

FELSHAW KING

Lifetime resident of Utah and Second Judicial District. Graduated from the University of Utah Law School. Admitted to Bar in 1962. Admitted to the Bar of Supreme Court of United States, Tenth Circuit and Fifth Circuit.

Representative in Utah House of Representatives 1965-66, Chairman of House Judiciary Committee and House Majority Whip; Commissioner, Davis County Housing Authority, 1979-1984; Chairman of Education Section of Utah State Bar; 1984; Chairman Utah Committee of Consumer Services, 1977-1989; President, National Association State Utility Consumer Advocates (NASUCA), 1985-1987; State Committeeman of Association of Trial Lawyers of America 1965-1967, State Representative to Legislative Section, 1969-1970, Member of Board of Governor's Utah Trial Lawyers Association, 1967; President, Aldon J. Anderson American Inns of Court 1997; Two years sea duty as Line Officer in the United States Navy, Retired from U.S. Naval Reserve as Commander, Judge Advocate General Corps.

Engaged in private practice in small firm for over 38 years representing school districts, municipalities, special service districts and private clients on a variety of matters, including primarily personal injury, estate planning and business matters.

The Utah State Bar should be a key factor in the professional career of every lawyer. The Bar should function as a support organization for lawyers and as an aid to them in providing quality legal services to the public served by the legal community. All other functions of the Bar should be secondary and collateral to that main purpose. The Bar should be more "user-friendly," especially to small firms which do not always have the resources of larger firms. As a Bar Commissioner, one of my goals would be to improve the relationship between the Bar and small-town firms outside the Salt Lake City metropolitan area. It is my belief that more can be done by the Bar to promote the interests of small firms and to provide them greater service without compromising the other services currently being provided by the Bar. For example, more CLE courses could be sponsored outside of Salt Lake County.

Full support from all members of the Bar, wherever located and however situated, is important for the continued success of our Association. Success of our profession requires a cohesive response to challenges and problems which face us in this new century. I would sincerely like to be part of the Bar team working to meet these challenges effectively.

Third Division Candidates

David R. Bird, Gus Chin and Karin Hobbs are running uncontested for three vacancies in the Third Division. According to Utah State Bar bylaws, in the event an insufficient number of nominating petitions are filed to require balloting in a division, the persons nominated shall be declared elected.

DAVID R. BIRD

David Bird is a shareholder in the natural resources department. He practices almost exclusively in the areas of government relations and environmental law. David is involved in building coalitions, representing trade and professional associations and lobbying for the interests of individual clients. While the primary focus of his practice is natural resources and environmental law, he is involved with a broad range of legislative issues. David is chairman of the Utah Mining

Association and a member of the Utah Manufacturers Association. He is the firm's legislative liaison with state government and is the former chair of the Legislative Action Committee of the Salt Lake Area Chamber of Commerce and the Chairman of the Utah State Bar Legislative Affairs Committee. He has taught Environmental Law at Brigham Young University where he was a member of Phi Kappa Phi, a J. Reuben Clark Scholar and the BYU Law Review from 1975 to 1977.

Areas of Concentration: Government Relations, Natural Resources, Environmental, Administrative Law.

Admissions: United States Supreme Court, 1987; United States Court of Appeals, Tenth Circuit, 1977; United States District Court, District of Utah, 1977; Utah State Bar, 1977.

Education: Brigham Young University (J.D., magna cum laude, 1977). Brigham Young University (B.S., cum laude, 1973)

I am seeking your support as a Bar Commissioner for the Third District. I am a shareholder at Parsons Behle & Latimer where I have practiced Natural Resources and Governmental Relations law since graduating from BYU Law School in 1977. I have been actively involved in the Utah Bar since my admission, serving on many committees and panels. I have served on the Bar's Governmental Affairs Committee since 1979 and have served as its chair for over 10 years. In that position, I have worked closely with many lawyers and past Bar Commissions.

During my career I have been actively involved in many business and trade associations and believe that Bar members have an important part to play in the economic, political and social affairs in our State. Too many people hold our profession in disdain. If elected I will work to strengthen understanding and ties between Bar members and the business and political communities and raise awareness of the contributions of the members of the Utah State Bar.

I would be pleased to serve you on the Bar Commission and I solicit your support.

AUGUSTUS "GUS" CHIN

Gus enjoys his role and responsibilities as an assistant prosecutor for Salt Lake City Corporation. Before becoming a municipal prosecutor, Gus clerked for the Honorable Tyrone E. Medley. Gus received his JD and his undergraduate degrees from the University of Utah.

Gus enjoys being involved in the community. In addition to being

a Small Claims Judge Pro Tempore, he is President of the Utah Chapter of the Organization of Chinese Americans. He is also a member of the "and Justice for All" Leadership Committee, and the University of Utah College of Law Alumni Board of Trustees. Gus takes great pleasure from serving others. In the past he has been a Tuesday Night Bar volunteer as well as the President of the Utah Minority Bar Association.

Originally from Jamaica, Gus prefers the cooler, and drier climate of Utah. Gus is semi-fluent in Spanish. Gus' hobbies include cooking, meeting people and playing racquetball (which he hasn't found time for since the birth of his three year old twins). His pride, joy and motivation are his wife, Lisa, and his four children: Jeremiah, Barbra, Emmalyn and AnnMarie.

Effective bar governance requires the involvement of lawyers representing diverse viewpoints and concerns. I believe that involvement in bar governance (1) affords consideration of diverse views, (2) provides an opportunity to make a difference in the administration of justice and bar issues, and (3) ensures pragmatism in the management of member concerns such as dues, funds, and discipline.

For the past three years I have been an Assistant Salt Lake City prosecutor. I have also been active in the Bar and the community. My past activities include serving as an ex-officio Bar Commissioner, volunteering for Tuesday Night Bar, membership on the Law Day Committee and the Representation Subcommittee for the Utah Task Force on Racial and Ethnic Fairness and being past-president of the Utah Minority Bar Association. Presently, I am a member of the Leadership Committee of the "and Justice for All" campaign, President of the Utah Chapter of the Organization of Chinese Americans, and a member of the U of U College of Law Alumni Board of Trustees. I also serve as a Small Claims Judge Pro Tempore in the Third District Court.

I seek the opportunity to be a voice of reason representing the views and concerns of fellow lawyers within the Third Division. As such, I ask for your support to be a Third Division Bar Commissioner.

KARIN S. HOBBS

Karin S. Hobbs started a private mediation and appellate consulting office in April of 2001. She was previously Chief Appellate Mediator at the Utah Court of Appeals for three years where she mediated over 300 appellate cases, involving claims in commercial litigation, personal injury, probate, workers' compensation, employment, zoning, and divorce. Ms. Hobbs was formerly a Staff Attorney at the Utah Court of Appeals, Associate Bar Counsel at the Utah State Bar, and Deputy Director of the Division of Child and Family Services. Ms. Hobbs served as a member of the Appellate Operations Task Force in 1994. Ms. Hobbs is currently chair of the Utah State Bar's Alternative Dispute Resolution Service and serves on the Board of the Utah Council on Conflict Resolution. She has attended numerous mediation trainings, including the Negotiation Workshop at Harvard Law School and CDR Associates' mediation training in Boulder, Colorado. Ms. Hobbs regularly presents to local and out-of-state organizations and has been a speaker at several State Bar Association annual meetings throughout the Intermountain West. Included in her recent publications is an article in the American Arbitration Association's Dispute Resolution Journal entitled, "Attention Attorneys: How to Achieve the Best Results in Mediation."

My experience as a mediator, staff attorney and law clerk for the Utah Court of Appeals, and counsel to the Utah State Bar, has exposed me to the concerns of hundreds of attorneys, from senior partners in large law firms to solo practitioners, government attorneys and corporate counsel. I would like the opportunity to address some of these concerns by serving on the Bar Commission.

After mediating over 300 cases, many of which involved complex, multiparty disputes, I came to appreciate the concerns of practitioners. As Adjunct Professor of Law teaching Negotiation and ADR at the University of Utah, I am also familiar with the concerns of young attorneys entering practice. As an attorney for the judiciary, I became aware of the concerns of judges and government attorneys. In April of 2001, I opened a private dispute resolution and appellate consulting office. This will present me with further insight into the concerns of the legal community.

In addition, I have been active in the Utah State Bar, initiating and chairing the Alternative Dispute Resolution Section. With my experience I could make significant contributions to the Utah State Bar. I ask for your vote to enable me to make this contribution.

Utah Zoning Law: The Zoning Ordinance

by Richard S. Dalebout

(Editor's Note: this article is the first in a series of three on Utah zoning law. The second article is entitled *Utah Zoning Law: Enforcement* and the third is entitled *Utah Zoning Law: Appeals.*)

Introduction[1]

Enabling Acts. The Municipal Land Use Development and Management Act empowers cities and towns in Utah to divide or "zone" the territory within their boundaries into districts and to regulate land uses therein. The County Land Use Development and Management Act similarly empowers counties. Subject, of course, to constitutional limitations, these two acts – commonly referred to as "enabling" acts – are the controlling law of zoning. They are worth reading: an experienced land use planner (and a non-lawyer) once commented that he could often outmaneuver local lawyers in zoning matters simply because he read and understood the applicable enabling act and they didn't.

Zoning Ordinance. The enabling acts permit cities and counties to use their law-making power to adopt a "zoning ordinance" consisting of a map and a text. The map illustrates the territory of the city divided into districts which have names such as "Agricultural (A-1)," "Single Family Residential (R-1)" or "Neighborhood Shopping Center (SC-1)." The text describes what can and cannot be done within each of these districts. For example, in an R-1 zone, as the name suggests, single family residences are allowed and more intensive uses such as duplexes and four-plexes are prohibited. It is left to the city or county to decide on the names for the zoning districts and the uses allowed within each of these districts – these are not prescribed in the enabling acts.

The Planning Commission

Organization and Procedure. The process of adopting a zoning ordinance starts with a planning commission, which is created by the governing body and is required for the exercise of zoning powers. (Commission members are local residents who are appointed by the governing body and usually serve without compensation.)

Powers and Duties. A planning commission has no law-making authority and, in general, it performs only the planning and administrative functions specified by the governing body. There are, however, three things it must do:

- *General Plan.* The planning commission must prepare "a comprehensive, long-range general plan" for the development of land in the city, which it recommends to the governing body. This general plan is the foundation on which the zoning ordinance is built. Any subsequent amendments to the general plan must likewise be routed through the planning commission for its recommendation.
- *Zoning Ordinance.* The zoning ordinance (map and text) must be reviewed by the planning commission before adoption into law by the legislative body. Amendments must be reviewed by the planning commission.
- *Subdivisions.* Any subdivision ordinance must be recommended by the planning commission. Amendments to the subdivision ordinance must also be reviewed by the planning commission. A subdivision plat may not be filed or recorded until the officer or body designated to approve subdivision plats has received the recommendation of the planning commission.

In the processes above, the governing body cannot proceed without first receiving the recommendation of the planning commission. However, the planning commission is completely subordinate because the governing body can modify any of the recommendations before enacting them into law (the general plan, zoning ordinance and subdivision ordinance)[2] or approving them (subdivision plats).

An example of the administrative work that may be handled by a planning commission (if authorized by the governing body) is holding a public hearing and deciding whether to grant a conditional use permit. In *Stucker v. Summit County,*[3] the local ordinance required a proposed use to be compatible with neighboring uses. Because compatibility was at issue, the ordinance authorized the planning commission to hold hearings and make a decision resolving the issue. The ordinance provided:

> When a developer and affected property owners cannot reach a consensus of opinion regarding compatibility of the proposed land use, *the Planning Commission holds a public hearing prior to making*

RICHARD S. DALEBOUT, a member of the Utah Bar, teaches local government law in the Marriott School at Brigham Young University. He is a member of the Utah County Board of Adjustment.

> *a decision and listens to the concerns of all affected property owners* and interested parties regarding the proposed project's compatibility.[4]

Although a planning commission (like that above) may hold a hearing and consider the opinions of local land owners, it crosses the line when it allows itself to be controlled by what the Utah Court of Appeals has characterized as "public clamor." In *Davis County v. Clearfield City,*[5] the Utah Court of Appeals noted: "[This] clamor is typified by the curious action taken at the Planning Commission hearing, where citizens in attendance were asked to vote on the application. Only one person voted for the facility and all others in the audience voted against it."[6] (Application denial was later overturned on appeal.)

The Zoning Ordinance

Legislative Action. The zoning ordinance (map and text) is adopted as law by the governing body. This legislative action is in derogation of the common law and is an exercise of police power. It is traditional to say that police power is exercised to promote the health, safety, morals and general welfare of the community. As long as the legislative judgment of the city council is within reasonable bounds, the courts usually will not overturn it. As the Utah Court of Appeals stated in *Sandy City v. Salt Lake County*[7]:

> It is well established in Utah that "courts of law cannot substitute their judgment in the area of zoning regulations for that of the governing body." Instead, the courts afford a comparatively wide latitude of discretion to administrative bodies charged with the responsibility of zoning, as well as endowing their actions with a presumption of correctness and validity, because of the complexity of factors involved in the matter of zoning and the specialized knowledge of the administrative body. Thus, the courts will not consider the wisdom, necessity, or advisability or otherwise interfere with a zoning determination unless "it is shown that there is no reasonable basis to justify the action taken."[8]

"Spot" Zones. There is a theoretical limitation on the power of the governing body to adopt a zoning ordinance – in this case the zoning map. The enabling act requires that territory on the map be divided into *districts,* and the Utah Supreme Court has recognized that such language seems, by definition, to prohibit a division of territory into very small pieces or islands which are sometimes referred to as "spot" zones. Although seemingly clear in concept about spot zoning, the Utah courts have in practice deferred to the discretion of local governing bodies. The result is that the courts have thus far been unwilling to acknowledge the existence of a prohibited "spot" zone, even when the zoning district is no bigger than a commercial corner lot.[9]

Permitted Uses. For each zoning district there is language in the text which describes the uses which are *permitted.* These are so-called "permitted" uses, and that language is usually accompanied by language stating that no other uses are allowed.

For example, an R-1 (single family residential) district might be accompanied by language in the text which allows the construction and use of a residence for a "single family," and no other uses. A well-crafted zoning text will include a list of definitions. In this case, the text should include a definition for "family." If there is not a "family" definition, the absence thereof will lead to disputes. (For example, are an unmarried man and woman living together a "family?" If the answer is yes, are two university students living together a "family?" If the answer to that is yes, are three, five or seven university students living together a "family?" And so on.)

Conditional Uses. Increasingly, the uses allowed in a district are uses known as "conditional" uses. The city and county enabling acts define a "conditional use" as "a land use that, because of its unique characteristics or potential impact on the [municipality/county], surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts."

For example, the governing body may create a Professional Office (P-O) zone and in the zoning text allow a convenience store (including the sale of gasoline) as a conditional use. The (abbreviated) text might be something like this:

> 21.15.000 Conditional Uses. A convenience store (including the sale of gasoline) is permitted only on the following conditions:
>
> (1) that the building lot shall not be less than 30,000 square feet in size,
>
> (2) that Utah Department of Transportation approval be obtained for any ingress or egress onto a state road, and
>
> (3) that the applicant consent to any additional term or condition necessary to prevent harm to the health, safety or general welfare of persons working or residing in the vicinity.

At an imaginary hearing on the question of issuing a conditional use permit for a convenience store (including the sale of gasoline) there is testimony that noise and light from the convenience store will cause problems at a nearby office building. Therefore, when the permit is issued, it contains the following requirements: "a fence not less than six feet high shall be maintained along the east convenience store boundary line. Parking lot lighting shall not illuminate past the east boundary line." The permit is subject to these conditions.

Elderly and Persons with a Disability. The enabling acts pro-

vide special protection for residential facilities for the elderly and for persons with a disability. Implicit in this protection is the assumption that cities and counties, under pressure from unhappy residents,[10] may not voluntarily authorize the use of such facilities. Thus, the enabling acts provide that each city and county "*shall* adopt" ordinance provisions that permit the use of facilities for the elderly and persons with a disability which meet standards described in the enabling acts.

Subdivision Regulations

Subdivision Plats. A subdivision plat is a map illustrating the division of real estate into building lots, open spaces, roads, utilities and the like. Property described in a subdivision plat is sold by reference to the plat. Thus, the deed for a building lot described in a subdivision plat might contain a description something like this: "Lot 10, Plat A, Elmwood Subdivision, according to the plat on file with the Urbana County Recorder." The enabling acts place the platting process within the control of cities and counties, and land which must be platted cannot be sold or developed until a subdivision plat is approved.

Cities and counties guard the subdivision plat approval process jealously because it is by controlling this process that they ensure that each new development fits into the overall plan for the city. Through this control a city or county enforces a variety of exactions such as connection fees, impact fees, dedications of land, and fees in lieu of dedications of land, all of which are part of the conditions of approval.[11] (For example, the plat will not be approved if the developer does not install – at the developer's expense – roads, sidewalks, sewer and water lines, and electric utilities.[12])

"Subdivision" Defined. Meeting the demands of a city or county in the platting process can be very expensive; thus, some land owners try to avoid the process. That raises the question: when can real estate be sold using a simple "metes and bounds" description, and when must the subdivision platting process be followed? The answer is that cities and counties may require land to be platted if the land is in a "subdivision" as defined in the enabling acts. The word "subdivision" has a comprehensive definition. It means, in general, any division of land into two or more smaller pieces for the present or future purpose of "offer, sale, lease, or development."

The "subdivision" definition has several exceptions. Of particular significance in counties is the exception that "a bona fide division or partition of agricultural land for agricultural purposes" is not within the subdivision definition. The effect of this exception is that land which is divided for agricultural purposes is not subject to platting requirements. If such a division of land is not subject to platting requirements it is not subject to the requirements and exactions normally associated with the subdivision process. Historically, counties have had difficulty with abuses in relation to this exception. As so-called "agricultural" parcels get increasingly smaller through the process of division, it becomes apparent that the real use of the resulting parcels is non-agricultural (for example: a house and three acres for a horse). To avoid arguments about when a land use has ceased to be truly "agricultural," and thus subject to the subdivision process, some counties place minimum standards for what is a "bona fide division of agricultural land" in their subdivision ordinance.

Zoning Procedure

Follow the Ritual. The adoption of zoning ordinance provisions requires that the governing body follow a specific ritual of notices and hearings. Unfortunately, some cities and counties (often smaller ones) sometimes fail to follow the ritual and the result is that in a moment of crisis they find their zoning ordinance is invalid. (Knowing this, experienced land use litigators always check the public record, looking for a technical defect that will give them an easy win.)

Some years ago the City of West Jordan failed to follow the ritual. In *Call v. City of West Jordan,*[13] the city adopted an impact fee pursuant to its power to enact subdivision ordinances; however, evidence showed that the city failed to conduct a required public hearing. Nevertheless, the city argued that the public hearing requirement was satisfied "because the ordinance was adopted at a regularly scheduled city council meeting which was open to the public." The Utah Supreme Court disagreed and invalidated the impact fee ordinance:

> [W]e hold that because the statute calls for a *public hearing* our legislature contemplated something more than a regular city council meeting held, so far as the record here discloses, without specific advance notice to the public that the proposed ordi-

> nance would be considered. Notice, to be effective, must alert the public to the nature and scope of the ordinance that is finally adopted. *Failure to strictly follow the statutory requirements in enacting the ordinance renders it invalid.*[14]

Standard for Review. The process of changing the zoning text or map is a *legislative* process and should be distinguished from *administrative* processes such as, for example, the approval of a conditional use permit or a planned unit development. In *Bradley v. Payson City Corporation*[15] the Utah Court of Appeals noted that judicial review of legislative acts "is highly deferential to the municipality's decision." The legislative act of a municipality will be upheld as long as the decision is "reasonably debatable."

Initiative/Referendum. The processes of initiative or referendum may only be used to alter a zoning ordinance when the change is a significant change of zoning policy; they cannot be used to make otherwise routine zoning amendments. Article VI, section 1 of the Utah Constitution explicitly authorizes the use of initiatives and referenda by voters "of any legal subdivision of the state." However, the Utah Supreme Court has held that some decisions by a legislative body, although cast in the form of a legislative act, are in substance an administrative decision. Thus, for example, in *Wilson v. Manning,*[16] the plaintiffs were refused the use of a referendum with respect to their objection to the rezoning of ten acres of land from residential to commercial. According to the court:

> This ruling does not mean that an amendment to a zoning ordinance can never be the subject of a referendum. Some amendments can constitute such a material variation from the basic zoning law of the governmental unit as to constitute, in effect, the making of a new law rather than merely, as this Court [has] said . . . "implementing the comprehensive plan and adjusting it to current conditions."[17]

This case law has been codified and the statute regulating initiatives and referenda refers to a routine zoning amendment as an "individual property zoning decision" and prohibits the use of initiatives and referenda to accomplish those decisions.[18]

Temporary Regulations (Moratoria). There is no provision in the acts for a moratorium on development as such, but in the case of a "compelling, countervailing public interest," the legislative body is permitted to adopt temporary zoning regulations without a public hearing. These temporary regulations may operate as moratoria because they may, for up to six months, "prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval." The authors of this provision were understandably reluctant to use the word "moratorium" or to extend the restriction beyond six months because the United States Supreme Court has held that if zoning regulations "deny a landowner all use of his property," even temporarily, the landowner may have a cause of action for compensation.[19]

Official Map

Related to subdivision plats and exactions associated with the approval and filing of subdivision plats is the "official map." An official map should not be confused with the map which accompanies the text of the zoning ordinance and shows the zoning classification (e.g., residential, commercial, industrial, etc.) which applies to land in a city or a county.

Prior to 1991, the city and county enabling acts contemplated the adoption of an "official map," which showed the location of existing and *future* roads. Without a formal "taking" (or the payment of compensation) the pre-1991 acts empowered a legislative body to place significant restraints on the development of land over which it proposed to build a road. Keeping in mind the distinction between an official map and the zoning map, the enabling acts continue to allow cities and counties to adopt an official map, but now that map "may not be used to unconstitutionally prohibit the development of property designated for eventual use as a public street."

1 Because of space constraints, only cursory endnotes are used. Unless otherwise indicated, all statutes quoted or referred to are found in The Municipal Land Use Development and Management Act (Utah Code Ann. § 10-9-101) or the County Land Use Development and Management Act (Utah Code Ann. § 17-27-101). Case references are limited to identifying significant cases and identifying the source of quotations.

2 *See Gardner v. Perry City,* 994 P.2d 811 (Utah App. 2000).

3 870 P.2d 283 (Utah App. 1994).

4 *Id.* at 285 (emphasis added).

5 756 P.2d 704 (Utah App. 1988).

6 *Id.* at 711-12 n. 9.

7 794 P.2d 482 (Utah App. 1990).

8 *Id.* at 485-86 (citations omitted).

9 *See Marshall v. Salt Lake City,* 141 P.2d 704 (Utah 1943).

10 *See generally Bangerter v. Orem City Corp.,* 797 F. Supp. 918, 920 (D. Utah 1992).

11 *See generally* Michael J. Mazuran, *Evolution of Real Estate Development Exactions in Utah,* Utah Bar J., Aug.-Sept. 1990, at 11.

12 *See generally Home Builders Ass'n v. City of North Logan,* 983 P.2d 561 (Utah 1999).

13 727 P.2d 180 (Utah 1986). *See* also, *Hatch v. Boulder Town Council,* 2001 UT App. 55 (Utah App. 2001).

14 *Id.* at 183 (emphasis added).

15 *Bradley v. Payson City,* 413 Utah Adv. Rep 13 (Utah App. 2001).

16 657 P.2d 251 (Utah 1982). *See also Citizen's Awareness Now v. Marakis,* 873 P.2d 1117 (Utah, 1994).

17 *Wilson v. Manning* at 254.

18 Utah Code Ann. §§ 20A-7-101 and102.

19 *See First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 482 U.S. 304, 318 (1987).

Utah's "New" Tax Court – An Important Step in Leveling the State Tax Playing Field

by Mark K. Buchi and Steven P. Young

During the 1998 general election, the voters of Utah approved a constitutional amendment that re-created a tax court within the district court system in Utah. The amendment became effective January 1, 1999. At least one case has been tried and decided and several cases are currently pending before the Tax Court. The Tax Court is important for individual and corporate Utah taxpayers because it should provide an experienced, independent forum, separate from the State Tax Commission, that can hear tax cases *de novo.* While the State Tax Commissioners have the background to hear tax cases, the Commissioners also supervise and administer Utah's tax system. In fact, based on Utah Supreme Court precedent, the only official Tax Commission authority lies in the four commissioners. Accordingly, the Tax Commissioners themselves are required to handle much of the supervision and administration personally. This creates a situation where the judge and prosecutor are the same person. In the minds of many taxpayers, this conflict is too great, and for these taxpayers, an "appeal" to the *de novo* Tax Court presents the first opportunity for a truly impartial tax hearing.

HISTORY OF THE TAX COURT

In 1977, a district court trial *de novo* system for tax cases was legislatively established in Utah. There was one designated tax judge, and published tax decisions. Because taxpayers had usually expended significant resources in litigation at the Tax Commission level, often they were able to stipulate to many facts at the Tax Court. This provided for streamlined cases with little or no new evidence presented. The trials were often a day or less and frequently resembled a summary judgment hearing more than a traditional trial.

In 1987, the *de novo* Tax Court took a blow when Judge Tim Hanson ruled that the term *"de novo"* meant a review of the record, and not the historically used primary definition of a fresh new trial of the evidence. *See Denver & Rio Grande Western Railroad Co. v. Tax Comm'n,* C-86-3602 (Dec. 2, 1987). Even though the standard of proof remained a preponderance of the evidence, the ruling strengthened the role of the Tax Commission decisions, and strengthened the deference paid to those decisions. The Tax Court had no feel for the evidence and testimony, but could only review a cold record and short summary arguments. It thus became much more difficult for taxpayers to get Commission decisions overturned. At the same time, a series of Utah Supreme Court cases created a taxpayer-unfriendly environment. The Supreme Court declared that even if Commission findings, as written, were arbitrary and capricious, the findings would still be upheld if the Supreme Court could conceive of a reason to support the findings.

In 1993, the Legislature statutorily overturned Judge Hanson's decision in part, creating a "new" Tax Court allowing for a limited trial *de novo.* Evidence was again allowed but no witnesses or exhibits that were not presented at the Tax Commission could be admitted without a stipulation of the parties or a judge's order based on the interest of justice. Utah Code Ann. § 59-1-601 to -610 (1993). In 1997, the Legislature broadened the court's *de novo* authority even more, reinstating a true trial *de novo* similar to the initial interpretation and application of the 1977 Tax Court. Utah Code Ann. § 59-1-601 to -610 (1997).

In October 1997, the Utah Supreme Court held in *Evans & Sutherland v. Tax Comm'n,* 953 P.2d 435 (Utah 1997) that any form of a trial *de novo* violated the Utah Constitution by encroaching on the Tax Commission's constitutional authority to "administer and supervise" the tax laws of Utah, and to "adjust

MARK K. BUCHI is CEO and a partner in the firm of Holme Roberts & Owen. He has been with the firm since 1986. His practice emphasis is state and local tax matters, administrative law, government relations, and sports law.

STEVEN P. YOUNG joined the firm of Holme Roberts & Owen as an associate in 1996. His practice emphasis is state and local taxation and government relations.

and equalize the valuation and assessment of property among the several counties." Some support for a violation of the Separation of Powers doctrine was espoused in dicta in the case as well. Attorneys for Evans & Sutherland and other taxpayers affected by the decision asked the court to rehear the case and were denied.

In response to the *Evans & Sutherland* decision, the 1998 Legislature passed a unanimous resolution allowing the voters of Utah to determine during the November 1998 election whether the Constitution should be amended to allow the Legislature to pass a statute providing for a classic, evidence-taking, new trial *de novo* review of Tax Commission decisions. The vote was overwhelmingly in favor of the Tax Court, and the constitutional amendment went into effect on January 1, 1999. See Utah Constitution Art. XIII, § 11. The 1998 Legislature also passed a bill creating a *de novo* Tax Court, which bill also went into effect on January 1, 1999. See Utah Code Ann. § 59-1-601. The statute had retroactive application to any decision issued by the Tax Commission after July 1, 1994 that was still "alive" in the appeal system on January 1, 1999. Id.

PROCEDURE IN TAKING A CASE TO TAX COURT

When a taxpayer (or an affected county) is unhappy with a decision of the Utah State Tax Commission, the party can "appeal" the decision to either the Utah Supreme Court (which case may be "poured over" to the Court of Appeals), or to the new Tax Court division of the district court for a classic trial *de novo.* See Utah Code Ann. § 59-1-602 (2000). Appeals to the Supreme Court are governed by the same procedures that have long been in place (the Rules of Appellate Procedure and the Administrative Procedures Act).

Appeals to the Tax Court should be filed through a Petition for Judicial Review which complies with the Utah Rules of Appellate Procedure. See Utah Code Ann. § 59-1-602(c). The Legislature chose to use appellate petitions for cases on review from the Tax Commission to minimize cost and because the parties, having already litigated before the Commission, are presumably familiar with the case. Thus, there is no need to put the opposing party on notice through a specifically pled complaint and summons. Once the petition has been filed, all further proceedings in Tax Court are conducted pursuant to the Rules of Civil Procedure. There are some tax cases that may be filed in the Tax Court without being heard first by the Tax Commission, such as "paid under protest" cases brought under Utah Code Ann. § 59-2-1327, and transitory personal property tax cases brought under Utah Code Ann. § 59-2-402. In these cases, a normal complaint should be filed rather than an appellate petition. See Utah Code Ann. § 59-1-602(c) (providing that appellate petitions are used only for Tax Commission appeals).

When the Legislature passed the 1997 tax court bill, the Utah Judicial Council implemented judicial rules effective May 1, 1997 establishing procedures for the Tax Court. See UCJA Rules 6-103, 3-108, 4-508. With the invalidation of the Tax Court in *Evans & Sutherland,* the rules had to wait for the January 1, 1999 effective date of the constitutionally-sanctioned new Tax Court to again have an application. Under the judicial rules, tax judges are chosen from sitting district court judges based on the judge's tax expertise. There currently are six sitting Tax Court judges appointed by the judicial council: Guy R. Burningham and Lynn W. Davis of the Fourth District, L.A. Dever and Ronald E. Nehring of the Third District, and Jon M. Memmot and Glen R. Dawson of the Second District. All six tax judges will continue to hear non-tax cases, and may resign from the tax panel at any time.

If a party desires to have a district court case assigned to a tax judge, the party should make such a request in the complaint, petition, or first responsive pleading. The court is then required to grant the request. See UCJA 6-103. If a request for a tax judge is made at a later time, the sitting judge has discretion whether to transfer the case to the Tax Court. Id. The six tax judges will be assigned to cases on a random basis, with no consideration being given to the judges' calendars.

Tax Court petitions/complaints should be filed in the taxpayer's own district court. If a case is filed in Third District Court, and assigned to a tax judge in the Fourth District, all pleadings are filed in the Fourth District, but hearings may be held in the Third District if the parties and judge so desire. If a case is filed in a district outside the Wasatch Front, the judge may travel to that district to hear the case. All pleadings should be filed in the taxpayer's/county's own district unless the judge directs otherwise.

When a Tax Court case offers new guidance, the tax judge will issue a published opinion, which opinion may be cited as precedent. See UCJA 4-508.

LEVELING OF THE PLAYING FIELD

The creation of the Tax Court should create an enhanced perception of fairness, level the playing field for taxpayers, and provide a detached body to hear tax cases with a balanced evidentiary standard. Because the Tax Commission administers and supervises the tax laws and adjudicates disputes as well, a conflict in duties exists. Moreover, when cases are taken up on appeal from the Tax Commission to the Supreme Court or the Court of Appeals, the appellate judges are required to grant the

Commission great deference on their findings of fact, applying a substantial evidence standard of review – even if the facts are less than rock solid. As long as the findings have some support, even if not stated in the Commission decision, the Court defers to the Commission. See Utah Code Ann. § 59-1-610. In property tax cases, issues relating to property value are generally factual issues, and thus do not get a full review by the appellate court. Even on legal issues, the court overturns the Commission only if there has been an error made in the law (a "correction of error" standard). Id. This is a much more difficult burden for taxpayers than the "preponderance of the evidence" in the new Tax Court, where the district court is starting with a clean slate (not undoing something already done), and can see and decide upon the evidence for itself.

The Tax Court is a fresh, objective body which will provide many benefits for the taxpayers of Utah for the following reasons:

First, as noted, the tax judges will decide cases based on the "preponderance of the evidence." Thus, the party with the best facts and legal arguments of law should win. If, after reviewing the evidence, the Tax Court believes the Tax Commission is in error, it can reverse and remand, or can take action itself, such as redetermining the audit deficiency to comply with the law, ordering a refund, or setting the fair market value of the property in accordance with constitutional prerogatives.

Second, the tax judges are likely to make independent decisions because they are completely separated from the tax assessment agency. Public perception is enhanced merely because someone unconnected with revenue hears the case. Enhanced due process to the taxpayer is the result.

Third, the judges should make for better reasoned judicial decisions to serve as precedent for all tax practitioners because they have specialized tax knowledge. Even though tax cases often dwarf other court cases in dollar amounts, the cases have still been heard by judges who historically confessed they were not qualified to hear or were not interested in hearing tax cases. In Utah, there are many qualified individuals who can serve as tax judges, beginning with the current sitting district court tax judges. Furthermore, there is now excellent training available for judges who want to increase their tax knowledge, including an annual conference each September in Cambridge, Massachusetts for all tax judges throughout the nation.

Fourth, the Tax Court should create uniformity, consistency and predictability in the tax law and reduce litigation in the long run. A qualified Tax Court will publish reasoned, reported decisions, clarifying the ambiguities that exist in tax laws. Taxpayers, CPA's, lawyers, taxing entities, and tax review departments will have a clear understanding of what the tax law is which will hopefully lead to easier and less expensive issue and case resolution.

Fifth, the Tax Court will provide a good check and balance to the Tax Commission. With a qualified Tax Court reviewing its decisions, the Commission and staff will likely be more careful in crafting responses to taxpayer petitions for relief and refunds.

Sixth, the Tax Court will create fewer Supreme Court appeals. As shown by the experience with the United States Tax Court, parties are often content with the decision of the Tax Court because of the court's qualified judges. This reduces appeals which go up from the Tax Court to higher courts. Losing parties often realize that if the Tax Court held against them, they are unlikely to gain a reversal on appeal.

Seventh, the new Tax Court will provide fairness to small-town taxpayers, giving them review in their own jurisdiction. These rural taxpayers will not have to come to the Wasatch Front if it is inconvenient or burdensome to do so.

Eighth, the Tax Court fits in the current court system. The six judges continue to fulfill their roles as district judges, causing few ripples in the current system. No new money was needed for tax judge appointments.

Ninth, the creation of a Tax Court follows a national trend. Presently, at least 28 of the 50 states have a Tax Court, or an independent body apart from the department of revenue reviewing tax cases (with several other states considering a Tax Court). The federal government has long operated a successful Tax Court (the U.S. Tax Court is one of few specialized federal courts), and the states are following suit.

In conclusion, it should be noted that the Tax Commission does an excellent job with its duties, and it is important that the Tax Court does not replace the Tax Commission. While the Tax Court is important, its existence should not de-emphasize the Tax Commission's administrative hearing role. For the majority of tax appeals, the Tax Commission will continue to provide an adequate, efficient and effective final resolution. However, because the Tax Commission wears several hats, an overall perception of fairness is created by having someone unconnected to the assessing function available to review tax cases de novo. The United States was founded on the principle of checks and balances, with different branches of government making sure other branches act appropriately to ensure fairness for all. The Tax Court is a check and balance for Utah's tax system, providing an impartial eye to ensure the system runs smoothly and fairly for everyone.

The Case Against MDPs: The Soul of Our Profession is at Stake

by Todd Weiler

> [L]awyers are special people. We're not like accountants. We're not like MBAs and deal-doers and investment bankers. We're fiduciaries. We're in the Constitution. We're officers of the court. And we hold in trust the very fabric of this society. It has been lawyers who have kept the playing fields level, who have kept people honest in the marketplace, and who have stood between the individual and the abuse of authority for 200 years and contributed to the success of this great American experiment . . . . And so I get real nervous when somebody suggests that we blend this profession into a business unit as a profit center for a company controlled by non-lawyers.[1]

I love this statement because it succinctly embodies everything that is wrong with Multidisciplinary Practices ("MDPs"). I strongly disagree with the conclusion of the Utah State Bar Multidisciplinary Task Force Report, which contends that we should protect our core values by embracing MDPs, because this is our only opportunity to regulate the delivery of legal services to the public.[2] The Task Force, in my opinion, seized on the fact that since some MDPs are beginning to take root, even in Utah, we have no choice but to embrace them before we all lose our livelihood. Applying this same logic, we should abandon all speed limits and drug laws because speeding and drug use have already taken root here.

I should admit that the ideas and thoughts in this article are not entirely my own. I have relied heavily on the work of other attorneys who are much wiser than myself, namely Lawrence J. Fox and Gary T. Johnson.[3] Nevertheless, I would like to highlight some of the most significant problems and dangers of MDPs.

Lawyers and Accountants Don't Mix. There are no obvious synergies between most legal work and most accounting work. Lawyers are ethically bound to advocate a client's interests and hold information obtained from the client in the strictest confidence. In contrast, the core value of an attest function of an accounting firm is, by definition, the public disclosure of material information. Accountants are ethically bound to exercise skepticism in dealing with client's management and must show allegiance to the public by disclosing the client's damaging confidential information. "Attorneys have an ethical duty to represent zealously the interests of their private clients, and it is impossible to reconcile this role as a private advocate with the duty accountants and auditors owe to the investing public."[4] Does anyone honestly believe that lawyers will function best in an organization in which individual professions each march to the beat of their own ethical drummers?

Independence is the Key. The independence of practicing lawyers is essential, and no reform of the rules should permit lawyers to report to non-lawyer supervisors. The best possible structure is one where each lawyer answers only to other lawyers within a firm controlled by lawyers. Compliance with the professional rules requires mutual reinforcement, peer support, and a clear institutional message. Many of the specialties included in today's professional services firms are not directly subject to any kind of professional code or standards.

Rule 5.4's prohibition on sharing fees with non-lawyers embodies the only prohibition that is likely to be effective in maintaining our professional independence. Follow the money and you will follow the power. Follow the power and you will know who is in control. And as soon as the power rests with non-lawyers, who are not trained in, not dedicated to, and not subject to discipline for our ethical principles, you will see the independence of this profession fall away.

If you don't believe that, just consider the following three examples in recent history.

- After the medical profession relaxed the rules on physicians working for non-physicians, many physicians now find them-

TODD WEILER is an associate with Parry Anderson & Mansfield in Salt Lake City, and is a member of the Young Lawyers Division of the Utah State Bar. He has a great deal of respect for accountants and the valuable function they serve in our society, but has no desire to work for them.

selves as supplicants who have to request permission from others, who decide which medicine to prescribe, which procedures to allow, and how long patients may remain in the hospital.

- Lawyers hired by insurance companies to represent the insured are often told when they can take depositions, whether they can engage an expert, and what motions they can file.[5]
- Whether lawyers will lose their professional independence under MDPs is not a matter of speculation. The Big Five accounting firms have already revealed their attitude toward the precious commodity that we call being a lawyer. These firms have hired thousands of lawyers in the United States, not to practice law, but to practice tax or investigations or mergers and acquisitions – all the while touting these individuals as lawyers in their advertising, and bringing in clients to view their bar admission plaques proudly displayed on their walls. The Big Five will not seek to preserve the core values of lawyers; they will instead seek to destroy any ethical rules that stand in their path.[6]

Confidentiality is a Core Value. Just when a legal client may most want to preserve a confidence, lawyers working at an MDP may be compelled to disclose it, running directly afoul of one of our most cherished professional values. A waiver of confidentiality at the beginning of representation is not a cure, because a lawyer's duty of confidentiality is not waiveable for the benefit of the lawyer, and a prospective waiver would be arguably void since it could never be "knowing and intelligent." In order to be effective at what we do, clients must know that the attorney-client relationship is sacrosanct. To place a lawyer in a trap between a duty to his client, and a duty to his non-lawyer auditing masters, creates an impossible dilemma that will only result in second-rate legal services and a compromise of ethical principles.

Loyalty is a Core Value. Accounting firms do not recognize, address, or otherwise care about conflicts of interest. In a recent case outside of Utah, it was discovered immediately before trial that the same Big Five accounting firm had been auditing one party for ten years, yet was providing litigation assistance to the opposing party in the case. The Big Five firm defended this conduct by arguing that different personnel were involved with each engagement.[7] There are no true "firewalls" at any law or accounting firm. The Task Force proposed to amend Rule 1.10 (Imputed Disqualification) to provide for "adequate firm screening procedures from imparting . . . any material information to the firm."[8] I find the word "screen" ironically apt, because it refers to an item we install in the spring to let in light, air and sound.

The truth is that the only protection against the misuse of information is the integrity and diligence of the individuals involved. Imagine, for a moment, the least ethical lawyer you know telling you, "Don't worry. We have erected a screen." The Big Five are requesting that we destroy our "antiquated notions of loyalty" and embrace their more "enlightened views" on this topic. So long as lawyers hold themselves out as one firm, tout to their clients the vast resources of their far-flung offices and the ability to call anyone in any office to assist with their representation, then it is the firm – not the individual – that must deliver complete loyalty to the client. Not one of the ethical rules at stake is designed to protect lawyers – they were drafted to protect clients, and they should remain in place to protect clients.

What will happen in a situation when an MDP lawyer has represented a client for two years, only to be told that the MDP is now going to represent the opposing party in an unrelated accounting matter? Does the client take her chances and accept the fact that the MDP is now working for the other side, or does she fire the firm and waste the fees, time and learning curve of her lawyer, only to look for another firm to represent her? Lawyers today provide clients with real choices. We disclose all potential conflicts, and the client has the choice as to whether or not we take on new representation. This is real choice and reflects a truly enlightened system in which the client is in control.

Why should Utah jump out ahead of the rest of the nation to become one of the first states to officially embrace MDPs? Do we really want to be the state making all of the mistakes from which other states learn? The Supreme Court of Utah should leave unchanged the rules dealing with the core values of our profession. We should retain lawyer control of firms because this type of independence is the best safeguard of our core values. That being said, I have no objection to a future task force considering whether anything else might be necessary to better equip law firms to serve their clients and to remain independent. The time has come, however, for the Utah State Bar to draw some lines and defend them. These lines are not just anti-competitive vestiges of a by-gone era, they are policies that affirm the value to the public of an independent legal profession, one whose identity to the public is unmistakable.

The independence of our profession has significant institutional value for our American society. Each one of us is an officer of the court. We are each licensed with the power to start lawsuits, subpoena witnesses, and stand between our clients and the

awesome power of the state. We are charged with defending the independence of the judiciary, accepting court appointments, recommending discipline of our own, and working to improve laws and legal institutions. What will happen to these values when we all work for others in for-profit enterprises? MDPs are just a benign way of describing the destruction of everything lawyers should and must stand for.

[1] Comments of Jack Dunbar of Mississippi in the ABA House of Delegates, 1999, as quoted by Gary T. Johnson, Written Testimony to the ABA Commission on Multidisciplinary Practice (October 8, 1999) (available at www.abanet.org/cpr/johnson.html).

[2] Utah State Bar Multidisciplinary Task Force Report, 19 (November 1, 2000) (available at www.utahbar.org/sites/mdp/html /mdp_task_force_report.html). It is noteworthy that the Task Force was co-chaired by an accountant.

[3] *See* Johnson, *supra* n. 1; Lawrence J. Fox, "You've Got the Soul of the Profession In Your Hands," Written Remarks before the Commission on Multidisciplinary Practice (available at www.abanet.org/cpr/fox1.html).

[4] Comments of SEC Commissioner Norman S. Johnson, *as quoted* by Gary T. Johnson, *supra* n.1.

[5] Some have argued that there is no difference between MDPs and corporations hiring in-house counsel. Nothing could be further from the truth. An in-house lawyer deals with no conflicts of interest (she only has one client), has no need to compromise her client's confidentiality, and represents a cost – not a profit center – for her employer. Lawyers employed by an MDP must deal with all of the issues associated with imputation, confidentiality and independence of professional judgment. Corporations hire in-house counsel to represent only the corporation.

[6] The Big Five, of necessity, would have to ignore our ethical mandate on conflicts of interest because they are so big, and because they perform services for such a vast array of individuals, companies, and organizations.

[7] *See* Fox, *supra* n.3.

[8] Utah State Bar Multidisciplinary Task Force Report, Attachment A at 9.

19th Annual Bob Miller Memorial Day Run/Walk

April 28, 2001 • 8:00 am • University of Utah Campus

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

When and where is the run/walk? Saturday, April 28, 2001 at 8:00 am. It will start and finish in front of the Law School. Come early for race day registration. P.S.: There's no killer hill this year on 100 South.

Does this event really start with a bang? You ain't just kiddin'! For the third straight year, Utah's fine judiciary will provide a genuine, heart-stopping gavel start. This year we will be graced by the enthusiastic presence of Justice Christine M. Durham of the Supreme Court of Utah.

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

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 for two billable hours. Everyone, please dig deep! Funds benefit clients of Utah legal Services, Legal Aid Society of Salt Lake, and Disability Law Center.

How do I sign up? Try on-line registration at www. utahbar. org. Look for the link to the run. Or send a completed registration form with fee to: Law Day Run/Walk, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111. For a hard copy registration form, send an e-mail request to dwesterby@kmclaw.com. Or check your firm's bulletin board. **Deadline for pre-registration is April 20,** with a registration fee of $18. Race day registration will be held from 7:00 am to 7:45 am with a registration fee of $20.

register on-line: www.utahbar.org

The MDP Question: Should We Board the Train to the Future or Lie Down in Front of it?[1]

by Mark C. Quinn

The debate over whether to allow Multidisciplinary Practices ("MDPs")[2] to exist as legitimate entities under our rules of professional conduct centers around the question of whether our profession can maintain its core values (e.g. independent judgment, confidentiality, attorney-client privilege, loyalty to clients and competence) while permitting the convenience and competitive advantages created by permitting lawyers to practice alongside, and share fees with, nonlawyers. The opponents of MDPs generally believe that this is not possible, and that our core values will be seriously compromised in such an arrangement. As a proponent of allowing MDPs to exist, I believe the profession can police the conduct of lawyers in and out of MDPs, at least as well as it does now, and ensure that these core values and the interests of the public are protected while allowing MDPs to exist. Call me an optimist, but I also believe that the benefits of MDPs will make the risks associated with them worthwhile. Finally, I agree with those who look around the state of our profession and see the seeds of MDPs already sown, and predict that trying to stop them from growing will ultimately prove futile and damaging to the profession.

Most MDP opponents see something else when they look at our profession today. They see a situation where our core values are protected and they see no reason to tamper with the current formula. I question, however, whether the non-MDP status quo these opponents see exists in actual fact, or only in their minds. Let me use the example of my own practice: as corporate attorney for Sinclair Oil Corporation, I am, in essence, in a three lawyer firm which is totally owned by non-lawyers. Though this is not a true MDP, the pressures of nonlawyer control of lawyers which MDP opponents fear will compromise a lawyer's independent judgment exist in my practice and the practice of countless other in-house and government attorneys. Thus, the barbarians are already at the gate. Does my relationship as an employee of a corporation controlled by nonlawyers affect my ability to provide independent analysis and advice, even when that analysis or advice is contrary to the corporate desires or financial incentives? It better not. As soon as it does I have lost the thing that is of greatest value to the corporation in having me here, and its management will rightfully ask me to leave.

I think this same principle will protect the interests of clients of MDPs. Every MDP will know that every client can "shop around" and seek second and third opinions from other lawyers in and out of MDPs. The first time a client feels that his lawyer has lost the ability to provide independent analysis or has otherwise stopped serving the client's best interests, that MDP will have lost that client. It's the client relationships that lawyers have that will be the very reason why MDPs will want to exist. An MDP that allows those client relationships to deteriorate or be subordinated to other interests will lose its most valuable asset, and will rightfully fail in the marketplace. I say we give MDPs that chance, to stand or fall by competition in the marketplace, rather than try to continue to restrict them by fiat.

The same principle may be applied to questions about conflicts of interest in MDPs. There is no reason why we cannot hold attorneys in MDPs to the same standard governing conflicts of interest to which we currently hold attorneys in existing firms. There is nothing magic, in my mind, about the current structure of lawyers' practices that makes them more likely to protect against conflicts of interest than the potential structure of an MDP, made up of lawyers and other professionals. Currently, lawyers guard against conflicts of interest because if they do not, they may be sanctioned and they will lose clients. Guarding against conflicts of interest may be a new standard of loyalty for the accountants or other professionals in an MDP to deal with, but if they want to practice with lawyers, it will be part of the price. If an MDP fails to meet this standard, it (or the lawyers within it) may be sanctioned, but more importantly, the MDP will lose clients. The marketplace, just as much as the threat of sanctions, will drive MDPs to avoid conflicts and protect the client's interests, just as law firms do now.

I do share some of the MDP opponents' concerns about whether our core values will be sufficiently protected in MPDs, but these concerns are outweighed by the following: (1) I feel

MARK C. QUINN is in-house counsel at Sinclair Oil Company in Salt Lake City, and currently serves as Past President of the Young Lawyer's Division of the Utah State Bar.

the current situation is not as pure and idyllic as we often imagine it to be (for evidence of this, just turn to the Discipline Corner in this Bar Journal). (2) Just as we must have systems in place to protect the public in today's marketplace, we can design systems to protect against the fears we have about MDPs without sacrificing the value that MDPs will provide to both lawyers seeking employment opportunities and clients seeking convenient and professional places in which to purchase professional services. (3) While the current situation is not perfect, I think the parade of horribles we often fear when we talk about MDPs may be much worse in theory than in practice. It is not too much of an oversimplification to state that the debate about MDPs is a battle between the optimists and the pessimists, and (4) while no one can predict the future, I am optimistic about our ability to meet the challenges posed by MDPs, and I would rather make the attempt than see us sit on our sandcastle and watch the tide rise.

The benefits of MDPs are far from imaginary. The most fundamental principles of economics suggest great economic benefits to allowing MDPs. Many attorneys, especially those just graduating from law school, will be happy to have the additional options for employment that MDPs will make available. Certainly partners and members of existing firms will have more flexibility and more options for generating revenue if MDPs are permitted. The additional opportunities presented by MDPs will provide greater competition for existing associates and, presumably, the higher demand will increase salaries. Clients are certainly benefited by increased competition that results in lower overall fees for legal services. Should we bar the door to these new opportunities for both attorneys and clients simply out of fear that we don't have the ethical wherewithal to withstand the pressures inherent in this new environment? Is it fair to our profession and to the public to let these fears foreclose the opportunities that MDPs may bring? Can we be successful in preventing MDPs even if we try?

These questions deserve honest evaluation. We cannot ignore the economic interests of attorneys and clients in order to couch this debate in purely ethical terms. If we do so we will only increase the perception that the bar is out of touch and irrelevant, or even that we are engaging in simple protectionism and disguising it as an ethical issue. If there is no compelling reason to believe that we cannot manage the ethical challenges presented by MDPs, then we ought to allow them and mandate a structure for them which will protect the public and our core values. Whether the structure suggested by the Utah Task Force accomplishes that can be the subject of further discussion, but when balanced against the potential benefits and the growing inevitability of MDPs, I believe we have no choice but to accept them and find the proper way to regulate them. As the Utah Bar's MDP Task Force concluded, "MDPs are a market-driven phenomenon." The market forces pushing for MDPs will not go away just because we are squeamish about them, nor are these market forces driven by some malevolent power. They exist because MDPs have important benefits in the marketplace which we cannot ignore.

In addition, though we talk a lot in this debate about protecting the client's interests, we never seem to talk about the client's interest in making his or her own choice about where to purchase legal services. This smacks of a self-interested and somewhat smug paternalism. If we require full disclosure about the nature of MDPs, can we really say that clients are so naive or so helpless that they cannot factor these concerns into their decisions about where to take their legal problems? The majority of legal dollars spent in this country are spent by corporations with very sophisticated ways of analyzing how to spend their money. Do they really need to be protected in this way by the bar? I would suggest that if MDPs are as inherently dangerous and unethical as their opponents claim they will expire for lack of business within a year of inception without any action by the bar.

Moreover, an examination of the history of our ethical rules shows a relatively short time period in which we have prohibited MDPs.[3] When the rule was adopted, many questioned whether it was necessary even then. If we dispense with the rule now, we may not know for certain for some time whether it was a good rule or a bad one, but we will at least have taken the opportunity presented to us to be the designers of the building in which those seeking legal services in the future will be shopping. If we fail to seize this opportunity, we will cede our role as designers to the forces of chaos. The debate over MDPs ought to continue, but on balance we ought to welcome the opportunities and challenges presented by MDPs, and order the future legal landscape in a way that best protects our values, rather than hide from this opportunity and have the landscape shoveled over us.

[1]The title of this article was suggested by an e-mail I received from an attorney commenting on the subject of MDPs who referred to MDP opponents as "backward thinking luddites who like to stand in front of moving trains." While the rhetoric may be harsh the metaphor is apt. There are numerous examples of MDPs already in existence outside the United States, where ethical rules, for the most part, have never prohibited them. Even in the United States, including Utah, there are entities forming that push the MDP envelope. See, Report of ABA Commission on Multidisciplinary Practice, 2-4; Utah State Bar Multidisciplinary Practice Task Force Report, p. 2.

[2]A Multidisciplinary Practice, or MDP, is defined as an organization or association that includes lawyers and nonlawyers and has as one, but not all, of its purposes the delivery of legal services to a client or clients other than itself. Report of ABA Commission on Multidisciplinary Practice p. 1.

[3]Utah State Bar Multidisciplinary Practice Task Force Report, pp. 5-6.

2001 Annual Convention

Lawyers in the 21st Century
Community, Diversity & Technology

Up to 12 hours of CLE credit available.

July 4 – 7, 2001
Sun Valley Resort

2001 Annual Convention
Sun Valley Resort – Sun Valley, Idaho

CLE Program Schedule

Wednesday, July 4, 2001

6:00 p.m. – 8:00 p.m.
Opening President's Reception & Registration

Thursday, July 5, 2001

7:30 a.m. – 8:00 a.m.
Registration and Continental Breakfast

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

Welcome & Opening Remarks
Daniel D. Andersen, 2001 Annual Convention Program Co-Chair
Lisa-Michele Church, 2001 Annual Convention Program Co-Chair

Report on the Utah State Bar
David O. Nuffer, President, Utah State Bar

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

Report on the Federal Judiciary
Chief Judge Dee V. Benson, U.S. District Court, District of Utah

Report on the Utah Bar Foundation
Randy L. Dryer, President, Utah Bar Foundation

9:00 a.m. – 9:50 a.m.
Keynote Address: – (1 CLE hour)
Featured Speaker: John McKay, President, Legal Services Corporation

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

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

JOHN MCKAY
John McKay received his B.A. in Political Science in 1978 from the University of Washington. After working for Congressman Joel Pritchard as a legislative aide in Washington, D.C. from 1978-79, he attended Creighton University where he earned his J.D. in 1982. Admitted to the Washington State Bar, Mr. McKay joined Lane Powell Spears Lubersky, in Seattle, as an associate, eventually becoming litigation partner. Also admitted to the U.S. District Courts, the Ninth Circuit, and the U.S. Supreme Court, he was selected as a White House Fellow in 1989, working as Special Assistant to the Director of the Federal Bureau of Investigation, in Washington D.C. Currently, Mr. McKay is on leave of absence from his position as managing partner of Cairncross & Hempelmann in Seattle. Its bipartisan board of directors appointed Mr. McKay president of Legal Services Corporation (LSC) in Spring 1997. During his tenure as its president, LSC has maintained its bipartisan support in Congress. He has logged thousands of miles visiting legal services programs around the country, encouraging programs to improve the delivery of legal services to clients by becoming more efficient and technologically proficient. In addition to his service to LSC, Mr. McKay has also served as a member of both the ABA Board of Governors and House of Delegates, as well as the state bar association's task forces on Opportunities for Minorities in the Legal Profession and on Governance. From 1988-89, he was president of the Washington State Young Lawyers Division, and in 1995, the Washington State Bar Association named Mr. McKay Pro Bono Lawyer of the Year.

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

LITIGATION TRACK	TRANSACTIONAL TRACK
The Robinson Patman Act: New Economics, In House Counseling and Agency Enforcement *Mark Glick, Parsons Behle & Latimer* *R. Wayne Klein, Utah Attorney General's Office* *Richard M. Marsh, Iomega Corporation*	**Trends in Attorney Compensation: The Effect on the Bottom Line and Firm Culture** *Paula Alvary, Hoffman, Alvary & Company LLC* *Kristen E. Clayton, Asst. Dean for Legal Career Services, University of Utah College of Law* *Denise A. Dragoo, Snell & Wilmer* *Mary Gordon, Manning Curtis Bradshaw & Bednar*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
A Harvard Approach to Mediation *James R. Holbrook, Callister, Nebeker & McCullough* *Karin S. Hobbs, Mediation & Arbitration Consulting*	**60 Gadgets in 50 Minutes** *Tom O'Connor, Director of Education & Training, Pacific Legal* Sponsored by: Business Law Section, Utah State Bar	**Means Testing or Just Plain "Mean" Under the Bankruptcy Reform Act of 2001** *Joel T. Marker, McKay Burton & Thurman* *William T Thurman, McKay Burton & Thurman*

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

11:20 a.m. – 12:10 p.m.
Session II – (1 CLE hour each)

LITIGATION TRACK	TRANSACTIONAL TRACK
What Judges and Lawyers Want From Each Other *Hon. Dee V. Benson, U.S. District Court, District of Utah* *Hon. Thomas L. Kay, Second District Court* *Brent V. Manning, Manning Curtis Brandshaw & Bednar* *Jerome H. Mooney, Larsen & Mooney* *Hon. Ronald E. Nehring, Third District Court* *Janet H. Smith, Ray Quinney & Nebeker* *Rodney G. Snow, Clyde Snow Sessions & Swenson* *Hon. Gary D. Stott, Fourth District Court*	**The Utah Revised LLC Act (2001) – Major Changes That Affect Your Practice** *Brent R. Armstrong, Armstrong Law Office*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
Taxing Problems in Domestic Relations *Lori W. Nelson, Dart, Adamson & Donovan*	**Internet Myths** *Gayle O'Connor, Director of Marketing, ABC Legal Services* Sponsored by: Business Law Section, Utah State Bar	**The Automated Office, A Demonstration** *Lawrence R. Peterson, Peterson & Simpson*

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

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

LITIGATION TRACK	TRANSACTIONAL TRACK
An Alternative to Alternative Dispute Resolution: A Kennecott Example *James M. Elegante, VP Legal and General Counsel of Kennecott Utah Copper*	**Understanding Wetlands Regulation and Its Impact on Development in Utah** *H. Michael Keller, VanCott, Bagley, Cornwall & McCarthy* Sponsored by: VanCott, Bagley, Cornwall & McCarthy

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
You Be the Judge: Can an Employer Ban Guns From the Workplace? *Lincoln W. Hobbs, Hobbs & Adondakis* *D. James Morgan, Jones Waldo Holbrook & McDonough* *Michael P. O'Brien, Jones Waldo Holbrook & McDonough*	**Staying Relevant: The Internet and the Practice of Law** *Toby Brown, Vice President of Strategic Initiatives, iLumin*	**Utilizing Legal Assistants: Pay No Attention to the [Wo]man Behind the Curtain** *Katherine A. Fox, General Counsel, Utah State Bar* *Billy Walker, Office of Professional Conduct, Utah State Bar*

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

Friday, July 6, 2001

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

8:00 a.m. – 8:30 a.m.
Registration and Continental Breakfast

8:30 a.m. – 9:15 a.m.
General Session

Presentation of Annual Awards
David O. Nuffer, President, Utah State Bar

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

9:15 a.m. – 10:05 a.m.
General Session: Clay Jenkinson as Thomas Jefferson – (1 CLE hour)

CLAY JENKINSON
Clay Jenkinson is the co-founder of the Great Plains Chautauqua, the first humanities Chautauqua program in the United States. He has delivered more than 1000 public humanities programs in more than forty states: lectures, forums, workshops, and first-person historical impersonations. On April 11, 1994, he appeared alone in the guise of Third President, Thomas Jefferson, on behalf of the National Endowment for the Humanities at a White House program attended by President and Mrs. Clinton, cabinet members, diplomats, Congressmen and 250 "Jeffersonians." He has been awarded several humanities awards, including the Charles Frankel Prize in 1989, the highest honor in the National Endowment for the Humanities. Mr. Jenkinson has served on the National Endowment for the Humanities panels, and as the chief humanities consultant to the award-winning Inland Educational Foundation in Riverside, California. He has served as a staff member of the North Dakota Humanities Council and now serves as a member of the Nevada Committee for the Humanities. He is considered the leading authority on scholarly first-person interpretation in the United States. Mr. Jenkinson has also worked with filmmaker Ken Burns on a documentary about the life of Thomas Jefferson. He is currently writing the companion volume to Burns' film.

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

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

LITIGATION TRACK	TRANSACTIONAL TRACK
Clay Jenkinson as Thomas Jefferson	**Legal Consideration for Clients Having a Presence on the Internet** *Eric L. Maschoff, Workman, Nydegger & Seeley*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
The Legislative Regulation of the Initiative Process *Senator Lyle W. Hillyard, Utah State Senate* *Lisa Watts Baskin, Plant, Wallace, Christensen & Kanell*	**The Future of Legal Research** *Shelly Albaum, West Group*	**Clay Jenkinson as Thomas Jefferson**

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

11:20 a.m. – 12:10 p.m.
Session II – (1 CLE hour each)

LITIGATION TRACK	TRANSACTIONAL TRACK
First We Kill All the Family Law Attorneys *Comm. Thomas N. Arnett, Third District Court* *Harry Caston, Gustin, Christian, Skordas & Caston* *Hon. James R. Taylor, Fourth District Court*	**ETHICS: Avoiding Legal Malpractice** *Charles A. Gruber, Office of Professional Conduct, Utah State Bar* *Michael F. Skolnick, Kipp & Christian* *Matt L. Lalli, Snell & Wilmer*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
ETHICS: Avoiding Legal Malpractice *Charles Gruber, Office of Professional Conduct, Utah State Bar* *Michael Skolnick, Kipp & Christian* *Matt Lalli, Snell & Wilmer*	**Technology Trends** *Richard D. Clayton, Parsons Behle & Latimer*	**What Every Lawyer/Parent Should Know About Zero Tolerance and School Safety** *John E. S. Robson, Fabian & Clendenin*

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

Saturday, July 7, 2001

8:30 a.m. – 9:00 a.m.
Continental Breakfast

9:00 a.m. – 10:10 a.m.
ETHICS General Session: The Lawyer and the Community – Obligations and Opportunities (1 CLE hour
Justice Christine M. Durham, Utah Supreme Court
Mary Gordon, Manning Curtis Bradshaw & Bednar
Brent V. Manning, Manning Curtis Bradshaw & Bednar
Alan L. Sullivan, Snell & Wilmer
Hon. Andrew A. Valdez, Third District Juvenile Court

10:10 a.m. – 10:25 a.m.
Refreshment Break

10:25 a.m. – 11:15 a.m.
Session I – (1 CLE hour each)

LITIGATION TRACK	TRANSACTIONAL TRACK
Civility, Credibility & Sanctions: A View From the Bench *Hon. Guy R. Burningham, Fourth District Court* *Hon. Leon A. Dever, Third District Court* *Hon. Roger A. Livingston, Third District Court* *Hon. Michael D. Lyon, Second District Court* *Shawn McGarry, Kipp & Christian*	**Private Property for the Public Good – Part I: Takings** *Craig M. Call, Private Property Ombudsman, State of Utah*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
Civility, Credibility & Sanctions: A View From the Bench *Hon. Guy R. Burningham, Fourth District Court* *Hon. Leon A. Dever, Third District Court* *Hon. Roger A. Livingston, Third District Court* *Hon. Michael D. Lyon, Second District Court* *Shawn McGarry, Kipp & Christian*	**Technology & The Legal Profession: The 21st Century and Beyond** *Kim A. Cooper, Chief Operations Officer, Sorenson Media, Inc.* *Lincoln Mead, MIS Manager/ Webmaster, Utah State Bar*	**Collection Law: How to Locate Anyone!** *Michael B. Bennett, Bennett & Deloney*

11:15 a.m. – 11:30 a.m.
Refreshment Break

11:30 a.m. – 12:20 p.m.
Session II – (1 CLE hour each)

LITIGATION TRACK	TRANSACTIONAL TRACK
Fraudulent Financial Statements: How They Do It *Gil A. Miller, Pricewaterhouse Coopers*	**Private Property for the Public Good – Part II: Recent Utah Cases on Land Use** *Craig M. Call, Private Property Ombudsman, State of Utah*

GENERAL PRACTICE/ GOVERNMENT TRACK	TECHNOLOGY TRACK	YOUNG LAWYERS TRACK
Private Property for the Public Good – Part II: Recent Utah Cases on Land Use *Craig M. Call, Private Property Ombudsman, State of Utah*	**How to Act not React to Technology** *Toby Brown, VP Strategic Initiatives, iLumin* *David O. Nuffer, Snow, Nuffer, Engstrom, Drake, Wade & Smart* *Tom O'Connor, Director of Education & Training, Pacific Legal* *Gayle O'Connor, Director of Marketing, ABC Legal Services* *Lincoln Mead, MIS Manager/ Webmaster, Utah State Bar*	**NLCLE: The ABCs of International Business Law** *William F. Atkin, Associate General Counsel of The Church of Jesus Christ of Latter-day Saints*

12:20 p.m.
Breakout Sessions Adjourn

12:30 p.m. – 3:00 p.m.
Salt Lake County Bar Film & Discussion: "The Castle" – (2 CLE hours)
Hon. Leslie A. Lewis, Third District Court
Steven F. Alder, Utah Attorney General's Office
Craig M. Call, Private Property Ombudsman, State of Utah
Clark W. Session, Clyde, Snow, Sessions & Swenson

3:00 p.m.
All Meetings Adjourn

Notice of Ethics & Discipline Committee Vacancies

The Bar is seeking interested volunteers to fill three vacancies on the Utah State Bar Ethics & Discipline Committee. The Ethics & Discipline Committee is divided into four panels which hear all informal complaints charging unethical or unprofessional conduct against members of the Bar and determine whether or not informal disciplinary action should result from the complaint or whether a formal complaint shall be filed in district court against the respondent attorney. Appointments to the Ethics & Discipline Committee are made by the Utah Supreme Court upon recommendations of the Bar Commission.

Please send resume, no later than April 26, 2001, to:
John C. Baldwin
Utah State Bar
645 South 200 East
Salt Lake City, UT 84111

NOTICE

of Legislative Rebate

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

Notice of Amendments to Rules

The following rule changes have been adopted by the Supreme Court or Judicial Council with an effective date of April 1, 2001. The information is intended to alert Bar members to changes that may be of interest and is not an inclusive list of all changes made.

DIGEST OF AMENDMENTS

Rules of Civil Procedure

Rule 5. Service and filings of pleadings and other papers. Amends to allow service by means other than U.S. Mail and hand delivery if consented to in writing by person served.

Rule 32. Use of depositions in court proceedings. Adds provision concerning offering deposition testimony in stenographic or nonstenographic form.

Rules of Criminal Procedure

Rule 14. Subpoena. Adds provision allowing attorney to issue and sign subpoena.

Rules of Appellate Procedure

Rule 11. The record on appeal. Adds list of exhibits offered in proceeding to record prepared by clerk of the trial court.

Rule 12. Transmission of record. Adds provision governing duty of juvenile court clerk.

Rule 36. Issuance of remittitur. Adds provision governing issuance of remittitur by Court of Appeals if petition for writ of certiorari is filed; amends provision governing stay, supersedeas or injunction pending application for review to the United States Supreme Court.

Code of Judicial Administration

Rule 3-503. Election to participate in deferred compensation plan. Removes rule.

Rule 4-501. Motions. Adds requirement that Notice to Submit for decision state the date on which the motion was filed, the date the memorandum in opposition, if any, was filed, the date the reply memorandum, if any, was filed, and whether a hearing has been requested.

Rule 4-509. Property bonds. Adds new rule governing property bonds posted in civil proceedings.

Rules of Professional Conduct

Rule 7.3. Direct contact with prospective clients. Amends rule including addition of requirement that written communication from a lawyer soliciting professional employment in certain circumstances be identified as advertising; replaces comment.

Lawyer Legislator 2001

The January/February issue of the *Utah Bar Journal* contained an article written by Bar President David Nuffer, which included photographs and contact information concerning lawyer legislators. Senator Terry R. Spencer's name and contact information were inadvertently omitted from that article. Mr. Spencer's name and contact information are listed below. The *Utah Bar Journal* apologizes for its error.

Senator Terry R. Spencer
T.R. Spencer & Associates, P.C.
140 West 9000 South, Suite 8
Sandy, Utah 84070
Office phone: (801) 566-1884
Fax: (801) 562-5151
E-mail: trs6851@aol.com

2000 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 2000 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than Thursday, April 26, 2001. The award categories include:

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

Mailing of Licensing Forms

The licensing forms for 2001-2002 will be mailed during the last week of May and the first week of June. Fees are due July 2, 2001, however fees received or postmarked on or before August 1, 2001 will be processed without penalty.

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

Utah State Bar Ethics Advisory Opinion Committee

Opinion No. 01-02
Issue: Does a lawyer violate the Utah Rules of Professional Conduct if he agrees to discount his fees to a client until a referral fee charged to the client by a lawyer-referral service is reimbursed to a client?

Opinion: A lawyer who agrees to discount his fees to a referred client in order to permit the client to be reimbursed for the referral fee that the client originally paid to the referral service makes an indirect payment to the referral service and, therefore, violates the prohibition against payment of referral fees on a fee-per-case basis under Utah Rules of Professional Conduct 7.2(c).

Discipline Corner

ADMONITION

On January 10, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a married couple in an adoption matter. During the course of the representation the attorney failed to keep the clients reasonably informed about the status of their matter. Thereafter, the attorney's law office was closed, but the attorney failed to notify the clients of the attorney's whereabouts. The attorney abandoned the representation of the clients without taking reasonable steps to protect their interests.

SUSPENSION

On January 23, 2001 the Honorable Leslie A. Lewis, Third District Court, entered Findings of Fact, Conclusions of Law, and Order of Suspension suspending H. Delbert Welker from the practice of law for thirty days for violation of Rules 1.15(a) and 1.15(b) (Safekeeping Property) of the Rules of Professional Conduct.

Welker represented three clients in separate personal injury matters. Welker signed written medical reports and doctor's liens ("medical provider lien") with a chiropractic clinic for medical services provided to the clients; the clients also signed the medical liens. Pursuant to the written medical provider liens, Welker was directed by the clients "to pay directly" to the chiropractic clinic "such sums as may be due and owing" for "medical service rendered" to the clients and "to withhold such sums from any settlement, judgement or verdict as may be necessary to adequately protect said clinic." Neither Welker nor the clients disputed the amount owed to the clinic.

Welker moved his law practice out-of-state and for approximately six months did not have a trust account in Utah for the purpose of holding client and third-party funds as required by Rule 1.15 of the Rules of Professional Conduct. Welker was able to settle the clients' personal injury matters, and he distributed the clients' settlement funds by paying himself attorney's fees on a contingency percentage basis and by distributing to the clients their portion of the funds. When Welker distributed the settlement funds to himself and to the clients, he did not promptly pay the amount owed to the chiropractic clinic for medical services provided to the clients. When Welker settled the clients' personal injury matters and distributed the settlement funds to himself and to the clients, he did not promptly notify or account to the chiropractic clinic regarding the funds he was holding for the clinic pursuant to the medical provider liens. Welker did not keep the complete records of his trust account concerning the settlement funds for the required period of five years after the termination of the representation. Welker eventually paid all money owed to the clinic on the three client matters. Welker did not receive any additional funds in the three client matters other than the funds due him for fees and costs. Any funds that were to be paid over to the chiropractic clinic were paid over to the clients. At no time did the chiropractic clinic seek repayment from the three clients.

ADMONITION

On January 25, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7(c) (Conflict of Interest: General Rule) and 1.10 (Imputed Disqualification: General Rule) of the Rules of Professional Conduct.

The attorney represented a client in a divorce action. As part of the divorce action, there were contested issues relating to whether certain pieces of property were part of the marital estate, and if so, how that property should be divided. One piece of property was in dispute between the client's estranged spouse and certain of the spouse's business associates. The disputed ownership issue raised questions concerning whether the property would be included in the marital estate and the value of the property. The divorce court made rulings, including the division of the marital estate property, and awarded a credit to the client of not less than a specified amount, or one-half of the actual sale price of the property. By the time of the court's ruling, the client had surrendered any interest in the properties that were in dispute in the litigation, which involved a dispute over the ownership interest that the estranged spouse had in various companies. Following the divorce, the court's rulings as to the division of the property, and at the divorce court's direction, the attorney began preparing proposed findings of fact and conclusions of law pursuant to the divorce court's instructions. In its ruling, the court ordered the client's estranged spouse to report to the client regarding on-going litigation regarding various lawsuits, the results of which might affect the value of property awarded to the client.

Thereafter, the client's estranged spouse approached the attorney's law partner and asked that the partner represent him in two lawsuits, one concerning the property and another concerning issues involving litigation with a former employer. The attorney

informed the client in writing concerning the estranged spouse's request to retain the attorney's partner in the property and litigation matter. The attorney informed the client that the client's interest was adverse to the estranged spouse's in the divorce, but that their interests were not adverse in the property and in the other litigation matter because the partner would essentially be protecting or recovering property from third parties that might be part of the marital estate. The client faxed a letter to the attorney in which the client stated that until the client and the attorney had an opportunity to discuss the attorney's partner representing the estranged spouse, the client was opposed to the representation. Six days later the client sent another letter to the attorney's firm in which she conditionally waived any conflict and agreed to allow the attorney's partner to represent the estranged spouse as long as two conditions were met. The two conditions to the waiver were: (1) that the divorce litigation be finalized and (2) that the client be kept informed of the progress in the litigation in which the attorney's partner was representing the estranged spouse. The divorce was not finalized because of unresolved objections to the proposed findings of fact. One of the conditions was not met by the time the partner began representing the client's estranged spouse, and consequently the client's waiver was not perfected.

Although the client's "interests" were not adverse to the estranged spouse's "interests" in the litigation over the pieces of property, the client was an adverse party in a separate matter. Rule 1.7(c) is not based on an "interest" analysis but rather strictly on an "adverse parties" analysis.

ADMONITION

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The attorney's law partner represented a client in a divorce action. As part of the divorce action, there were contested issues relating to whether certain pieces of property were part of the marital estate, and if so, how that property should be divided. One piece of property was in dispute between the client's estranged spouse and certain of the spouse's business associates. The disputed ownership issue raised questions concerning whether the property would be included in the marital estate and the value of the property. The divorce court made rulings, including the division of the marital estate property, and awarded a credit to the client of not less than a specified amount, or one-half of the actual sale price of the property. By the time of the court's ruling, the client had surrendered any interest in the properties that were in dispute in the litigation, which involved a dispute over certain ownership interests that the estranged spouse had in various companies. Following the divorce, the court's rulings as to the division of the property, and at the divorce court's direction, the attorney began preparing proposed findings of fact and conclusions of law pursuant to the divorce court's instructions. In its ruling, the court ordered the client's estranged spouse to report to the client regarding on-going litigation regarding various lawsuits, the results of which might affect the value of property awarded to the client.

Thereafter, the client's estranged spouse approached the attorney and requested representation in two lawsuits, one concerning the property and another concerning issues involving litigation with a former employer. The attorney's partner informed the client in writing concerning the estranged spouse's request to retain the attorney in the property and litigation matter. The partner informed the client that the client's interest was adverse to the estranged spouse's in the divorce, but that their interests were not adverse in the property and in the other litigation matter because the partner would essentially be protecting or recovering property from third parties that might be part of the marital estate. The client faxed a letter to the attorney's law partner in which the client stated that until the client and the law partner had an opportunity to discuss the attorney representing the estranged spouse, the client was opposed to the representation. Six days later the client sent another letter to the attorney's firm in which she conditionally waived any conflict and agreed to allow the attorney to represent the estranged spouse as long as two conditions were met. The two conditions to the waiver were: (1) that the divorce litigation be finalized and (2) that the client be kept informed of the progress in the litigation in which the attorney's partner was representing the estranged spouse. The divorce was not finalized because of unresolved objections to the proposed findings of fact. One of the conditions was not met by the time the attorney began representing the client's estranged spouse, and consequently the client's waiver was not perfected.

Although the client's "interests" were not adverse to the estranged spouse's "interests" in the litigation over the pieces of property, the client was an adverse party in a separate matter. Rule 1.7(c) is not based on an "interest" analysis but rather strictly on an "adverse parties" analysis.

ADMONITION

On January 29, 2001, an attorney was admonished by the Chair

of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented the plaintiff in a personal injury matter stemming from an automobile accident. The client reached a settlement of the personal injury claim with the defendant driver's ("driver") insurance carrier. Prior to the settlement agreement, the client's insurance company notified the driver's insurance carrier of its subrogation claim for personal injury protection ("PIP") payments made to the client. The client's settlement amount was to include a payment to the client's insurance carrier for the PIP payments paid to the client.

The client's insurance carrier informed the attorney that it would be handling its subrogation claim directly through arbitration with the driver's insurance carrier. In a letter to the driver's insurance carrier the attorney confirmed the settlement amount and indicated that the client recognized the client's insurance carrier's subrogation claim. The client executed a release in the amount of the settlement. The driver's insurance carrier informed the client's insurance carrier that its interest had been protected by including its name in the settlement draft along with the attorney's and the client's names. The driver's insurance carrier issued two checks in accordance with its settlement agreement with the client. One check was made payable to the attorney, the client and the client's insurance carrier; the second check was made payable to the attorney and the client to cover the balance of the settlement. The attorney, on behalf of the client, alleged that the settlement had not made the client whole and notified the client's insurance carrier that he felt it should not receive the total amount for its lien for PIP payments provided. The client's insurance carrier disagreed, and refused to negotiate directly with the client regarding its subrogation claim. The attorney returned the disputed check to the driver's insurance carrier and requested that a new check be issued without the client's insurance carrier as a payee. The driver's insurance carrier refused to issue a new check and returned the disputed check to the attorney. Thereafter, while the attorney had possession of the check, someone endorsed the check with the words: [CLIENT'S INSURANCE CARRIER], PER LTRS 3/31/95 - 12/8/95, and deposited the check into the attorney's trust account, where it remained until the attorney deposited it into the court in litigation initiated by the client's insurance carrier. When the attorney negotiated the check, the attorney notified the client's insurance carrier that funds would be held in trust until the dispute was resolved.

ADMONITION

On February 2, 2001, 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), 1.5 (Fees), 3.2 (Expediting Litigation), 8.1 (Bar Admission and Disciplinary Matters), 8.4(a) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a termination of parental rights matter. A four day trial was scheduled. On two of the first four days of trial, the attorney was fifteen to twenty minutes late for the beginning of trial, and late returning after the lunch recesses. On each day the attorney failed to alert the court to any need for such delays. The court continued the remaining days of the trial to approximately one month later. On the day set to begin the trial, the attorney failed to appear and did not call the court to explain the absence. The trial began in the attorney's absence. The client had flown in from out-of-state and was present. Another attorney involved in the matter located the attorney and reported the attorney's whereabouts to the court. The attorney claimed to be in another court. The judge's clerk attempted to reach the attorney, but was unable to do so. Eventually, the judge was able to reach the attorney who offered a series of contradictory explanations for being absent from the trial. The attorney's failure to appear forced the judge to declare a mistrial. The court ordered the attorney removed from the case, and ordered the attorney to reimburse the client for any fees paid. The attorney reimbursed the fees paid.

Mitigating factors include: imposition of other penalties and sanctions.

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From the Get-go to the End of the Day

by Just Learned Ham

Speaking of tort reform, when did "niche" become "neesh" instead of "nitch?" I just spent two of the longest days of my life[1] in a seminar devoted to helping us "secure and defend our neesh in the market." When I was a second year associate I remember some concern expressed about my inability to find my nitch in the firm. Naively unaware that I had even lost my nitch, I hadn't really been looking for it. When it was pointed out to me that mine was apparently missing, but luckily still somewhere in the office waiting for me to stumble across it, I diligently went looking. I switched nitches a lot, but never found mine. Except in my *Random House Dictionary of the English Language* (unabridged), where the pronunciation is shown as "nich." No alternative pronunciation is even listed. It doesn't rhyme with quiche. It rhymes with kitsch. Maybe if someone had told me 20 years ago that what I really needed was a neesh, things would have gone much differently.

I learned a lot in the seminar, though. While I still have no idea how lawyers are supposed to secure and defend a niche in the market (witness my practice), I do know exactly how consultants do it – don't actually do anything differently, just say it differently.

The consultants – I mean, our facilitators – began by encouraging us to "create a robust, value-added network by leveraging our platform of delivery systems to enhance the richness of the client experience." This sent me thumbing through my impressive three-ring binder of Power Point slides looking for a glossary. Mine was missing (just like my niche). So I spent most of the next 48 hours compiling one (a glossary, not a niche).[2] Here's what I came up with. I think it's close.

"Robust" means "good." ("Good" is the archaic form of "robust" and is no longer robust enough to be used by intelligent people: *The functionality of our website is not very robust. Our firm brochure is not very robust. Lunch was certainly robust. My, aren't these slides robust? If we can't find an expert witness that agrees with us by next Tuesday, it'll be Robust Night, Irene for this case and our associates can all kiss their bonuses robust-bye.)*

"Value added" means "of questionable value." *(At Grey, Tepid, and Vanilla we add richness to the client experience through a kaleidoscope of value added services such as legal audits, prepaid legal services for the client's employees, compliance hotlines, extensive use of focus groups, and cold fusion.)*

"From the get-go" means "I can't think of another way to start this sentence and I think this might sound better than if I just clear my throat again." (The first time I saw this phrase used in print was in a brief to the Wyoming Supreme Court. I remember thinking it looked quaint, and that we were going to lose badly. I was half right. Instead of quaint, it is apparently chic. *From the get-go, we must realize that, at the end of the day, synergies do not actually exist.)*

"The end of the day" means "I can't remember how I started this thought, so I'm just going to sum up." *(At the end of the day, if we haven't taken ownership of a visionary paradigm, we will be mired in an archaic modality. And we will probably get sleepy, and then it will get dark, too.)*

"In a perfect world" means "I am about to tell you something utterly ridiculous, that doesn't exist or never really happens." *(In a perfect world, synergies abound. In a perfect world, we will break at 10:30. In a perfect world, you would get your money back for this seminar.)*

"Process together" means "brainstorming." (One of my favorites. This is where we take flipcharts and "breakout" with something, or into something. Having paid plenty of money to learn from our expert facilitators, we are now told that the most robust ideas are the ones lurking inside of us, waiting to be teased out by a trained professional. Right. What kind of a pigeon falls for something like that? When I pay tuition, I expect to be taught something. I remember law school, and the Socratic method, and, well . . . bad example, but probably just the exception that proves my point. The most promising idea to come of our breakout group was that we all fatten our margins by dropping our malpractice coverage. I chuckled when I heard that one – it felt good to be ahead of the curve on something.)

"Think outside of the box" means "I hope you guys come up with some robust ideas, because I sure can't." (This is what our facilitators urge us to do when we process together. Why can't people who think it's so important to think outside of the box at least come up with a new expression for it? Every facilitator on the planet insists that we think outside of the box. I had a cat who thought that way once, and at the end of the day it didn't work out very robustly for him.)

"Offer sponsorship" means "to suggest." (Goes hand in hand with "take ownership." See below. The two expressions are always used together, like "q" and "u," Stockton and Malone, registration statement and malpractice claim, etc.)

"Take ownership" means "try." *(I'd like to offer sponsorship to you of the possibility of taking ownership of a robust new paradigm. I'd like to offer sponsorship to you of taking ownership of a niche. I'd like to offer sponsorship to you of taking ownership of the spinach and mushroom quiche.)*

"Paradigm" means "vision."

"Vision" means "modality."

"Modality" means "the progeny of synergy."

"The progeny of synergy" means "absolutely nothing."

"Exceeding expectations" means "a pleasant surprise." (As, for example, when the temperature in the seminar room is actually in double digits, or when it ends at 3:30, or when the facilitator says something mildly informative.)

"Engage in live interaction" means "talk to someone." (In today's value-added business modality, this is to be avoided at all costs. *If the functionality of your website toolbar isn't sufficiently robust, you will have no choice but to engage in live interaction.)*

"Best practices" are what the firm's emeritus partners have.

Still, somewhere around the middle of the second day I started to get it. I glimpsed the future. Out of the corner of my eye I swear I even saw a niche. By 2:30 I was fully synergized, chanting and clapping and calling for Kool Aid along with the rest. At the last possible moment I was saved by a clear headed tax partner who dragged me from the room and straight to deprogramming. But for his quick and decisive action, I would be mouthing platitudes and carrying a day planner at this very moment. Don't make the mistake of thinking it could never happen to your firm. Talk to your associates. Don't let them experiment with consulting. Tell them about the danger. The consulting industry is just a hypnotic dialect. There are no real ideas, just a lot of words that leave you feeling inferior until you figure out that they don't really mean much anyway. Listening to consultants speak is like listening to litigators discuss civil procedure – sorry, another bad example. I didn't mean that. There is hope, though. With the passage of the English-only initiative, the consultants' days are numbered. (I'd never really thought of it before, but the initiative might not bode very robustly for us, either . . . Govern yourselves accordingly!)

[1] Almost as long as those two days taking the bar exam. The examiners enjoyed my essay on the probate code so much they invited me back to write a supplement. The guy to my left ended up a Utah Supreme Court Justice - I guess I should have copied more carefully. The guy to my right introduced himself as Bud Scruggs. He said his idea of a diet was having a salad with lunch, so we picked out a buffet and were a little late getting back to the test room. That probably didn't help my score. But it did help me sleep better during the multi-state.

[2] Note to the Bar Commissioners (as if they would actually be reading this . . .): don't worry, I didn't even try to claim CLE. I was tempted, but didn't. I think I deserve at least a couple of ethics hours for that.

Utah Bar Foundation

The Utah Bar Foundation announces two Trustee vacancies on the Board of Trustees.

A nominating committee will forward a slate of proposed names for vote by the Utah Bar Foundation Board. In addition to the nominated slate, individual attorneys may seek election for a three year Utah Bar Foundation Trustee term by filing a petition containing the signatures of at least 25 attorneys in good standing with the Utah Bar Foundation by May 4, 2001. Petitions may be obtained at the Utah Bar Foundation, 645 South 200 East, Salt Lake City, Utah 84111 or on the Bar's website at www.utahbar.org. For questions, please contact Kimberly Garvin at (801)297-7046.

The Utah Bar Foundation is currently accepting applications for funding for FY2001. The Utah Bar Foundation funds organizations that promote legal education; provide legal services to the disadvantaged; improve the administration of justice; and serve other worthwhile law-related public purposes. Interested organizations can contact Kimberly Garvin at (801)297-7046 for an application form. Applications are due by 3:00pm on Friday, May 25, 2001.

Legislative Highlights

by Scott Daniels

Although any change in the law may have some effect on the practice of law, I have selected a few of the bills which were passed this session which may have some broad interest among lawyers. As of the date of this writing, the bills have not been signed into law by the Governor.

Attorney Liens

H.B. 221 amends Utah Code Ann. Section 78-51-41. This statute broadens the right of an attorney to assert an attorney's lien. Previously, the attorney's lien attached only to "any settlement, verdict, report, decision or judgment." Under the new statute, the lien may also attach to "any real or personal property that is the subject of or connected with the work performed for the client." The statute also extends lien rights to non-litigation matters by changing the commencement date to the "time of employment of the attorney." Previously the lien ran from the commencement of an action or a counter-claim.

The statute also provides the procedure for filing the attorney lien which was absent in the previous statute.

The Bar's Office of Professional Conduct requested the sponsor to include an amendment which precludes an attorney from asserting a lien in a criminal or domestic matter while the matter is still pending. This was requested in order to avoid the conflict of interest that may occur if an attorney asserts the lien while continuing to represent the client.

The statute may settle a longstanding controversy regarding whether an attorney may assert a lien on child support payments. The statute provides that the lien attaches to "property owned by the client." It is at least arguable that child support payments belong to the child, not the custodial parent and therefore are not subject to a lien.

Bar Complaints

S.R. 3 is a joint resolution urging the Utah Supreme Court and the Utah State Bar to require any person filing a bar complaint to post a bond. Although a joint resolution does not have the effect of law, because it carries the weight of the expressed opinion of the legislature, the Bar Commission will consider it very carefully. The sponsor, Senator Terry Spencer, will present the resolution to the Bar Commission at the regular Commission meeting in April. The Bar Commission encourages anyone who may wish to comment on this issue to contact a Bar Commissioner.

Litigation

H.B. 112 Prevention of Retaliatory Lawsuits enacts Utah Code Ann. Sec. 78-58-101 et seq. This new statute may have a significant effect in certain types of lawsuits, especially libel and slander cases. It arose in response to a perceived problem that developers and others seeking government approvals and licenses may file suits against citizens who oppose them in hearings before zoning boards, city councils and the like. The proponents of the bill claimed that these protesters, faced with the possibility of having to defend costly lawsuits, are prevented from exercising first amendment rights.

This statute allows a defendant to assert in the Answer that the primary purpose of the lawsuit is to interfere with the defendant's public participation in the process of government. The Answer may include a Motion for Judgment on the Pleadings and affidavits in support of the Motion. Upon the filing of such a Motion, discovery is stayed unless the court orders otherwise. The Motion is given an expedited hearing. If the court finds that the "primary purpose" of the action is to interfere with the defendant's participation in the process of government, the action is supposed to be dismissed.

It is interesting that if the court finds the suit was filed for the improper purpose, the case is dismissed, even though the underlying action may be meritorious. Whether this runs afoul of the Open Courts provision of the Utah Constitution is a question.

H.B. 25 Civil Stalking Amendments. Several years ago the legislature passed a bill creating the crime of stalking. The law did not include a civil remedy, however, allowing a citizen to seek a protective order against a stalker. A co-habitant can secure a protective order under the spouse abuse law. This statute seeks to provide a similar remedy to persons who are placed in fear by a person who they have not lived with.

H.B. 129 amends Utah Code Ann. Section 78-14-7.1 This bill raises the damage cap on medical malpractice claims to $400,000 with an automatic inflation adjustment after July of 2002. A bill was also introduced to eliminate the "per occurrence" cap on claims under the Governmental Immunity Act. This bill passed in the Senate, but was not funded and didn't come to a vote in the House.

H.B. 13 amends Utah Code Ann. Section 78-11-12. This clarifies that pre-death lost wages are recoverable under the survival statute. The previous statute allowed for recovery of pre-death "out of pocket" losses and some courts had held that literally interpreted, lost wages are not "out of pocket."

Family law

S.B. 136 requires the formation of a parenting plan in order for

a court to order joint legal custody. The purpose is apparently to force divorcing parents who choose "joint legal custody" to define what they mean by that term, including allocating parenting functions, responsibilities, and decision making authority. This requirement should avoid a host of post divorce disputes and is something many domestic practitioners already do.

SB 117 enacts Utah Code Ann. Section 78-7-36. This gives the court the authority to appoint private attorneys as guardians ad litem in criminal and visitation and custody cases. The court is given the power to order recovery of costs against the parties. For every five cases in which an attorney is appointed and receives compensation, the attorney is obligated to take one appointment pro bono. The Judicial Council is directed to establish standards for appointment as guardian ad litem. This statute takes effect on July 1, 2001 in the Second, Third and Fourth Judicial Districts and on July 1, 2002 in the remainder of the State.

H.B. 269 amends Utah Code Ann. Sections 78-3a- 104 and 105 and 78-3a-119. This gives the juvenile court exclusive jurisdiction over adoptions in which the juvenile court has previously entered an order terminating the parental rights of a parent.

H.B. 148 amends Utah Code Ann. Section78-3a-109. This statute authorizes the juvenile court to order a "family unity conference" to resolve disputes between the Division of Child and Family Services and the parties in neglect and abuse actions.

S.B. 64 allows Utah courts to take consents and finalize adoptions for non-resident adoptive parents if the child was conceived and born in Utah.

Probate

HB 349 amends Utah Code Ann. Section 78-5-401. This provides that a court cannot refuse to appoint a conservator solely because a power of attorney is in effect.

Liens and Real property

H.B. 305 amends a number of sections of the Utah Code to change the long standing law that a judgment creates a lien against all the real property of the judgment debtor in the county in which the judgment is rendered. This bill, instead, requires the judgment creditor to record the judgment with the county recorder. This is presumably meant to make life easier for title companies and others researching liens. The effective date of the bill was delayed until July 1, 2002. Some lawyers have expressed concerns about this legislation, and the real property section may want to propose amendments in the next session, prior to the bill becoming effective.

HB 335 enacts Utah Code Ann. Sections 38-1-28 and 29 to allow a person who has had a mechanics lien filed against his or her property to post alternate security and have the lien released.

SB 53 amends a number of sections of the Utah Code to modify and detail the duties of trustees of trust deeds.

SB 254 amends the Residence Lien Recovery Fund. This is a fund financed by payments from contractor licensing fees. It allows homebuyers and home owners who do remodels to collect from the fund if the homeowner pays a licensed contractor, but the contractor fails to pay a sub or a supplier and the homeowner has to pay a second time to release a lien. The Department of Professional and Occupational Licensing then attempts recovery against the defaulting contractor. This has proven to be a very successful program. It is especially popular among subcontractors and suppliers. The statute removes the lifetime cap of $500,000, which was declared unconstitutional. A $75,000 per residence cap is left in place. The procedure for filing these claims is simplified.

Criminal Law

Enhanced penalties for certain crimes was an issue of some controversy during this legislative session. A "hate crime" bill was proposed in both the House and the Senate. The bill was supported by The Statewide Association of Prosecutors, the Attorney General and the Utah Sentencing Commission. A similar bill had failed in previous legislative sessions, ostensibly because it singled out specific groups for special protection (i.e. racial minorities and gays). This year, the bill proposed to enhance the penalty for crimes committed against a person "primarily" because he or she was a member of a "group." The bill failed in House Judiciary Committee but passed in the Senate after some amendment. Upon referral to the House, the bill was assigned to the Rules Committee, and never brought out for debate or vote.

It is interesting that the argument most often made against the Hate Crime Bill was that a crime should be punished according to the seriousness of the conduct only, not the underlying motivation. Nevertheless, H.B. 322 was enacted in this session which imposes enhanced penalties for crimes committed with the intent to interfere with an "animal enterprise." A bill also passed the House (but failed in the Senate) which would have imposed enhanced penalties for crimes committed against referees and coaches at athletic events.

In addition, a bill was passed which enhances the penalty for committing a violent crime with a weapon if the perpetrator is wearing body armor. H.B. 238.

As usual, the legislature created a number of new crimes (e.g. soliciting minors for sexual activity over the internet, H.B. 181; spiking a drink with drugs or alcohol, H.B. 113; jail or prison guards having sex with prisoners S.B. 4; and pointing a laser pointer at a car, H.B. 101). It extended others (e.g. burglary was extended to include entering a building with the intent to commit lewdness H.B. 220). And it increased the penalties for some (e.g. performing unlawful marriages involving minors, S.B. 146; possession of forgery tools, H.B. 215).

As usual, no crimes were eliminated, restricted, nor penalties reduced.

The Pro Bono Initiative: Volunteer Students and Attorneys

by Lucinda Gryzenia and Jenny Gelman

On January 9th, the University of Utah College of Law invited its first year students to a lunch hour presentation about the importance of pro bono work. Speakers at the lunch, Jeff Tachiki (2L) and attorney Mary Jane Ciccarello, encouraged a standing-room only crowd to join the Pro Bono Initiative, a new College of Law program that provides student assistants to attorneys working on pro bono cases.

The first year students' enthusiastic response can in part be attributed to the Pro Bono Initiative's dynamic first semester. Since August, 25 local law firms have become members of the Initiative and over sixty second and third year students have taken on pro bono projects ranging from death penalty appeals to victims' rights cases. Among the first volunteers were Matt Hall, working with A Welcome Place, and Kira Dale Pfisterer, volunteering for the Utah Rivers Council.

Matt Hall, a second-year law student fluent in Spanish, chose to serve as a volunteer with A Welcome Place, a local agency providing legal services for immigrants and refugees in Salt Lake City. Matt is specifically interested in Immigration Law and is the President of the law school's International Law Society.

Attorney Marti Jones works full-time at the agency, and served as Matt's supervisor. A Welcome Place serves a large clientele base with legal problems, including family-based petitions of immigration, political asylum, suspension of deportation and cases of domestic violence. While the agency charges a small fee for its services, between 30% to 50% of its funding comes from private grants.

During fall semester, Matt worked on two separate cases. The first case involved a recent refugee from Chad who was seeking asylum. Matt researched the history of Chad and its current political conditions. He studied the five official grounds for asylum (nationality, religion, social group, race and political opinion) and assessed the relevance of each of these issues to the case.

Matt also assisted Marti Jones on a case involving a woman from Guatemala who was seeking a petition for suspension of deportation. As a student volunteer, he gathered information by conducting interviews with the woman's family, confirming the citizenship of her relatives, and gathering other pertinent background information. Matt found that tracking down the client was the most difficult part of this project. "Marti Jones is thorough in emphasizing to her clients the gravity of preparation for a hearing," Matt says, yet the difficulty of gathering relevant information presented a unique challenge in this case. However, with his Spanish skills, Matt was able to make contact, set up an appointment, and "motivate her to get prepared for the hearing."

While Matt was interviewing clients at A Welcome Place, the Natural Resources Law Forum (NRLF), a student organization at the law school, was organizing a volunteer project through the Pro Bono Initiative with the Utah Rivers Council. NRLF members met with Utah Rivers Council Director Zach Frankel, and a five-student team signed up to work on a research project involving the disputed ownership of the Bear River Bird Refuge.

The Bear River project presented NRLF volunteers with a complex research assignment. Working under the supervision of attorneys Jeff Appel, Cullen Battle, and Joro Walker, the student team researched state statutes and interpretations of the Reservation Act.

"One of the best things about this project is that the work we are doing with Utah Rivers correlates directly with the curriculum in my Natural Resources Law class. In class we're given context, background and framework, but Utah Rivers Council presents us with the messy application which doesn't always fit into tidy chapters. It's a more realistic application of what I am learning," Kira explained.

This interplay between curriculum and volunteer work is a happy by-product of the Pro Bono Initiative's original intent: to create an ethic of public service among law students while providing assistance to attorneys doing pro bono work.

"Kira was a tireless workhorse on this project," says Utah Rivers Council director Zach Frankel appreciatively. The Utah Rivers Council has extensive experience working with volunteers and particularly valued Kira's ability to take the initiative and pursue the research independently.

The Pro Bono Initiative requires that all students work under the supervision of an attorney. Working with an attorney ensures the quality of the student's work product and gives the students a positive professional role model. Jeff Appel (Appel & Warlaumont), Kira's supervisor, had this to say about their collaboration: "There are very few people who offer environmental pro bono assistance. Having this pool of talent to draw on helps to multiply our effectiveness. It is also refreshing to see the gleam in the eye of these students as they work on projects with goals they obviously believe in."

"The attorneys working on the case are members of private law firms, and they are setting a good example for student volunteers by doing pro bono work," says Kira Dale Pfisterer, who has accepted a summer position at Parsons, Behle & Latimer. "I have decided to enter the firm environment upon graduation, and it is important to me that lawyers in firms do pro bono work."

"The Pro Bono Initiative encourages all College of Law students to complete a minimum of fifty hours of law-related volunteer work before graduation. Our students are receiving neither credit nor compensation for their work," says Assistant Dean for Career Services Kristin Clayton. "As the time logs for our first semester begin to trickle in, I am amazed to see that some students have far exceeded that goal already."

Participation in the Pro Bono Initiative is open to all College of Law students after the completion of their first semester of law school. First year students are now eligible to take on projects. If you are an attorney currently working on a pro bono case and would like a student volunteer, please contact the Pro Bono Initiative at *581-5418* or *probono@law.utah.edu.*

Federal Judge Dee Benson Will Speak at Law Day 2001 Luncheon at the Grand America Hotel

The Utah State Bar and guests will recognize Law Day 2001 on May 1st, highlighted by a luncheon at 12:00 noon at the new Grand America Hotel in downtown Salt Lake City.

The Honorable Chief Judge Dee V. Benson, United States District Court for the District of Utah, will be the key note speaker. Judge Benson has served on the Federal bench since 1991 when he was appointed by President Bush. Prior to that, Judge Benson served as legal counsel to the Senate Judiciary Committee from 1984 to 1986, as Senator Orrin Hatch's Chief of Staff from 1986 to 1988, and as United States Attorney from 1989 to 1991. For Law Day 2001, Judge Benson is expected to speak on the origins of Law Day. Judge Benson is always a popular speaker whose comments are certain to educate as well as entertain.

The luncheon will be sponsored in part by Lexis-Nexis and held at the soon-to-open Grand America Hotel. The Grand America will be the first five-star hotel in Salt Lake City. Although the hotel will not be fully operational and open until later in the summer, this event will be one of the very first opportunities the public will have to see the hotel.

Awards will be presented to members of the legal community as well as to high school students chosen as winners of the Law in the Community essay and art competitions.

Please RSVP by April 25, 2001, by check for $30, made out to the Utah Bar, and mailed to Attn: Richard Dibblee, Utah State Bar Law Day Luncheon, 645 South 200 East, Salt Lake City, Utah 84111.

Pro Bono: A Golden Opportunity

Here is a great opportunity to do pro bono work that is truly satisfying. The Needs of the Elderly Committee of the Utah State Bar sponsors several Senior Clinics each month at various Salt Lake County Senior Centers. We need your help.

The program works like this. Volunteer attorneys agree to spend 2 hours, usually from 11:00 am until 1:00 pm, visiting with seniors in a private setting regarding a variety of potential legal issues. The volunteer screens the case to determine whether the person needs a lawyer and, if so, the nature of the expertise required. Some problems can be resolved on the spot. Others require only a phone call or similar limited involvement. A few require referral to a specialist.

Inasmuch as the volunteer attorney is there on behalf of the Utah Bar Association, s/he is prohibited from handling cases in any capacity other than on a pro bono basis. If the case is complex (and some are), or if the person is in a position to pay for the services of a lawyer (and many are), they should be referred to competent counsel. We have put together a packet of materials to guide you to available resources.

This is a great opportunity to meet people, to provide a useful service, and to be involved in the community. These Senior Centers are truly grateful for this service and the Needs of the Elderly Committee has received a number of compliments for the fine work performed by many lawyers throughout the Bar. The dozens of lawyers who have participated have also expressed satisfaction with the whole process. It is 2 hours of pro bono service that you can really feel good about.

If you are interested in doing a Senior Clinic, contact Ms. Vicki Firestack at Christensen & Jensen, P.C., (801) 355-3431 ext. 338 or vicki.firestack@chrisjen.com. She is the liaison between the Needs of the Elderly Committee and the Area Agency on Aging who coordinates the clinics at the senior centers. (Be gentle with her; she works for Phil Ferguson.) If you would like to help us set up a senior clinic in an area closer to where you live and work, outside of Salt Lake County, call Mr. Ferguson at (801) 355-3431 ext. 306 or email him at phillip.ferguson@chrisjen.com.

Message from the Chair

by Ann Streadbeck

Under the direction of Utilization Chair Cynthia Mendenhall, the Utah State Bar Legal Assistant Division is currently conducting a survey regarding the utilization and compensation of legal assistants in the State of Utah. Although much data has been collected from national surveys, we feel it is important to obtain a better understanding of these issues specific to legal assistants in the State of Utah. The information will help further the career goals of legal assistants, and will provide updated, comparative salary and utilization information for attorneys and others who employ legal assistants.

The 2001 LAD Salary and Utilization Survey was mailed to members of the Legal Assistant Division and the Legal Assistants Association of Utah at the beginning of March. However, all legal assistants are invited and encouraged to complete the survey. We also ask that attorneys who employ legal assistants make their staff aware of the survey and encourage them to participate.

Please assist us in gathering this important data by participating in the survey. The survey can be completed on-line at the Utah State Bar website through the end of April. For a hard copy of the survey, please e-mail Cynthia Mendenhall at cpmendenhall@hotmail.com. Results from on-line participants and mailed responses will be tallied in May, and will be presented to the legal community in May and June.

12th Annual Legal Assistants Day Luncheon

For Legal Assistants & their supervising attorneys

Recognizing the contributions of
Legal Assistants to the legal profession.

Special Guest Speaker

Brent R. Armstrong, Esq.

"Living Trusts: Do I need one or not?"

Wednesday, May 16, 2001 • 11:45 am
The Law and Justice Center
645 South 200 East

$23.00 per person
1 hour USB CLE
.1 unit CLA-E

RSVP – Marion
(801) 297-7032
by May 11

The Utah State Bar
Legal Assistant Division
is pleased to announce

The Job Bank

is now accepting resumes
and job postings.

For information please contact:
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KING & ISAACSON, P.C.
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Salt Lake City, Utah 84180
(801) 532-1700
email: cpmendenhall@hotmail.com

The Job Bank is unable to verify information contained in either resumes or job postings.

CLE Calendar

DATES	TITLE	PLACE, TIME, CLE CREDIT, PRICE
4-19-01	**Annual Real Property Section Seminar**	Law & Justice Center; 8:30 a.m.–12:30 p.m.; 4 Hrs. CLE; $60 section, $75 non-section members.
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, UACDL and UTLA members, $150 others.
4-20-01	**Annual Collection Law Section Seminar**	Law & Justice Center; 9:00 a.m.–1:00 p.m. (lunch provided), $40 section members, $55 non-section members, 3 Hrs. CLE*.
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.
4-27-01	**Pay Equity, Strategies in the 21st Century**	State Office Building Auditorium (behind Capitol); 8:30 a.m.–4:00 p.m. (lunch provided), 7.5 Hrs. CLE, $50 before 4/20/01, $65 after. (add $11.25 MCLE fee for credit (opt.))
5-03-01	**Annual Corporate Counsel Section Seminar**	Law & Justice Center; 8:30 a.m.–1:30 p.m., 3 Hrs. CLE, $45 section, $80 non-section members (includes membership).
5-10-01	**Annual Business Law Section Seminar**	Law & Justice Center; 8:30 a.m.–noon, 3 Hrs. CLE, free to section members, $55 non-section members.
5-11-01	**Annual Family Law Section Seminar**	Law & Justice Center; 8:30 a.m.–4:30 p.m., 7.5 Hrs. CLE, $120 section, $130 non-section members.
5-16-01	**Annual Labor & Employment Law Section Seminar**	Law & Justice Center; 9:00 a.m.–noon. 3 Hrs. CLE. Price $60 section, $75 non-section members, ADA, FMLA and Compensation Laws, case Law Updates.
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.

*Information based on last years seminar. Subject to change.

For current seminar information access our website. Questions? Call Connie Howard at 297-7033.
To register: fax name, seminar title & bar number to 531-0660, mail to 645 South 200 East, or register on-line.

Visit our web site 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) _____

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Classified Ads

RATES & DEADLINES

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

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

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

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

FOR SALE

LAW BOOKS: Used; excellent condition. One set each *American Jurisprudence 2d, American Jurisprudence Legal Forms 2d, American Jurisprudence Pleading and Practice Forms Annotated,* updated through August 2000. Best offer. Contact Karen @ 963-3271 or *khinckley@ct.westvalley.ut.us.*

FOR SALE: Perfect for a home business. This absolutely stunning two story in Holladay features a business suite in the basement with two separate offices, reception area, future wiring, separate entrance, client parking and much more. Quality construction throughout with too many extras to list. This is a luxury home (440K) with a perfect business combination. The home is located on a private lane close to freeway access. For more info call Jake Dreier, ColdwellBanker Premier (801) 560-3161 or see our virtual tour on www.utahhomes.com (go to: Find agent, enter: Jake Dreier)

POSITIONS AVAILABLE

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

UNCLE SAM WANTS YOU! The U.S. Army Reserves seeks attorneys for its JAG units to serve the country and its soldiers. Prior military experience not required. One weekend/month and 2 weeks active duty/year. Join a highly professional, dedicated team of soldier-lawyers committed to serving the nation. Call David Walsh at 468-2670.

Senior City Attorney ($4860–$7396/Month, Midpoint $6038) The Salt Lake City Attorney's Office serves as legal counsel to the City Administration and Council. The office has two openings in the civil division for Senior City Attorneys. Positions are usually offered at a salary range in the proximity of the midpoint. The positions involve work assignments which include: drafting and reviewing ordinances and resolutions, preparing legal opinions, drafting and reviewing contracts and advising elected officials, department directors, City boards and commissions and employees on legal matters. Preference will be given to candidates with experience in litigation, commercial real estate, complex leasing agreements, landlord/tenant actions, construction, real property, and other areas of the law which would be applicable to the transactional work which the office performs for the City Airport or Redevelopment Agency. The positions require a JD or LL.B. degree and six years full time paid employment in the practice of law. Candidates must be members in good standing with the Utah State Bar. Total compensation includes extensive benefits package of paid leave (sick, vacation, holiday, etc.) and a variety of insurance plans. Apply at Salt Lake City Department of Human Resource Management, 451 South State Street, Suite 115 or fax resume, including title of desired position, to 801-535-6614. **Positions will remain open until filled.** EOE

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.

ASSISTANT COUNSEL – Full-time attorney position available in Utah State Bar, Office of Professional Conduct. Entry level position, 2-4 years of litigation experience. Ideal candidate must have strong writing and research skills, and a background in the area of attorney ethics is a plus. Salary commensurate with entry level position. Good benefits and working conditions. Submit or fax resume and cover letter of introduction to: Billy L. Walker, Senior Counsel, Office of Professional Conduct, 645 South 200 East, Salt Lake City, Utah 84111; Fax: (801) 531-9912.

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ATTORNEY OFFICE SHARE/OVERFLOW WORK Layton Law firm seeking an attorney to share office space and do significant overflow work in Business Law, Real Estate Law and Estate Planning as well as some personal injury. All the nice amenities, wood desk, conference room, reception area, law library, secretarial and paralegal support, computer network, time and billing system, phones, etc. Send or fax resume and/or information to: DURBANO LAW FIRM, 476 W. Heritage Park Blvd., #200, Layton, Utah 84041. Phone: (801) 776-4111, Fax: (801) 776-1121.

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.

Exceptionally nice office space for rent in excellent downtown location for one to three attorneys in office sharing arrangement with four other experienced practitioners; professional environment; free gym facilities and telephone system; receptionist, photocopier and fax avail. Rates fluctuate based on your needs and office size. 575-7100

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The following information is required:

- **You must provide a street address for your business and a street address for your residence.**
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- **You may designate either your business, residence, or a post office box for mailing purposes.**

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All changes must be made in writing. Please return to: UTAH STATE BAR, 645 South 200 East, Salt Lake City, Utah 84111-3834: Attention: Arnold Birrell, fax number (801) 531-0660.

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

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Executive Director
Tel: 297-7028

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

Ronna Leyba
Utah Law & Justice Center Coordinator
Tel: 297-7030

Maud C. Thurman
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General Counsel
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Tel: 297-7057

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MCLE Administrator
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Member Benefits
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