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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: Mount Superior, Alta, Utah, by Kerry P. Eagan, Utah Bar member who serves as Chief Administrative Officer for Lancaster County Board of Commissioners, Nebraska.

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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

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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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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.

A Prayer for the Professions

by Scott Daniels

The Utah Supreme Court has established a commission to address the problem of unprofessionalism in the legal profession. This commission is to be chaired by Justice Mathew Durrant. The Court has expressed real concern that this problem is serious and growing. Courts across the country have established similar commissions to study whether the phenomenon of incivility and unprofessionalism is becoming more widespread or is limited to a few bad actors. These commissions are studying possible responses the courts or the Bar should make.

Partly because I didn't get around to writing a President's Message this month, and partly because an article I wrote several years ago seems quite timely in light of this new commission, I am submitting the following rerun.

There was a time when the only occupations known as "professions" were the military, the law, medicine, and the ministry. What do these "professions" have in common today? We all take ourselves too seriously.

Of course, it's hard to be humble when you command the immense destructive power of armies and navies. It's hard not to be proud when you direct the awesome and majestic power of the government and the law. It's hard not to be arrogant when you confront disease and even death itself and provide healing and life. It's hard not to take yourself too seriously when you speak for God. Indeed we in the traditional professions may stand a little taller than the mere mortals that surround us. No wonder everyone in the United States of America hates us.

Even I hate us sometimes. Can't we lighten up just a little? Do you know why there are so many lawyer jokes? Because lawyers are easy pickings for those looking for a laugh at the expense of an arrogant, self-important creep. Let's face it: we have some bad apples in our barrel. Even Jesus disliked lawyers, and Jesus was an exceptionally tolerant fellow.

Arrogance is not at the heart of being a lawyer, however. More of us became lawyers because of examples like Atticus Finch than examples from *L.A. Law.* I know a large number of lawyers, their skills, and their reputations. In the comparatively small legal community of Salt Lake City, I run into lawyers in casual situations all the time. When I see a lawyer making a fool of himself (herself/itself) and an embarrassment of the legal profession, it's almost always the lawyer on the margins of the profession, widely known for ineptitude. It's usually these marginal ones who mention that they are lawyers as they complain to the waiter, or the dry cleaner, or the storekeeper, or act as if they are going to sue because the soup is cold or someone parked a car in front of their house. It's almost always the semi-competent who write the insulting letters; who bluster and threaten and accuse and attempt to intimidate.

Think about the last really uncivil letter or telephone call you received from another lawyer; or think about the last time you saw a lawyer in court full of sound and fury; accusing, blustering, and generally full of himself (herself/itself). I'll guarantee you that this lawyer fell into one of only three categories: 1) just out of law school, and may not know better; 2) an absolutely marginal lawyer with almost no practice experience except this case; or 3) one of a select list of about a dozen lawyers, statewide. Any judge can give you this list.

These jerks are our dredges. And there appears to be no cure. But, what can we do? Do you think requiring a certain number of CLE hours in bowling would make SOB lawyers into regular people? Making

them suffer and endure humiliation wouldn't help; they already did that in law school. And bluntly lecturing on proper behavior doesn't help either, because they just don't get it. It seems to be congenital. I wish we could just disbar them, but I don't think we could legally do that, even though "arrogant butthead" is not a constitutionally protected class or a suspected criterion.

Here's the thing: There are a certain number of people on this planet who are full of themselves, thinking they are God's gift to humankind. Not all of these have the aptitude in math to get into premedicine. There are a certain number of people who love to bully and intimidate. Not all of them have the physical abilities required to succeed in the military, police academy, or as gym coaches in junior high. There are people who believe that every word they speak is full of wisdom and gospel truth, and that they speak for, to, or with God. The best of these went into the ministry; the worst are institutionalized; most of the rest became journalists. Still there are some left over who went to law school.

Yes, my brothers and sisters of the Bar, some of the leftovers and dredges of these groups have found their way into the legal profession. If we can't shame them into repentance, at least, can each of us resolve to behave ourselves as ordinary, fallible mortals?

Perhaps the doctors will one day develop a pill which will cure the scourge of arrogance. On that glorious day may each of these doctors take one of the pills himself (herself/itself), and then they may deliver a truckload to the Law and Justice Center.

Amen.

Avoiding Legal Malpractice Claims

by Matthew L. Lalli

Most lawyers who are sued for legal malpractice feel like the police officer convicted of a crime. Like the police, lawyers tend to view themselves as the ones who solve problems, undo mistakes, and provide comfort and security to clients who usually are distressed. When the tables are turned, awkward does not even begin to describe the situation. Almost all lawyers who become defendants use terms like "agony," "hell," and "a lot of sleepless nights." Most lawyers take being sued about twice as hard as the average citizen. After all, cops are not supposed to go to jail.

Like most things in life, in the arena of legal malpractice an ounce of prevention is worth a pound of cure. With that objective in mind, the following are thirteen tips lawyers can follow to avoid legal malpractice claims or to enhance their chances of success should a claim be filed.

1. Don't be afraid to turn down a client. Whether you are a solo practitioner in a small town or a big firm partner in the city, the pressure to land new clients is a fact of life. Ironically, however, the most important client to your practice may be the one you turn away. Frequently, lawyers sued for legal malpractice will say they knew at the outset they should not have taken on the client who sued them. Beware of clients who fired their previous counsel or who have been turned down by other lawyers. Think twice about a client who has more litigation experience than you do, or the one who has nothing good to say about lawyers or the legal system. But most importantly, run from the clients who just don't feel right. Chances are you have good instincts. Learn to trust them.

2. Don't forget the small cases. There is a case that has been sitting on the corner of your desk, the end of your credenza, or the bottom of your pile, and you just cannot bring yourself to pick it up. You tell yourself you will work on it tomorrow, or the next day, or next week, because today you must devote attention to your big cases and your big clients. This is the attitude that will get you sued. Only rarely are lawyers sued by their most important clients or on the cases where they spend a great deal of time. Almost always it is the small case or the difficult client lawyers will neglect. The truth is, there are no small, insignificant cases or transactions on your docket.

3. Use effective retention agreements. A central but often overlooked issue in legal malpractice cases is the existence and scope of the attorney-client relationship. Lawyers frequently get sued by people they never thought they represented, or by clients they know they represent but on matters they did not think they were engaged to handle. Preparing specific engagement letters can help prevent these suits, or at least they can provide strong defenses if you are sued. The engagement letter need say nothing more than this: "Thank you for retaining me to represent you in the lawsuit entitled *Smith v. Jones,* now pending in the Third Judicial District Court, case no. 01-00345. Although I would be happy to represent you in other matters should the need arise, this current representation will be limited to the *Smith v. Jones* case." Moreover, many lawyers represent clients on multiple matters. Although it may seem like a hassle at the time, preparing separate engagement letters for each new matter, and avoiding general representations such as "corporate advice" or "general business matters," could be your salvation in a legal malpractice case.

4. Manage your clients' expectations. Many clients' exposure to the legal system is limited to what they see on television, which usually gives them unrealistic expectations about what you and the legal system can do for them, how long it will take to do it, and how much it will cost. Clients almost always believe their position

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is the correct one, and they expect to be vindicated in the courtroom or across the transaction table. Rarely do they view their legal predicament with objectivity, so they need their lawyer to explain concepts like the adversarial system, the neutral fact finder, varying interpretations of the law, competing policy concerns, inherent delays of litigation, controllable and uncontrollable expenses, and unpredictable outcomes. Without managing clients' expectations at the outset of the engagement – and periodically throughout – they will believe from watching "Perry Mason," "L.A. Law," "The Practice," and the O.J. Simpson trial that the best lawyer always wins. And if you don't, you may get sued.

5. Return your phone calls. When you first graduated from law school and took your first job, the first thing your first supervisor told you was to return your phone calls daily. Lawyers who get sued for legal malpractice almost invariably violate this rule. There is nothing clients resent more than being ignored by the lawyer they are paying to look out for their interests. Combined with unfulfilled expectations, unreturned phone calls make clients angry with their lawyer. A lawsuit is a predictable result.

6. Don't sit on your mistakes. Most lawyers pride themselves on fixing the mistakes of their clients, not making mistakes themselves. So when they do make mistakes – and all of us do – they naturally are embarrassed and instinctively want to prevent anyone else from knowing. But the biggest mistake of all usually is trying to hide your mistakes. Lawyer mistakes do not go away, they fester and grow. There is no need to make a public announcement, but talk to a partner or a trusted colleague for some objective advice. And most importantly, tell your client. Frequently, there is a solution to the problem, and if there is not, the last thing you want is a failure to disclose to add to a negligence claim.

7. Think twice before suing to collect unpaid fees. Being a lawyer carries an implied threat of suing anyone who crosses you. So you might get some mileage out of mentioning your occupation to an insurance representative trying to deny your coverage request, or to an auto mechanic trying to overcharge you. But throwing your legal weight around by suing clients when they fail to pay will land you in a legal malpractice suit ten out of ten times. There are times when suing your clients might be justified, just be aware of the certainty of a counterclaim and be confident you can prevail.

8. Be diligent in billing and collecting fees. The corollary to the rule against suing clients for fees is to keep your billings and collections under control so you are not tempted to sue. If you do not bill for three or four months at a time, your receivables may grow to the point where you cannot afford to walk away. The same may be true if you bill regularly, but do not collect. You do not have to work for free, and even your deadbeat clients will not expect you to. But they will take advantage of you for not billing and collecting regularly, leaving you in the awkward position of having to continue working pro bono or seeking to withdraw for non-payment, which almost assures you will not get paid without suing.

9. Write it in your calendar, and then write it in another calendar. The number one cause of legal malpractice, by an overwhelming margin, is missed deadlines. Most lawyers have a false sense that something so easy as meeting a deadline is not so hard. But the reality is that deadlines change, compete with other deadlines, and are just plain forgotten. So make a habit of writing all of your deadlines in your calendar, and then have a secretary or docket clerk make a backup calendar. And most importantly, remember to review your calendars daily.

10. Look for conflicts, not away from them. Few things look worse in a legal malpractice case than conflicts of interest. Conflicts frequently arise in non-litigation contexts, such as when the estate planning lawyer represents a trustor, trustee, and beneficiaries at the same time; when the real estate lawyer represents multiple members of a development joint venture; or when the corporate lawyer represents the buyer and the seller in a small transaction. For litigators, common conflicts traps include taking different positions on the same legal issue or representing the adversary of a former client in a factually related matter. Most potential or actual conflicts can be foreseen and resolved at the outset of a matter with an inquiry or a conflict waiver letter, which in the long run is a lot less trouble than taking a chance and getting sued.

11. All work and no play makes Jack a dull boy. Whether a lawyer's mistake takes the form of a missed deadline, an overlooked conflict, or sloppy billing practices, a common cause of the mistake is stress. Paradoxically, it takes a clear mind and a certain degree of calmness to practice law, while the practice of law tends to muddle the mind and agitate your disposition. To keep things in balance, everyone needs an outlet. So take a vacation, go for a run, or read a good book. You may lose a few billable hours but you likely will make fewer mistakes and enjoy lawyering more.

12. Be a lawyer or a business person, but not both. It takes only a short time in the practice of law to realize that many of your clients make more and work less than you do. The lure of being in the deal, taking equity, or running a business is there for many of us. While some people manage to be both lawyers and business men or women, they do so at a risk. Mixing law and business invariably will put you in the line of fire for allegations of conflicts of interest or self-dealing should the business do badly. As the lawyer in the mix, you are likely to be the first one sued and most aggressively pursued.

13. It really could happen to you. According to the American Bar Association, one of the top ten legal malpractice traps is the unwillingness to believe it could happen to you. The truth is, a lot of bad lawyers get sued for legal malpractice. But so do really good lawyers, new lawyers, old lawyers, big firm lawyers, and solo practitioners. There is no prototype legal malpractice defendant. We all are at risk. So be careful and buy insurance. You will be glad you did.

Aspirational Morality: The Ideals of Professionalism

by Jeffrey M. Vincent

EDITOR'S NOTE: *The following article is the first of a two-part series examining the professionalism movement, and current attitudes and efforts directed towards improving professionalism – including civility and integrity – in the legal profession.*

I. The Concept of Professionalism

In his oft-cited *Democracy in America,* Alexis de Tocqueville observed this about lawyers in the early nineteenth century: "If I were asked where I place the American aristocracy, I should reply, without hesitation, that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar."[1] An aristocrat himself, Tocqueville's observation was not likely intended as a denouncement of lawyer elitism. Rather, his purpose was probably to describe his perception, as a political journalist, of the critical role that lawyers played in the early development and maintenance of a reliable democracy. Most of the signers of the Declaration of Independence were lawyers. Many of America's early statesmen were lawyers. Perhaps in Tocqueville's view, the place occupied by lawyers in early American society was most comparable to the place the aristocracy was supposed to occupy in the classic European tradition – leaders and statesman dedicated to protecting and advancing the public good.

Such an assessment is appealing. Our profession would certainly be justified to take pride in a role as societal fiduciary. The same Tocqueville quote was cited favorably by a former president of the American Bar Association, Martha Barnett.[2] While allowing that lawyers "have never been popular," she asserted that:

> [L]awyers have always enjoyed a special status – and indeed a special place – in the hearts of Americans because the public believed that the legal profession had a mission that was bigger than the business of practicing law. They understood the concept of the 'lawyer-statesman' who combined practical wisdom and statesmanship to advance society and its democratic values.[3]

Whether and to what extent the legal profession actually occupied such an elevated status in the minds of the general public is a point of debate in the current "professionalism revival."[4] But without regard to the public's historical sentiment, it is generally accepted among the legal profession that lawyers have a duty or responsibility to conduct themselves in accordance with a high set of moral values. These high moral values – which seem, in relevant commentary and scholarship, universally to include integrity, civility, competence and independence, among other things – are the concept of professionalism. One commentator stated:

> At the most abstract level…everyone agrees that professionalism consists of something more than the ordinary rules of legal ethics that simply prohibit the worst sorts of behavior by lawyers. Professionalism is loftier – an attitude, manifest in actions, demonstrating that the lawyer holds to fundamental principles that transcend any immediate project. Professionalism makes one's vocation an aspiration. While ordinary lawyering can bring success, professionalism evokes praise.[5]

II. A Sense of Declining Professionalism

Certainly, most members of the legal profession endeavor to conduct themselves in a manner that is consistent with the ideals of professionalism. Nevertheless, professionalism problems are neither new nor rare.

For example, at a Yale University commencement in 1776, the speaker discouraged the young graduates from pursuing a legal career. His warnings to the students – that the legal profession was riddled with meanness and deception, was needlessly litigious, and postponed trials in order to earn higher fees – could easily have been lifted from the editorial page of a contemporary newspaper.[6] The commencement speaker's negative opinion is curious when juxtaposed with Thomas Jefferson's characterization of the lawyers who signed the Declaration of Independence in the same year as "demi-gods."

There is a widely-shared perspective that incivility among lawyers, rude behavior, disrespect for the courts and judges, and other non-professional interactions are taking place with increasing frequency.[7] Indeed, there is no shortage of law review articles, bar association studies and treatises that address the critical importance of improving professionalism. And as of the begin-

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ning of last year, professionalism commissions (called by a variety of names) had been established in ten states, and several others states have followed during the past year.[8]

III. Application of the Ideals of Professionalism

Unfortunately, there is by no means a consensus of opinion on how to apply the *ideals* of professionalism in the *practical* context of the legal profession. Many commentators are concerned that the current ethical rules will not be adequate to the task.

Another former president of the American Bar Association, Jerome J. Shestack, said:

> The problem that has evolved with the current rules is that they seemingly create minimum standards that have come to be regarded as the maximum statement of the prevailing ethical level. At the same time, the rules are often viewed the same way as people look at the Internal Revenue Service regulations – how far can I push the envelope without actually violating the regulations? Such a viewpoint does not enhance a strong, professional commitment to ethics.[9]

Similarly, another commentator has stated that the "contemporary evolution of ethical codes into quasi-criminal rules of minimum conduct largely abandons their role as a source of vocation or calling."[10] The distinction between the current ethical rules and professionalism is one of scope, with the ethical rules being a subset of the professionalism ideals. The distinction is also one of substance, with the ethical rules based in a "morality of duty" and professionalism based in a "morality of aspiration."[11] Under the current rules construct, errant lawyers are brought into compliance with ethical duties through punishment. Motivation to achieve the loftier ideals of professionalism – which would require the internalization of certain shared moral values – will undoubtedly require a more multifaceted approach reliant on cooperation at both individual and institutional levels.

Both internal and external justifications will influence the adoption and implementation of improved professionalism habits. Internal justifications, which are more personal in nature, might include the assertion that acting with courtesy, dignity and respect is "a better way to live," or will provide a more fulfilling professional life, or will enable the lawyer to become a more effective advocate because of the resulting respect she receives.[12] External factors are more philosophical in nature and might include the concept that a lawyer is a recipient of the public trust through the licensure to practice law, and therefore has a duty to act in the interest of the public good and for the purpose of obtaining justice. Another more elegant external justification is based on the political philosophy of a secular and democratic society, which contemplates that the people themselves make the laws and govern themselves. In that construct, the legal professional is the agent for positive (or potentially negative) change and therefore has the weighty responsibility to infuse the legal process with societal context.[13]

It is anticipated that a forthcoming second part of this article will examine some of the suggested causes of the perceived decline in professionalism, as well as existing and proposed methods for improved professionalism education.

1 Alexis de Tocqueville, 1 *Democracy in America* 355 (Henry Reeve Trans., Francis Bowen ed., 4th ed. 1864).

2 Martha W. Barnett, *Keynote Address,* 52 S.C. L. Rev. 453, 454 (2001).

3 *Id.*

4 Rob Atkinson, *Law as a Learned Profession: The Forgotten Mission Field of the Professionalism Movement,* 52 S.C. L. Rev. 621, 623 (2001). An additional point of debate is whether the reason for any elevated status was the public's admiration for a higher set of values or simply the result of anticompetitive practices. Skeptics suggest that the professionalism concept is either misplaced nostalgia for a hypothesized, happier era when law was purportedly less competitive and market-driven, or perhaps simply a ruse to allow lawyers to control the market for legal services and exclude potential non-lawyer contributors from the legal dialogue. *See generally* Dean Kilpatrick & Robert L. Nelson, *Professionalism from a Social Science Perspective,* 52 S.C. L. Rev. 473, 477 (2001); Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession,* 2 (2000). This debate is quite involved and is beyond the scope of this article.

5 Timothy P. Terrell, *Professionalism as Trust: The Unique Internal Legal Role of the Corporate General Counsel,* 46 Emory L. J. 1005 (1997).

6 *See* Barnett, *supra* note 2, at 453.

7 *See* Rhode, *Professionalism,* 52 S.C. L. Rev. 458, 467-68 (2001).

8 Florida, Georgia, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, South Carolina, and Texas all had such commissions as of the beginning of last year. A.B.A. Standing Committee on Professionalism, *A Guide to Professionalism Commissions ix,* 4-6 (2001) (hereinafter, the *"Guide to Professionalism Commissions"*). Some of the commissions are organized differently, including not only in their mission and activities, but also in the way that they are operated and funded. Judges and lawyers who desire to establish a new professionalism entity in the future will consequently have an array of experiences on which to draw. An informal review of bar association websites reveals that other states have created similar commissions since the publication of the *Guide to Professionalism Commissions,* and the creation of such commissions is being planned in other states, including Utah.

9 Jerome J. Shestack, *Taking Professionalism Seriously,* A.B.A. J., Aug. 1998, at 70.

10 Roger C. Cramton, *On Giving Meaning to "Professionalism",* Teaching and Learning Professionalism 7, 10-11 (1997). For more information on the history of the A.B.A. Model Canons of Ethics, *see* Frank X. Neuner, Jr., *Professionalism: Charting a Different Course for the New Millennium,* 73 Tul. L. Rev. 2041, 2042-43 (1999).

11 *Id.*

12 *See* Barnett, *supra* note 2, at 456; *see also* Justice Matthew B. Durrant, *Civility and Advocacy,* Utah Bar J. (June-July 2001).

13 Atkinson, *supra* note 4, at 627.

Judicial Independence and the Blame Game: The Easiest Target is a Sitting One

by Stephen Kelson

I. Introduction

When discussing judicial independence in Utah, many think about the relatively recent arguments and struggles that have occurred, and certainly will continue to occur, between the Utah judiciary and the Utah legislature. Where the judiciary has continually argued the necessity of maintaining its independence, the legislature has argued for greater judicial accountability. However, when considering the issue of judicial independence, little emphasis has been placed on the extensive harm that parties and their attorneys can have on the judiciary. This article examines the threat to judicial independence when a judge renders a politically unpopular decision and/or vindictive parties and attorneys accuse a judge of improper behavior. First, this article examines judicial accountability as it exists in Utah. Second, it discusses the public perception of judges. Third, it discusses methods by which public perception can and at times is used as a tool against judges and judicial independence, and its effect upon the judiciary. Fourth, it suggests some practical solutions to aid in protecting judicial independence in Utah.

II. Judicial Accountability

Since the founding of our nation, the branches of government at both the federal and state level have been in an ongoing debate and struggle involving issues of judicial independence and accountability. Although the judiciary is considered a separate branch of government, in reality it is dependent on the executive and legislative branches in many significant respects, including the appointment and tenure of its judges. At the state level, local governments continuously struggle with the issues surrounding judicial appointment, retention and accountability. Utah is no exception. Utah's process for selecting and retaining judges has undergone significant changes throughout its history. In its current form, judges are nominated by commissions, appointed by the governor, confirmed by the senate, and retained through periodic unopposed retention elections. Both the American Bar Association and American Judicature Society have expressed their support of this process. Several amendments to the statutes governing Utah's judicial nomination commissions were made in 1994, and since that time, issues concerning the merit process and retention elections have regularly been raised. The struggle between judicial independence and accountability remains a simmering topic in Utah.

Although judicial independence in Utah is considered a vital necessity, the majority would most certainly agree that judicial accountability is just as important. To insure judicial accountability, Utah has adopted several nationally established processes, including: judicial performance evaluations, retention elections, and the establishment of a Judicial Conduct Commission.

Rule 3-111 of the Rules of Judicial Administration sets forth the process and criteria for certifying judges for retention elections or reappointment. After three years of experience on the bench, and every seven years thereafter, the Judicial Council administers performance evaluations to aid in determining whether to certify judges for retention elections or reappointment. The Judicial Council takes several criteria into account in its evaluations including: integrity, knowledge and understanding of the law and judicial branch rules, ability to communicate, preparation, attentiveness, dignity and control over proceedings, skills as a manager, and punctuality. Furthermore, judges must meet certain standards in a variety of areas including: performance as measured in surveys of attorneys and jurors that appear before the judge; compliance with case under advisement standards; compliance with education standards; substantial compliance with the Code of Judicial Conduct and the Code of Judicial Administration; and physical and mental competence. Once the process is completed, the Council's determination to certify or not to certify a judge is provided to the Office of Lieutenant Governor for publication in the voter information pamphlet.

Following the performance evaluation process, Utah judges are then subject to unopposed retention elections, allowing the public the opportunity to review the voter information pamphlet and determine whether the individual judges of their districts meet their expectations and vote as to whether or not to retain those

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judges. If fifty percent or more of the voters vote to retain a judge, the judge stays. If a judge receives less than fifty percent, that judge is removed.

When issues arise as to a judge's professional conduct, complaints can be made to the Judicial Conduct Commission. Although the Commission itself has no authority to impose discipline, it performs confidential investigations and advises the Supreme Court, which imposes discipline. Where removal from the bench may be necessary in cases of unfitness and misconduct, this method of investigation and discipline protects judges' independence from public sway in individual cases.

Through these various methods, judges in the state of Utah are made accountable to attorneys before the court, jurors, the Judicial Council, the Judicial Conduct Commission, and the public.

III. Public Perception of the Judiciary

Although the greatest threat to judicial independence comes from the assertion of power by the other two branches, the public's perception can damage the institutional independence of the judiciary. In order to do its job properly, the judiciary must have the public's moral authority. Without it, the courts will not have the support of the legislature or executive which enforces its judgments and grants it resources to operate. Unfortunately, public perception generally is against the judiciary, especially in high profile cases where everything a judge does comes under public scrutiny.

Recent polls show that the public does not have a positive perception of the courts and judges.[1] Judges are often perceived as uncaring and arbitrary. In general, the public does not understand how or why a judge comes to any given ruling, and as a result, public perception of the judiciary nationwide is continually declining. As Judge J. Thomas Greene stated at the Federal Bar Association's Annual Litigation Practice Seminar on November 3, 2000:

> Public perception of our system seems to be that the adversary system is broken, the jury system is not working properly, the amount of justice meted out depends on the amount of money a person has, there is a disparate and unequal treatment of the races, lawyers are greedy and judges are insensitive. Moreover, extensive surveys have revealed three basic things about public perception of our civil and criminal justice system. First, that the general public knows little or nothing about how our courts function. Second, that there is an underlying feeling of hostility toward the third branch of government. And third, that what people do know or think they know about the courts comes mostly from sound bites, television dramas or sensational and atypical high profile cases. In general, the portrayals of our judicial system and the legal profession by the media provide entertainment rather than the reality of how our justice system works.[2]

The media have a substantial role in the public's perception of the judiciary, by giving the general public glimpses of the actions and decisions of the judiciary. However, the media do not necessarily convey decisions of a court accurately. As Justice Michael J. Wilkins stated at the Utah Bar Foundation's annual luncheon on November 7, 2000:

> Please don't misunderstand me. I am not suggesting that the legitimate media intentionally fail in the effort to be accurate, or fair. Quite the contrary. My experience with individual reporters, and with those who control and direct news operations, is that they are well intentioned, hard working, and dedicated to the notion of the free press being the first and best defense of freedom for us all. Don't tell anybody, but I actually happen to believe that too.
>
> No, my concern with the working press as it relates to courts, and equally to other governmental operations, is not a lack of good intentions. My concern is with the lack of basic understanding, and the absence, almost the seemingly exclusion of legal expertise in reporting on courts. I believe it is incumbent on any person or organization that sets itself up as the full and fair representative of the rest of us as watchdog, or observer, or reporter, to be properly prepared to report accurately…
>
> More relevant to my daily experience, the media rarely note that the judge who was just reversed by the supreme court was also not reversed in thousands of other decisions made with the same degree of devotion and within the same demanding rules and time constraints.
>
> My concern for the press is that by their own pronouncement, they act to inform the rest of our citizens what courts and lawyers do, and why. I think some of them have found it easier to simply act as critics most of the time. Anyone can criticize something they don't fully understand. The more noble undertaking would be to only criticize after assuring that both the reporter, and the readers or listeners, fully understand what actually happened, and

why. Then criticize away.[3]

A judge remains largely anonymous to everyone but courthouse regulars until there is a high-profile criminal trial. Too often the public then hears the media, politicians, and organizations criticize judicial decisions and/or the judges that make them because they are unpopular, at least to those criticizing them. However, judges cannot simply base their decisions upon what the majority of people might want or think. Because the judiciary acts independently of public opinion, and instead bases its decisions upon the law as set forth in Utah statutes and case law, it continually comes under criticism by those who do not understand or agree with the outcome. Furthermore, the criticism of an individual judge can quickly become an institutional indictment.

IV. Public Perception as a Tool

Unfortunately, there are cases where the public's perception is used as a tool against the judiciary. We have seen this in recent years, where nationwide, attorneys, parties, victims, and politicians have made public attacks against judges and the judiciary, acting vindictively, for purposes of intimidation, in hope of obtaining certain results, reassignment to another judge, and even simply to be seen in the media for political purposes. Instead of going through the legal process or legal recourse, these critical attacks are made through the media, where a judge ethically has no recourse. It is necessary to examine why these attacks are happening and their effects on the judiciary.

Many perception difficulties that judges encounter do not involve issues of ethical behavior, legal violations, neglect, or a failure of duty. Rather, they arise out of the working relationships with the parties and attorneys that appear before or have judicial contact with a judge. There is almost always someone on the other side of every legal issue who does not like a judge's decision, and there is always someone who feels they have lost control or are losing something. This loss can happen in a number of ways: first, an individual becomes severely frustrated with the system during the process; second, a litigated ruling does not come out in the individual's favor and he/she is unprepared to face the loss; or third, a litigated ruling comes out in their favor but it does not represent a solution to meet their needs.

When things "go wrong" in court, parties and even their attorneys often look for someone to blame, and the easiest target is the judge. It has been my unfortunate experience to witness rare occasions where attorneys have acted inappropriately in court, slammed books down on tables, made grandstanding remarks and unfulfilled promises to "prove you [the judge] wrong," and have openly and publicly mischaracterized facts and circumstances of a case to the media, attacking a judge's reputation and credibility in order to save face or cover up their own lack of preparation and improper conduct. Fortunately, these experiences have been the extreme exception. The vast majority of the members of Utah Bar are above such tactics, and continually act as professionals, in and out of court, even when they disagree with a judge's decision.

The effect of such attacks upon judges in Utah damages the judiciary as a whole. As Judge J. Thomas Greene has pointed out "[T]he media is more likely to look for and report apparent flaws in the system rather than to extol its virtues."[4] The public hears a one-sided attack upon a judge without response. The perception is that the allegations must be true, otherwise the judge would respond. However, the general public does not understand that judges are substantially handicapped when public attacks are made against them. They cannot come out in the media and explain their rulings or publicly respond to criticism, at least about adverse perceptions concerning current cases. Where bar associations nationwide can potentially respond to such criticism and media attacks, their timing and content are often not effective to stem the harm already done.[5]

The criticism and attacks can give a judge a bad reputation and even affect the result of elections, including retention elections. Furthermore, such public attacks injure the principle of an independent judiciary and mislead the public as to the role of judges in a constitutional democracy. The vast majority of voters in judicial elections are not adequately informed about candidates and typically make decisions based on meritless considerations, including a judge's public image or recommendations of the media.

In a rare response to an attack upon Judge Baer, who sits on the U.S. District Court for the Southern District of New York, four judges of the U.S. Court of Appeals for the Second Circuit offered a ringing defense:

> The recent attacks on a trial judge have gone too far. They threaten to weaken the constitutional structure of this nation which has well served our citizens for more than 200 years.
>
> . . .
>
> When a judge is threatened with a call for resignation or impeachment because of disagreement with a ruling, the entire process of orderly resolution of legal disputes is

> undermined. Attacks on a judge risk inhibition of all judges as they conscientiously endeavor to discharge their constitutional responsibilities.[6]

In the long run, such public attacks against judges will inevitably erode the judiciary's independence. Judges will be unable to avoid considering the personal and political consequences of making an unpopular decision, and wondering where support might come from should an attack occur.

V. Practical Solutions

It has not been my intention to suggest that judges can "do no wrong." Clearly, if a judge has acted in clear violation of the Rules of Judicial Conduct, attorneys should act in accordance with established procedures in order to protect the judiciary system. However, baseless and vindictive attacks against any judge should not be tolerated. Several practical measures should be considered to protect the judiciary's independence from such unwarranted criticism.

First, we as members of the legal profession, both attorneys and judges, must continually act to retain and return dignity and civility to our profession. As the Preamble of Rules of Professional Conduct states, "a lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials." On an individual level, we should examine whether we are keeping up our standards of ethics. I refer readers to an article entitled, *A Pop-Quiz on Ethics,* by Judge Fred D. Howard, found in the February, 1996 issue of the *Utah Bar Journal,* also found on Lexis at 9 Utah Bar J. 38. This article provides a list of questions for attorneys and judges, aimed to stimulate thought and discussion concerning our ethical standards.

Second, we must educate ourselves. We must actively educate ourselves and voice our concerns about the harm being done to our judiciary by unwarranted, vindictive, and politically motivated attacks. Each of us must be prepared to act with the moral and personal courage to fight these attacks on the state and federal level.

Third, we must educate others. We have a moral and ethical responsibility to educate the public. We need to actively educate clients, our family, the media, even the guy next door, about misperceptions they might have concerning the judiciary. The problems of an under-informed electorate and media can be further resolved through additional bar sponsored education programs.

Finally, the judiciary must be provided with methods to effectively defend itself and the system against public criticism and personal attacks against judges. Currently, a judge in Utah can say and do nothing to clarify or defend his or her position when unfairly criticized. In 1999, ATLA appointed a Judicial Independence Committee, with three subcommittees to respond to unfair criticism, public education, and legislative-judicial issues. At that time, ATLA President Mark Mandell urged all state trial lawyers associations to establish similar committees. It is my suggestion that a similar committee be created in Utah to evaluate criticism of Utah judges, and to respond rapidly and timely to unjust criticism of judges or the courts when the failure to do so will cause irreparable harm to the fair administration of justice.

Other methods should be examined to continually better the legal profession in Utah and the public's perception of the judiciary. By taking an active role in the issue of judicial independence, we, as members of the Utah Bar, can aid in the administration of justice and prevent irreparable harm.

VI. Conclusion

As members of the legal profession and the Utah State Bar, we must continually act to retain and return dignity and civility to our profession. We have a duty to act responsibly in defense of the judiciary. Efforts to intimidate judges and thereby diminish the independence of our judiciary must not be tolerated. The moral authority of our courts, nationwide, is steadily declining. In the end, the effectiveness and independence of our judicial institution rests upon what hundreds of millions think of it, and we play a substantial role in that perception.

1 *See Perceptions of the U.S. Justice System,* February 1999; ABA Journal, July 1999 at 86; and The Harris Poll #51, September 6, 2000.

2 *See* Judge J. Thomas Greene, *Views from the Bench: Some Current Causes for Popular Dissatisfaction with the Administration of Justice,* 14 Utah Bar J. 35 (May, 2001).

3 Justice Michael J. Wilkins, *Views From the Bench: Keepers of the Flame,* 13 Utah Bar J. 34 (December, 2000).

4 Greene, *supra* note 2.

5 See Joseph T. Walsh, *Judicial Independence: A Delaware Perspective,* 2 Del. L. Rev. 1 (1999).

6 Douglas W. Hillman, *Judicial Independence,:Linchpin of our Constitutional Democracy,* 76 MI Bar J. 1300, 1303.

Commission Highlights

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

1. Scott Daniels updated the Commission on the activities of the Bar's special committee on the Unauthorized Practice of Law and the Delivery of Legal Services.
2. Scott Daniels stated that for some while now the Courts and Judges Committee had been working with the Commission to establish a formal policy on how the Bar could help judges respond to public criticism. He indicated that the Bar should act to inform the public that judges are not in a position to defend themselves.
3. Scott Daniels said a press conference had been held to publicize the efforts of pro bono lawyers who had been solicited to represent members of the public who may be suddenly called up to active military service.
4. Scott Daniels indicated that the Bar had been approached by the United States Olympic Committee and asked to organize a program in which lawyers would provide pro bono representation to athletes involved in matters before the Court of Arbitration for Sports during the Olympic Games.
5. Appointments were made to the Utah Legal Services Board of Trustees. Lisa Hurtado Armstrong, John A. Beckstead, Terry L. Cathcart, Carol Clawson, Mary Corporon, Thom R. Roberts, Erick Strindberg, Mary Tucker and Roland Uresk were reappointed to that Board.
6. Scott Daniels reminded the Commission that the National Conference of Bar Presidents will be held in January and the Western States Bar Conference will be in March of 2002.
7. Marlene Gonzalez gave a report on the membership of the Minority Bar Association and reported on mentoring activities and the need for more judges and attorneys.
8. John Baldwin indicated that there would be a $10.00 fee for certificates of good standing.
9. John Adams reviewed a memorandum summarizing the recent activities of the Commission's OPC Rules Review Committee.
10. The Commission discussed the usage of the Ethics Advisory Opinions. It was resolved that the opinions bind the OPC and give guidance to requesting lawyers.
11. C. Dane Nolan was asked to write an article for the Bar Journal, which would provide a primer on the disciplinary process and an indication of where the Bar was in improving the process.
12. Gary Sackett gave an Ethics Advisory Opinion Committee report.
13. A 2001 Commission photograph was taken.
14. Debra Moore gave a Judicial Council report.
15. John Adams reported on the follow up of the Task Force on Racial and Ethnic Fairness.

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.

Mock Trial Volunteers Needed

Volunteer judges are needed for the 2002 Mock Trials. All mock trials will be held during the months of March and April. If you are interested in signing up or would like more information, please visit our website at www.utahbar.org.

Notice of Direct Election of Bar President

In response to the its task force on Bar governance the Utah Supreme Court has amended the Bar's election rules to permit all active Bar members in good standing to submit their names to the Bar Commission to be nomination to run for President-Elect in a popular election and to succeed to the office of President. The Bar Commission will interview all potential candidates and select two final candidates who will run on a ballot submitted to all active Bar members and voted upon by the active Bar membership. Final candidates may include sitting Bar Commissioners who have indicated interest.

Letters indicating an interest in being nominated to run are due at the Bar offices, 645 South 200 East, Salt Lake City, Utah, 84111 by 5:00 P.M. on March 1, 2002. Potential candidates will be invited to meet with the Bar Commission in the afternoon of March 21, 2002 at the commission meeting in St. George. At that time the Commission will select the finalist candidates for the election.

Ballots will be mailed May 1st and will be counted June 3rd. The President-Elect will be seated June 27, 2002 at the Bar's Annual Convention and will serve one year as president-elect prior to succeeding to president. The president and president-elect need not be sitting Bar commissioners.

In order to reduce campaigning costs, the Bar will print a one page campaign statement from the final candidates in the Utah Bar Journal and will include a one page statement from the candidates with the election ballot mailing. For further information, call John C. Baldwin, Executive Director, 297-7028, or e-mail jbaldwin@utahbar.org.

Notice of Election of Bar Commissioners

First and Third Divisions

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for one member from the First Division and two members from the Third Division, each to serve a three-year term. To be eligible for the office of Commissioner from a division, the nominee's mailing address must be in that Division as shown by the records of the Bar.

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after January 2 and **completed petitions must be received no later than March 1.** Ballots will be mailed on or about May 1, with balloting to be completed and ballots received by the Bar office by 5:00 pm on May 31. Ballots will be counted on June 3.

To reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1) Space for up to a 200-word campaign message plus a photograph in the April issue of the *Utah Bar Journal.* The space may be used for biographical information, platform or other election promotion. Campaign messages for the April *Bar Journal* publication are due, along with completed petitions, two photographs, and a short biographical sketch **no later than March 1.**

2) A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their Division.

3) The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates are responsible for delivering to the Bar, no later than March 1, enough copies of letters for all attorneys in their Division. (Call the Bar for the count in your respective Division.)

If you have any questions concerning this procedure, please contact John C. Baldwin, at the Bar offices, 531-9077.

NOTE: According to the Rules of Integration and Management, residence is interpreted as the mailing address according to the Bar's records.

2002 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 2002 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Thursday, April 25, 2002. The award categories include:

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

Food and Clothing Drive Participants and Volunteers

We would like to thank all participants and volunteers for their assistance and support in this year's Food and Clothing Drive. We delivered six truck loads of donated items, received almost $2,500 in cash donations to specific shelters and $5,000 was donated to Jennie Dudley and her Eagle Ranch Ministries to feed the homeless.

We would also like to thank all of the individual contacts that we made this year and look forward to working with you next year.

Thank you all for your kindness and generosity.

Leonard W. Burningham
Toby Brown
Sheryl Ross
Shelley Goff

Olympic Court Plan – February 8-24, 2002

Judges were encouraged not to schedule trials during this time. We are not aware of any trials scheduled to date. However, if a jury is called, jurors will be expected to serve. If the juror can prove that he or she is a spectator or volunteer for the Olympics, jury service will be deferred until after the Olympics. ***No public parking will be allowed at the Matheson courthouse during this time.***

Matheson, West Valley and Summit Courts

The Third District Court Olympics Sub-Committee has adopted the following policies, due to the events of September 11:

- All Third District Courts will operate during normal business hours (8:00 a.m. to 5:00 p.m.) during the Olympic period of February 8-24, 2001. An on-call roster of district judges, staff and attorneys has been established in the event of mass arrests in Salt Lake County or Summit County. Any mass arrest hearings will be held at the jail of the respective county.
- Third District and Third District Juvenile Courts will process cases in which individuals are cited at an Olympic venue such as the E-Center (West Valley), Park City (Summit), Downtown Salt Lake (Matheson), or Kearns Ice Skating (West Valley).
- Any misdemeanor citation occurring at a location other than an Olympic venue will be processed under the same jurisdictional guidelines as specified in the Utah Code. A venue is considered to be a place where an Olympic event or activity is held.
- Felonies will be processed in the same manner as currently required.

Cases

- Arraignments, pre-trials, and preliminary hearings will be held as needed for in-custody only. Trials will not be held unless there are extenuating circumstances.
- Civil cases are limited to emergency settings only at the Matheson, West Valley City, and Summit courthouses.
- The Murray Court will hold protective order hearings where the Legal Aid Society will prepare ex-parte petitions and commissioners will hear domestic matters.
- A protective order signing judge will schedule time at the Murray Court for protective order signing. Summit County will continue to accept protective order petitions at Silver Summit.
- Ex-parte protective order petitions may also be filed at the Matheson Court, but Salt Lake County residents are encouraged to file at the Murray Court.
- No unlawful detainer matters will be signed (3 day summons), issued (orders of restitution), or heard (unlawful detainer hearings) at the Matheson Court during the Olympics.

Third District Juvenile Courts

- All Third District Juvenile Court Locations (Tooele, Summit, Sandy, Matheson) will be open 8:00 a.m. to 5:00 p.m. for filing of court documents, to receive payments, or to receive protective orders or warrants. In addition all probation and intake offices will be open to serve the public.
- Protective orders, pursuant to jurisdiction, will be processed by the Juvenile Court during the Olympic games at the Sandy Court location.
- Warrants will be processed at the Sandy Court location.
- The majority of citations issued to juvenile offenders are processed through the Assessment Diversion Division. This process will continue through the Olympic Games. ADD managers will soon meet with Law Enforcement agencies to review the process and to develop an expedited process for Olympic Visitors. (i.e. same day or next day appearance). Juveniles must be accompanied by a parent or guardian for juvenile court proceedings. Juveniles cited for committing minor offenses may exercise their right to due process and request a formal hearing before the court. They may alternately elect a non judicial review and clearance of the matter by a probation officer if they are not contesting the charge.
- If a juvenile is cited for an alcohol related offense the case may be handled as above. A second offense requires mandatory court appearance, and if convicted mandatory penalties including fines and performance of community service hours.
- Olympic guests will be treated as all others coming before the court.

- Child protective services will be available during the Olympic Games. Child protective matters (abuse, neglect, dependency) should be directed to the Division of Child and Protective Services hotlines (801) 538-4377 in Salt Lake City or 1 (800) 678-9399 statewide or by calling law enforcement 911.
- Juvenile courts will operate reduced schedules at the Matheson Court and Summit County Court which are both Olympic Court locations. The juvenile court will conduct all mandatory hearings for the district at the Sandy location. This will include shelter hearings, shelter arraignments, detention arraignments, warrants and protective orders. Detention hearings will be conducted at the Salt Lake Valley Detention Center.
- Shelter hearings will be conducted at the Sandy Court location. These hearings occur within 72 hours of removal of the child from home and will be scheduled daily during the Olympic games with a judge rotation each day. Shelter arraignment / pre trials will be scheduled within fifteen days of that hearing. Shelter arraignment / pre trials two weeks preceding the games will be set and held in Sandy. A schedule of judges is available through the Clerk of the Court, 238-7700.
- A juvenile detained by law enforcement may be taken to a juvenile receiving center if the offense is minor or there are no parents or guardians for the officer to release the child to. Receiving centers are located in the Salt Lake Valley and a temporary receiving center will operate in Summit County during the Olympic games. Receiving centers attempt to reunite parents and children. A juvenile probation officer may be called if the juvenile is charged with a crime to determine a course of action.

  If a juvenile is charged with a major crime, for which they may be held under Utah law, they may be booked into a juvenile detention center. Salt Lake Valley Detention Center is located in Salt Lake City and serves the Third District. If a juvenile is booked into detention, a hearing before a judge is scheduled within 48 hours, usually the next morning (not weekends or holidays) to determine if the juvenile should be held in detention or released to parents or guardian pending review of the charges by the DA. If held in detention, an arraignment hearing is scheduled on the charge within five (5) working days, before a judge. Charges are determined by the District Attorney's Office. If language barriers exist a juvenile may request an interpreter. A probation officer may meet with the juvenile and the family for a preliminary inquiry on the charges. A juvenile is entitled to representation by legal counsel in any juvenile court proceeding.
- A law enforcement officer has the discretion to release a juvenile offender. If a juvenile must be detained the officer may take the juvenile to a receiving center, or to juvenile detention depending on the nature of the violation. A list of holdable offenses for detention is available by calling the detention center, or in the Juvenile Court Olympic Manual.

  Salt Lake Valley Detention Center is located at 3450 South 900 West, SLC at (801) 261-2060. Juvenile receiving is located at 177 West Price Ave in SLC (801) 269-7500 or 10195 South Central Parkway, Sandy (801) 352-8680. In Summit County the location will be next to the Olympic Court at Silver Creek Junction, phone not available at this time.
- Juvenile court information is available by calling (801) 238-7700 during the work day 8:00 a.m. to 5:00 p.m. or after hours by calling an on call probation officer at (801) 550-6470.
- A juvenile may request a trial in a juvenile court proceeding. Juvenile defendants are not entitled to a trial by jury under Utah Law. A judge will preside over the case. All juvenile proceedings require a parent or guardian to be present. A juvenile is entitled to representation by legal counsel. If counsel cannot be afforded the court may consider a request for a court appointed attorney. The juvenile and parent or guardian must submit a document of impecunious circumstances for review by the court.

  Trial settings through the juvenile court may take up to three months depending on the circumstances. If the juvenile is not held in detention a trial date will be given at the arraignment / pretrial hearing. If a juvenile is being held in detention an effort will be made to expedite the trial setting. Interpreter services may be requested by a juvenile who has language barriers.
- Juvenile Courts in Utah consider victim requests for restitution payment upon the conviction of a crime and appropriate documentation of loss. Victim restitution payment is common in Juvenile Court cases. The victim may request of the court the opportunity to notice of the proceedings or to attend them. Notice of restitution ordered by the court is mailed to the victim. Victim rights questions may answered by contacting the District Attorneys office or the Office of the Utah Attorney General.

Discipline Corner

SUSPENSION

On August 3, 2001, the Honorable Bruce J. Lubeck, Third Judicial District Court, entered an Order of Suspension suspending J. Douglas Kinateder from the practice of law for a period of twenty months, beginning October 15, 2001, for violation of Rules 1.3 (Diligence), 1.15(a) and (b) (Safekeeping Property), 5.5 (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

Kinateder was grossly negligent in the management of his trust account. Kinateder did not promptly notify, deliver, and account for the client's and third party's funds. Thereafter, Kinateder paid funds owing to the clients and third party medical provider from his own funds. Kinateder was grossly negligent in failing to keep client and third party funds separate from his personal funds. Kinateder failed to act with reasonable diligence and promptness in representing a client in a personal injury matter. Kinateder continued to practice law while administratively suspended for failure to comply with mandatory continuing legal education requirements.

Mitigating factors include: personal or emotional problems; good faith effort to rectify the consequences of the misconduct involved; full and free disclosure to the Office of Professional Conduct prior to the discovery of further misconduct, and cooperative attitude towards proceedings; good character; physical disability; mental disability; and remorse.

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

DISBARMENT

On October 15, 2001, the Honorable Michael D. Lyon, Second Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment disbarring Stanley L. Ballif from the practice of law for violation of Rules 1.15(a) and (b) (Safekeeping Property) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

While employed at a law firm, in one case Ballif placed a client's settlement check into his personal account instead of the firm's trust account. Ballif temporarily used the client's money for his own personal use without authorization.

In another case Ballif failed to promptly notify the firm of a settlement in a client matter, failed to render a prompt accounting to the firm, and failed to immediately deliver to the firm its share of the settlement proceeds.

Aggravating factors include: prior record of discipline; dishonest or selfish motive; multiple offenses; substantial experience in the practice of law; and illegal conduct.

Mitigating factors include: full disclosure to the disciplinary authority prior to the discovery of any misconduct; cooperative attitude toward proceeding; and good character or reputation.

ADMONITION

On October 15, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney agreed to represent a client for the purpose of appealing the client's criminal conviction. The attorney failed to file a Notice of Appeal of the client's conviction before the time for appeal expired.

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

ADMONITION

On October 15, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The Office of Professional Conduct received several overdraft notices regarding a law firm's trust account. At all relevant times the attorney was a signatory on the law firm's trust account, and was responsible for the trust account. In one instance, the attorney deposited funds into the trust account to cover an overdraft, but the funds were not credited to the trust account until the following day. The attorney failed to verify that the deposit had been credited to the trust account before issuing two checks against the deposited funds. The bank honored the two checks leaving the trust account overdrawn. In another instance, the attorney wrote three checks against the law firm's trust account believing the checks to be operating account checks. There were insufficient funds in the trust account to cover the three checks. The bank honored the three checks leaving the trust account overdrawn.

PUBLIC REPRIMAND

On October 26, 2001, the Honorable Frank G. Noel, Third Judicial District Court, entered an Order of Discipline: Reprimand reprimanding William B. Parsons, III for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Parsons was retained to represent a client in a lawsuit. Parsons failed to respond to discovery requests on the client's behalf and failed to appear for a scheduling conference, resulting in dismissal of the case. Parsons failed to keep the client reasonably informed about the status of the lawsuit.

ADMONITION

On October 29, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney filed a Notice of Appeal to the United States Court of Appeals for the Tenth Circuit on a client's behalf. The Court sent the attorney notice of receipt of the Notice of Appeal and informed the attorney that the attorney needed to become a member of the Court's bar to proceed with the appeal. The attorney did not respond to the Court's notice, did not apply to become a member of the Court's bar, and did not file a request to withdraw from the appeal.

ADMONITION

On November 16, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.6 (Confidentiality of Information) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a family law matter. The attorney advertised for applicants to apply for a secretarial position in the attorney's law office. Several applicants applied and were interviewed for the position by the attorney. As part of the interview process, the applicants were given a typing test. The applicants were given access to the client's file and were given a tape of a dictated letter concerning the file to type. One of the applicants was a friend of the client and reported to the client that the applicant had been given access to the client's file and had typed a dictated letter from the file. The client's file and the dictated letter contained information relating to the attorney's representation of the client. The attorney admitted that the client's file and dictated letter had been used for the applicant testing, expressed remorse for doing so, and apologized to the client.

ADMONITION

On November 16, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme

Court for violation of Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a divorce action. The attorney was aware that in the divorce action, the parties were prohibited and restrained from dating during the pendency of the divorce including romantic relations with any individual. Prior to and during his representation of the client in the divorce action, the attorney engaged in a romantic relationship with the client.

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

SUSPENSION

On November 19, 2001, the Honorable Stephen L. Henriod, Third Judicial District Court, entered an Order of Suspension Suspending the Respondent From the Practice of Law for Violating the Court's Pervious Order of Suspension suspending Steven D. Brantley from the practice of law.

On May 10, 2000, the court entered an Order of Suspension suspending Brantley from the practice of law for a period of one year. All but three months of the suspension were stayed. Brantley was ordered to comply with Rule 25, Rules of Lawyer Discipline and Disability ("RLDD"), including filing a petition for reinstatement prior to the end of his one-year suspension. Brantley also was ordered to produce any trust account records upon ten days written notice by the Office of Professional Conduct ("OPC").

Brantley violated the Order of Suspension and Rule 25, RLDD by failing to file a petition for reinstatement prior to the end of his one-year suspension. Brantley further violated the Order of Suspension by failing to provide his trust account records to the OPC. The court issued an Order to Show Cause ordering Brantley to produce to the OPC and the court three days prior to an Order to Show Cause hearing his trust account records and an accounting of all client funds held by him in his trust account, business operating account, and any personal accounts through a specified period of time. Brantley violated the court's Order to Show Cause by failing to produce the trust account records as ordered.

Brantley is suspended from the practice of law pending a final disposition on his petition for reinstatement which he has now filed pursuant to Rule 25, RLDD.

SUSPENSION

On November 26, 2001, the Honorable William B. Bohling, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order Lifting Stay and Ordering Six Months Suspension suspending John Alex from the practice of law for six months.

On February 27, 2001, the court entered an Order of Suspension suspending Alex for six months but stayed the entire suspension. Among other things, the court's Order of Suspension ordered Alex to meet monthly with a court-appointed supervising attorney, respond to any informal complaints filed against him with the Office of Professional Conduct ("OPC") within ten days, submit to binding fee arbitration if requested by clients, and timely pay his Utah State Bar membership fees.

The court conducted several hearings to review Alex's compliance with its order and ultimately lifted the stay of suspension. Alex was suspended from the practice of law for six months, beginning October 19, 2001. He was given through November 19, 2001 to wind up his practice.

Alex violated the court's Order of Suspension by failing to meet with and respond to his court appointed supervising attorney, by failing to timely respond to informal complaints filed against him with the OPC, by failing to timely respond to a client's request for binding fee arbitration, and by failing to timely pay his Utah State Bar membership fees.

ADMONITION

On December 5, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 4.1(a) (Truthfulness in Statements to Others) and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

The attorney filed a Petition to Modify Child Support Order ("Petition") and Supporting Affidavit in an attempt to have the attorney's court-ordered child support payments decreased. At the time the Petition was filed, the attorney was in negotiations with a law firm concerning possible employment. After filing the Petition, the attorney made misrepresentations of material fact in a letter to opposing counsel concerning the attorney's pending employment with the law firm and the salary the attorney expected to earn there. The attorney's misrepresentations were made negligently.

The View From Here

by Judge Thomas M. Higbee

As I stand on the top of Angel's Landing in Zion National Park there are spectacular views in every direction. I can look north, up the canyon to the Temple of Sinawava, south down the canyon, east across the canyon to the Great White Throne, or west to the treacherous trail over which I just came. As I consider this "View from the Bench," I feel somewhat the same way. From my perspective early in the transition from lawyer to judge, I can look back down the canyon, reflecting on the almost 21 years in the practice which are still fresh on my mind, or up the canyon towards what I hope will be a long and productive career on the bench. Maybe a little of both will be in order for this article.

I have been on the bench for coming up on a year now. The transition has been interesting for a lot of reasons. As the time came for me to take the bench, I realized at some point that my life's work – being a lawyer – would soon be over. I couldn't help but look back on my career as an attorney: A brief stint with a great firm in Salt Lake, and then for 20 years as a general practitioner in Cedar City.

In those moments of reflection as I prepared to leave the practice, I thought often about what I had learned, things I wished I would have done differently, and what lessons I would take with me onto the bench. Here are a few of my thoughts looking down the canyon of almost 21 years of law practice. These thoughts are my own. Other members of the bar may or may not have had similar feelings. I offer them for what they are worth. I also realize that I am not plowing new ground here. Perspectives on the practice of law have been stated in the pages of the Bar Journal more eloquently than I can do, but here goes anyway.

1. Kudos to good lawyers and the legal profession. In my naivety as a law student, I somehow supposed that getting through law school was the toughest part about being a lawyer. I soon realized, and had reinforced often, that law school was a piece of cake compared to the rigors of the practice. Being a good lawyer is hard. The work we do is diverse, challenging, difficult, stressful, and always important. After all, as George Eliot stated, "The law and medicine should be very serious professions to undertake, should they not? People's lives and fortunes depend on them."

So amid the lawyer jokes, and notwithstanding what the public perception of lawyers may be, I reaffirm that the law is a noble profession. I am proud of my years as an attorney and commend every good lawyer for the invaluable service they perform in our society.

2. The pace of life. There was a seasoned practitioner in our town named Pat Fenton. By the time I came home to practice in Cedar City in 1981, he had already been a member of the bar for over 30 years. Pat often walked to work from his home, and sometimes even walked the several blocks to court from his office. He walked slowly.

The first few times I saw Pat walking to work I thought him quite silly. With time being so valuable and all, I couldn't understand why he would "waste" his time with an unproductive thing like walking.

By the time I had practiced ten years or so I wasn't so sure it was such a bad idea to walk to work. In some ways, I was a bit jealous that he could arrange to do it, and I couldn't. I no longer viewed it as silly and silently wished I had enough control over the pace of my life to do the same. But I was still convinced that given my schedule and all that I had on my plate,

JUDGE THOMAS M. HIGBEE was appointed to the Fifth District Juvenile Court in January 2001 by Gov. Michael O. Leavitt. He serves Beaver, Iron and Washington Counties. Judge Higbee received his law degree from the University of Utah Law School in 1980 . He was the senior partner in the law firm of Higbee & Jensen P.C. at the time of his appointment to the bench. Prior to that, he was a partner in the law firm of Chamberlain & Higbee. Judge Higbee served on the Southern Utah University Board of Trustees and is a member and past president of the Cedar City Kiwanis Club. He is actively involved in the Boy Scouts of America and was recently given the Silver Beaver Award. He and his wife Carolyn have five sons.

my pace was right for me.

Then, as I prepared to leave the practice, I decided that, at least in concept, I should have paid more attention to Pat's approach. For 20 years I could have – maybe even should have – taken more time to figuratively walk to work and didn't. I never did quite figure out how to manage the pace of my life so that I had time to do such things, but I am convinced that we would all do better to find time to walk to work (either literally or figuratively) more often.

Pat died a few months ago -– his walk having long since slowed to a shuffle – having been a member of the bar for over 50 years. I never had the chance to ask him, but my guess is that he did not view the time spent walking to his office or to court as wasted.

3. Priorities. There has been much ink spilled discussing how lawyers deal with priorities in their lives. The rub of the issue is that, because the practice is so demanding, other important things – even more important things – get left behind in the press of legal business. According to Joseph Story, "The law . . . is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favours, but by lavish homage."

I read an interesting article in the May 1994 issue of *Arizona Attorney* that I have often thought about. It is called "The $150 Sunset and Other Reflections on Life After Lawyering." One of the points the author, Rudy Eugholm, makes is that we lawyers sometimes measure what we do or don't do by what our time is worth. As you might have guessed from the title of the article, one scenario imagines a lawyer (undoubtedly with laptop in tow) sitting on the beach analyzing the reality that, since he or she bills at $150 an hour, it is "costing" him or her $150 to watch the beautiful sunset.

I found myself occasionally, perhaps even frequently, measuring what I did against what my time was worth – washing the car, fixing the leaky hose, or watching a baseball game. In my reflections on life after lawyering, I realize that often the $150 I might have made working on a given Saturday is not "worth" anywhere near the value of watching one of my sons play in a Jr. Jazz game. Sometimes the obligation to get the work done for the client simply precludes other options. But without in any way diminishing the efforts we all make to be the best lawyers that we can possibly be, in those discretionary times I should have tried harder to adjust my practice to allow time for more important things. There is something to be said for the motto of the Angler's Inn, that "[t]ime spent fishing cannot be deducted from a per-

son's life."

Even as I write these thoughts, I realize that the concept is easier said than implemented. In my years of practice I talked often about how to make more time to do other things. I resolved each year to do better. But somehow, I never quite got there.

4. It was worth it. Do you ever get asked, "Are you glad you became a lawyer?" I have to confess that at times in my practice I would have wavered in answering. But as I write this today, I say without hesitation that it was worth it. Even with all of the pressures, sleepless nights, and long hours I am glad that I became a lawyer. Lawyering is a noble profession, and those who are critical of it don't understand what it's all about. Sure, like any other profession, we have our problems and problem lawyers, but we are literally entrusted with the lives and fortunes of people. Theodore Roosevelt's memorable observation applies to lawyers in a unique way:

> It is not the critic who counts, not the man who points out how the strong man stumbled, or where the doer of deeds could have done better. The credit belongs to the man who is actually in the arena; whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again; who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement; and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory or defeat.

Now, as I finish up, let me shift my view to the present and future instead of the past. My, how perspective changes things! Good judging, like good lawyering, is hard work. The things that seemed so clear to me when I dumped my case in the judge's lap as an attorney are not so clear on the receiving end. Every judge wants to have the judgment and wisdom of Solomon on every issue that he or she decides, but wisdom and good judgment are hard-earned. And, just as I did as an attorney, as a judge – especially in the Juvenile Court – I often have a significant part of the lives and fortunes of people in my hands. While the demands of the bench are different than those of the bar in some ways, in the big picture judging is hard for the same reasons that lawyering is hard. And, for many of the same reasons that lawyering is worth it, judging is worth it too. I hope the road on up the canyon will be as exciting and rewarding as the journey to this point has been.

CLE Information for the Regional Conference

In addition to the opportunity of meeting with lawyers from all over the country in a post-Olympic environment that includes the option of world-class snow skiing, this Regional Conference offers a variety of outstanding seminars to meet a wide range of interests, all of which are approved for CLE credit. David Schwendiman, Assistant U.S. Attorney, and author of the Utah Public Safety Command System Book, and Edwin Firmage, professor of law at the University of Utah, a well-known civil rights attorney, will present what is likely to be a lively discussion on the topic of "Public Safety While Protecting Civil Rights and Liberties." The discussion is likely to include, among other things, ideas for implementing additional security in businesses, public areas, and the impacts the tragedies of September 11 have had on security and civil rights.

"Protecting Intellectual Property Rights," is the title of the next session that is sure to appeal to a variety of attorneys, especially transactional attorneys and commercial litigators. This session will be presented by Paul Fador, an attorney who has handled brand infringement, patent and trademark issues throughout the world, including those of the Olympic Committees for both the Sydney and Salt Lake Olympic games, Urvasi Naidoo, a British attorney, or solicitor, working with SLOC who handles brand and trademark protection for the Olympic Committee, and Arthur Berger, a partner at Ray Quinney & Nebeker, who specializes in brand and trademark protection and litigation and who has acted as outside counsel for SLOC in its brand and trademark protection. The discussion and presentations are likely to include brand protection, patent/trademark protection, copyright, software and intellectual property issues related to Internet use.

Diane Conrad, an attorney and the environmental specialist for the Salt Lake Olympic Committee, will discuss the topic of "Environmental Laws in a Growing Community." Ms. Conrad is on the cutting edge of new developments in the environmental law arena and due to her involvement with the Salt Lake Olympic Committee, has implemented some of the most innovative technologies available to protect the environment while permitting, constructing and operating facilities in environmentally sensitive areas. With the increasing significance that environmental regulation has on our lives and the practice of law, this will be a presentation attendees will not want to miss.

Many attendees will also enjoy meeting well-known athletes, attorneys and possibly agents who assist these athletes in a variety of ways. This CLE presentation is titled "The Legal Issues Facing America's Athletes." The topics this panel will address will likely include the interesting civil rights, publicity and endorsement issues faced by athletes and other professionals throughout the county. One interesting and unique aspect of this CLE will be the personal experiences of the athletes themselves. Although this CLE should provide an exciting brief look into the lives of some of America's premier athletes, the contract, civil rights and publicity issues have a broad range of applicability.

Message From the Chair

by Deborah Calegory

2002 . . . . hard to believe that a new year is underway! As with each new year, many of us make resolutions to try and improve ourselves, within and without. As resolutions are made let's not forget to include our careers. It is time to start out with a fresh, new perspective and to set realistic career goals. Some suggested career resolutions are:

- Be on time
- Organize your work area to make yourself more efficient
- Create checklists for routine procedures
- Get CLE in an area in which you do work

Whether you are starting new employment, or continuing with a long-time employment relationship, there is always something that can be done to make you, your surroundings, and your attitude, more positive.

I also want to update you on Legal Assistant Division ("LAD") matters that are currently pending:

Membership Directory
I am hopeful that by the time you read this you will have received your 2001-2002 Utah State Bar Legal Assistant Division Membership Directory. This Directory is an invaluable source of information on LAD Members and includes general information, together with specific practices areas. The Directory can be a valuable tool when looking for information in a specific area of the law. When you have specific questions, pick up your directory and contact a member who has expertise in that area. It is also beneficial when trying to do work in a different area of the State. Being from St. George I have been contacted numerous times by individuals from the Wasatch Front area who are looking for information on legal publications, service of process, court personnel, etc. in St. George. Use the Directory as a network tool to help save you time and effort.

Utah State Bar Mid-Year Meetings
Mark your calendars now and plan to attend the Bar mid-year meetings that will be held in St. George on March 21-23, 2001. The LAD will again be sponsoring a full-track of CLE that will be beneficial to legal assistants and attorneys alike. The CLE will be geared toward "practical application" of your skills. With the adoption of the revised Article 9 of the UCC and changes to the LLC and Corporation statutes, you may want to attend the session where a representative of the Utah Department of Commerce will be available to address questions regarding these and other issues you may have relating to the Department of Commerce. The LAD will also have tracks dealing with collaborative lawyering, and laying the foundation of a construction law case.

The LAD and the Legal Assistant Association of Utah will be co-sponsoring a luncheon on Friday the 22nd, following the morning CLE sessions. The luncheon will include an additional hour of CLE credit. This luncheon has been well attended in the past and is a great opportunity to network and get to know other individuals in the legal assistant field.

Bar Committee Work
The LAD will have representatives on the Bar's **Governmental Relations Committee.** This Committee is active during the time the Utah Legislature is in session. In accordance with the guidelines set forth by the Utah Supreme Court, this Committee studies and provides assistance on public policy issues, reviews and analyzes pending legislation, provides technical assistance to the legislature, the Governor, the Judicial Council and other public bodies relating to proposed legislation put forth each session. The Committee will examine proposed legislation for its effect on the practice of law and on the Bar, and will provide assistance to legislators in trying to bring proposed legislation into conformity with the Constitution and existing law.

The LAD has requested to be included as part of the **Supreme Court Study Committee on the Delivery of Legal Services.** This Committee will study five main issues (described in H.B. 2003):

1. increasing the availability of standardized legal forms for use in filing legal matters;
2. increasing the use of technology to make legal services available to the public;
3. allowing non-lawyers to provide charitable legal help;
4. allowing duly-authorized officers to represent their business entities; and
5. allowing independent lay professionals to perform certain functions now requiring an attorney.

This committee work will obviously have an impact on the legal assistant profession. We will keep you informed as work progresses.

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
03/01/02	**Intellectual Property Section Mid-Winter Institute** Wyndham Hotel, all day seminar (exact time TBA). Featuring Judge Randall R. Rader, U.S. Court of Appeals for the Federal Circuit.	7 (1 ethics)
03/09/02	**ADR Academy: Lawyering in ADR Processes – Part V Advocacy in Private Caucuses and Facilitating Resolution.** $30 Young Lawyers, $40 ADR Section members, $50 all others.	1.5
03/21, 22, & 23/02	**Utah State Bar Mid-Year Convention.** Keynotes for the 2002 Convention: Justice Michael J. Wilkins and Wisconsin Chief Justice Shirley S. Abrahamson. $180 early registration, $90 for Legal Assistant Division members, $140 for Legal Assistants, $210 for all after 2/21/02.	10 (up to 6 NLCLE, 1 ethics, and the Salt Lake Co. Bar Film)
03/28/02	**NLCLE Workshop: TBA.** 5:30–8:30 pm. $45 Young Lawyers, $60 all others.	3 CLE/NLCLE
03/29/02	**Native America Law Symposium:** Sponsored by the ENREL Section, Utah State Bar. University of Utah College of Law Moot Court Room. 8:30 am–4:30 pm. Price TBA.	Approx. 7

Unless otherwise indicated, register for these seminars by: calling in your name and Bar number to 297-7033 or 297-7032 OR faxing your name and bar number to 531-0660, OR on-line at www.utahbar.org/cle

Mid-Year Meeting Registration

Find your pull-out schedule and registration form for the Mid-Year Meeting in the center fold of this *Journal,* or register on-line at www.utahbar.org/cle
No other registration form will be mailed.

REGISTRATION FORM

Pre-registration recommended for all seminars. 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.

Registration for (Seminar Title(s)):

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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.

POSITIONS AVAILABLE

Small downtown litigation firm seeks associate with 3-5 years commercial litigation experience. Excellent credentials required. Salary commensurate with experience. Inquiries kept confidential. Please send inquiries to: Christine Critchley, Utah State Bar, Confidential box #15, 645 South 200 East, Salt Lake City, Utah 84111-3834 or reply by e-mail to: ccritchley@utahbar.org.

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Law firm in historical Salt Lake Stock and Mining Building at 39 Exchange Place has three office spaces available, $500 to $850. Two with separate secretarial spaces. Amenities include family law referrals from yellow page picture ad, receptionist, conference room, fax, copier, law library, parking, kitchen and optional DSL connection. Contact Joanne or Marcy @ 534-0909.

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Office: Attorney office in existing law office suite. Work area for secretary included $425. Second office available $275. Conference room, kitchen facilities, etc. Other amenities furnished. 7321 South State Street. Clayton Fairbourn 942-2780.

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For Years _____ and _____

Name:			**Utah State Bar Number:**			
Address:			**Telephone Number:**			
Date of Activity	**Program Sponsor**	**Program Title**	**Type of Activity (see back of form)**	**Ethics Hours (minimum 3 hrs. required)**	**Other CLE (minimum 24 hrs. required)**	**Total Hours**
			Total Hours			

Explanation of Type of Activity

A. Audio/Video, Interactive Telephonic and On-Line CLE Programs, Self-Study

No more than twelve hours of credit may be obtained through study with audio/video, interactive telephonic and on-line cle programs. Regulation 4(d)-101(a)

B. Writing and Publishing an Article, Self-Study

Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. No more than twelve hours of credit may be obtained through writing and publishing an article or articles. Regulation 4(d)-101(b)

C. Lecturing, Self-Study

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

D. Live CLE Program

There is no restriction on the percentage of the credit hour requirement, which may be obtained through attendance at an accredited legal education program. However, a minimum of fifteen (15) hours must be obtained through attendance at live continuing legal education programs. Regulation 4(d)-101(e)

The total of all hours allowable under sub-sections (a), (b) and (c) above of this Regulation 4(d)-101 may not exceed twelve (12) hours during a reporting period.

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

Regulation 5-101 – Each licensed attorney subject to these continuing legal education requirements shall file with the Board, by January 31 following the year for which the report is due, a statement of compliance listing continuing legal education which the attorney has completed during the applicable reporting period.

Regulation 5-102 – In accordance with Rule 8, each attorney shall pay a filing fee of $5.00 at the time of filing the statement of compliance. **Any attorney who fails to complete the CLE requirement by the December 31 deadline shall be assessed a $50.00 late fee. In addition, attorneys who fail to file within a reasonable time after the late fee has been assessed may be subject to suspension and $100.00 reinstatement fee.**

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

Date: _____ Signature: _____

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