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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: Wildflowers near Cardiff Pass, Little Cottonwood Canyon, by first-time contributor Bruce Plenk, a member of the Utah Bar residing in Kansas.

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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.

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

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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Submission of Articles for the Utah Bar Journal

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

1. Length: The editorial staff prefers articles having no more than 3,000 words. If you cannot reduce your article to that length, consider dividing it into a "Part 1" and "Part 2" for publication in successive issues.

2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.

3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.

4. Content: Articles should address the *Bar Journal* audience, which is composed primarily of licensed Bar members. The broader the appeal of your article, the better. Nevertheless, the editorial staff sometimes considers articles on narrower topics. If you are in doubt about the suitability of your article for publication, the editorial staff invites you to submit it for evaluation.

5. Editing: Any article submitted to the *Bar Journal* may be edited for citation style, length, grammar, and punctuation. Content is the author's responsibility–the editorial staff merely determines whether the article should be published.

6. Citation Format: All citations should at least attempt to follow *The Bluebook* format.

7. Authors: Submit a sentence identifying your place of employment. Photographs are discouraged, but may be submitted and will be considered for use, depending on available space.

Preparing for Practice in 2010

by David O. Nuffer

We are in the new millennium, and even comfortable with it. We passed the Y2K crisis without any real disasters. Some suggest the talk of "future shock" is overblown. I, however, agree with Bill Gates who suggested we overestimate the change which will occur in the next *two* years, and underestimate the change which will occur in the next *ten* years. Looking back, we see little change since 1998, but significant change since 1990. Similarly, in 2010 we may marvel at the primitive way of practicing law back in 2000.

Lawyering Has Changed in the Past

There have been many changes to the legal profession in the past. Some of these have been tolerated because they have been gradual. Examples include the quiet surge of non-lawyers involved in real estate closings, Social Security proceedings, and tax courts. The profession has also suffered more abrupt involuntary changes such as the abolition of minimum fee schedules, advertising restrictions and residency requirements for bar admission. The fact that change has occurred in the past should tell us that change will occur in the future. Change will likely continue to come in abrupt and quiet ways.

There are those who say some changes cannot occur in the legal profession because "there are rules against it." But the rules are relatively recent. The 100 years that organized bars have existed is really a short history. No license to practice law was required in most states in the 1800's. The Utah State Bar was established by legislative authority in 1931, and moved under judicial authority as recently as 1984. History which is barely longer than memory is not a guarantee of perpetuity. In the view of some, the need for licensed legal service providers is outdated, or outweighed by the detriments of an exclusive profession. The boundaries around our profession may not be as inviolate as we, inside, perceive them. They are not so historic as to be indispensable.

An objective commentator might justly question the resilience of a precedent-based profession in a time of unprecedented change. Our own tendency to look backward for guidance may be unhelpful as the world around us looks forward. We justly pride ourselves in being rooted in the past and there are essential values that merit preservation, but we must not fail to look around us and to the future. This article will attempt to focus on trends outside the profession, some of which are emerging inside the profession, and suggest ways we should prepare for what the practice of law may be in 2010.

Hints of Future Changes in Lawyering

Changes that are taking place in the business world around us hint at the changes lawyers may see by 2010, and can guide us in preparing for the practice of law in the next decade.

Technological means of delivery have made significant inroads on commercial transactions. For example, Amazon and Barnes & Noble deliver millions of books to persons who do not enter traditional physical stores. The ambience of the store, and ability to browse through stacks of books are replaced by computer recognition of our interests and purchase history and hyperlinks that enable jumping from topic to author. We see signs that computers and electronic delivery are moving beyond supply of hard goods, to supplant professional delivery of services to persons as well. WebMD has become a premier source of medical

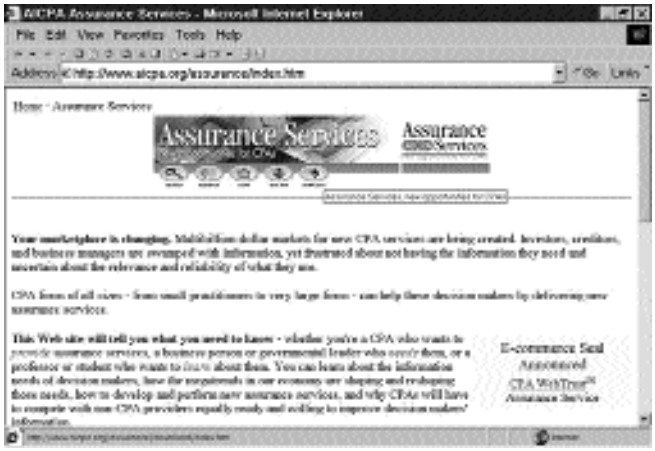
information and can even store an individual's personal medical information on its site. Instead of filling out forms for each successive health insurer, users can store the data securely and print it out on demand.

There are already significant technology inroads on traditional lawyering turf.

Legalopinion.com offers 'an opinion from a licensed legal professional from the privacy of your home or office.' Those professionals may themselves be working in 'the privacy of their homes' – in the comfort of their pajamas. A typical feature of these emerging sites is a broad offering of legal forms. Another emerging trend is competitive bidding for legal services. Some judges are using this for class action handling, but consumers can obtain bids online at places like sharktank.com.

Non-lawyer providers are also emerging, and using e -delivery options. Independent paralegals offer 'comprehensive cost effective preparation of legal documents with a commitment to service.' These document preparers are emerging as alternatives to use of lawyers in traditional offices. Unauthorized practice of law enforcement does not affect these providers, in part because of enforcement challenges, and partially because of a lack of complaints of harm by these providers. Another example is the National $119 Divorce Center which has legal, counseling and chat services for those with domestic problems. This site has divorce information and forms for all 50 states.

Another angle of **competition is from larger players,** such as Price Waterhouse offering Tax and Legal Guides to Real Estate. This is representative of the emerging competition from other professionals, such as the push by the American Institute of Certified Public Accountants to help CPAs offer 'Assurance



Services.' Assurance services are a professional certification that offers review and comfort, similar to that offered by an opinion of legal counsel. The AICPA spent $20 million on a visioning project 5 years ago and outlined new areas of practice. This is one of the many new emerging areas of service.

Consumers also use **other means to obtain legal services.** LegalCare is one of the many legal insurers that provide a base level of services for a fixed monthly premium. This is one of the ways the middle class, left out of the pro bono scheme, and priced out of traditional lawyering, is meeting its need for legal service.

External Trends

Besides these concrete examples, there are also trends external to the practice that foreshadow changes in our profession. As new ways of delivery of information and transacting emerge, it is apparent there is no "business as usual."

- The Napster phenomenon tells of the desire in the market for peer to peer exchange of intellectual property. What if clients linked together, in networks of community of interest, to exchange shopping center leases, litigation histories and results, or informational content? Bill Cobb has said that the Internet will do to lawyers what the printing press did to priests and rabbis. He sees information as a lawyer's product

and the Internet as a new means of distribution.

- Social structures change with diversity, tolerance and cultural trends, and gender and family roles are constantly evolving. Traditional domestic and contractual law may be molded to these new needs, while assumptions made in jury selection and business advising will be altered.
- Personal values evolve and alter, as "generation X" issues of personal fulfillment assume primary motivational roles in employment. This has implications for clients and for our own workplaces. Survival is no longer an issue in the midst of material prosperity – a sense of personal well being becomes the paradigm.
- There is a downturn in belief in justice as a standard, or as an achievable goal. Media exposure to high profile cases and Judge Judy have drained public respect for courts. And for many, resolution and peace-making have replaced justice as a primary value. Some see justice as retributive and revengeful, without the healing values of resolution and restoration of relationships.
- The complexity of everyday matters increases, creating a need for niche specialists with practical experience. Often, these providers are not traditionally trained professionals, and do not need to be, as they acquire knowledge and serve in their limited area without significant collateral ramifications.
- Complexity and interrelatedness drive consumers to seek horizontal solutions, like Home Depot, instead of going to a plumbing store, an electrical supplier and a lumberyard. As we buy technology, we want the software, network and hardware to come from a single responsible vendor.
- Self-help trends are increasing. People utilize the Internet and technology to find ways of doing things on their own. Information rich sites, such as WebMD grow as a result of this trend.
- Boundaries thought to be inherent disappear rapidly. Geographic limitations disappear with the Internet; educational qualifications disappear when Bill Gates makes more than college graduates; and hierarchy fades when a fourteen year old kid can run a Linux server on a five year old computer.

Changes Ahead for the Legal Profession

With this background of current transition, it is possible to make some broad predictions of changes lawyers are likely to experience.

- E-delivery of legal services will dramatically increase. This will change the attorney client relationship and accelerate segmenting (unbundling) of legal service into discrete parts, such as consultation, letter writing and document drafting, as the consumer purchases only what is needed.
- Empowered consumers of legal services will collaborate on areas of common interest, reducing reliance on custom fit professional service.
- Mass purchasing of legal services, such as we have seen for insurance companies and corporate counsel, with restraints and guidelines on practice standards, will increase. Groups of consumers will contract for legal service, through associations of common interest such as AARP or through legal insurers.
- We will see more non-legal solutions based on entirely different value foundations than traditional legal standards. Just as ADR has supplanted justice with resolution, non-legal standards may emerge in transactional and other settings.
- There will be much more horizontal delivery of professional service. The client who shops at Home Depot on the weekend will want to have a single firm handle all the aspects of a business transaction, or real estate development, or domestic dispute.
- Other professionals, including paraprofessionals, will do lawyer's work. As a natural outgrowth of complexity and handling related issues, contracts will be drafted, applications made, representation handled and disputes resolved by non-lawyers. This may happen in their own professional firm, without lawyers, or with lawyers on staff, as "consultants."

This will amount to "APL" – the alternative practice of law – that will be invisible to and immune from UPL regulation.

We can see some changes in the courts, which are responding more rapidly than lawyers. Courts do not have the lawyers' barrier of pricing, and have a constitutional mandate to be open to the public. In Arizona, 60% of divorces have no attorney involved, 20% have one attorney, and only 20% of the cases have an attorney on each side. This has required Maricopa County to install a Self Service Center Room with computers and Customer Service Representatives, with a web site full of forms and guides. The alternative to preparing the pro se litigants is to clog the courtroom as the judge explains procedure and law to each litigant.

How do we prepare?

We lawyers should prepare for this new lawyering by assembling resources and taking strategies that meet future needs. We may not be sure of the future, but we can be relatively sure what we will likely need to compete there.

First, we must recruit the right people. We want 'knowledge workers' who are good information handlers. They must have computer skills and communication skills to enable them to deal in our stock in trade. We want diversity in our workforce to ensure we can stay in touch with all segments of the market. If we know what people want and need by hearing it from our own staff, we can be better tuned to the market.

Second, we should prepare personally by acquiring those skills our staff needs to have. We ought to fit into rather than fight technology, and be aware of what is going on in the business world. That business world is shaping ours. The skills and strategies of emerging and dying companies ought to be of interest to us.

Third, we should start to affiliate and build alliances, making sure we can create a horizontal whole solution approach to a client's problem. We ought to think about where our clients come from (which professional they just saw) and where they go next. This makes us more competent in solving clients' problems. Relationships with those professionals are also important because they are potential keys to multidisciplinary solutions.

Fourth, we must no longer view technology as a tool, but from a strategic perspective, integrated into all business planning and strategy. Information management, including security, organization and maintenance is critical to lawyers. More law firms will have CIOs (Chief Information Officers) to manage intellectual inventory.

Finally, we ought to start to consciously retool the way we work. We can delegate more to qualified lower cost professionals in our offices. We can automate routine tasks, to save time and provide service at lower cost. We can streamline processes to remove unnecessary steps that have "always been done that way." Services can be "unbundled" so that a client can purchase what is needed step by step. Information can be prepared for e-delivery as we use the ATM paradigm: Better to have a computer providing service than to require a teller to be involved in each transaction – so long as the teller is still available when needed.

We Can Compete

As I speak with lawyers about these challenges, I sense concern in the conversation. There is always some hemming and hawing when the cheese is moved. But I have great confidence that lawyers are just the ones to meet the future challenges. We are lawyers. We got into law school. We survived it! We passed the bar exam. We have continued our training. We have practical experience. We just need to think outside the traditional institutional box, which we are not used to doing. But we can acquire that new skill.

If we do meet these challenges better than the dot-coms and other professionals, we will create more value in our firms, reduce the shock that future surprises bring, and serve more clients better. So, I see upsides in this future and believe that lawyers can be the best at rising to the challenge of change.

"The Internet will do to the legal profession what the printing press did to priests and rabbis."

–William C. Cobb, Chair, ABA Seize the Future Conference, 1999

New Revisions to Utah's Limited Liability Company Act – The LLC Revolution Rolls On

by Brent R. Armstrong

This is the first of a three-part series discussing the Utah Revised Limited Liability Company Act passed by the Utah Legislature on February 23, 2001. Part I gives an overview of the Revised Act and describes part of the changes made by the Revised Act. Part II will appear in the August/September issue and will discuss other changes made by the Revised Act. Part III will appear in the October issue and will discuss transition issues and tips for drafting and planning under the Revised Act.

I. Introduction

On February 23, 2001, the Utah Legislature passed Senate Bill 170 – Utah Revised Limited Liability Company Act (the "Revised Act").[1] That Bill was signed into law by Governor Leavitt on March 19, 2001. The effective date of the Revised Act is July 1, 2001. The Revised Act re-codifies, expands and updates the existing Utah Limited Liability Company Act [2] (the "Old Act"). The extent of changes made by the Revised Act reflects the extensive evolution of LLC laws in this country over the past ten years.

The purposes of this article are (1) to give a brief history of limited liability companies ("LLCs") in Utah, and (2) to summarize some of the changes made to the Old Act.

II. Background

The LLC "revolution" in the U.S. started in Wyoming in 1977. Although it just simmered for 11 years, the revolution exploded after the Internal Revenue Service issued a ruling in 1988 to treat an LLC as a partnership for federal income tax purposes.[3]

Utah enacted its LLC Act in 1991, making Utah one of the vanguard states to adopt LLC legislation. During the four years that followed, all states passed LLC laws, utilizing a variety of formats and content. Each vintage and version of LLC statute brought some improvements and expanded the utility of LLCs in meeting the need for an entity with structural flexibility but with limited liability and pass-through taxation for its owners.

Now, the LLC has become the entity of choice in Utah[4] and in most states for most business or financial transactions.

The Old Act was amended a few times, including amendments to adapt to the IRS "Check-the-Box" regulations.[5] Despite those amendments, most lawyers familiar with the Old Act have recognized the need for the Old Act to be reorganized and to bring it up to date with LLC statutes in other states.

In August 1995 the "Uniform Limited Liability Company Act" was proposed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").

In 1997, the Business Law Section of the Utah State Bar formed a committee to study the Uniform LLC Act for the purpose of possibly recommending its adoption in Utah. That committee started with vigor, meeting monthly to read and discuss the Uniform LLC Act. After about 9 months of effort that continued into mid-1998, the committee stopped its work after coming to the conclusion that, although the Uniform LLC Act contains many useful concepts and provisions, it also contains too many unworkable provisions to warrant its adoption in Utah. In coming to that conclusion, the committee was also aware that, except for Illinois[6], ***none*** of the states with large populations or business law influence, such as Delaware, New York, California, Texas, Michigan or New Jersey, had adopted the Uniform LLC Act but had, instead, drafted their own LLC laws. Thus, it appeared that NCCUSL's quest for uniformity in LLC legislation would not be realized – at least not any time soon.

Although the committee of the Business Law Section stopped its work and disbanded, members of the committee felt that the focus should shift to updating the Old Act. A few "stragglers" from the committee, the author included, re-directed their efforts to

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improving the Old Act rather than adopting the Uniform LLC Act. Accordingly, energy was devoted over the following two years to preparing language for a new, re-codified version of the Old Act. That effort was encouraged by Senator John L. Valentine, of Provo, Utah, a member of the Utah Bar who was the sponsor of the original Utah LLC legislation in 1991, and a highly respected member of the Utah Legislature and himself a renowned tax and business lawyer. The drafting effort culminated in 2001 in Senate Bill 170, which added a new Chapter 2c to Title 48 of the Utah Code and repealed old Chapter 2b of Title 48.

III. Conceptual Underpinnings of Revised Act

A. Goal of Revised Act. Although several states have succumbed to boasting that their LLC acts are "the best in the country," the goal in drafting the Revised Act was not to obtain bragging rights but to make the Revised Act as useful, flexible and comprehensive as possible.

B. Contract Model Used. The Revised Act, as well as the Old Act, were drafted under the "contract" model – namely, the statute sets up numerous "default" rules that apply if the governing documents for the LLC (the articles of organization and the operating agreement) do not provide otherwise. The contract model allows LLC members to contract out of the default rules by written agreement. In other words, LLC members are given maximum flexibility in crafting the LLC governing documents to their liking.

The policy statement in the Revised Act underscores the preeminence of contract law in the LLC arena: "It is the intent of the Legislature that this chapter be interpreted so as to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of companies."[7]

C. Provisions of Old Act Retained. Most provisions and concepts of the Old Act are included in the Revised Act, but with a new Section number and, in most cases, in revised form. Thus, the Revised Act is a re-codification of the Old Act.

D. Terminology and Definitions. Much of the terminology and concepts from the Old Act was preserved, with a few exceptions. The Old Act has 10 defined terms – bankruptcy, business, division, foreign limited liability company, limited liability company, person, professional services, regulating board, state and successor limited liability company. All of those terms, except the last one, were retained but the definitions for most of them were revised.

E. Sources for Borrowed Provisions. In drafting the Revised Act, besides preserving most provisions from the Old Act, numerous provisions were borrowed from other Utah statutes, from LLC statutes of other states and from other sources. In particular, provisions were borrowed from the Utah Revised Business Corporation Act, the Utah Revised Uniform Limited Partnership Act, the Utah Professional Corporation Act and the Utah Revised Nonprofit Corporation Act. Provisions were also borrowed from the Prototype Limited Liability Company Act[8] and the Uniform Limited Liability Company Act and from the LLC statutes of California, Colorado, Connecticut, Delaware, Mississippi, North Carolina, New York, Virginia and Washington.

IV. Changes Made by Revised Act

The Revised Act makes numerous significant changes to the Old Act. We will discuss many of those changes following the sequence of provisions in the Revised Act.

A. New Definitions. Thirteen new general definitions were added by the Revised Act: capital account, distribution, designated office, entity, filed with the division, interest in the company, manager, manager-managed company, member, member-managed company, operating agreement, proceeding, and signed.

In addition to the general definitions, definitions relating to "winding up" are included in Part 13, special definitions on professions are included in Part 15 and special definitions on indemnification are included in Part 18 of the Revised Act.

1. Nature of Business. The definition of "business" was changed slightly by the Revised Act. The law of agency generally imputes apparent authority to a manager of an enterprise consistent with the "regular business" of the enterprise. Therefore, the scope of an LLC's "business" may determine the authority of its managers

to bind the LLC. Typically, an LLC's business is described in its Articles of Organization. The Old Act allows LLCs to engage in any "business," which is defined as "every trade, occupation or profession," but the Old Act language, originally taken from the Uniform Partnership Act, allows an LLC to conduct or promote any "lawful purpose, activity or business," which could include non-profit activities. Under the Revised Act, "business" includes any lawful business, investment or other activity, whether or not carried on for profit. Thus, a non-profit activity is referred to as a "business" under the Revised Act even though the activity is not a business in the common meaning of the term. Under the Revised Act, unless a more limited purpose is set forth in its Articles of Organization, a domestic LLC is deemed to have the purpose of engaging in any business. [Section 48-2c-105] Accordingly, if an LLC's purpose is described in its Articles of Organization as "any lawful business," then each member (in a member-managed LLC) could be an agent of the LLC in the broadest sense.

2. Capital Accounts. Under the Old Act, the default standard for voting on significant member actions is the members' percentage interests in the profits and losses of the LLC. But, that rule for determining a member's percentage interest is geared to the *"value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned."* The same rule applies for allocation of LLC distributions to members. Yet, upon dissolution and winding up of an LLC under the Old Act, the assets of the LLC are distributable to the members based on their "claims for capital."

Some practitioners have experienced difficulty calculating a member's "value of contributions" at a given point in time. To eliminate this difficulty, the Revised Act replaces the concept of "value of contributions" with the partnership concept of "capital account" as the default measuring standard for profits and losses, distributions, voting and distribution of assets on winding up.

3. Designated Office. The term "designated office" is new and means the street address in Utah where the LLC records required by the Revised Act are to be kept. The designated office must be a geographical address – not a P. O. Box and an LLC's records must be available for inspection at its designated office. Thus, every domestic LLC must have a designated office which, by default, would be the LLC's registered office if a separate address for a designated office is not listed in the records of the Division of Corporations.

For new domestic LLCs, the designated office address must be included in the Articles of Organization. For all domestic LLCs, the designated office address must be included in their annual reports filed with the Division of Corporations and any statement of change of such address must be filed within 30 days of such change.

4. Manager-managed vs. Member-managed. The Revised Act continues the distinction included in the Old Act between a member-managed LLC and a manager-managed LLC. Yet, the Revised Act highlights that distinction since many other rules in the Revised Act pivot one way or the other depending on which structure is used. Under the Revised Act, an LLC must elect to be either member-managed or manager-managed and designate such election in its Articles of Organization. The principal effect of this distinction is to clarify who has apparent authority to bind the LLC in dealing with third parties and to give constructive notice of such authority.

The Revised Act also provides that a manager-managed LLC is converted to a member-managed LLC upon the death, withdrawal or removal of the sole remaining manager (and other events) where another manager is not appointed by the members within 90 days.

5. Operating Agreements. The Revised Act requires LLC operating agreements to be in writing – oral agreements do not constitute operating agreements under the Revised Act. Operating agreements pertain to the internal affairs of the LLC and, where in conflict with the Articles of Organization or the Revised Act, the Articles or the Revised Act controls. The initial operating agreement must be adopted by all of the members and, unless otherwise provided, can only be amended by written consent of all members.

6. Signed. To accommodate the electronic age, the Revised Act defines "signed" as including any electronic or digital signature approved by the Division of Corporations, as well as a manual signature or facsimile thereof.

B. Organization. The Old Act has 59 sections, but no parts or recognizable organization. In contrast, the Revised Act has 181 sections and is organized into 19 Parts:

Part	Heading
1	General Provisions
2	Filing Requirements
3	Service of Process
4	Formation
5	Operating Agreements
6	Limited Liability
7	Members
8	Management
9	Contributions – Profits and Losses
10	Distributions
11	Assignment of Interests
12	Dissolution
13	Winding Up
14	Conversions and Mergers
15	Professions
16	Foreign Limited Liability Companies
17	Derivative Actions
18	Indemnification
19	Miscellaneous

C. LLC Powers. The Old Act empowers an LLC to lend money or otherwise assist its managers and employees, but does not mention members. The Revised Act includes members, as well. The Old Act also empowers an LLC to indemnify or hold harmless an LLC manager. The Revised Act expands an LLC's power to indemnify any person and includes detailed procedures regarding indemnification – similar to procedures under Utah corporate law.

D. New Records to be Kept. The Revised Act requires that where the LLC was formed by an organizer that is not a member or a manager, the LLC's records must include a "statement of organizer" showing the identity of the initial members and initial managers of the LLC.

E. Inspection of Records. The Old Act grants members, managers and their agents the right to inspect LLC records, but the procedures are not clear. The Revised Act gives explicit procedures for inspection and copying of records by members, managers and their agents, as well as former members and former managers and their agents. It also allows reasonable copy costs to be charged and a court-ordered procedure for inspection of records, including attorney's fees, if inspection of records is denied.

F. Non-waivable Provisions. Under the Old Act, it was unclear which statutory provisions were non-waivable by private agreement. The Revised Act contains a detailed list of provisions that cannot be waived by an LLC's Articles of Organization or operating agreement.

G. Constructive Notice. The Old Act allows no "notice" effect to an LLC's Articles of Organization or other documents on file with the Utah Division of Corporations (except that the LLC has been "legally organized"). In contrast, the Revised Act allows an LLC's Articles of Organization to give constructive notice to third persons (as well as members and managers) of all statements required to be included in the Articles of Organization and certain statements permitted to be included in the Articles of Organization (but not allowing incorporation by reference to other documents). Similar constructive notice effect is given to items required to be included in an LLC's annual report to the Division of Corporations. Thus, limits on authority of members or managers in an LLC, or in the scope of the LLC's business, can be included in the LLC's Articles of Organization to give constructive notice of such limits.

H. Statement by Manager or Member. A person who ceases to be a member or manager of an LLC may file a statement to that effect with the Division of Corporations. The Old Act has no such provision.

I. Required Filings. The Revised Act adapts provisions from the Utah Revised Business Corporation Act on requirements for filing documents with the Division of Corporations, including the effective date and time, and signing, of filed documents. In addition, it clarifies the Division's duty to file documents and allows an appeal from the Division's refusal to file documents. For most filings, only a single copy is now required, unless the person filing wants a copy back for his or her records.

J. Powers of Division. The Revised Act grants the Division of Corporations and its director the power to interpret and administer the provisions applicable to them. Thus, the Division has the power to adopt rules interpreting the filing requirements and related procedures at the Division.

K. Registered Agent. Under the Old Act, any change in the registered agent's address had to be approved by the LLC members or managers. The Revised Act allows the registered agent to change its street address in Utah by filing a written notice of such change, without any official LLC action.

L. Service of Process. The Old Act contains provisions for service of process only for a domestic LLC. The Revised Act adds specific directions on how service of process is effected on a foreign LLC, a dissolved LLC, a withdrawn foreign LLC, as well as a foreign LLC not authorized to do business in Utah. Those provisions were drawn primarily from parallel provisions in the Utah Revised Business Corporation Act.

M. Organizer. The Old Act requires an LLC to be formed by a member or a manager. The Revised Act also allows an "organizer" to form an LLC – meaning a person who is not a member or a manager. A member could still organize a member-managed LLC and a manager could still organize a manager-managed LLC. Thus, an attorney or other agent could organize an LLC on behalf of the members without being a member or a manager. Yet, there is a small catch. Where an "organizer" is used, the organizer must prepare:

> . . . a writing to be held with the records of the company which sets forth:
>
> (a) The name and street address of each initial member of the company; and
>
> (b) If the articles of organization provide that the company is manager-managed, the name and street address of each initial manager.
>
> Thus, there still must be at least one member for an LLC to be formed under Utah law and a record to that effect must be kept.

N. Articles of Organization. The Revised Act adds new requirements for an LLC's Articles of Organization, and allows some permissive provisions which could have constructive notice effect.

O. Transfers and Domestications. The Revised Act allows a domestic LLC to transfer to or domesticate in another jurisdic-

tion by filing Articles of Transfer after the requisite member approvals are in place. Similarly, the Revised Act allows an LLC not formed under Utah law to become subject to the Revised Act (and other Utah law) by filing Articles of Domestication after the required member approvals are obtained.

P. Exceptions to Limited Liability. The Old Act contains numerous exceptions to the general rule of limited liability for LLC members, but such provisions are scattered throughout the Old Act. The Revised Act collects in one section all such exceptions to limited liability and deletes one exception in the Old Act that makes "any person" liable for damage "occasioned" by omitting the words "limited liability company" (or their abbreviation) from the commercial use of an LLC's name.

Q. Waiver of Wrongful Distributions. Both the Old Act and the Revised Act contain exceptions to limited liability for unpaid contributions by a member and for wrongful or mistaken distributions of property to a member, but allow such exceptions to liability to be waived or compromised by consent of all members. The Revised Act clarifies that no such waiver or compromise as to a wrongful distribution affects the rights of an LLC creditor if the creditor extended credit in reliance on a representation as to the LLC's financial condition prior to such distribution and without notice of such waiver or compromise.

R. No Formalities Required. Under the Old Act, questions arose whether an LLC was required to comply with any formalities (records, meetings, etc.) in order for the limited liability shield to remain available to the LLC's members. The Revised Act confirms that no formalities are required to maintain limited liability.

With the prevalence and constant use of LLCs in Utah, attorneys need to become familiar with the Revised Act and how to use it to assist and protect their clients.

The Revised Act makes numerous other changes to the Old Act. Part II of this article, coming in the August/September issue, will discuss those other changes.

[1]A full text copy of the Revised Act (SB170) can be downloaded from the State of Utah web page www.le.state.ut.us.

[2]Utah Code §48-2b-101 et seq.

[3]Rev. Rul. 88-76, 1988-1 C.B. 360.

[4]Statistics from the Utah Division of Corporations indicate that of 14,770 new domestic entities formed in Utah in 1999, 7,708 (52%) were LLCs, 773 (5%) were limited partnerships and 6,287 (43%) were corporations. For 2000, the numbers were 6,467 (51%), 572 (5%) and 5,621 (44%), respectively.

[5]Treas. Reg. §§301.7701-1 through 301.7701-3.

[6]When Illinois revised its LLC Act in 1997, it adopted the Uniform LLC Act. Seven other states have also adopted some variations of the Uniform LLC Act – Alabama, Montana, Hawaii, South Carolina, South Dakota, Vermont and West Virginia.

[7]Utah Code §48-2c-1901.

[8]An act released in 1992 by the Business Law Section of the American Bar Association to be used as a tool in drafting LLC legislation.

Utah Revised Nonprofit Corporation Act

by Bruce L. Olson

The new Utah Revised Nonprofit Corporation Act (the "Act") became effective April 30, 2001. The Act affects all of the 9,100 nonprofit corporations registered in Utah with the Division of Corporations and Commercial Code (the "Division"). Utah lawyers who represent nonprofit corporations should become familiar with the provisions of the Act and its impact on the clients they represent.

I. Background

The Utah Nonprofit Corporation and Cooperative Association Act (the "old Act") was enacted in 1963. Over its nearly 40 year life, the old Act was amended numerous times to keep pace with the evolution of nonprofit corporation practice. However, as with most statutory schemes, changes in federal law, politics and the economy and the increasing needs and sophistication of users, called for a reevaluation of the effectiveness of the old Act.

In 1999, Senator Lyle Hillyard, motivated by suggestions from constituents and the Tax and Business Sections of the Bar, requested leaders of these Sections to study the need for a new nonprofit act. Although it would have been possible to simply tweak the old Act in a piecemeal fashion, Senator Hillyard and Bar participants determined that the most efficient way to revitalize Utah nonprofit law was to start from the beginning with a new statutory regime.

The drafting of a new nonprofit code is a complex process not undertaken lightly. Nonprofit corporations range from the largest health care organizations to neighborhood flower funds. They include public charities, private foundations, social clubs, unions, support organizations, title holding companies, beneficiary and fraternal organizations, cooperatives, mutual irrigation companies, mosquito abatement districts and a host of others. Some nonprofit organizations are exempt from federal and state tax while others are fully taxable like business corporations. Certain nonprofit organizations have members while others do not. Some issue stock while most do not. Unlike business corporations whose structures generally include shareholders, boards of directors and officers who seek to increase shareholder equity, each nonprofit corporation is organized for a purpose unique to that organization and controlled through customized features designed to enhance contributions and further public or group purposes. More often than not, organizers of nonprofit entities have a limited budget, if at all, to pay for legal advice in organizing and operating the entity, and often are unaware of regulatory requirements.

The Act was developed from three principal sources: Utah's Business Corporation Act, the American Bar Association (ABA) 1987 Revised Model Nonprofit Corporation Act ("Model ABA Act") and the nonprofit acts of Colorado and Idaho, both of which states have pursued a similar course as Utah to upgrade their nonprofit codes.

In 1992, Utah passed the Utah Revised Business Corporation Act (the "Corporation Act"). As Utah practitioners became familiar with the Corporation Act, it became apparent that many of its provisions would work equally well in the nonprofit arena. It was also believed that adopting provisions from Utah's Corporation Act insofar as relevant would ease the burden of Utah attorneys in advising nonprofit clients by providing a familiar platform from which to operate, with the result of greater uniformity and consistency. On the other hand, because any nonprofit statutory scheme necessarily differs in crucial aspects from its business corporation counterpart, the Model ABA Act was used to bridge that gap. Although the ABA had hoped that its Model Act would be uniformly adopted as a nonprofit vehicle, it has been embraced by only a small handful of states. Nonetheless, a number of its provisions provide useful language for the Act. Finally, inasmuch as Idaho and Colorado recently had undergone projects to update their own nonprofit acts (a Colorado Bar Committee of more than 30 persons spent three years on their project), it was thought that those statutory models would be useful in enacting the new Utah law.

The Act was enacted by the Legislature in its 2000 session (S.B. 61) with an effective date of April 30, 2001. Comments were sought from law and CPA firms, the Bar and UACPA, nonprofit corporations and various professional associations. The one year delay in the effective date was afforded practitioners and organizations to become familiar with the Act and suggest changes for consideration by the 2001 Legislature. Based on helpful comments from members of the Bar, amendments were made to the Act by S.B. 139 (2001). It is anticipated that as Utah nonprofit corpora-

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tions and the Division become familiar with the Act through usage, additional changes will be necessary to conform the Act to the evolving needs and practices of Utah nonprofit corporations.

It is hoped that the Act will serve the Utah nonprofit community well by addressing circumstances previously overlooked, closing potential loopholes subject to abuse, modernizing provisions to current standards and practices, increasing drafting flexibility for representatives and providing default provisions for less sophisticated users. The Act applies to all nonprofit corporations existing in Utah or authorized to conduct affairs in Utah after the effective date. The Division has responsibility to administer the Act. The Act gives significant deference to the articles of incorporation and bylaws of nonprofit corporations for structural and operational standards. In the absence of such standards, however, the Act sets forth default provisions which are much more comprehensive and robust than those in the old Act.

II. Provisions of the Act

Discussed below is a survey of the Act's provisions which add to, supercede or revitalize the old Act.

A. General Provisions. The Act increases the number of sections into which it is divided from 6 to 17 and the number of definitions from 12 to 48, making it easier to reference.

In contrast to the old Act, the Act provides that notice may be given orally if reasonable under the circumstances; otherwise, notice must be in writing.[1] Notice may also be made by electronic communications, such as e-mail.[2]

Documents may be executed by the Chair of the board of directors, all of the directors, an officer, or an incorporator (if the directors have not been selected), or a receiver, trustee or court-appointed fiduciary (if applicable).[3] The Act provides for the filing of documents with delayed effective dates.[4]

Another important clarification from the old Act is that directors, officers, employees and members of a nonprofit corporation are not personally liable in those capacities for the acts, debts, liabilities or obligations of the nonprofit corporation.[5]

The Act provides a list of requirements that must be followed by organizations classified as private foundations under Federal tax law, which requires these restrictions to be in the organizing document of the private foundation if not otherwise provided by State law.[6]

To bring the Act to modern standards, UCA § 16-16a-118(1) gives the Division rulemaking authority to permit writings required or permitted to be filed with or sent by the Division to be delivered, mailed or filed in an electronic medium or by electronic transmission or to be signed by photographic, electronic or other means. Granting the Division this authority will permit it to flexibly implement changes based on emerging technologies and without requiring legislation.

B. Incorporation. The Act deletes the requirement under the old Act that articles of incorporation contain the street address of the nonprofit corporation's principal office.[7] Also, the articles need only specify whether the nonprofit corporation will have *voting* members and not whether it has *any type* of members, as required under the old Act.[8] This provision places the public on inquiry notice that members of the corporation, whose identity is not made public, have voting rights in the nonprofit corporation. The Act no longer requires the initial directors to be listed in the articles of incorporation. Rather, one or more incorporators may form the entity and subsequently appoint directors.[9] Any provisions that must or may be contained in the bylaws may be set forth in the articles of incorporation.[10]

The provisions applying to the organization of cooperative associations set forth in the old Act remain unchanged in the Act.[11]

C. Purposes and Powers. A nonprofit corporation may engage in any lawful activity unless restricted by its articles of incorporation, or disallowed or subject to regulation by other State statutes.[12]

A nonprofit corporation, unless otherwise provided in its articles of incorporation, has perpetual duration and succession in its corporate name.[13]

A new provision in the Act provides that a nonprofit corporation is imbued with emergency powers in the event of a catastrophic event that otherwise would impair its normal ability to function. The board of directors is authorized to modify lines of succession, accommodate incapacity of directors or officers, relocate its principal office, streamline notice otherwise provided for meetings of members and directors, and treat attendance of officers at directors meetings the same as if they were directors. Corporate action taken in good faith during an emergency to further the ordinary business affairs of the nonprofit corporation binds the corporation.[14]

D. Provisions Concerning Members. A nonprofit corporation is not required to have members.[15] It may, however, have one or more classes of voting or nonvoting members, with one or more members in each class.[16] The class or classes of members, along with their qualifications and rights, may be designated in the bylaws.[17] No person may be admitted as a member without that person's consent.[18] A member may not be expelled, suspended or terminated unless provided in the bylaws or pursuant to a procedure that is fair and reasonable.[19] A proceeding challenging an expulsion, suspension or termination must be commenced within one year after the effective date of the action.[20] A new provision permits nonprofit corporations to provide in their bylaws for delegates having some or all of the authority of mem-

bers.[21] A delegate is defined as any person elected or appointed to vote in a representative assembly for the election of a director or for other matters.[22]

As was permitted under the old Act, members may take action by written consent.[23] However, unlike the old Act, the Act provides that written consent must be signed by members having at least the minimum voting power that would be necessary to authorize or take action at a meeting of members, which need not be unanimous consent.[24] Corporations in existence prior to April 30, 2001 may only take action by written consent if that consent is unanimous, unless a resolution providing otherwise has been duly approved.[25] This transition provision is similar to that imposed by the Corporation Act when it was enacted.

Any action that may be taken by a meeting may also be taken without a meeting if a nonprofit corporation delivers a ballot to every member entitled to vote.[26] Also, pursuant to a 2001 amendment,[27] unless otherwise provided by the bylaws, a written ballot delivered to members may be used in connection with any meeting, thereby allowing members the choice of either voting in person or by written ballot delivered by a member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot is counted equally with the votes of members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.[28]

Unless otherwise required by the bylaws, a majority of the votes entitled to be cast on a matter constitutes a quorum.[29] This is a change from the old Act which provided that absent a provision in the bylaws, the members present in person at a meeting or represented by proxy constituted a quorum.[30] Thus, in nonprofit corporations where quorum requirements are intended to be lower than a majority of members, practitioners should ensure authorization for such a provision in the bylaws.

The members may elect directors through cumulative voting if the bylaws so provide.[31]

E. Directors and Officers. One of the most noticeable changes in the Act refers to the members of the governing board of a nonprofit corporation as "directors," as opposed to the former "trustees." This change represents a policy determination that recognizes the more common parlance of nonprofit corporate statutes in many other states, eases reference and avoids confusion with trustees of trusts. Notwithstanding this change, however, a nonprofit corporation may refer to members of its governing board with any term it may choose, including "trustees," "regents," or other designations, as set forth in its bylaws.[32]

The articles of incorporation may authorize one or more persons to exercise some or all of the authority of the board of directors.[33] When this authority is delegated, the directors are relieved to that extent from such authority and duty.[34]

The Act provides that the board of directors consists of at least three members.[35] The board of directors may be divided into classes with such rights and duties as the bylaws may provide.[36] In the absence of any term specified in the bylaws, the term of each director is one year.[37] The Act provides a number of requirements and guidelines for the resignation and removal of directors.[38]

The board may appoint committees of directors consisting of two or more directors serving on each committee.[39] Any committee that has one or more members that are entitled to vote on committee matters and who are not also directors may not exercise any power or authority reserved to the board of directors.[40]

Any natural person 18 years of age or older may hold one or more officer positions in a nonprofit corporation.[41]

Although the Act provides guidelines for how directors and officers should discharge their duties, directors and officers, similar to the old Act, are not liable to the nonprofit corporation or others for any action taken or failure to take action unless (1) the director or officer has breached or failed to perform the duties of the office as set forth in the Act; and (2) the breach or failure to perform constitutes willful misconduct or intentional infliction of harm on the nonprofit corporation or its members.[42]

A nonprofit corporation generally may eliminate or limit the liability of a director to the nonprofit corporation or its members, with several enumerated exceptions.[43] A director who assents to a distribution which is unlawful or in violation of the articles of incorporation is personally liable to the corporation for the excess amount of the distribution if it is established that the director's duties were not performed in compliance with the Act's general standards of conduct.[44]

Distributions are unlawful unless they consist of distributions of income or assets to a member that is a nonprofit corporation; represent payment of reasonable compensation to members, directors or officers for services rendered; are made in connection with a cooperative nonprofit corporation making distributions consistent with its purposes; or confer benefits upon members in conformity with the purposes of the nonprofit corporation.[45] Also, a nonprofit corporation may make distributions upon dissolution in conformity with the Act.[46]

Actions taken by directors or parties related to directors that represent a conflict of interest may be voided, enjoined or set aside or give rise to an award of damages.[47] A conflicting interest transaction may nonetheless be entered if the nonprofit corporation meets certain conditions similar to those found in the Corporation Act.[48] In addition, the Act provides that a conflicting interest transaction may be entered if it is consistent with a provision in the articles of incorporation or bylaws which com-

mits the nonprofit corporation to support other charitable entities or authorizes one or more directors to exercise discretion in making gifts or contributions to other charitable entities. This exception applies in the case of contributions by supporting organizations (defined under federal law[49]) to charitable entities with common directors or officers.[50]

A corporation generally may indemnify directors under principles similar to those of the Corporation Act, and a nonprofit corporation *must* indemnify a director for expenses incurred by the director in connection with a proceeding in which the director has been successful.[51]

F. Corporate Actions. Under the old Act there was a question whether a nonprofit corporation could both amend and restate its articles of incorporation in the same document.[52] The Act removes that ambiguity by providing specifically that a document which restates articles of incorporation can also include amendments to the articles.[53] Nonprofit corporations may convert to business corporations and vice versa through the amendment of the articles of incorporation of the entity.[54] Obviously, practitioners must consider the Federal and State tax consequences of a conversion prior to completing it.

The Act contains a number of specific provisions relating to the merger of one or more nonprofit corporations into other nonprofit corporations, including foreign nonprofit corporations.[55]

Provisions of the Act concerning sale of property in the ordinary course of business and other than in the ordinary course of business are similar to those contained in the Corporation Act.[56]

The Act sets forth specific requirements for the dissolution of nonprofit corporations by directors and members.[57]

The Act authorizes the conduct of business in Utah by foreign nonprofit corporations and sets forth the requirements and provisions affecting foreign nonprofit corporations.[58] The Act also provides for the domestication of a foreign nonprofit corporation in Utah.[59]

Directors or members are entitled to inspect and copy records required to be kept by nonprofit corporations by providing at least five business days' notice to the nonprofit corporation prior to inspection.[60]

The Act authorizes the Division to propound interrogatories as necessary to determine whether a nonprofit corporation has complied with the requirements of the Act.[61] The interrogatories may be directed to any nonprofit corporation subject to the Act or to any officer or director of such a corporation.[62] Those who fail to answer interrogatories truthfully and fully by the deadline provided are subject to potentially severe penalties.[63]

The Act contains a number of transitional provisions relating to its effective date of April 30, 2001.[64] Specifically, these provisions provide that the Act does not apply to corporations sole except with respect to mergers and consolidations nor to domestic or foreign nonprofit corporations governed by U.C.A. § 3-1, et seq. (provisions relating to agricultural cooperative associations).[65] Indemnification for an act or omission of a director or officer, if the act or omission occurred prior to April 30, 2001, is governed by the old Act.[66]

III. Conclusion

Practitioners should become familiar with the terms and provisions of the Act, a process eased by practitioners' familiarity with the Corporation Act. The Act does not require nonprofit corporations to amend their articles of incorporation or bylaws. However, practitioners should become familiar with issues that may call for modernizing and updating bylaws, and in some cases the articles of incorporation, of nonprofit corporations with which they are involved. In particular, practitioners may wish to advise their nonprofit corporation clients to add provisions to the bylaws relating to electronic communications and more flexible provisions which involve members, delegates and directors. Practitioners may also wish to suggest a bylaws provision or a resolution which permits written consent by less than all of the members and to ensure bylaws authority for a quorum of members less than a majority of the members, if appropriate in the context. Practitioners may further wish to consider a bylaws provision referring to members of the governing board as "directors" in the event such term is desired, ensure that provisions for the inspection of corporate records are consistent with provisions of the Act, avoid distributions other than those authorized in the Act, delete the address of the principal office from future amended or restated articles, and make allowance for streamlined operational provisions in the event of an emergency. In all cases, practitioners should be aware of the effects of Federal and State tax law on the organization and operation of nonprofit corporations they represent.

[1] Utah Code § 16-6a-103(1).
[2] Utah Code § 16-6a-103(2)(a)(iii).
[3] Utah Code § 16-6a-105(6)(b).
[4] Utah Code § 16-6a-108.
[5] Utah Code § 16-6a-115; Cf. Utah Code § 16-6-107.
[6] Utah Code § 16-6a-116; see I.R.C. § 508(e).
[7] Utah Code § 16-6a-202.
[8] *Id.*
[9] Utah Code § 16-6a-202(2)(a); Utah Code § 16-6a-205(1)(b).
[10] Utah Code §§ 16-6a-202(2)(c), (7)(a).
[11] Utah Code § 16-6a-207.
[12] Utah Code § 16-6a-301.
[13] Utah Code § 16-6a-302(1).
[14] Utah Code § 16-6a-303.
[15] Utah Code § 16-6a-601.
[16] Utah Code § 16-6a-602(1).

[17]Utah Code § 16-6a-602(2).
[18]Utah Code § 16-6a-603(2).
[19]Utah Code § 16-6a-609(1).
[20]Utah Code § 16-6a-609(4).
[21]Utah Code § 16-6a-613.
[22]Utah Code § 16-6a-102(14).
[23]Utah Code § 16-6a-707.
[24]*Id.*
[25]Utah Code § 16-6-1704(3).
[26]Utah Code § 16-6a-709(1).
[27]*See* S.B. 139.
[28]Utah Code § 16-6a-709(7).
[29]Utah Code § 16-6a-714(1)(b).
[30]Utah Code § 16-6-29.
[31]Utah Code § 16-6a-717.
[32]Utah Code § 16-6a-801(4).
[33]Utah Code § 16-6a-801(2)(b).
[34]*Id.*
[35]Utah Code § 16-6a-803, S.B. 61 in 2000 initially provided that a nonprofit corporation could have fewer than three directors. That provision was deleted prior to enactment because of opposition by a major association of nonprofit corporations.
[36]Utah Code § 16-6a-801(3).
[37]Utah Code § 16-6a-805(1)(b).
[38]Utah Code § 16-6a-807, 808.
[39]Utah Code § 16-6a-817(1)(b), as amended by S.B. 139 (2001).
[40]Utah Code § 16-6a-817(6)(b).
[41]Utah Code § 16-6a-818(4).
[42]Utah Code § 16-6a-822(6)(b).
[43]Utah Code § 16-6a-823(1).
[44]Utah Code § 16-6a-824(1)(a).
[45]Utah Code § 16-6a-1302(1).
[46]Utah Code § 16-6a-1302(2).
[47]Utah Code § 16-6a-825(2).
[48]Utah Code § 16-6a-825(4).
[49]*See* I.R.C. § 509(a)(3).
[50]Utah Code § 16-6a-825(4)(b)(iii).
[51]Utah Code § 16-6a-901.
[52]Utah Code § 16-6-53.5(2) ("as previously amended").
[53]Utah Code § 16-6a-1006(2)(a).
[54]Utah Code §§ 16-6a-1008; 16-10a-1008.5.
[55]Utah Code § 16-6a-1101 *et seq.*
[56]Utah Code § 16-6a-1201 *et seq.*
[57]Utah Code § 16-6a-1401 *et seq.*
[58]Utah Code § 16-6a-1501 *et seq.*
[59]Utah Code § 16-6a-1518.
[60]Utah Code § 16-6a-1602(1), (2).
[61]Utah Code § 16-6a-1609.
[62]*Id.*
[63]Utah Code § 16-6a-1609(4).
[64]Utah Code § 16-6a-1701 *et seq.*
[65]Utah Code § 16-6a-1703.
[66]Utah Code § 16-6a-1704(4).

Utah Zoning Law: Enforcement

by Richard S. Dalebout

Editor's Note: *This article is the second in a series of three on Utah zoning law. The first article, entitled* Utah Zoning Law: The Zoning Ordinance, *appeared in the April issue, and the third, entitled* Utah Zoning Law: Appeals, *will appear in the August/September issue.*

I. Enforcement Generally[1]

The Municipal Land Use Development and Management Act and the County Land Use Development and Management Act permit local zoning ordinances in Utah to be enforced by criminal and civil actions.

A. Criminal. A governing body may provide in its zoning ordinance for criminal prosecutions to enforce zoning regulations. Violations may be punished as a Class C misdemeanor. (The penalty associated with a Class C misdemeanor is a term not exceeding ninety days and a fine not exceeding $1,000.)

B. Civil. Cities, counties and private parties may enforce zoning ordinances by civil actions. Specifically, the enabling acts provide that: "a [city or county] or any owner of real estate within the [municipality/county] . . . may, in addition to other remedies provided by law, institute . . . injunctions, mandamus, abatement, or any other appropriate actions . . . [or] proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act."

II. Civil Actions by Government

A. Injunctions. Historically, local governments have been successful in persuading the courts to issue injunctions to prevent a variety of zoning ordinance violations including, as examples, the establishment of a funeral home in a residential district, the sale of unsubdivided land for nonagricultural purposes or a commercial use in an agricultural district. On the other hand, these actions are not a slam dunk and when the facts or the law are against the government, the appellate courts have not been reluctant to rule in favor of land owners.[2]

In *Utah County v. Baxter,*[3] the Utah Supreme Court explained the policy that allows a local government to obtain an injunction to prohibit violation of its zoning laws:

> Generally, injunctive relief is available only when intervention of a court of equity is essential to protect against "irreparable injury;" hence, where the remedy at law is adequate, an injunction will not lie. Under our zoning statute, however, injunctive relief is available as an *alternative* to criminal prosecution. This is based on the assumption that zoning offenses are inherently different from other violations of law, and that enforcement officers should be empowered to seek civil redress rather than to proceed in every case by criminal prosecution.[4]

In *Baxter,* the court quoted *City of New Orleans v. Liberty Shop*[5] to explain the public interests that an injunction is intended to protect:

> An injunction should not be issued to prevent the commission of a crime, if the only reason for preventing it is that it is a crime. But, if the wrong complained of is injurious to property interests or civil rights, or if it is a public nuisance, either in the opinion of the court or in virtue of a statute or an ordinance making it a nuisance, the fact that it is also a violation of a criminal statute or ordinance does not take away the authority of a court of civil jurisdiction to prevent the injury or abate the nuisance.[6]

B. Presumption of Validity. Administrative actions granting or denying permission to engage in a land use are presumed to be valid. In *Cottonwood Heights Citizens Ass'n v. Board of Commissioners of Salt Lake County,*[7] a county commission authorized construction of an apartment complex after having denied that permission to a previous owner. Sustaining the action of the county commission, the Utah Supreme Court stated:

> Due to the complexity of factors involved in the matter of zoning, as in other fields where courts review the actions of administrative bodies, it should be assumed that those charged with that responsibility (the Commission) have specialized knowledge in that field. Accordingly, they

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> should be allowed a comparatively wide latitude of discretion; and their actions endowed with a presumption of correctness and validity which the courts should not interfere with unless it is shown that there is no reasonable basis to justify the action taken.[8]

Notwithstanding the general assumption that administrative zoning actions are correct, it is nevertheless true that "because zoning ordinances are in derogation of a property owner's common law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner."[9]

III. Defenses to Actions by Government

If local government initiates a civil action to enforce its zoning ordinance, the defendant may respond by raising a number of issues which, in a loose sense, may be classified as "defenses." In addition to constitutional issues (which are not discussed in this article) the list of such defenses includes:

> *Procedure.* Evidence that adoption of the ordinance (text or map) did not meet procedural requirements.
>
> *Delay.* A claim that the zoning authority has lost the legal right to enforce its ordinances because of delay (laches).
>
> *Unfairness.* A claim that the zoning authority has engaged in an act or omission which makes it unfair to enforce the zoning ordinance (estoppel).
>
> *Nonconforming Use.* A claim that the subject use is a lawful nonconforming use.

A. Procedure. Failure to follow statutory procedures may cause a zoning ordinance to be invalid. Thus, Utah cases have held that failure to hold a required public hearing or to give a required notice will result in invalidity. *Citizen's Awareness Now v. Marakis* [10] includes a catalogue of such defects, including the following:

> Although the ordinance annexed and zoned the . . . property, the City Council neglected to add the land to the city's official zoning map. [Plaintiff] also alleges, and the City Council does not dispute, that the East Carbon City records contained no certificate of posting for [the] ordinance . . . [11]

B. Delay. A claim of laches is a claim that government has waited too long to bring its action and in fairness that action should now be barred. Laches is an equitable defense that must be affirmatively pleaded. A defense of laches is not favored, and in *Salt Lake County v. Kartchner*[12] the Utah Supreme Court held that "[o]rdinarily a municipality is not precluded from enforcing its zoning regulations, when its officers have remained inactive in the face of . . . violations."[13] But, in *Kartchner,* inaction nevertheless precluded a county from enforcing a setback requirement where its inaction in relation to several other homeowners had become discriminatory. Later, the court in *Provo City v. Hansen*[14] held that a measure of delay was permissible when a complaint system was being used in which enforcement action is prompted by a citizen complaint, so long as the result is not discriminatory.

C. Unfairness. Estoppel is a defense raised by a defendant in an attempt to prevent a city or county from enforcing its zoning ordinance. It is an appeal to the court's sense of fairness but it is nevertheless not favored. In *Morrison v. Horne,*[15] the plaintiff claimed the right to construct a service station in a residential district, in part because the county assessor had incorrectly "listed and assessed it as commercial property." Refusing the plaintiff's estoppel claim, the Utah Supreme Court outlined its philosophy with respect to such claims:

> As to estoppel: It would be unreasonable and unrealistic to conclude that a clerk or a ministerial officer having no authority to do so, could bind the county to a variation of a zoning ordinance duly passed, to which everyone has notice by its passage and publication, because a ministerial employee erred in characterizing the type of property.[16]

In general, the following are the controlling principles related to an estoppel defense:

> *Exceptional circumstances.* Estoppel, waiver or laches does not constitute a defense in a zoning action unless the circumstances are exceptional.
>
> *Act or omission.* Estoppel requires an act or omission upon which the defendant relies in good faith in making substantial changes in position or incurring extensive expenses. If estoppel is based on an affirmative act by the zoning authority, that act must be of a clear, definite and affirmative nature. If estoppel is based on an omission by the zoning authority, that omission must be a negligent or culpable omission where the party failing to act had a duty to act. Silence or inaction does not work an estoppel.
>
> *Reliance.* There must be substantial reliance by the land owner on governmental actions. In that context, the claiming party has a duty to inquire and confer with zoning officials about lawful property uses.
>
> *Bad Faith/Fraud/Knowledge.* Estoppel may not be used

> as a defense by one who has acted fraudulently, in bad faith, or with knowledge.

Utah County v. Young[17] illustrates an unsuccessful attempt by a land owner to have estoppel applied. The trial court granted an injunction preventing the defendant from conducting a commercial auction business in an agricultural zone. On appeal, the defendant claimed that the county was estopped because the county building inspector, noting plumbing and wiring suitable for a commercial building, did not warn the defendant that a commercial use would be unlawful in his new building. Contrary to the defendant's position, an advisory jury found that the defendant knew, when he obtained his building permit, that applicable zoning regulations prohibited commercial uses. The defendant's estoppel defense failed because he acted with ***knowledge*** of the zoning restrictions and thus was not misled (no *reliance*) by the building inspector.

D. Nonconforming Use. A nonconforming use of land is one that: (1) legally existed before its current zoning designation, (2) has been maintained continuously since the time the zoning regulation governing the land changed, and (3) because of subsequent zoning changes, does not conform to the zoning regulations that now govern the land. In a zoning enforcement action a defendant may defend by claiming that his or her use may continue as a lawful nonconforming use. The burden of proof is on the claimant. But if the claimant succeeds in proving the existence of the nonconforming use, the burden of proof is reversed and the government must then prove that the defendant exceeded the established nonconforming use.[18]

IV. Private Actions

A. Writ of Mandamus. Private parties may bring civil actions against government or other private parties in relation to zoning issues. Historically, many actions by private parties against government have been requests that the court issue a writ of mandamus. In general, a writ of mandamus is a court order compelling a public official to perform a nondiscretionary function. Understanding that cities and counties commonly enforce their zoning ordinances by refusing to issue a building permit if they are not satisfied in their demands, land owners have used mandamus proceedings to call the government's bluff. If the land owner was correct that he or she was entitled to a permit, the writ compelled its issuance.

As examples, in *Herr v. Salt Lake County*[19] mandamus compelled the issuance of a conditional use permit because the county commission did not act to reverse a decision of the planning commission within the time provided in the zoning ordinance. On the other hand, in *Wright Development, Inc. v. City of Wellsville,*[20] a developer was refused mandamus compelling approval of a proposed subdivision plat because that decision was within the reasonable discretion of the city.

Reading old Utah mandamus cases may be misleading. Recent case law is clear that mandamus proceedings cannot be used as a substitute for the zoning appeal process described in the enabling acts. The enabling acts are clear that a refusal to grant a building permit (or to perform some other administrative act) is first appealed to the zoning board of adjustment. In *Hatch v. Utah County Planning Dept.*[21] judicial relief was denied because, *inter alia,* the plaintiff bypassed the board of adjustment and applied directly to the district court. The Utah Supreme Court held that "a party must *exhaust administrative remedies* before seeking judicial review of the denial of a building permit."[22]

In the past, litigants sometimes ignored this administrative process and when they were refused a building permit they immediately asked the district court to issue a writ of mandamus. This was done in *Crist v. Mapleton City.*[23] Instead of appealing administratively, and then going to the courts, the plaintiff bypassed his administrative remedies and immediately asked the district court to issue a writ of mandamus. The Utah Supreme Court condemned this tactic:

> By ignoring a plain, speedy, and adequate remedy at law, the plaintiffs placed themselves out of reach of the extraordinary writ of mandamus. A writ of mandamus is not a substitute for and cannot be used in civil proceedings to serve the purpose of appeal, certiorari, or writ of error.[24]

B. Injunction. The remedy of injunction has been used to stop public officials from performing unlawful acts. In *Harris v. Springville City,*[25] an injunction was granted preventing a commercial operation in a residential district; and, in *Chambers v. Smithfield City,*[26] an injunction was granted prohibiting the exercise of a variance granted by the city for which the applicant was not qualified.

C. Standing. By statute, a municipality, county, county attorney, or "any owner of real estate" may bring an action to enforce the acts or ordinances enacted pursuant to those acts. If the action is for injunctive relief, the acts provide that a *municipality or a county* "need only establish the violation to obtain the injunction." But, in *Harris v. Springville City,* Utah's high court held that, for a *private* party to obtain relief by enforcing the terms of a zoning ordinance, there must be a demonstration of standing, and standing is jurisdictional. Standing requires that the plaintiffs demonstrate an adverse interest, and, in the words of

the *Harris* court, "that they [have] suffered some injury peculiar to their own property or at least more substantial than that suffered by the community at large."[27]

V. Vested Rights

At what point can government no longer "change its mind" in relation to uses which may be allowed? The phrase "vested right" focuses on the moment when government can no longer change its mind and the landowner concurrently has a fixed or vested right to government approval for his or her project.

In 1974, the Utah Supreme Court decided *Contracts Funding & Mortgage Exchange v. Maynes,*[28] in which a property owner applied to Salt Lake County for a building permit to construct a mobile home park on what was then unzoned property. The county delayed the application until it could zone the property and then denied the application. The court held that the landowner's rights were determined at the time he made his application, and because a mobile home park was permitted (or at least not prohibited) *at the time of application,* a permit should be issued if there were no defects in the application.

The inflexibility of the *Contracts Funding* decision was softened in 1980 when the Utah Supreme Court decided *Western Land Equities, Inc. v. City of Logan.*[29] In *Western Land Equities,* the court held that the claim of a landowner to a permit or approval based upon current zoning should be balanced against: (1) "compelling, countervailing public interest[s];" and, (2) the existence, if any, of pending proceedings to change zoning requirements. The court held:

> [A]n applicant is entitled to a building permit or subdivision approval *if his proposed development meets the zoning requirements* in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling, countervailing public interest. Furthermore, *if a city or county has initiated proceedings* to amend its zoning ordinances, a landowner who subsequently makes application for a permit is not entitled to rely on the original zoning classification.[30]

The *Western Land Equities* decision was revisited in 1994 in *Stucker v. Summit County.*[31] In *Stucker,* the plaintiff purchased a lot in a subdivision which was originally platted in 1964. The Utah Court of Appeals held that the uses to which the lot could be applied were those in effect when the application was made for a building permit in 1990, not those in effect when the subdivision plat was approved in 1964. The court stated:

> Accordingly, pursuant to the *Western Land* decision, the Stuckers' application for a building permit in 1990 fixed the 1985 Code as the governing ordinance, not the 1977 Code. Thus, the Stuckers have no claim of a vested right under the 1977 Code because they did not apply for a building permit during the period when the 1977 Code applied.[32]

[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 § 10-9-101) or the County Land Use Development and Management Act (Utah Code § 17-27-101). Case references are limited to identifying significant cases and identifying the source of quotations.

[2]*See Brown v. Sandy City Bd. of Adjustment,* 957 P.2d 207 (Utah Ct.App. 1998).

[3]635 P.2d 61 Utah 1981).

[4]*Id.* at 64.

[5]101 So. 798 (La. 1924).

[6]*Id.* at 798.

[7]593 P.2d 138 (Utah 1979).

[8]*Id.* at 140.

[9]*Patterson v. Utah County Bd. of Adjustment,* 893 P.2d 602, 606 (Utah Ct.App. 1995).

[10]873 P.2d 1117 (Utah 1994).

[11]*Id.* at 1120.

[12]552 P.2d 136 (Utah 1976).

[13]*Id.* at 138.

[14]585 P.2d 461 (Utah 1978).

[15]363 P.2d 1113 (Utah 1961).

[16]*Id.* at 1114.

[17]615 P.2d 1265 (Utah 1980).

[18]*See Fillmore City v. Reeve,* 571 P.2d 1316, 1318 (Utah 1977).

[19]525 P.2d 728 (Utah 1974).

[20]608 P.2d 232 (Utah 1980).

[21]685 P.2d 550 (Utah 1984).

[22]*Id.* at 551.

[23]497 P.2d 633 (Utah 1972).

[24]*Id.* at 634.

[25]712 P.2d 188 (Utah 1984).

[26]714 P.2d 1133 (Utah 1986).

[27]*Id.* at 191.

[28]527 P.2d 1073 (Utah 1974).

[29]617 P.2d 388 (Utah 1980).

[30]*Id.* at 396.

[31]870 P.2d 283 (Utah App. 1994).

[32]*Id.* at 286.

Mediator Focus: Mediation Advocacy in a Nutshell

by James R. Holbrook

Editor's Note: *Only a year old, the Alternative Dispute Resolution Section of the Utah State Bar has already made great progress in spreading information about mediation and arbitration both within the Bar and to the general public. With this issue of the* Bar Journal, *the Section initiates its "Mediator Focus," in which short articles by available mediators will appear from time to time.*

As counsel for a party in mediation, your advocacy strategy is to motivate the opposing party to say "Yes" to a settlement option that works for your client. This means that your advocacy in mediation is much like your advocacy in negotiation which differs significantly from your advocacy in litigation. Mediation is facilitated negotiation; it is a collaborative problem-solving process. Mediation is ***not*** adjudication; it is ***not*** an adversarial evidentiary process. In mediation, the opposing party – not the mediator – is the decision maker.

Prepare your client for mediation. Explain that mediation is facilitated negotiation and that the opposing party – not the mediator – is the person who must be persuaded by your advocacy. The mediator's role is simply to help the parties reach a mutually acceptable agreement.

Identify your client's and anticipate your opponent's interests (including objective, subjective, and third-party interests), priorities, possible settlement options, legitimacy criteria, deadlines, and alternatives to settlement. Determine your negotiating style, settlement authority, settlement range, starting position, and bargaining power. Determine who should make the first offer in mediation. Agree with your client to make the first offer in order to avoid an early procedural impasse.

Prepare your opening presentation. Frame the dispute productively for negotiation; include appropriate empathetic remarks about the opposing party; and incorporate answers to anticipated questions about your presentation. Decide whether your client should participate in the opening presentation (e.g., to "vent" emotion) or whether that would be counterproductive. Your client also must be prepared to listen to the opponent's venting and risk analysis without getting too upset.

In making your opening presentation, demonstrate your commitment to joint problem solving. Attempt to build a relationship of trust and respect with your opponent. Identify issues that should be addressed by the parties in reaching agreement. Disclose your client's interests and suggest some options that might satisfy the objective, subjective, and third-party interests of both parties. Don't threaten to elect your unilateral alternatives to a negotiated agreement.

Listen carefully to your opponent's opening presentation without interruption. Control your client's behavior to ensure that it enhances joint problem solving. Ask questions about your opponent's objective, subjective, and third-party interests. Avoid being inadvertently aggressive with your questions. Respond productively to venting by the opposing party. Use reflective listening to reinforce positive feelings. Use reframing to redirect negative feelings. Be flexible and creative in brainstorming possible settlement options. Be prepared to justify and evaluate possible settlement options using objective legitimacy criteria (such as precedents).

The Harvard Negotiation Project has identified seven elements of effective negotiations: the quality of the parties' **relationship;** the quality of their **communication;** their **interests** that must be satisfied to reach agreement; their joint **options** for settlement; the objective **legitimacy** of those options; their unilateral **alternatives** to settlement; and their authority for **commitment** to an agreement. During the mediation, you must keep productively focused on all seven elements.

You also must help move the process of mediation through its various stages by: handling emotion; sharing information; identifying issues and interests; inventing joint options; analyzing options; breaking impasses; and documenting agreement. If your client or the opposing party says "No" and stops moving toward settlement, you must help the mediator do a risk analysis of both your client's and the opposing party's alternatives to settlement. To help break an impasse, you may request the mediator's evaluation of the merits of the dispute and the risks and expense of the parties' alternatives.

Remember that the goodwill, patience, and creativity which you and your client demonstrate help your opponent say "Yes" to what you need.

JAMES R. HOLBROOK is a senior litigator in the Salt Lake City law firm of Callister Nebeker & McCullough.

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For additional information,
please visit the Bar's website at

www.utahbar.org/sites/annual

President-Elect and Bar Commission Election Results

John A. Adams was elected President-Elect of the Utah State Bar in the first popular election of the position in the Bar's history. John received 1,424 votes to Denise A. Dragoo's 1,063 votes. Felshaw King was elected Bar Commissioner in the Second Division, receiving 123 votes to David R. Hamilton's 108 votes. Felshaw joins new Third Division Commissioners David R. Bird, Gus Chin and Karin Hobbs, who ran unopposed.

John A. Adams

Felshaw King

David R. Bird

Gus Chin

Karin Hobbs

Commission Highlights

During its regularly scheduled meeting April 27, 2001, which was held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Dr. Theresa A. Martinez of the University of Utah Sociology Department gave a presentation on "Race and Culture in America".
2. The Commissioners had lunch with the Young Lawyers Division Board.
3. Neil Crist gave a report on the Client Security Fund ("CSF") and requested some rule changes. Nanci Bockelie, Scott Daniels and Sharon Donovan are to look into some issues of Crist's report and bring to Commission meeting in Moab on June 8, 2001. The Commission voted to approve CSF claims totaling $20,485.
4. Annual Awards were selected: Alan L. Sullivan was selected as the Lawyer of the Year, Mitchell R. Barker was selected as Pro Bono Lawyer of the Year, and Judge of the Year was given to both Anne M. Stirba and Sharon P. McCully. Section of the Year was awarded to Legal Assistants Division and a Distinguished Service Award was given to Judge Raymond M. Harding, Sr. Members of the Ethics Advisory Opinion Committee were also nominated for a distinguished service award.
5. Scott Daniels reviewed the 2001-2002 budget draft.
6. Kirk Torgensen from the Utah Attorney General's Office addressed the Commission with his concerns on the A.G. staff attorney retention problem. Scott Daniels noted that the Legislative Executive Appropriations Committee was the appropriate entity to lobby about the staff retention concerns.
7. The Bar Admissions ceremony was May 16 and the motion to certify the list of applicants passed.
8. Executive Session: Admissions Hearing & Review of Appointment to Advisory Board on Children's Justice.
9. The Commission approved the appointment of Helen Christian and Stewart Ralphs to the Child Support Advisory Committee.

A full text of minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director, or on the Bar's website at www.utahbar.org.

Utah State Bar Ethics Advisory Opinion Committee

Opinion No. 01-04

Issue: Is it ethical for lawyers to charge clients an annual fee for estate planning and asset-protection legal services based on a percentage of the value of the assets involved?

Opinion: Charging clients an annual fee for estate planning and asset protection legal services based on a percentage of the value of the assets involved is likely to be ethical only in extraordinary circumstances.

Opinion No. 01-03

Issue: What are the ethical considerations where a lawyer seeks to disqualify a judge from a case by associating a lawyer from the judge's prior private law firm and intentionally creating a circumstance in which the judge may conclude that he must recuse himself from the case?

Conclusion: Depending on the facts and circumstances, it may be unethical conduct for either lawyer to manipulate the judicial system by agreeing to associate new counsel for the primary purpose of provoking a judge's recusal.

Request for Input on Judgment Lien Amendments

During the 2001 Annual General Session, Representative Tom Hatch sponsored House Bill 305, Judgment Lien Amendments. This bill makes several significant changes regarding judgment liens, including providing that a judgment or an abstract of a judgment constitutes a lien when it is recorded in the office of the county recorder. The bill was amended to postpone its effective date to July 1, 2002 to provide members of the Bar with actual knowledge and the opportunity for input on these changes before this bill became law.

Senator John C. Valentine has requested that the Utah State Bar review this bill and provide specific feedback by October 1, 2001. Please send your comments to Senator Valentine at Utah State Senate, 319 State Capitol, Salt Lake City, Utah 84114 or Fax: (801) 538-1414.

House Bill 305 can be copied or reviewed from the Legislature's website at "www.le.state.ut.us".

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 July 2, 2001 to: John C. Baldwin, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111

Mailing of Licensing Forms

The licensing forms for 2001-2002 were 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. Failure to notify the Bar of an address change does not relieve an attorney from paying licensing fees, late fees, or possible suspension for non-payment of fees. You may check the Bar's web site to see what information is on file. The site is updated weekly and is located at www.utahbar.org.

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

SPECIAL THANKS

"and Justice for all"

The "AND JUSTICE FOR ALL" Campaign would like to extend special thanks to the administration, staff, and programs of the **Utah State Bar Law & Justice Center** for their generous on-going support of our efforts to make access to the legal system a reality for all Utahns.

Summary of Utah State Bar Licensing

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

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

Active, Under Three – A lawyer on Active Status who admitted on or after July 1, 1998 qualifies for a reduced licensing fee. (If you took the Attorney Bar Examination or have practiced law for more than three years as of July 1, 1998 you do not qualify.) The current licensing fee is $190 plus the client security fund assessment. You must also satisfy the New Lawyer Continuing Legal Education requirements.

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

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

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

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

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

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

Discipline Corner

PUBLIC REPRIMAND

On February 14, 2001, the Honorable Michael D. Lyon, Second Judicial District Court, entered an Order of Discipline: Reprimand reprimanding Stuwert B. Johnson for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

Johnson was retained to represent a client in a personal injury action. The client provided Johnson with copies of her medical records and other personal information regarding the automobile accident which was the subject of her personal injury action. Thereafter, Johnson misplaced the client's file containing her medical records and other information, but failed to immediately inform her of this fact. The client attempted to contact Johnson by telephone on numerous occasions to inquire about the status of her matter, but Johnson failed to return her telephone calls. Johnson failed to make adequate contact with the insurance carrier, and did not provide it with the needed information. Johnson represented to the client that he had provided the insurance carrier with all relevant information concerning her matter, when in fact he had not.

ADMONITION

On February 21, 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), 1.2 (Scope of Representation), 1.3 (Diligence), 1.15(a) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client regarding injuries sustained in an automobile accident. Prior to retaining the attorney, the client was represented by other counsel, who referred the client to a chiropractor for treatment. The client received approximately sixty-five treatments from the chiropractor for a period of eight months. Thereafter, the client became dissatisfied with the prior attorney's representation, partly because of the prior attorney's relationship to the chiropractor, and terminated the relationship with the prior attorney and the chiropractor. After being retained by the client, the attorney executed a doctor's lien with the chiropractor concerning the client's outstanding chiropractic bills. The lien did not contain a set amount that was due and owing. Thereafter, the attorney settled the client's case and received settlement funds on the client's behalf. The attorney did not remember the lien held by the chiropractor and did not find the lien in the client's files when settlement funds were dispersed. Consequently, the attorney did not withhold funds from the settlement for the chiropractor's services, nor did the attorney deal with determining the amount of the lien.

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

Mitigating factors include: absence of prior record of discipline and cooperation with the Office of Professional Counsel.

SUSPENSION

On February 27, 2001, the Honorable William B. Bohling, Third Judicial District Court, entered an Order of Suspension and Probation suspending John Alex from the practice of law for six months for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15(b) (Safekeeping Property), 3.2 (Expediting Litigation), 5.5 (Unauthorized Practice of Law), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct. The entire six month suspension was stayed. Alex was placed on probation for twenty-four months.

Alex was notified that he had been suspended from the practice of law as a result of his failure to comply with mandatory continuing legal education requirements. While suspended, Alex signed and filed a Docketing Statement on a client's behalf with the Utah Supreme Court. Alex represented the same client in a civil matter. After filing a lawsuit on the client's behalf, Alex failed to have the defendants served within 120 days, which resulted in the matter being dismissed without prejudice.

Alex was retained by a collection agency to collect on several accounts and to file lawsuits if necessary. The collection agency paid Alex a fee for legal services to be performed and certain funds for costs of the various matters. Thereafter, the collection agency attempted to contact Alex to inquire about the status of the collection matters by telephone, fax, and mail. Alex failed to promptly respond to these requests. On at least one occasion, Alex responded with a general status report, but failed to timely respond to the collection agency's requests for information. In his representation of the collection agency, Alex failed to provide competent representation and failed to have the skill, thoroughness, and preparation reasonably necessary for such a representation. Alex failed to abide by the collection agency's decisions concerning the objectives of the representation and failed to consult with it as to the means by which to pursue them. Alex failed to act with reasonable diligence and promptness in representing the collection agency. Alex failed to make reasonable efforts to expedite litigation consistent with the interests of the collection agency and its customers

An individual was sent a "collections letter" for an unpaid bill owed to a department store. The individual went to Alex's law office and paid the bill with a check made out to Alex personally. Thereafter, the individual received a letter from a collection agency informing him that they had been retained to collect the amount owing to the department store. Alex received funds from the individual to pay a debt owed by the individual to the department store. Although part or all of the funds belonged to

someone other than Alex, he failed to promptly notify, deliver, and account for the funds.

Alex was retained to represent a client in a divorce matter and related temporary and protective orders. Alex never obtained a written fee agreement with the client although the cost of that legal representation exceeded $750, and Alex reasonably should have expected that the cost of the legal representation would exceed $750.

Alex was retained to represent a client in a divorce matter. Alex failed to keep the client reasonably informed about the status of her matter and failed promptly to comply with reasonable requests for information; Alex further failed to explain the matter to the extent reasonably necessary to enable the client to make informed decisions regarding her divorce.

Alex was retained to represent a client in the recovery of disputed and converted funds from another person. Although Alex agreed to represent the client on a contingency fee basis, he never obtained a written fee agreement. Alex failed to provide competent representation and failed to have the skill, thoroughness and preparation reasonably necessary for such a representation. Alex failed to abide by the client's decisions concerning the objectives of the representation and failed to consult with her as to the means by which to pursue them. Alex failed to act with reasonable diligence and promptness. Alex failed to keep the client reasonably informed about the status of her pending matter and failed promptly to comply with reasonable requests for information about her matters; Alex further failed to explain the matter to the extent reasonably necessary to enable the client to make informed decisions. Alex failed to make reasonable efforts to expedite litigation consistent with the interests of the client. Alex misrepresented to the client the status of her matter.

During the course of its investigation into the informal complaints filed against Alex, the Office of Professional Conduct ("OPC") requested on numerous occasions that Alex submit written responses to each of the complaints and produce specific records and documents. In addition, the OPC sent Notices of Informal Complaint in each matter to Alex. Under the Rules of Lawyer Discipline and Disability, Alex was to respond within twenty days to the Notices of Informal Complaint. Alex failed to submit written responses, failed to timely produce the documents and responses requested by the OPC, and failed to attend the Screening Panel hearings held in those matters.

Alex failed to act with reasonable diligence and promptness in representing four other clients. Alex failed to keep the clients reasonably informed about the status of their pending matters and failed to comply with the clients' reasonable requests for information about their matters; Alex further failed to explain the matters to the extent reasonably necessary to enable the clients to make informed decisions.

Mitigating factors include: personal or emotional problems; good faith effort to rectify the consequences of the misconduct involved; and remorse.

ADMONITION

On February 28, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a civil action. The court in the civil action directed the attorney to prepare an order. The attorney failed to prepare and file an order, consistent with the court's directive, within the fifteen-day time frame required by Rule 4-504 of the Code of Judicial Administration.

PUBLIC REPRIMAND

On March 28, 2001, the Honorable J. Dennis Frederick, Third Judicial District Court, entered an Order of Reprimand reprimanding John L. McCoy for violation of Rules 1.15(a), (b), and (c) (Safekeeping Property) of the Rules of Professional Conduct.

McCoy was an agent for Attorney's Title Guarantee Fund ("ATGF") for the purpose of issuing title insurance. Pursuant to the agency agreement McCoy entered into with ATGF, he was to collect title insurance premiums at the closing of each real estate transaction, holding thirty percent of each premium in a trust/escrow account for ATGF, and remitting it to ATGF within thirty days of each transaction. In the course of his agency on behalf of ATGF, McCoy issued several title insurance policies for which he did not promptly account or promptly provide ATGF with its portion of the funds. McCoy received funds which belonged to ATGF and placed those funds into a trust/escrow account.

McCoy had an employee who was, for certain limited purposes, his agent. McCoy allowed the employee to have signatory power over the trust/escrow account in which McCoy was to hold third-party funds belonging to ATGF. After an initial period of supervision during which McCoy and the employee together handled the closing paperwork for real estate sales transactions, the closings and paper work of the sales were handled by the employee. The employee, without McCoy's knowledge or consent, misappropriated ATGF funds from the trust/escrow account. ATGF sent several letters to McCoy listing all title insurance policies that he held and requesting that he account for all title jackets and distribute all funds he had collected on ATGF's behalf. McCoy sent at least one of these written requests from ATGF to the employee and asked that he account for the title jackets. McCoy has paid funds to ATGF to replace the funds that his employee misappropriated. The court ordered McCoy to provide a final accounting to ATGF of all policy jackets and to pay any monies owed to ATGF within six months of the order.

McCoy's employee also arranged a real estate closing on a condo-

minium owned by an individual. Certain of the individual's and third-party debts were paid from the proceeds of the real estate closing. In addition to the debts paid from the real estate closing proceeds, McCoy was to pay an additional amount out of the trust/escrow account to a third party. The employee misappropriated the amount from the trust/escrow account and there were insufficient funds in the account to pay third parties. The employee did this without McCoy's knowledge or consent. A dispute existed as to whether the amount was to be paid to the individual or another third-party. Since it was disputed who was to receive the funds, McCoy interpleaded the funds into District Court. McCoy used his personal funds to replace the amount the employee misappropriated from his trust/escrow account in the individual's condominium sale.

McCoy was negligent in allowing the employee signatory power over the trust/escrow account and was negligent in his supervision of the employee in his handling of the trust/escrow account and the closing paperwork for real estate sales transactions and sales.

McCoy violated Rules 1.15(a), (b) and (c) (Safekeeping Property) by negligently failing promptly to account for funds he received on behalf of ATGF, by negligently failing promptly to notify ATGF upon receiving funds belonging to it, and by negligently failing promptly to deliver those funds to ATGF. McCoy further violated Rule 1.15 by negligently supervising the use of his trust/escrow account in such a manner that his employee was able to misappropriate third-party funds.

Mitigating circumstances include: absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; and remorse.

ADMONITION

On April 2, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to help a client recover stolen property, or to obtain a judgment against the person who took the property. The client periodically asked the attorney for updates concerning the case, but the attorney did not initiate any contact with the client, and the client was only intermittently successful in reaching the attorney. The attorney told the client that there was a trial date, but the day before the trial, the attorney informed the client of a settlement proposal. The client agreed to accept settlement and repeatedly requested a copy of the settlement agreement, but the attorney never provided it to the client. When the deadline passed for payment of the settlement and the client had not received any money, the client called the attorney repeatedly without success. Thereafter, the attorney told the client that they might have to pursue payment of the judgment. The client again made numerous unsuccessful attempts to reach the attorney to find out what would be the implications of an action to enforce judgment. A full year after the settlement should have been paid, the attorney told the client that they might have to go back to court to seek a default judgment. Again, the attorney failed to explain what might be entailed. Several months later, the attorney told the client that the settlement was worthless, and the client would have to go after the opposing party's property. The attorney told the client a date had been set to seize the property. The day before the seizure date, the attorney informed the client that the opposing party had filed bankruptcy. Although the attorney claimed to have attended a meeting of creditors, he was unable to tell the client under what chapter the bankruptcy had been filed. No further progress was made, despite repeated calls to the attorney's office. Although the matter was pursued on a contingency fee basis, there was no written fee agreement.

RESIGNATION PENDING DISCIPLINE

On March 29, 2001, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Dean H. Becker.

On June 2, 2000, Becker was suspended from the practice of law for two years. Thereafter, Becker failed to comply with the District Court's Order of Suspension and Rule 26, Rules of Lawyer Discipline and Disability.

Although Becker received notice that he was suspended for failing to pay dues to the Utah State Bar in September 1998, Becker made appearances as an attorney representing clients while suspended.

Becker has prior discipline which constitutes an aggravating circumstance under Rule 6, Standards for Imposing Lawyer Sanctions.

ADMONITION

On April 2, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.8(a) and (h) (Conflict of Interest: Prohibited Transactions) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in several legal matters. The attorney entered into a stipulation and release of claims with the client that prospectively limited the attorney's liability for malpractice. The client was not independently represented in making the agreement with the attorney. The attorney allowed the client an opportunity to repudiate the stipulation and seek counsel.

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

Mitigating factors include: cooperative attitude toward the disciplinary proceedings.

Civility and Advocacy

by Justice Matthew B. Durrant, Utah Supreme Court

Swapping stories of outrageous conduct is a favorite lawyer pastime. I remember as a young lawyer being regaled with tales of one prominent litigator in particular. One of his favorite tactics was to mouth obscenities at the opposing lawyers as he walked back to counsel table after examining a witness. By the time he turned around to again face the judge and jury he was the very model of decorum and solemnity.

This is an extreme example, but you no doubt could tell similar stories about rude and offensive conduct by lawyers in our community. The less fortunate among you have encountered some of that conduct first hand. Unfortunately, some lawyers perceive a tactical advantage in incivility. Their aim seems to be to make litigation against them so miserable an experience that opposing lawyers will do anything to end it, or avoid it altogether. They are intent on wearing down the other side through annoying or offensive ploys, both large and small. The notion seems to be that rude or boorish behavior will distract opposing lawyers; make them take their eyes off the ball; elicit irrational, emotional responses. You might call it the Dennis Rodman school of litigation tactics.

Fortunately, lawyers who adhere to this philosophy are the exception. They get an inordinate amount of attention, however. They make for good copy, so to speak. Indeed, in our popular culture the so-called "mad dog" or "Rambo" litigator is usually considered the very best kind of lawyer to have in your corner. You are unlikely to see a television or movie character threaten a lawsuit by saying, "You'll be sorry. I'm going to hire the most dignified, courteous and honest lawyer in this town." Regrettably, some potential clients have adopted this perception that the meaner, the ornerier, the nastier a lawyer is, the more effective an advocate that lawyer will be.

Even more regrettably, I fear that too many young lawyers are buying into the notion that incivility makes for effective advocacy. There has been no shortage of articles and speeches calling for greater civility among lawyers. I concur wholeheartedly in that sentiment. Lawyers should see themselves as engaged in a noble profession. They should conduct themselves with dignity and courtesy. They should be invariably honest and straightforward. Why? It should be enough that it is the right thing to do, and a more satisfying way to practice – a better way to live, for that matter. Those whose lawyering strategy is to inflict maximum misery often make themselves most miserable of all. But I write to suggest one additional reason for adhering to the highest standards of courtesy and professionalism. Civility, dignity and honesty not only make for a more satisfying and fulfilling professional life, but for more effective advocacy.

Now, it must be admitted that sometimes Rambo-style tactics can lead to an advantage. But usually that advantage is temporary. A lawyer who develops a reputation as someone who takes unfair advantage, who is rudely confrontational, abusive, and unreasonable, severely undermines his or her effectiveness as an advocate. The meanest, nastiest, ornerier lawyers in town may well be the least effective advocates. Other lawyers view their every word with suspicion, are wary of their settlement overtures, and are less likely to cooperate with them in reaching a fair resolution of a dispute. Judges quickly learn of their reputation. Jurors are put off by the way they treat other lawyers and witnesses. Whether fair or not, in the minds of many civility is often linked to credibility. Judges, jurors and other lawyers are more likely to believe a lawyer who is courteous and treats others with dignity and respect. Or, put more simply, we are more likely to believe people we like.

Unfortunately, it is true that some see civility as indicative of weakness. The reality is, however, that a lawyer can be firm and tough-minded while being unfailingly courteous. Indeed, there is real power that comes from maintaining one's dignity in the face of a tantrum, from returning courtesy for rudeness, from treating people respectfully who do not deserve respect, and from refusing to respond in kind to personal insult.

Finally, I think the ultimate proof of my hypothesis is found in a review of the most successful lawyers in our bar. I won't mention any names here, but I do have specific individuals in mind. In my view, the most effective and successful lawyers in our community, the lawyers who can be described as the giants of our bar are, almost without exception, civil, courteous, and respectful men and women who practice in a dignified and professional way. And I believe the exceptions succeed not because of their incivility, but in spite of it. I urge young lawyers in particular to choose the higher road from the very beginning of their careers, because a reputation once developed is very difficult to alter. It will not only make your professional life more fulfilling, but will, quite simply, make you a better advocate.

A Conversation With Edwin J. Skeen

Editor's Note: *In honor of the 70th year of the Utah State Bar, the* Bar Journal *is presenting brief portraits of some of the most senior members of the Bar, particularly those whose admission to practice law in Utah predates the formation of the Utah State Bar in 1931.*

Edwin J. Skeen was born January 2, 1906 in Ogden, Utah, the second of five children and the only son of Utah lawyer Jedediah D. Skeen. Twenty-three years later, he was admitted to practice law in Utah. Now age 95, Mr. Skeen is one of only three living members of the first class admitted to the Utah Bar.

As a boy, Mr. Skeen's family moved from Ogden to Salt Lake City, where he worked as a farm hand on his family's property. He graduated from the L.D.S. High School in 1923, and went on to the University of Utah, earning a Bachelor's degree in philosophy with a minor in mathematics. His outstanding academic performance gained him admission to Stanford University Law School in 1926, where he excelled, despite a full load of classes, a correspondence course from the University of Utah, and work at odd jobs to earn money. After his first year at Stanford, the University of California, Berkeley Law School offered Mr. Skeen a scholarship, which he accepted, and completed his legal education there.

At Berkeley, Mr. Skeen's impressive grades earned him a position as a staff member of the California Law Review. He wrote a Law Review article on commercial arbitration, which was accepted as his thesis for a doctoral degree. He graduated from Berkeley with a doctor of jurisprudence degree (similar to a masters in law) in 1929.

Upon returning to Utah, Mr. Skeen was admitted to practice law in the state on October 14, 1929, and began working at his father's law firm, doing routine legal work. The practice of law at that time was not particularly lucrative because of the Great Depression. Businesses were closing, foreclosures were routine, and the entire country was in a financial panic. The father and son stayed in business by representing debtors in foreclosures on farms, ranches, and homes. The Skeens took cases for a $10.00 retainer, recovering the remainder of their fee only if they prevailed. At one time, the Skeens had several hundred cases pending in Utah Federal District Court, and in most of them were able to get an order to temporarily stop foreclosure.

Mr. Skeen in 1929.

Mr. Skeen today.

In 1936 T.H. Humphreys, the state engineer, hired Mr. Skeen to oversee Utah water rights adjudication. He soon earned the title of "Special Assistant Attorney General" and a salary of $200 per month. In that position, which he held for nearly ten years, Mr. Skeen handled all water cases involving the state engineer, and all interstate water compact matters. These included the Bear River Compact and the Upper Colorado River Compact. Negotiations over the latter required Mr. Skeen to travel with the governor and other high state officials to Arizona, Colorado, California, Nevada, and New Mexico.

In 1945 the United States Department of the Interior hired Mr. Skeen to advise the Bureau of Reclamation, and to handle water rights litigation involving the United States in seven Western states. Over the following ten years, Skeen helped draft numerous interstate water compacts, particularly with Arizona, Wyoming and New Mexico. He drafted an agreement between the United States and Mexico which divided the Colorado River. He also drafted a compact between Nevada and California regarding the use of water from Lake Tahoe.

After ten years with the federal government, Mr. Skeen returned to private practice with his aging father. By this time, he had built an outstanding reputation because of his state and federal work, and readily resumed a rather large private practice. The Weber Basin Water Conservancy District in Ogden retained their services, as did the Truckee-Carson Irrigation District in

Nevada, and many other irrigation companies. He also was actively engaged in trial work, condemnation, and water litigation. In 1982, Mr. Skeen joined the firm of VanCott, Bagley, Cornwall & McCarthy. He stayed with the firm in an "Of Counsel" position until 1990, when he left to resume practice as a sole practitioner.

Many of the cases Mr. Skeen oversaw during his career set the stage for today's water jurisprudence, and many of the agreements he drafted still guide water use in the West. Mr. Skeen also distinguished himself by arguing two cases before the United States Supreme Court: *Mangus v. Miller,*[1] in 1942, and *Kesler v. Department of Public Safety,*[2] in 1961.

Edwin Skeen has made many valuable contributions to the legal community and to his clients throughout a long and productive career. He served as Chairman of the Natural Resource Section of the Utah State Bar, and received the Distinguished Natural Resource Lawyer of the Year Award. He is highly respected by his peers, and still maintains his membership in the Utah State Bar. The Utah Bar recognizes Mr. Skeen for his years of accomplishment and contribution to the Bar, and the State of Utah.

[1] 317 U.S. 178, 63 S.Ct. 182 (1942).

[2] 369 U.S. 153, 82 S.Ct. 807 (1962); overruled by Swift & Co. v. Wickham, 382 U.S. 111, 86 S.Ct. 258 (1965).

Utah State Bar Legal Assistant Division 2001 Salary and Utilization Survey Results

Under the direction of Utilization Chair Cynthia Mendenhall, the Utah State Bar Legal Assistant Division ("LAD") has completed a survey regarding the utilization and compensation of legal assistants in Utah. Although much data has been previously collected from national surveys, the LAD Board feels it is important to obtain a better understanding of these issues specific to legal assistants in Utah. The information will help further the career goals of legal assistants, and will provide 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. In addition, an on-line version of the Survey was placed on the LAD website. Of a total of 120 LAD members and 35 additional LAAU members, 89 Survey responses were timely received. The tabulated results of those survey responses are listed below. For each question, the percentages are based on 89 respondents, unless otherwise noted.

1. *For the year 2000, what was your total salary from employment as a paralegal/legal assistant. Please state your annual salary, separately stating any overtime and/or bonuses you received.* For this question, 4 respondents were part-time employees. Of the remaining 85 respondents, the averages are as follows:

   Average Salary: $36,665.63
   Average Overtime: $915.58
   Average Bonuses: $1,479.87

2. *For the year 2000, in addition to your salary compensation, how much additional compensation did you receive in the form of profit sharing, 401k, or other retirement or profit-sharing arrangement paid by your employer?*

   Average Additional Compensation: $2,583.90

3. *For the year 2000, in addition to your salary compensation, how much additional compensation did you receive in the form of a cafeteria plan?* Of 89 Respondents, 12 Respondents indicated that they received additional compensation from a cafeteria plan. For those 12 Respondents:

   Average additional compensation
   from a cafeteria plan: $1,481.75

4. *For the year 2000 how much did your employer pay you or others on your behalf for:*

   Averages: Education $89.63
   Prof. Dues: $66.56
   CLE Expenses: $257.98
   Parking $247.89

5. *Choose your total years of legal experience from the following:*

   1-5 years: 18%
   6-10 years: 30%
   11-15 years: 26%
   16-20 years: 7%
   20+years: 18%
   No answer: 2%

6. *Choose the number of years with your current employer:*

   1-5 years: 56%
   6-10 years: 25%
   11-15 years: 10%
   16-20 years: 3%
   20+ years: 6%

7. *Choose your highest education level from the following:*

   High School: 18%
   Associate Degree: 23%
   Bachelor's Degree: 38%
   Master's Degree: 6%
   Vocational Training: 15%
   Ph.D.: 0%

8. *Choose your legal assistant education level from the following:*

   Undergraduate Certificate: 28%
   Post Baccalaureate Certificate: 18%
   Associate Degree: 24%
   Bachelor's Degree: 2%
   Master's Degree: 0%
   Other: 18%
   None: 10%

9. *Choose the frequency of salary increases you receive from the following:*

   3 mo: 0%
   6 mo: 3%
   1 yr: 82%
   No schedule: 15%

10. *How many attorneys are currently working at your place of employment? If you work in a satellite or branch office, please give a company total.* (85 Respondents for this question)

Sole:	.4%	26-30:	.2%
2-5:	.27%	31-35:	.1%
6-10:	.13%	36-40:	.2%
11-15:	.18%	41-45:	.0%
16-20:	.2%	46-50:	.0%
21-25:	.12%	51+:	.19%

11. *How many attorneys do you specifically work for?*

Average: . . . . . .3.75 attorneys

12. *If offered, do you participate in any of the following employer provided benefits?*

	YES	NO	N/A
Employers Retirement/ Pension Plan	.75%	.11%	.14%
Employers Profit Sharing	.30%	.25%	.45%
Does your employer contribute to a retirement plan on your behalf?	.82%	.11%	.7%

13. *Does your employer provide any of the following?*

	YES	NO
Health Insurance	.94%	.6%
Life Insurance	.74%	.26%
Disability Insurance	.61%	.39%
Dental Insurance	.79%	.21%
Free Representation	.34%	.66%
Maternity Benefits	.56%	.44%
Parking	.66%	.34%
Child Care	.3%	.97%
Professional Dues	.78%	.22%
Leased Car	.2%	.98%
CLE Expenses	.91%	.9%

14. *How many days per year are you allowed for the following types of absences:*

Vacation:	<5:	.2%	16-20:	.21%
	6-10:	.38%	21-25:	.2%
	11-15:	.35%	>26:	.2%
Personal Leave:	<5:	.69%	16-20:	.4%
	6-10:	.18%	21-25:	.1%
	11-15:	.6%	>26:	.2%
Sick Leave:	<5:	.18%	16-20:	.0%
	6-10:	.53%	21-25:	.0%
	11-15:	.23%	>26:	.6%
Holidays:	<5:	.3%	16-20:	.0%
	6-10:	.64%	Other:	.1%
	11-15:	.32%		

15. *For the year 2000, how many weeks of leave did you utilize under the Federal Family Medical Leave Act?*

Total Respondents: 4
Total weeks utilized: 25

16. *Is your time billed?*

YES: . . . . . .65% NO: 35%

If so, what is your current hourly billing rate? (percentages based on 58 "YES" Respondents)

<$30:	.1%	$66-$70:	.11%
$31-$35:	.0%	$71-$75:	.9%
$36-$40:	.3%	$76-$80:	.5%
$41-$45:	.3%	$81-$85:	.9%
$46-$50:	.3%	$86-$90:	.5%
$51-$55:	.8%	$91-$95:	.0%
$56-$60:	.14%	$96-$100:	.1%
$61-$65:	.23%	$100 +:	.5%

17. *Which best describes your type of employer?*

Private law firm: 60%
Insurance Company: 7%
Public/Government: 21%
Corporation: 12%

18. *What level of secretarial assistance are you provided?*

Have own personal secretary: 3%
Share with 1or more attorney: 28%
Share with 1or more legal assistants: 8%
Perform own duties w/limited secretarial access: . .37%
Access to secretarial pool: 2%
No services available: 22%

19. *How do you best describe your work space?*

Own office:	.61%	Shared office:	.3%
Cubicle:	.33%	Other:	.3%

20. *How frequently do you work in excess of your employer's normal working hours?*

Almost daily:	.22%	Rarely/Never:	.31%
Once/week:	.27%	N/A:	.2%
Once/month:	.18%		

21. *How do you receive overtime compensation?* (88 Respondents, 1 N/A)

Always paid:	.35%	Never paid:	.17%
Sometimes paid:	.6%	Compensatory time:	.42%

22. *With what frequency do you participate in attorney meetings?*

Always:	.16%	Never:	.6%
Occasionally:	.60%	Rarely:	.13%
N/A:	.5%		

23. *With what frequency do you participate in attorney/client meetings?*

Always:	.18%	Never:	.6%
Occasionally:	.59%	Rarely:	.12%
N/A:	.5%		

24. *With what frequency do you attend hearings or trials on cases on which you work?*

Always:	.21%	Never:	.6%
Occasionally:	.41%	Rarely:	.24%
N/A:	.8%		

25. *Are you a member of the Utah State Bar Legal Assistant Division?*

YES: . . . . . .69 NO: 20

26. *Are you a member of any other legal assistant organization?*

YES: . . . . . .66 NO: 23

If so, which organization?

Legal Assistant Association of Utah: 36
National Federation of Paralegal Associations: 1
National Association of Legal Assistants: 11
Utah Trial Lawyer's Association: 3
American Bar Association: 1
Texas Legal Assistant Division: 1
Utah Prosecutor's Association: 2
CLLA: 1
No Answer: 18

27. *Are you certified as a legal assistant?*

YES: . . . . . .26 NO: . . . . . .61 No Answer: . . .2

If yes, which organization?

National Association of Legal Assistants: 14
American Paralegal Association: 2
Utah Prosecutor's Association: 2
Other or No Organization Listed: 8

(Note: The individuals who listed "no organization" may be graduates of a legal assistant training program which awards a "certificate" for completion, which is not the same as being a "certified legal assistant")

28. *Which of the following functions/duties do you perform and with what frequency?*

Assist at trial:	Rarely 48%
Monthly 24%	Daily 1%
Weekly 1%	N/A 26%
Assist with clients:	Rarely 8%
Monthly 15%	Daily 49%
Weekly 19%	N/A 9%
Assist/attend mediations:	Rarely 49%
Monthly 8%	Daily 3%
Weekly 0%	N/A 39%
Automation systems /computers:	Rarely 13%
Monthly 1%	Daily 68%
Weekly 9%	N/A 8%
Calendaring deadlines:	Rarely 11%
Monthly 4%	Daily 61%
Weekly 18%	N/A 6%
Case management:	Rarely 1%
Monthly 6%	Daily 79%
Weekly 7%	N/A 8%
Client/Witness interviews:	Rarely 22%
Monthly 12%	Daily 25%
Weekly 22%	N/A 18%
Court filings:	Rarely 15%
Monthly 12%	Daily 36%
Weekly 24%	N/A 13%
Deposition summaries:	Rarely 37%
Monthly 17%	Daily 3%
Weekly 6%	N/A 37%
Document analysis/summary:	Rarely 9%
Monthly 16%	Daily 44%
Weekly 25%	N/A 7%
Draft Correspondence:	Rarely 1%
Monthly 1%	Daily 76%
Weekly 21%	N/A 0%
Draft pleadings:	Rarely 8%
Monthly 8%	Daily 47%
Weekly 26%	N/A 11%
General/factual research:	Rarely 4%
Monthly 16%	Daily 47%
Weekly 28%	N/A 4%
Investigation:	Rarely 13%
Monthly 11%	Daily 34%
Weekly 25%	N/A 17%
Law library maintenance:	Rarely 35%
Monthly 15%	Daily 6%
Weekly 4%	N/A 40%
Legal research:	Rarely 24%
Monthly 32%	Daily 16%
Weekly 21%	N/A 6%
Office matters:	Rarely 10%
Monthly 12%	Daily 50%
Weekly 18%	N/A 9%
Personnel management:	Rarely 30%
Monthly 12%	Daily 12%
Weekly 10%	N/A 36%
Prepare/attend depositions:	Rarely 34%
Monthly 18%	Daily 2%
Weekly 4%	N/A 41%
Prepare/attend closings:	Rarely 36%
Monthly 7%	Daily 3%
Weekly 1%	N/A 53%
Training employees:	Rarely 38%
Monthly 13%	Daily 15%
Weekly 8%	N/A 26%

29. *Please select all of your current practice areas from the following:* (All Respondents listed two or more areas)

Civil Litigation 56	Personal Injury 29
Corporate 37	Real Estate 27
Probate/Estates 20	Contracts 23
Public/Govmt 17	Trusts/Estates 15
Insurance 22	Family Law 21

Office Mgmt.	.9	Med. Mal.	.18
Employment	.15	Bankruptcy	.12
Work Comp.	.3	Criminal	.15
Intell. Prop.	.6	Tax	.6
Environmental	.4	ERISA	.4
Securities	.4	Elder Law	.2
Oil & Gas	.3	Energy/Util.	.3
Immigration	.1	Nat.Am/Tribal	.1
Other	.11		

Additional Note: In tabulating the survey responses, we felt it would be instructional to average Respondents' compensation information based on both type of employer and years of experience. Those results are listed below:

Salary Averages--Sorted by Type of Employer

Corporate:	.12%		
Salary	.$46,959	Overtime	.$846
Bonuses	.$4,416	Retirement	.$1,143
Insurance Co.	.7%		
Salary	.$43,788	Overtime	.$500
Bonuses	.$667	Retirement	.$1,654
Public/Govmt:	.21%		
Salary	.$34,162	Overtime	.$786
Bonuses	.$318	Retirement	.$1,604
Private Firms:	.60%		
Salary	.$35,195	Overtime	.$1,095
Bonuses	.$1,440	Retirement	.$2,708

Salary Averages--Sorted by Years of Experience

1-5 Years:	.18%		
Salary	.$31,698	Overtime	.$1,402
Bonuses	.$1,008	Retirement	.$1,941
6-10 Years:	.30%		
Salary	.$37,609	Overtime	.$473
Bonuses	.$1,251	Retirement	.$3,034
11-15 Years:	.26%		
Salary	.$40,223	Overtime	.$505
Bonuses	.$2,389	Retirement	.$1,849
16-20 Years:	.7%		
Salary	.$43,448	Overtime	.$3,455
Bonuses	.$1,358	Retirement	.$3,358
20 + Years:	.18%		
Salary	.$33,243	Overtime	.$1,112
Bonuses	.$1,529	Retirement	.$3,972

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
6/07/01	**ALI-ABA Satellite Broadcast: Annual Spring Estate Planning Practice Update** 10:00 am – 2:00 pm. $175.00. To register call ALI-ABA at 1-800-CLE-NEWS, or fax to 1-215-243-1664.	4
6/08/01	**Annual Legal Assistant Seminar** 8:30 am – 4:30 pm (lunch provided). $65 for Division members, $75 non-members. No charge to attend only the business meeting. Annual Business Meeting, Basic Accounting Principles for Paralegals, Privacy Rights Issues, Mediation/Arbitration for the paralegal.	6 (includes 1.5 hrs. ethics)
6/15/01	**New Lawyer Mandatory** 8:30 am – 12:00 noon. Westminster College, Gore Auditorium. This seminar fulfills the ethics requirements for new lawyers.	3
6/21/01	**Business Law Workshop: 2001 a Cyberspace Odyssey** 5:30 – 8:30 pm $40 for YLD, $55 all others. Presenters: Marsha Thomas and Erik Johnson.	3 NLCE/CLE
6/21/01	**Practicing Law Institute Satellite Broadcast: Intellectual Property Issues in Structuring and Drafting Agreements** 9:00 am – 4:00 pm. $299. To register call 1-800-260-4PLI or fax to 1-800-321-0093.	3
7/4-7/07/01	**Annual Convention, Sun Valley Idaho.** $245 before 6/4. Legal asst. registration $122.50 before 6/4. All registration $275 post-dated after 6/4. See on-line for agenda.	12 CLE (includes up to 3 hrs. ethics & 3 hrs. NLCLE)
8/17&18/01	**Annual Securities Law Seminar** Jackson Hole Wyoming, Snow King Resort. Watch on-line calendar for updates.	TBA
8/17/01	**Criminal Law Workshop: DUI Defense, I Fought the Law and I Won!** 5:30–8:30 pm. $40 for YLD, $55 all others.Defending a DUI in court and in front of the Drivers License Division, intoxilizer test.	3 NLCE/CLE

COMING THIS FALL:

Computer Essential Workshop Series. Classes include e-mail essential, courtroom computerized presentations, research on the internet, designing a web site, electronic filings, case management and office management software. Classes taught Wednesdays during the lunch hour for 1–2 hours of credit. Questions or suggestions please call 297-7033.

Fall Schedule is packed with CLE options. Watch the web site for agendas.

Full agendas can be found for each of these programs on our web site at: www.utahbar.org/cle. Need CLE? Try an on-line course for self-study credit.

REGISTRATION FORM

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

Registration for (Seminar Title(s)):

(1) _____ (2) _____

(3) _____ (4) _____

Name: _____ Bar No.: _____

Phone No.: _____ Total $ _____

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

Exp. Date _____

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

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

CONSTRUCTION TRANSACTIONS ATTORNEY Fennemore Craig is seeking an attorney with 2-5 years of experience with complex construction transactions for an expanding statewide practice based in its Tucson office. Candidate should have excellent professional credentials, possess a working knowledge of and strong interest in matters of concern to owners of construction projects, and be willing/able to respond quickly and effectively to client needs. Experience with construction & design contracts is required. Prior experience representing owners &/or developers is ideal. Please send resume, together with summary of construction transaction practice experience to: Laura Zilmer, Recruitment Coordinator, Fennemore Craig, 3003 N. Central Avenue, Suite 2600, Phoenix, AZ 85012, Fax (602) 916-5957, recruiting@fclaw.com, www.fennemorecraig.com

Managing Attorney The Disability Law Center seeks qualified applicants for the position of Managing Attorney responsible for: managing legal advocacy, quality assurance and supervision processes; supervising the short term assistance team and case acceptance system; providing routine and complex civil legal services. Qualifications include: five years' experience, disability or civil rights law preferred; management, leadership and supervisory skills; persons with disabilities strongly encouraged to apply. Submit resume, writing sample and cover letter to: Fraser Nelson, Disability Law Center, 455 East 400 South, Suite 410, Salt Lake City, Utah 84111. (801) 363-1347, (801) 363-1437 (fax)

ASSOCIATE POSITION – Tesch, Vance & Miller, LLC, a general practice law firm in Park City, Utah, is seeking an associate attorney with two to five years experience to begin working immediately. Litigation, estate planning, probate, or business experience preferred, but not required. Send resume to Dwayne A. Vance, Tesch, Vance & Miller, LLC, P.O. Box 3390, Park City, Utah 84060-3390; dwaynev@teschlaw.com; fax number (435) 649-2561.

DEPUTY CIRCUIT EXECUTIVE The Office of the Circuit Executive for the Tenth Circuit Court of Appeals is accepting applications for the position of Deputy Circuit Executive. The Deputy Circuit Executive reports to and assists the Circuit Executive in providing administrative support in the areas of personnel management, policy analysis, automation, budget, space and facilities, alternative dispute resolution policies and programs, and court administration projects. The position serves as second-in-command to the Circuit Executive with both administrative and supervisory responsibilities for the office. The position requires a minimum of six years of progressively responsible administrative and professional experience, including at least three years of substantial management experience. Excellent written and organizational skills, as well as very strong interpersonal and analytical skills, are required. A bachelor's degree is required. A law degree or post graduate degree in judicial administration or related fields is preferred. Strong knowledge of automated systems and federal court experience are likewise preferred. The starting salary range is $89,195–$104,611, depending on qualifications. To apply candidates should submit a cover letter, resume, and writing sample to: Elisabeth A. Shumaker, Circuit Executive, Byron White United States Courthouse, 1823 Stout Street, Denver, CO 80257. All applications must be received before 5 p.m. on Friday, June 29, 2001. The court is an Equal Opportunity Employer.

IMMEDIATE OPENING: 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, crown molding, conference room, reception area, law library, secretarial and paralegal support, computer network, time and billing system, phones, etc. Send resume and/or information to: DURBANO LAW FIRM, 476 W. Heritage Park Blvd., #200, Layton, Utah 84041.

UNIVERSITY OF UTAH COLLEGE OF LAW invites applications for a Legal Methods teaching fellowship for a full-time position during the 2001-02 academic year. Legal Methods is a first-year course focusing on legal reasoning. writing and other lawyering skills. J.D. degree, excellent academic and writing credentials, and strong interpersonal skills required. Prior teaching, judicial clerkship or practice preferred. Nine-month contract and excellent benefits. Equal Opportunity Employer. Send letter, resume with references, law school transcript, and writing sample to Legal Methods Search Committee, University of Utah College of Law, 332 South 1400 East Rm 101, Salt Lake City, Utah 84112.

Attorney Position Available: Twenty attorney firm with principal offices in Phoenix, Arizona seeks experienced supervising attorney for Salt Lake City Branch Office. Candidate should have 10-15+ years experience in Plaintiff's personal injury, insurance defense or coverage. Excellent compensation package available. Send Resume to Box #13, c/o Utah State Bar. All responses are confidential.

ATTORNEY POSITIONS AVAILABLE – COLORADO Thirteen lawyer, AV rated firm in western Colorado seeks two associates, one atty with 0-4 years' general civil experience, another atty with minimum three years health law experience. Excellent academic credentials, writing and analytical skills required. Sophisticated practice in a small town setting with year-round outdoor recreational opportunities. Send resume and writing sample to: Firm Administrator, Hoskin, Farina, Aldrich & Kampf, Professional Corporation, Post Office Box 40, Grand Junction, Colorado 81502.

Associate Attorney. Full-time attorney position available at Park City law firm of Strachan & Strachan. Review website www.strachanlaw.com for list of clients and biographies. Two to four years litigation experience with no divorces or criminal defense work. Salary commensurate with background. Fax resume to Gordon Strachan 435-645-9429.

Get Litigation Experience Now in Family Law. Handle cases from start to finish, we provide you assistance as needed. Earn up to $50k/yr. Work at home according to your own schedule. Member of Utah Bar required. Fax resume to 801 964-1928.

Circuit Mediator – U.S. Court of Appeals for the Tenth Circuit seeks an attorney for its appellate mediation program to preside at mediation conferences in civil appeals. The primary purpose of the conference is to settle appeals and any related cases. Duties include leading discussions of the procedural and substantive legal issues involved, conducting analyses of an appeal's settlement value, and probing for each party's interest in an effort to help the parties create and explore options to continued litigation. An applicant must have substantial legal and mediation experience. Application may be made by sending a resume and supporting information to: David W. Aemmer, Esq., Chief Circuit Mediator, United States Court of Appeals, 1823 Stout Street, Denver, CO 80257. The starting salary range is $75,829 to $89,195 (CL-30 – CL-31), depending on experience. The court is unable to offer reimbursement for relcation expenses. No telephone calls, please. The court is an equal opportunity employer. **Application deadline is June 29, 2001.**

Estate Planning Attorney wanted for experienced, growth oriented financial planning company. International asset protection/tax planning a plus. Full compensation package including bonus. Immediate availability. Fax or e-mail resume to 801-266-0114/ hr@merrillscott.com

OFFICE SPACE/SHARING

ATTRACTIVE OFFICE SPACE is available at prime downtown location, in the McIntyre Building, 68 South Main Street. 1-15 elegant offices in different sizes, complete with reception service, secretary space, conference room, telephone, parking, fax machine, copier and library available. For additional information please call (801)531-8300.

Historic building on Exchange Place, leasing 1553 square foot office space on garden level with five offices, reception and secretarial areas, only $1650 monthly. Available on main level within a law firm is one office which includes receptionist, conference room, copier, fax and library. Parking stalls available. Contact Joanne Brooks @ 534-0909.

Salt Lake Rentals: Online reservation system for rental property during next year's winter events is now operational at www.stayutah.com. Advertising available. To reserve or list property or to find out more about advertising your products or services, check out www.stayutah.com today or email pattie@stayutah.com.

OFFICE SPACE FOR RENT. Prime downtown location. The Walker Center Building on second south between Main street and State street. Includes office space, fax, copier, conference room and kitchen. Call Penni @ (801)521-3464.

SERVICES

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

QUALIFIED DOCUMENT EXAMINER Linda L. Cropp. Board Certified, American College of Forensic Examiners, Fellow; National Association Document Examiners, International Graphonomics Society, Certified Fraud Examiners. Court Qualified Forgery Detection, Jury Screening, Behavioral Profiles, Witness Consulting, Testimony. ALL HANDWRITING SERVICES, Phone/Fax: 801-572-1149. email: allhandwriting@worldnet.att.net.

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

Fiduciary Litigation; Will and Trust Contests; Estate Planning Malpractice and Ethics: Consultant and expert witness. Charles M. Bennett, 77 W. 200 South, Suite 400, Salt Lake City, UT 84101; 801 578-3525. Fellow and Regent, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

Estate Planning: Online estate planning and business planning information is now available at www.utahestateplanners.com. Services provided for individuals, businesses and attorneys. Fixed fee and independent contractor relationships available. For more information, contact pchristensen@utahestateplanners.com

UTAH STATE BAR ADDRESS CHANGE FORM

The following information is required:

- **You must provide a street address for your business and a street address for your residence.**
- **The address of your business is public information. The address of your residence is confidential and will not be disclosed to the public if it is different from the business address.**
- **If your residence is your place of business it is public information as your place of business.**
- **You may designate either your business, residence, or a post office box for mailing purposes.**

***PLEASE PRINT**

1. Name _____ **Bar No.** _____ **Effective Date of Change** _____

2. Business Address – <u>Public Information</u>

Firm or Company Name _____

Street Address _____ Suite _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail address (optional) _____

3. Residence Address – <u>Private Information</u>

Street Address _____ Suite _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail address (optional) _____

4. Mailing Address – Which address do you want used for mailings? (Check one) (If P.O. Box, please fill out)

_____ Business _____ Residence

_____ P.O. Box Number _____ City _____ State _____ Zip _____

Signature _____

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