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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: Utah's Mount Olympus, by Dana Sohm, Small Business Administration, Salt Lake City.

The *Utah Bar Journal* is published monthly by the Utah State Bar. One copy of each issue is furnished to members as part of their Bar dues. Subscription price to others, $45.00; single copies, $5.00. For information on advertising rates and space reservation, call or write the Utah State Bar offices.

Utah Bar JOURNAL

Volume 16 No. 1
Jan/Feb 2003

Letters Submission Guidelines:

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

Cover Art

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

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

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

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

The Utah Bar Journal

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Submission of Articles for the Utah Bar Journal

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

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

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

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

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

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

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

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

Who Are We? – The Demographics of the Utah State Bar

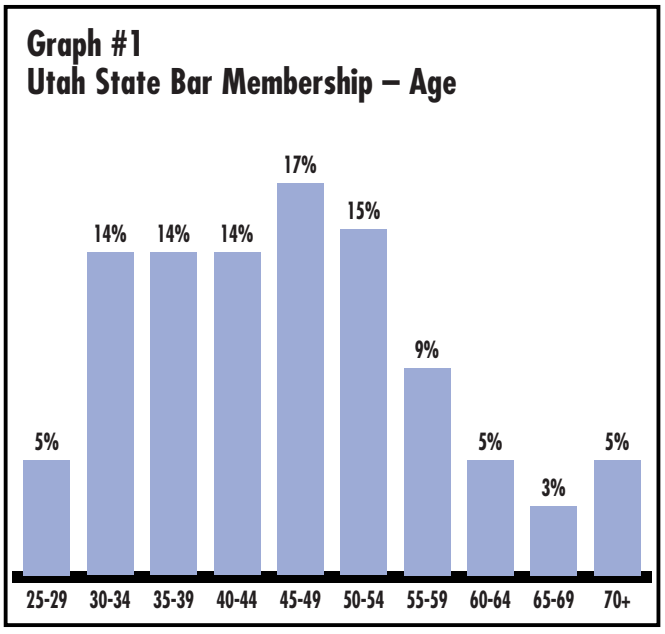
by John A. Adams

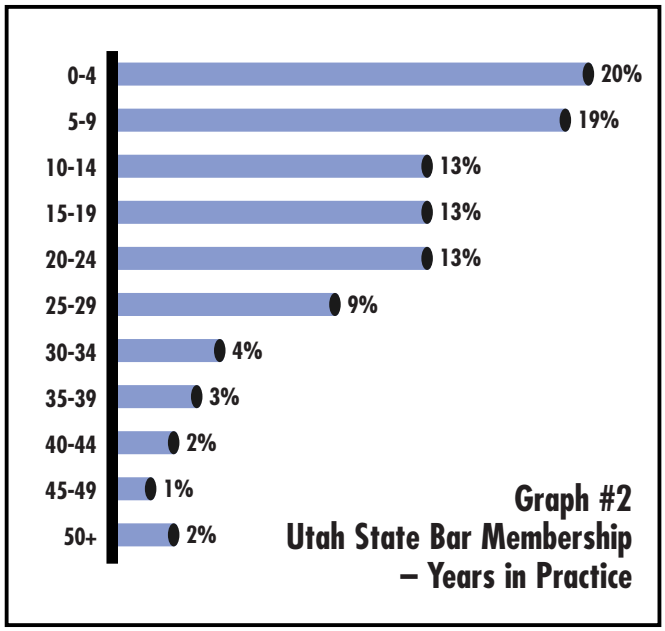
The Utah State Bar at the start of 2003 consists of 7,823 lawyers. Who are we? How old are we? How long have we been members of the Bar? How many of us are women and how many are men? How diverse is the ethnicity of our Bar? In what settings do we practice law? How many of us are not practicing law? Where do we live? With the help of some graphics, I'll answer these questions for you.

Age and Years in Practice

As you might expect, the vast majority of lawyers in Utah are between the ages of 30 and 55. The single largest group is in the 45 to 49 year old bracket. However, as shown in graph #1, there is a fairly even distribution of lawyers over the 25 year span from 30 to 55 years of age. We have 420 lawyers over 70 years of age.

In terms of years in practice, the largest group is new lawyers (1,559) between 0 and 4 years of practice. As shown in graph #2, the second largest group is those between 5 and 9 years of practice. We have 174 lawyers who have practiced more than 50 years – an amazing accomplishment!



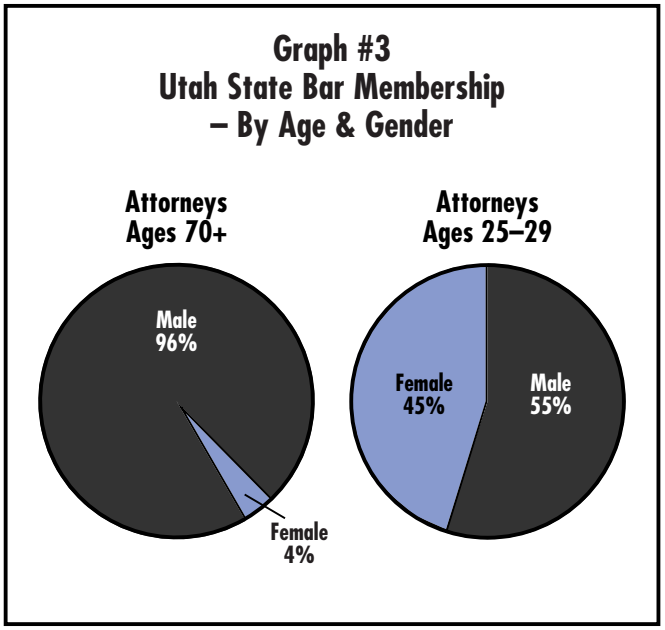


Gender

Of our Bar's 7,823 members, 1,664 (21%) are women and 6,159 (79%) are men. Graph #3 shows that of our 420 lawyers over 70 years of age, only 17 (4%) are women and 403 (96%) are men. In contrast, in the 25 to 29 year old group of 401 lawyers, 181 (45%) are women and 220 (55%) are men. To give you some feel for the gender mix in the pipeline, Dean Scott Matheson of the S.J. Quinney School of Law reports that his class of 2003 has 36% women and 64% men. Dean Reese Hansen of the J. Reuben Clark Law School said that of the law students graduating this spring 31% are women and 69% are men.

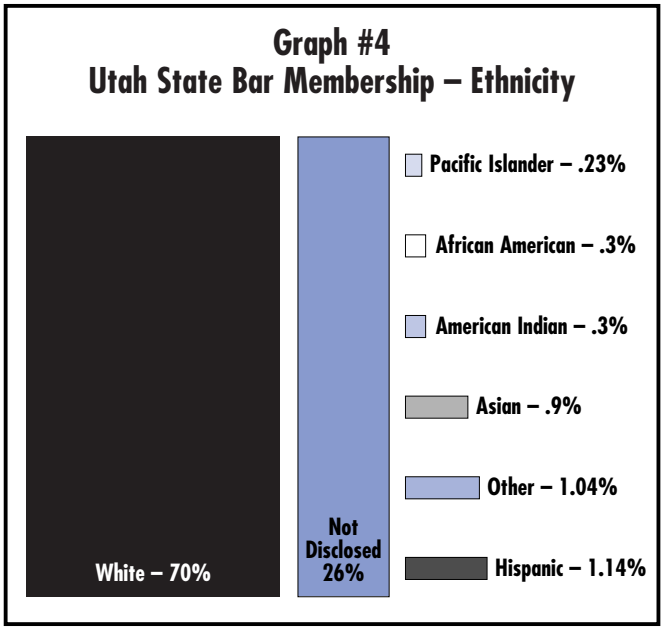
Ethnicity

Ethnicity is one area where the Bar's infor-



mation is incomplete. Most of the information for this article is taken from the Bar's annual registration forms. The Bar requests, but does not require, information about ethnic background. Almost 26% of Bar members choose not to disclose their ethnic backgrounds. With that explanation in mind, graph #4 shows that the ethnicity of the Utah State Bar is overwhelmingly white at 70%. The next largest ethnic background is Hispanic at 1%. The class of 2003 at the S. J. Quinney School of Law has 11% students of color and the class of 2003 at the J. Reuben Clark Law School has 10% students of color.

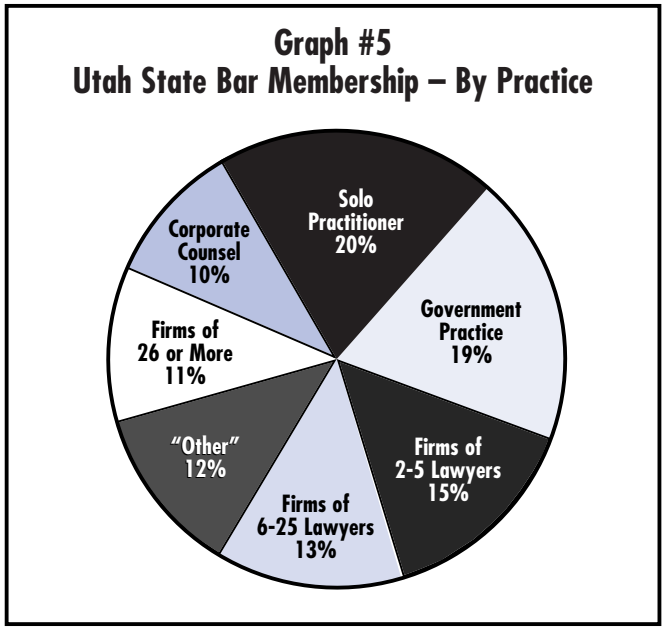
It is worth noting that the composition of the Bar Commission is much more diverse than the membership of the Bar generally. The



Bar Commission consists of 15 voting members and 9 ex-officio members. Of the 15 voting members, 4 are women and 11 are men. Two of the voting commissioners are lawyers of color. Of the nine ex-officio members, 3 are women, 6 are men and 1 is a lawyer of color. Our Bar staff is quite diverse. Of the 25 full-time members of our Bar staff, 72% are women and 28% are men with 4 of them representing backgrounds of color.

Practice Settings and Members on Inactive Status

Some may mistakenly believe that the majority of lawyers practice in large or medium size law firms. That is not the case. Graph #5 shows that the largest segment of Utah lawyers (20%) is solo practitioners. The next largest group (19%) is government, followed by small firm (i.e., 2–5 lawyers) (15%) and medium

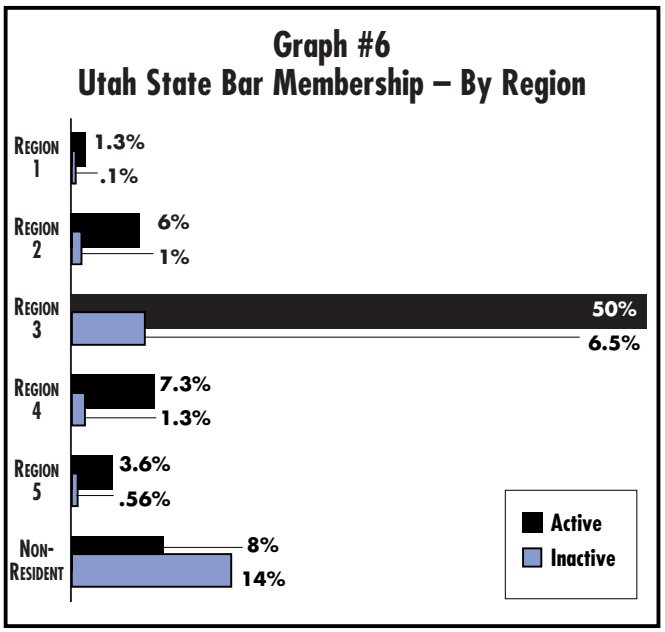


firm (i.e., 6–25 lawyers) (13%). Lawyers in large firms (i.e., 26 plus) represent only 11% of the Bar membership.

Another myth is that the Bar leadership is dominated by large law firm lawyers. Although I happen to practice with a large firm, my two predecessors, now Magistrate Judge David Nuffer and Scott Daniels, do not. David Nuffer's roots were in a rural, small firm setting. Scott Daniels began with a large firm but is now a state legislator and mediator. Debra Moore, our President-Elect, works for the Utah Attorney General's Office and will be the first government lawyer to serve as Bar President. Of the 15 voting members of the Commission, 2 come from large firms, 8 from small firm or solo practice and 3 from government. Two

voting commissioners are public members.

Our membership is also classified according to those in active practice vis-à-vis those who maintain their licenses on inactive status. Of our 7,823 members, 5,972 or 76% are active members with 1,851 or 24% on inactive status.



Geographic Distribution

Our Bar is divided into five regions. Under our scheme of Bar governance, you elect Bar commissioners for your respective regions. The largest concentration of lawyers (4,448 or 57%) comes from the third region, consisting of Salt Lake, Summit and Tooele Counties. As shown by graph #6, the next largest region (676 or 9%) is the fourth region, consisting of Utah, Juab and Millard Counties. The smallest population of lawyers (114 or 2%) resides in the first region, consisting of Cache, Box Elder and Rich Counties. Finally, 6,115 or 78% of our members live in the State of Utah and 1,708 or 22% of the members of the Utah State Bar live in other states.

Conclusion

You can be proud of your membership in the Utah State Bar. It is a group of women and men who are competent and dedicated professionals. We are served by a very capable Bar staff. On behalf of the Bar Commission, we thank you for your support of our Bar programs and efforts. I wish you and yours happiness, good health and prosperity in this New Year.

p.s. Breaking News . . .

In last month's President's Message I wrote about the work of the Supreme Court Committee on the Delivery of Legal Services. Since that issue went to press, a significant development has occurred concerning regulation of the unauthorized practice of law. Up to now, the Utah State Bar has relied upon statutory authority as the principal basis for action against those engaged in the unauthorized practice of law. The Utah Supreme Court by rule has now asserted jurisdiction to govern the unauthorized practice of law.

On December 23, 2002, the Utah Supreme Court adopted (and promulgated effective January 1, 2003) proposed amendments to the Rules of Lawyer Discipline and Disability. Of particular note here are the changes to Rule 6(a) concerning "persons practicing law." The rule defines who is subject to the disciplinary jurisdiction of the Utah Supreme Court and the Office of Professional Conduct. Besides lawyers, the rule governs "*any other person* not admitted in this state who practices law or who renders or offers to render any legal services in this state." (Emphasis added).

The practical effect of this new rule is to overrule the Utah Supreme Court's decision in *Utah State Bar v. Benton Petersen,* 937 P.2d 1263 (1997), in which the Supreme Court stated that the Legislature governed the unauthorized practice of law. *Id.* at 1270. The Utah Legislature in 2001 passed Utah Code Ann. § 78-9-101 which makes it unlawful for a person to "practice law or assume to act or hold himself out to the public as a person qualified to practice law within this state" if he is not admitted and licensed to practice law in Utah. The statute was enacted as a stop-gap measure in that it contains a sunset provision that repeals the statute effective May 1, 2003. This latest action by the Utah Supreme Court provides continuity and a clearly defined and workable enforcement mechanism through the Bar and the state courts.

Let's Celebrate the Soul in Solo

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A Look at Lawyers Helping Lawyers

by Richard G. Uday

The editors and staff of the *Utah Bar Journal* have graciously announced their intent to dedicate the August/September issue of the *Utah Bar Journal* to the pursuits and purposes of Lawyers Helping Lawyers ("LHL"). Dr. Lynn Johnson's article on Stress Management in this *Journal* makes reference to LHL, so this article is intended as a brief background of LHL and how we got started. This article also takes a quick glance at what we are doing at LHL, what we have planned and what to look forward to in that upcoming August/September issue of the *Utah Bar Journal*.

In 1988 the Board of Governors of the ABA created a commission to assist lawyers and judges to overcome the problems of addiction and substance abuse. The ABA encouraged each state bar association to create a lawyer assistance program to aid those lawyers and judges whose lives and practices are jeopardized by the problems of substance abuse.

In 1996 the ABA's Commission on Lawyer Assistance Programs ("CoLAP") expanded services to include helping with problems stemming from stress, depression and other mental health issues. More recently CoLAP has assisted and encouraged the state bar programs to include services for those members of the profession who encounter other debilitating problems such as gambling addictions, professional burnout, internet addictions, sexual addictions and a variety of compulsive disorders.

Lawyers Helping Lawyers ("LHL") is the Utah Lawyer Assistance Program created originally as a committee within the Bar. In 1990 the LHL Committee sought and received an amendment to Rule 8.3 of the Rules of Professional Conduct specifically exempting LHL members from the duty to report misconduct they learn about through their work with LHL. Accordingly, all contacts with LHL are completely confidential. Rule 8.3(d) and the commentary that follows the rule provides that, when appropriate, members of the profession may choose to contact LHL as a practical alternative to meet the ethical obligation to report misconduct.

Once contacted, LHL functions as a clearinghouse to elicit and arrange help from a network of professionals who can confidentially advise and assist members of the Bar to successfully deal with the debilitating issues discussed above as well as to enhance their lives and practices in other ways.

In 2001 the Utah State Bar gave the LHL Committee a small grant to reorganize from its committee status at the Utah Bar to a not-for-profit corporation to assure independent and confidential assistance to any Utah lawyer or judge whose professional or personal life might be impaired due to addiction, mental health issues or substance abuse. (Visit our website for more information: www.LawyersHelpingLawyers.org)

We have substantiated the obvious at LHL confirming that the more visible we are, the more calls we receive. Understandably, we are excited that the *Utah Bar Journal* will dedicate the August/September 2003 edition to Lawyers Helping Lawyers and provide us the additional visibility. Members can expect in that edition to read more from Dr. Lynn Johnson on specific how-to tips for successfully reducing and handling the stress and pressures of law practice. Additionally, LHL will contribute articles on a variety of topics aimed at enhancing the law prac-

RICHARD UDAY is the Director of the Lawyers Helping Lawyers programs, maintains a limited solo practice with a focus on Criminal Defense and is also an assistant professor at the Salt Lake Community College teaching in the Paralegal Studies program.

tice and the quality of life for members of the Bar.

LHL also intends to include in the issue some success stories of lawyers and judges who have confronted substance abuse and mental health issues and who have overcome those problems and continue in successful recovery as talented and wonderful members of our legal profession.

Just last December the ABA sent out the Chair of CoLAP and two CoLAP commissioners to review and evaluate the program at LHL. During the evaluation process, the ABA Commissioners spoke with Bar leadership, representatives from the courts, the law school deans and others. The August/September issue will contain a report on the results of that evaluation.

Stay tuned for more about LHL, but in the meantime, consider Dr. Johnson's concluding remarks in his article about managing stress:

> *Do not tolerate high levels of stress in your life. If you are experiencing emotional symptoms or if you are using alcohol or drugs to cope with stress, the Lawyers Helping Lawyers program can be of great service to you. It really is quite feasible to live a happier, more productive and more fulfilling life.*

Contact LHL at 579-0404, or in state 1-800-530-3743.

Stress Management

by Lynn Johnson, Ph.D.

Stress makes you stupid.

I know many attorneys who don't believe that. They think that when they are angry, upset, or under stress, their minds are sharper and more focused.

They are wrong.

When I went to graduate school, we knew the names of all the parts of the brain, but we knew relatively little about what they did. Today we know far more, and one thing we know is that when your brain is on stress, the higher centers of the brain – the prefrontal lobes of the cerebral cortex – begin to shut down, and the unreasoning, emotional parts of your brain ramp up. There are three modes of stress response, fight, flight, and freeze. None of them help make you smarter.

When Rich Uday asked me to help with his Lawyers Helping Lawyers program, I admired his taste in consultants. Who better? Then humility intruded. I am not a lawyer, I am a psychologist, and I need to have some background. I started researching the role of stress in the lives of attorneys, and found some sobering facts:

Lawyers have a high rate of drinking and drug problems; 1 1/2 times the national baseline. 8-10% of general population has a substance abuse problem vs. 15–18% of attorneys.

In another study, 13% of male and 20% of female attorneys reported downing six drinks or more per day. If you don't think six drinks a day is a problem, we need to talk!

A study at Johns Hopkins University found that attorneys are 3.6 times more likely to suffer from depression than other professions. Depression is a very serious illness, with a high mortality rate.

Male attorneys are twice as likely as the general population to take their own life, according to a 1992 study by the National Institute of Occupational Safety and Health. Depression and substance abuse are both substantial risk factors for suicide. Research conducted at Campbell University in North Carolina indicated that 11 percent of the lawyers in that state thought of taking their own life at least once a month.

In surveys of state Bar Associations, 60% of ethical violations involved substance abuse.

What's Behind the Stress?

Two major factors (and a host of minor ones) contribute to the high stress in the law profession. First, the stakes are high and the consequences of error are large. This promotes an attitude of perfectionism, a chronic feeling that nothing is good enough. Perfectionism raises cortisol levels in the body, the stress hormone that is helpful in the short run and very damaging in the long run. High cortisol levels lead to burnout, vulnerability to infections, increased healing time, and mental and emotional depression. Perfectionists are more vulnerable to depression and anxiety, harder to treat with either therapy or drugs, and much more likely to commit suicide when things go very wrong.

Second, law may attract pessimistic personalities. One study found that in every graduate program, optimistics outperform pessimists, except in law. There, the pessimists are ascendant.

But pessimism is another risk factor for high stress and chronic depression. Pessimists expect bad things to last a long time, to affect every part of their lives, and the see themselves as the cause of bad things happening. Pessimistic lawyers are doubly at risk, since they are likely to see bad things happen, and they are less able to cope when they do.

As a result of the professional push toward perfectionism and the pessimism, many attorneys are not enjoying their careers, feeling disillusioned and unhappy. They are at risk for underperformance, increasing stress, which increases under-performing. This vicious cycle can then turn to acting out in dangerous activities – affairs, drug or alcohol abuse, and ethical problems.

Ethics and Stress

Chronic high stress is a prime cause of ethical violations. When one feels out of control, unable to cope, and when one turns to substances – drugs and alcohol – to reduce the feeling of vulnerability, bad judgment follows. The Oregon Bar found that by

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energetically identifying and helping lawyers with drinking and drug problems, they were able to substantially reduce malpractice awards. It is clearly smart to take a proactive approach to reducing stress, to helping those who are depressed or who are relying on substances to cope.

Too often we shy away from talking directly to people who seem to be having problems. That is entirely understandable. Yet when we consider the higher levels of stress in the legal profession, we can see the necessity of reaching out.

As an analogy, consider the changes in cockpit management in aviation. Years ago, the person sitting in the left seat was the Pilot in Command, and his word was law. Copilots and engineers did not interfere. But in accident investigations it was learned that in case after case, the crew didn't like the way the flight was proceeding but they didn't speak up. Today, cockpit resource management rules encourage, even require that crew members assert their own opinions. Safe flight is everyone's responsibility, not just the pilot in command.

So it is with the law profession. Since the stakes are high and the stress ubiquitous, a higher level of concern and caring for colleagues is necessary.

Recognizing those who need help

In my own review of all the Lawyers Helping Lawyers programs across the country, most of the emphasis was on identifying and addressing substance abuse. I only found a few that spoke of depression. This is a mistake. Anxiety and depression are serious problems in their own right, as well as being co-morbidity factors for alcohol and drug abuse. About one-third of patients diagnosed with alcohol abuse actually had a pre-existing anxiety condition that was a causal factor in the substance abuse. Here are some checklists to help you diagnose problems.

Signs of a Troubled Colleague

- Attendance: arriving late, leaving early
- Late returning or fails to return from lunch
- Unexplained days off
- Frequent injuries
- Misses deadlines, court appearances
- Productivity and quality of work declining
- Blames others, defensive when questioned
- Marital infidelity, affairs, sexual harassment of coworkers
- Financial irregularities (co-mingling funds, borrows money from clients)
- Client complaints – performance, attendance, attention, quality

- Mood swings, erratic behavior, strong emotional reactions

Self Assessment

Ironically, it is to your advantage to become less tolerant of stress, not more. What I mean is that you ought to recognize danger signs and respond energetically to them, not tolerate them. In our next article, I will cover some positive coping strategies.

Rate yourself on the following items. Use this method of rating yourself: In the last seven days, did you experience this item?

0 Rarely or none of the time (less than 1 day).

1 Some or a little of the time (1 - 2 days).

2 Occasionally or a moderate amount of the time (3 - 4 days).

3 Most of the time (5 - 7 days).

Any 2 or 3 rating is cause for concern; if you have several of them (or, a score of 15 or more), you should get a good evaluation immediately.

___ I felt sad.

___ I felt fearful.

___ My sleep was disturbed.

___ My appetite was poor; I didn't feel like eating.

___ Things that used to please me felt flat or uninteresting.

___ There was a lump in my throat or knots in my stomach.

___ I feared I would lose control.

___ I felt like yelling or hurting others

___ I had thoughts of harming others.

___ I felt a sense of doom or dread.

___ I felt others didn't like me.

___ I couldn't stop thinking about something upsetting.

___ I felt hopeless about the future.

___ I couldn't get going on activities that were important.

___ I thought I would be better off dead.

Substance Abuse Warning Signs

These are yes or no items. Rather than rating them 0 -3, simply reflect on whether they are present at all. If you have any of the following, you clearly should have an evaluation of your drinking or drug use:

___ Are you able to drink more without feeling the effects?

___ Have you ever had "blackouts" i.e., when there are hours or days you cannot remember?

___ Do you desire to continue use when others stop?

___ Are you uncomfortable in situations where the substance is not present?

___ Are you preoccupied with use of alcohol or a drug?

___ Is there an urgency to use after a period without?

___ Do you have feelings of guilt about use/morning after regrets?

___ Do others express concern about your use of any substance (i.e., drugs or alcohol)?

Prevention: Leadership issues

I was asked recently to coach a poor-performing leader. 'Mel' had alienated his team and his co-workers and his job was on the line. He was seen as having personality defects that were probably impossible to fix, but as a last resort they called in the executive coach – me. I suppose the script was I would find him too

difficult and then they could fire him with a clear conscience.

What I found instead was that Mel was not a difficult person. Instead, the design of his job and the leadership above him had combined to make his position an impossible one. Publically, Mel's boss had given him one assignment; privately he had given him another. As Mel tried to comply with both assignments, he ran into conflict with coworkers and employees.

In organizational psychology we have a saying, "It is not the person, it is the system." I met with Mel's supervisor and coached him toward better leadership; we re-designed Mel's job and gave him clear and consistent assignments, and I met with Mel's peers and explained the changes in his job. Within a month, his peers and his direct reports were very pleased with Mel's work, his job was safe, and he was much happier.

How is the stress level in your practice? Much stress at work is caused by ineffective leadership. Indeed, in surveys of workplace stress, leadership is the number one cause. Danger signs here include:

- Leaders who rely on criticism to motivate.
- Supervision focus is on correcting errors.
- Absent or passive managers and directors.
- Being given contradictory assignments.
- Assignments that have responsibilities but no authority.
- Frequent changes in tasks and assignments.
- Encouragement to cut corners or engage in unethical behaviors.
- Leaders who show negative emotions, such as anger or contempt.

In this article we have reviewed danger signs. In an upcoming issue, I will share new developments in stress management, some simple and very effective ways that focus on positive living strategies. The opposite of stress is happiness and satisfaction, feeling of fulfillment and recognition of the value you bring to your clients. In the past few years, psychologists have developed positive and practical ways of increasing happiness in professional and personal lives, and we will cover those next time.

Do not tolerate high levels of stress in your life. If you are experiencing emotional symptoms or if you are using alcohol or drugs to cope with stress, Rich Uday who directs the Lawyers Helping Lawyers program can be of great service to you. It really is quite feasible to live a happier, more productive and more fulfilling life. Go for it, you deserve it!

Contact Lawyers Helping Lawyers: Rich Uday, (801) 579-0404 or 800-530-3743 (in state calls only).

Disaster Plans and Other Unpleasant Subjects for Attorneys in Private Practice

by Kate A. Toomey

Rumor has it that the Utah State Bar provides storage for client files when an attorney leaves the practice of law. It doesn't. Nevertheless, I've answered a surprising number of inquiries about this on the Office of Professional Conduct's Ethics Hotline, and when I ask people where they got that idea, the answer is always that the caller either heard or assumed this was a service the Bar provides its members. Even more commonly, callers want to know how long an attorney must keep client files. This article discusses a lawyer's enduring ethical responsibilities to clients. It also identifies important considerations for developing a disaster plan that will protect clients and at the same time make things easier for the people who survive you or take care of you in the event of your death or disability. Many of these ideas serve as well to protect you and your clients when you retire.

Lawyers often counsel others to give some advance thought to protecting their families by having an estate plan and making arrangements for end-of-life care. This advice is just as sound for attorneys vis-à-vis protecting clients and former clients in the event of the attorney's retirement, disability, or death-especially those in solo practice. But even attorneys who have the safety net afforded by a firm should be familiar with, and periodically review, the firm's long-term plans for client files. The OPC frequently receives calls in the aftermath of a lawyer's death or disability, usually from the attorney's staff or family, when it is far more complicated to resolve the problems and protect client interests than it would have been for the attorney to devise and implement a long-term plan.

Important considerations are the attorney's enduring duty to maintain confidentiality of client information – even after the attorney/client relationship has ended – and to return client property.[1] Moreover, the duty survives the end of the relationship, and an attorney must "take steps to the extent reasonably practicable to protect a client's interests." *See* Rule 1.16(d) (Declining or Terminating Representation). The rules also require an attorney to provide, upon request, the client's file and otherwise to protect a client's interests upon termination of the representation "to the extent reasonably practicable," and to preserve client property "for a period of five years after termination of the representation." *See* Rule 1.16(d) (Declining or Terminating Representation); Rule 1.15(b) (Safekeeping Property). A prudent attorney would do several things to protect a client's interests, avoid burdening colleagues, friends, and family, and protect themselves from Bar complaints and malpractice actions.

First, develop a plan for notifying your clients if you are suddenly unable to continue representing them. Notification should include information concerning the urgency of seeking new counsel for active cases, the availability of the file in both active and inactive cases, and the designation of another lawyer who will assume responsibility not for the representation, but for custody of the file, until the client provides written directions concerning the disposition of the file.

This depends upon you having an agreement with another lawyer to fill the void if necessary. Attorneys with law partners have less to worry about here. Anyone who does not have a law partner might consider entering reciprocal agreements with trusted colleagues who can take custody of the files, inventory them, and see to it that they reach the appropriate clients, former clients, or substitute counsel.[2] You can lighten the burden of this request by maintaining your files, both active and inactive, in good order, and keeping a running list of your cases with all the relevant client information included. Another essential is that your trust account records and time-keeping records are reasonably up-to-date. The attorney you designate to assist in the event of calamity should know where your books are kept, know the bank and account numbers for your trust and operating accounts, and know where your inactive files are stored. If you have staff, give them written instructions about whom to contact and how to assist; if you don't have staff, provide the same written instructions to a responsible member of your family, or to a close friend.

Second, discuss with your client the end of the relationship at the beginning of the relationship. Talk about what happens to the papers and other things in the client file. The OPC suggests

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that attorneys routinely give clients copies of every paper filed in court or having other significance to the case as it progresses, but at the termination of the representation the client is entitled upon request to the original file, minus the attorney's notes.[3] The lawyer may keep a copy of the file, but must do so at the lawyer's own expense. *See* Rule 1.16(d) (Declining or Terminating Representation). One thing an attorney might agree to do at the inception of the representation, is simply transfer the entire file to the client when the matter is closed. If you put this in the engagement agreement, and of course discuss it with the client, this resolves any ambiguity about who will get what at the end of the relationship.

It's also a good idea to let the client know, in writing, what will happen to the file if there's a calamity. Discuss the ramifications, disclose your plan, answer their questions, and explain how to proceed if you are suddenly unable to continue representing them while the case is active. Explain that the attorney you have designated to assist with this will not undertake the client's representation, but will assist them in getting the file and the refund of any unearned fees. Assure them that even in your absence, you have made arrangements to protect their interests. Explain it to them, but also give it to them in writing, preferably as part of the retainer agreement, so that the client will have something to refer to later. And don't forget to obtain their consent.[4]

The suggestion that an attorney transfer the entire file to the client has the virtue of avoiding the long-term storage problem. But transferring the entire file leaves the attorney exposed if there are malpractice actions and disciplinary complaints. In other words, although it is the least expensive alternative, you take this course at some peril. That's why we suggest keeping a copy of the entire file for the period set by statute for various types of legal action against the attorney. If you do this, you'll at least have what you need in the event that there are inquiries or lawsuits arising from the work you did. It has the virtue of thoroughly protecting the client, as well as the attorney. The suggestion is expensive in two respects, however. The first is obvious: it costs a lot to photocopy an entire file. Moreover, long-term storage is expensive.

An intermediate alternative is to transfer the original file to the client, retaining all of your original notes and copies of anything that can't easily be obtained from court or another entity that retains records for a lengthy period. In that manner, the client is protected, you are reasonably protected, and the file could be reconstructed if necessary. At the same time, you have significantly

reduced the volume of the file, thereby minimizing necessary storage space. An annual review of what's in storage would allow you to evaluate which files can be further reduced or destroyed.

What if you can't transfer the file, or elect not to do so unless asked? The answer is that the length of time you must retain such files depends upon what's in them. Here, you or the attorney you have designated (with the client's consent) must use sound judgment based on the evaluation of many factors. The Rules of Professional Conduct provide that property of clients "shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." Rule 1.15(a) (Safekeeping Property). This means that after a reasonable effort to locate the client to return the property, you must continue to preserve it for the period designated in the rule. Is there a document in the file with independent legal significance that is of vital importance to the client? If so, you may have a duty to indefinitely maintain it until a court gives you permission to destroy it. As the pertinent Ethics Advisory Opinion concludes, "There is no specific time period governing retention of a client's file. The guiding principles are the ultimate return of the portions of the file that are the client's property under Rule 1.16 and the reasonable protection of the client's foreseeable legal interests." Utah State Bar Ethics Advisory Op. Comm., Op. No. 96-02.

The OPC urges attorneys to consider these issues before there's a life-changing event, to review the Rules of Professional Conduct, and to exercise good judgment concerning how to proceed. If you're in solo practice, consider some sort of reciprocal arrangement with a colleague. Don't assume that the Bar will serve as a repository for client files(!), but feel free to call the Ethics Hotline (531-9110) to discuss your plan with an OPC attorney.

[1] Various Rules of Professional Conduct that warrant review as you consider these problems are Rule 1.6 (Confidentiality of Information), Rule 1.15 (Safekeeping Property), Rule 1.16 (Declining or Terminating Representation), and Rule 1.17 (Sale of Law Practice). Other sources of information are The Lawyer's Guide to Retirement: Strategies for Attorneys and Their Clients, published by the Senior Lawyers Division of the American Bar Association, ABA Formal Opinion 92-369 (Disposition of Deceased Sole Practitioners' Client Files and Property), and Utah State Bar Ethics Advisory Opinion Committee, Opinion No. 96-02.

[2] *See* Rule 27, Rules of Lawyer Discipline and Disability (Appointment of Trustee to Protect Clients' Interest When Lawyer Disappears, Dies, Is Suspended or Disbarred, or Is Transferred to Disability Status).

[3] See the annotation captioned "Client file" following Rule 1.16 (Declining or Terminating Representation) for a discussion of what is and is not the client file. For example, "[t]he lawyer may retain items such as depositions, experts' reports and other items for which the attorney has paid costs or is obligated to pay costs and for which the client has not reimbursed the attorney."

[4] If the client consents after consultation, the rules permit you to disclose information relating to the representation. *See* Rule 1.6(a) (Confidentiality of Information).

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The Single Most Profitable Technology?

by Hal Davis

Technology Overload

Have you got a bad case of technology overload? You know what I mean. You're constantly bombarded by information about hardware and software for document management, case management, litigation management, knowledge management, trial presentations, document assembly, electronic time and billing, voice-activated dictation, groupware, electronic calendaring, tickler systems, online fax servers, contact management, online research, the latest PDA, and so on and so forth.

It's easy to wonder sometimes whether you are practicing law or running an information technology company. Don't get me wrong, it would be pretty tough to practice law today without word processors, online research tools, and voicemail. (As a former user of carbon paper, I speak from experience.) But technology can be overwhelming sometimes. Do you have the capital, knowledge, time, or energy to implement into your practice every technology that looks like a good idea? Probably not.

The Single Most Profitable Technology

One danger of technology overload is that it may prevent you from doing anything at all. That's bad. So the question becomes: "Where should I start?" In a way, answering that question is easy. Start with technology that boosts productivity the most, saves the most money, and is easy to use. If you were prioritizing the payment of your debts, you would first tackle the debt with the highest interest rate, right? – the debt that costs you the most. The same is true with headaches in your practice. Tackle the headache that costs you the most. But which one is that you ask? Ready for a surprise? It's paper. Yes, paper! Listen to what one practicing attorney says:

> I can truthfully say that each and every technology [we use] has improved the way we practice law. . . . [H]owever . . . I am convinced that the *single most profitable technology* we have implemented is the use of scanning/imaging technology, coupled with document management software, to create a paperless office environment.
>
> Other than junk mail, we scan . . . everything that comes in for every file. *It is easy to do* and has made a *tremendous boost in our productivity.* What I cannot understand is why so many people look at me incredulously when I tell them this and then say, "Well I just can't see taking the time to scan everything." They then dismiss the idea as nonsense and continue to practice that same way they have for the last umpteen years. . . .
>
> I know that those of us who have adopted this method would not be willing to go back."[1]

The "Large Firm" Myth

Document imaging is *not* just for the big firms in town. In fact, small and medium-sized firms may benefit the most from using less paper. Why? Because the need to leverage limited time, energy, and resources is so much greater in a small firm where there is no army of file clerks, mail carriers, Xeroxers, runners, and paralegals to do leg work on a case. A good 20-page-per-minute scanner and a single-seat document management system cost less than two thousand bucks – and you don't have to pay social security tax on them either!

Less Paper Boosts Productivity

Now I'll be the first to admit that a *completely* paperless office is about as practical as a completely paperless bathroom. Both make me nervous! But don't give up on the concept of less paper. It's powerful. An office that uses less paper can always opt for creating paper documents, but the reverse is not true. A law firm using document imaging technology will realize many advantages over a firm that is completely paper based. Here are some of those advantages:

- File all your documents on computer instead of in a filing cabinet.
- Create one central computer repository for paper and electronic documents, whether received from outside the firm or generated in house.
- Create standard infrastructures for filing, indexing, and locating your documents.
- Find and view any document in your filing system in seconds

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– from your desk.

- Let associates, clients, witnesses, or anyone else you choose view documents in your files simultaneously – via computer – whether they're in the next office or on a business trip in Singapore.
- Have every client file in the office up to date within an hour of mail delivery.
- Take any or all of your client files home, on the road, or to court with you. (A single CD holds a four-drawer filing cabinet full of documents.)
- Keep a copy of your entire filing system in a safety deposit box.
- Never again have a "missing" document or file sitting somewhere lost, where it doesn't belong.
- Pull up a client's file immediately, while he's on the telephone with you.
- Instantly access years of work product to draft new documents.
- Never photocopy documents as attachments to motions or affidavits again.
- Never tear apart or reconstruct a paper file to pull supporting documents, prepare for depositions, or assemble witness kits.
- Print paper documents from the file for temporary use and then throw them away when the task is done.
- Never again be accused of leaving a file in a mess following a deposition when just the day before it had finally been organized and brought up to date.
- Improve the speed, accuracy, timeliness, and recyclability of your work.
- Reduce or eliminate photocopying.
- Reduce the frustration and stress deadlines can cause.

Less Paper Saves Money

Just think. It costs about the same to scan a document as it does to photocopy it. But the similarity ends there. Without itemizing the differences – and boring you to tears – I counted 32 more things you can do with a digital image than you can do with a paper document. Most of these activities would require altering an original paper document or photocopying it again. (Did you know that the average paper document gets copied 19 times?) Document images can be filed in multiple sort orders, printed, emailed, indexed, linked to other documents, posted on the web,

converted to text, password protected, redacted, highlighted, bates numbered, audited (to see who has accessed them), exported to litigation support or trial presentation systems, and more.

This is why document imaging is so powerful. An image costs the same as a photocopy but increases exponentially what you can do with it thereafter – and without generating any more paper! To achieve the same result with a paper document, it must often be copied again and again. Here are some of the ways less paper can save money:

- Reduce costs for equipment such as photocopy and fax machines, telephone lines, desk drawers, credenzas, filing cabinets, shelving, carts, and dollies.
- Reduce costs for copy paper, file folders, accordion files, and banker's boxes.
- Reduce costs for postage, FedEx and UPS, faxing, and runners.
- Reduce attorney and staff labor costs for activities such as researching, drafting, filing, searching, mailing, faxing, and Xeroxing.
- Reduce costs for office space by eliminating the need for large offices, furniture for filing paper, file rooms, and dead file warehouse space.

Intangible Benefits

In addition to boosting productivity and saving money, there are many intangible benefits to generating less paper. The most important of these is happy clients. Scanning and imaging technology makes communicating with your clients fast and painless. Many business clients already do much of their work in a digital world, and having an attorney who is digital friendly makes working with him that much easier. Happy clients generate more work, give more referrals, pay their bills, and do not complain to the bar association. A firm that employs strategies for generating less paper may also compete better to attract new clients because it has a modern, efficient, quality-driven, and cost-conscious image.

Lastly, many petty office frustrations can be completely eliminated by using less paper. Little irritations like missing documents, war rooms, conference rooms, and offices that look like the city dump, and a secretary who always seems to be away from her desk searching for a file in the basement simply disappear. Practicing law is stressful enough without spilling soft drinks on important documents, having the copy machine break down in the middle of a document production, or having the boss leave an important client file on an airplane.

Less Paper is Easy to Use

Document imaging is not rocket science. It was once the exclusive technology of Fortune 500 companies, but not any more. Plummeting costs, huge hard drives, and advances in hardware, software, and compression technology have combined to make the obvious benefits of document imaging affordable and accessible to any size business. And it's easy. There are six steps required to image your documents: Capture, index, file, retrieve, share, and secure.

1. Capture. You first run a paper document you receive in the mail, for example, through a document scanner and turn it into an image – or a picture – that you can view on your computer. If you have a Microsoft Word document, for example, you can print it out as an image instead of to paper. (You can also leave it in its native Word format, if you want to).
2. Index. Next, you will probably want to write a few key words about each document so that you can find it later. Key words might include client, matter, document type, date, description, author, and recipient. You over-achievers and litigators may also want to OCR a document image (convert it to text) so you can do full-text searches on it later (but you don't have to).
3. File. You next file the image on your computer instead of in a filing cabinet.
4. Retrieve. When it comes time to find the document, you simply

type a few key words, pick your document from the list of matches, and view it on your monitor. It couldn't be easier!

5. Share. If necessary, you can give simultaneous access to these documents to partners, associates, staff, clients, co-counsel, opposing counsel, witnesses, expert witnesses, the court, and anyone else you want to and still leave the original completely in tact and safe in a single physical location. Parties accessing your documents can be in the same office, the same building, the same city, or anywhere else in the world.
6. Secure. Only you decide who may have access to what documents. Security can be controlled at the computer network level, at the document management system level, or at the document level (because passwords can even be placed on individual documents).

What About Existing Paper Documents?

A man once extolled the benefits of large shade trees but complained that they take 50 years to grow. "Well," observed his friend, "then you'd better plant one today!" Deciding to use less paper is not difficult, but getting there is not an overnight process either. It may require patience. The easy part of using less paper is installing the system and scanning incoming documents. The $64,000 question is what to do about your existing paper files – called your backfile.

There are three options for handling your backfile. First, you can ignore it all together. This means that you'll have what's called a "day-forward" document imaging system. The second option is to scan only the documents from the backfile that you retrieve and use. This is what's called an "on-demand" system. Third, you can scan your entire backfile into your document imaging system. This is what's known as a back-file conversion. If you're patient, you can start inexpensively and ignore your backfile. If you're anxious, you can pony up to have everything scanned and put online right away. Or . . . you can compromise.

Three Options for Doing the Work

Like laying tile in your kitchen, there are three ways to do the actual document imaging work. First, you can do it all yourself. Second, you can hire it done (outsource it). Or third, you can do part of the work, and outsource the rest. Which option you choose depends on several factors: What are you going to do with your backfile? Do you have clerical and technical people dedicated to the job? Is your computer system up to snuff or does it need an upgrade? Do you want to manage your own technology or just practice law? Here's a brief description of how each option might work.

1. Do the work yourself. Using this option, you scan the documents, you index them, and you store them on your computer or network. To retrieve and use your documents, you simply search for them by clicking on folders or by running simple key-word searches. Advantages of this option may include complete control over your documents from beginning to end. Disadvantages may include the need to purchase a scanner, computer hardware, software, and network resources, and the need make sure that your technical and clerical people know how to run and use the system.
2. Outsource the work. Using this option, a service provider could pick up your filing every day, scan the documents, index them according to your directions, store them on their computer or network, and return the original documents to you. The entire document imaging process, except for using the system to find and retrieve documents from your files, would be outsourced. Advantages of this option may include having someone else scan, index, store, retrieve, secure, and backup your documents. You would need no hardware, software, or IT support for your document imaging system. Disadvantages may include losing some control over how, when, and where your documents are scanned and indexed.
3. Do some of the work yourself and outsource the rest. There are many variations possible with this option. Any one piece of the process – such as converting your backfile – could be outsourced, and the rest could be done in-house. In one scenario, you could scan and index your documents yourself and then download them to a service provider for storage on its large server. As in option two above, finding and retrieving documents would be done in-house using an internet connection. Advantages of this option include outsourcing the storage, security, and backup of your documents while maintaining the flexibility to scan, index, find, and retrieve your documents in-house where, when, and how you want to. Disadvantages may include the temporary loss of physical control of your documents.

Application Service Providers

Just a word about ASPs. Letting go of the physical control of your documents may worry you. Some concerns have merit and need to be addressed, but other concerns are unfounded. Realistically, a good service provider may actually improve the management, backup, accessibility, and security of your documents because that's what they do for a living. After all, isn't that why your clients come to you? Because you're a specialist and a professional? A reputable ASP, a good service agreement, and a Plan B in case things don't work out should alleviate any fears you may have about entrusting your documents and files to an ASP.

Outsourcing technology is the future of law firm computing. A couple of law firms back east – one with only eight attorneys – recently outsourced their entire computer network system. They own no servers, no software, and some of them even employ no IT people. All they have in-house are workstations with access to the internet using a web browser. Users log on to the web using private, leased telephone lines and access the Microsoft Office, email, legal applications, and document imaging services they subscribe to and pay for. Advantages to this arrangement include a fixed monthly IT budget, minimal need for technical support staff, and no capital outlays for hardware, software, or system upgrades, other than low-end workstations. Now that's neat! (albeit beyond the scope of this article).

Try It, You'll Like It!

In short, less paper is probably the single most profitable technology a law firm can employ. Using a scanner and a document management system will make your work easier, boost your productivity, save you money, eliminate frustrations, make your clients happy, improve your image, and give you a competitive edge. After you begin imaging your documents, you, too, will probably never, ever want to go back.

[1] The Biggest Bang for the Buck, *LawTechnology News,* December, 2000, Bruce A. Olson, emphasis added. (Mr. Olson is the principal of Olson Law Group, LLC and ONLAW Trial Technologies, LLC in Minneapolis.)

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The Unsolicited Email Act and Anti-Spam Litigation

by Gregory M. Saylin and Spencer J. Cox

The media is full of information and news about how Americans hate receiving "spam" and legislative efforts to limit or eliminate it. States throughout the Union and the federal government are grappling with how to balance the constitutional rights afforded commercial speech with the ever-growing problem of receiving unwanted commercial or even sexually explicit emails. The Utah Legislature recently tried its hand at passing a law aimed at curbing spam within the state. Utah plaintiffs have wasted no time in bringing suit under the new legislation, seeking to recover damages, costs and attorneys' fees from alleged violators.

I. The Unsolicited Email Act

Last year, the Utah Legislature passed the Unsolicited Commercial and Sexually Explicit Email Act.[1] The Act requires senders of unsolicited emails to jump through a number of hoops aimed at protecting recipients from the inconvenience and hassle of so-called "spam." For example, senders of unsolicited emails are required to include "ADV" in the subject line of their emails, apparently allowing recipients seeking to avoid receipt of such emails to program their email software to reject all emails containing "ADV" in the subject line. Other requirements include providing an easy way for recipients to be removed from the senders' email distribution lists.

An unsolicited email is one sent without the "recipient's express permission," except that the Act includes an exception where the sender has a "preexisting business or personal relationship" with the recipient. The Act only applies to emails sent "through the intermediary of an email service provider located in the state or to an email address held by a resident of the state."

No one can accuse the Legislature of leaving the Act without sufficient teeth to encourage compliance. A person who receives an offending email can recover either actual damages, or the lesser of $10 per email or $25,000 per day. Costs and reasonable attorneys' fees are available to successful plaintiffs. Senders of unsolicited sexually explicit emails can also be subject to criminal penalties.

Other states have passed similar anti-spam legislation. Besides Utah, various versions of anti-spam legislation are on the books in California, Colorado, Idaho, Illinois, Iowa, Kansas, Maryland, Minnesota, Ohio, Oklahoma, South Dakota, Tennessee, Virginia, Washington, and West Virginia. The United States Congress is also considering federal anti-spam legislation.

II. Anti-Spam Litigation

Since the Act became effective in May of 2002, Utah plaintiffs lawyers have filed hundreds of class action suits in Third District Court against both local and national defendants based on supposedly unsolicited emails. Whether such suits are properly within the reach of the Act, and whether the Act, as applied, is constitutional is currently before the Third District Court. Some of these suits test the breadth of the Act's application and seek damages from well-known national defendants who consider themselves to be responsible email marketers.

It is common to employ email distribution companies to handle email marketing. Such companies offer "opt-in" bulk email distribution services where emails are sent to recipients who have requested to receive certain categories of information, offers and advertisements. Many of these distribution services have "anti-spam" policies that prevent email distribution to recipients who have not opted to receive them. Companies who employ these opt-in services intend to avoid spamming and prefer that their offers and advertisements end up in the in-boxes of those most interested in them.

At least one of the anti-spam suits now pending in Utah is against

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a national telecommunications company who has sent email offers through such an email distribution company. The plaintiff in that case allegedly signed up with the distribution company to receive relevant emails but subsequently cancelled his subscription. Less than two days later, the plaintiff received an email from the defendant company which was already posted to the outgoing queue (a sort of "out box") prior to the cancellation. Plaintiff subsequently brought a class action suit under the Act. At least one other suit is based on an email that was received by the plaintiff while the plaintiff was still subscribed to the opt-in service. Whether such emails were "unsolicited' and whether a "preexisting business or personal relationship" existed between the parties within the meaning of the Act are the subjects of dispute.

Most recently, a national defendant was sued under the Act because of a pop-up window on its own web page. Apparently, plaintiffs have alleged that the pop-up window was an unsolicited email under the Act. It seems clear, however, that the Act does not have application to such a pop-up window because it was solicited within the meaning of the Act (the recipient intentionally accessed the defendant's webpage) and because a pop-up window (unlike an e-mail) is not sent through an email service provider located in the state or to an email address held by a resident of the state, but rather is just another webpage.

Serious questions also exist surrounding the constitutionality of the Act. Although commercial speech is not entitled to the full protection of the First Amendment, the Supreme Court continues to recognize that the free flow of commercial information is indispensable to our society.[2] For a regulation of protected commercial speech to be constitutionally permissible, the speech in question must concern lawful activity and not be misleading, the asserted governmental interest to be served by the regulation must be substantial, and the regulation must directly advance the governmental interest and not be more extensive than is necessary to serve that interest.[3] Whether the Act can satisfy this standard is presently before the judiciary.

Other constitutional issues that may be called into question under the Act include possible violations of the Fourteenth Amendment, *i.e.,* whether the Act is unconstitutionally vague and fundamentally unfair. Furthermore, the Act may require review under the Dormant Commerce Clause, assessing the burden placed on out-of-state business. These and other questions of constitutionality must be decided by the courts in order to clarify the legitimacy of the Act.

III. Proposed Amendments to the Act

Proposed amendments to the Act are currently under consideration. One proposed amendment would define "preexisting business relationship" to include where the recipient has indicated a willingness to receive the emails or requested information, goods or services from the sender. At least one proposal seeks to make it easier for plaintiffs to certify class actions by shifting the burden of proof to the defendants as to the existence of preexisting relationships. It would also increase the amount of statutory damages. Another proposed change would allow a reasonable period of time for senders to recognize a recipient's request to no longer receive emails. A formal bill has not yet surfaced.

The Legislature should take a close look at how the Act is being used by local plaintiffs and its effect on national and even international email marketing. Utah should recognize the anti-spam efforts of companies that are good citizens in our virtual community. The Legislature should consider rewarding companies for using legitimate opt-in services and create an exception for them. Until an effective, constitutional and fair legislative solution is found, anti-spam litigation in Utah will continue to grow while in-boxes continue to fill with spam.

[1] Utah Code Ann. §§ 13-36-101, et seq.

[2] *Thompson v. Western States Medical Center,* 535 U.S. 357 (2002).

[3] *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.,* 447 U.S. 557, 566 (1980).

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BANKRUPTCY & CREDITORS' RIGHTS PRACTICE
effective January, 2003

New Attorneys in the Durham Jones & Pinegar Bankruptcy Practice:

KENNETH L. CANNON II | formerly of the firm of LeBoeuf, Lamb, Greene & MacRae, has joined Durham Jones & Pinegar as a Shareholder and will continue his practice in Bankruptcy & Creditors' Rights. He will serve as the Chair of the Firm's Bankruptcy and Creditors' Rights Section

PENROD W. KEITH | formerly of the firm of LeBoeuf, Lamb, Greene & MacRae, has joined Durham Jones & Pinegar as a Shareholder and will continue his practice in Bankruptcy & Creditors' Rights

PAUL R. CHRISTENSON | formerly of the firm of Simpson Thacher & Bartlett in New York, has joined Durham Jones & Pinegar as an associate and will continue his practice in Bankruptcy, Corporate and Real Estate Law

HEATH H. SNOW | Snow formerly of the firm of Snow Nuffer, which has merged with Durham Jones & Pinegar, is an associate with the Firm in its St. George office and will continue his practice in Litigation, Bankruptcy, Real Estate and Municipal Law

Mr. Cannon and Mr. Keith have represented clients in substantial Chapter 11 reorganization cases, and have written and lectured extensively on various bankruptcy topics. Mr. Cannon has served on the Advisory Board of the ABI Rocky Mountain Region. Mr. Keith has served as the Chair of the Bankruptcy Section of the Utah State Bar. The firm's Bankruptcy practice will concentrate on matters related to Chapter 11 reorganizations under the Bankruptcy Code and on out-of-court workouts.

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Reflections and Observations

by Justice Richard C. Howe

My class at the University of Utah was the first after the end of World War II. We started in September 1945, just one month after the war ended in the Pacific. There were sixty of us, fifty-nine men and one woman – Lucy Redd. By the time we graduated in the spring of 1948, there were only about thirty of us left, including Lucy. In that graduating class were also James E. Faust, Glenn Hanni, Wilford Kirton, Earl Tanner, Maurice Richards, and Verl Ritchie, just to name a few.

Things were different in the law practice from what we do today. Our secretaries prepared letters and pleadings on a manual typewriter using carbon paper to create additional copies, which were on legal-sized onion skin paper. One of my first appearances in court was before Third District Judge Albert H. Ellett, who granted my client a default divorce on a Saturday morning. Up until the late 1950s, the courts, like all state offices, were open on Saturday until 1 p.m.

I often went to court on Wednesday morning when the probate calendar was heard. Attorneys who had written their clients' wills had to appear and give testimony to have the will admitted to probate. Nearly all of the attorneys who came on Wednesday morning were older than me, and I learned to know them and admire them for their professionalism. At that time, the Third District Court was housed in the City and County Building, and there were only six district judges. No trials were scheduled in July and August, since the building was not air-conditioned and the judges took their vacations during those months.

One of the unexpected rewards of my law practice was the number of friends I made. Clients often come to lawyers at the client's time of need. When the lawyer guides them through the crisis and a satisfactory solution is achieved, a bond forms. Some of my best friends today are former clients with whom I worked to solve problems which had arisen in their lives. Other clients came under happy circumstances such as adopting a baby. There, I shared in their happiness in welcoming a long-awaited child into their home. Fellow lawyers also became good friends.

As I look back on my fifty-four years as a member of the Bar, perhaps the most significant change for the better is the process by which judges in Utah are selected and retained in office. This change started in 1944 when the Utah Constitution was amended to provide for the selection and election of judges solely on their merits and without regard to partisan affiliations. This amendment was spearheaded by the Utah Bar Association with encouragement from the American Bar Association. Up until that time, judges in Utah ran for office as Democrats or Republicans. Whether you were elected depended a good deal on whether you were of the same party as the presidential candidate who carried the state. From statehood until the time of Woodrow Wilson's presidency, we had Republican presidents and Republican judges in Utah. When Woodrow Wilson came into office, Democratic judges were swept into office with him. In the 1920s, Republican presidents were again elected and also Republican judges. In 1932, with the election of Franklin D. Roosevelt as president, all of the Republican judges were swept out of office and Democratic judges were elected. No judge had any hope of long tenure on the bench, and only the bravest would leave their law practices to gamble on gaining and keeping a judgeship.

After the 1944 amendment, the Legislature experimented with different ways to select and elect judges. At first, the governor could appoint any member of the Bar. Nominating Commissions which restrict the appointing power were to come later. Any lawyer could file to oppose an incumbent judge at election time. Finally, in the mid-1980s, the present retention election system (Missouri Plan) was adopted.

The four years that I spent as chief justice afforded me the opportunity to meet and talk to justices of other states. It would never be long in our conversations before the subject of judicial elections would come up. In some states, judges still run as Democrats and Republicans, and any lawyer can oppose them. In other states, judges run without party affiliation, but any lawyer can run against them. In these

states which have not adopted the Missouri Plan, an incumbent judge who is opposed for reelection must necessarily raise large amounts of campaign money.

This money comes principally from lawyers and groups which frequently appear in the courts, such as business, medical, labor, agriculture groups, etc. A justice on the Texas Supreme Court who was running for reelection about fifteen years ago told me that he had to raise a million dollars and buy television time in seventeen different markets in Texas. I'm sure today, the amount required is much more than that one million dollars. With judges having to raise money to finance their reelection come many problems.

Public confidence in judges and the judiciary is eroded when judges have to resort to accepting campaign contributions. Not only does the running of a campaign take time and energy away from a judge's judicial work, but it introduces suspicion about a judge's biases and favoritism. Every lawyer who takes his client into a court in a state where contested elections are still held must always wonder whether the lawyer's opponent, and perhaps the opponent's client, has contributed to the judge's last campaign. It would seem that a lawyer who practices frequently in the courts in those states would need to make a contribution to every judge's campaign fund and hope that the amount would not be overshadowed by the amount given by future opponents in that court.

Contested elections and campaign contributions to judges create many ethical issues. Several times each year, national conferences are held to try to come to some consensus as to whether limits should be put on the amount of contributions a judge can accept and what restraint, if any, should be on a judge in responding to his or her opponent's criticism of the judge's record.

Fortunately, in Utah, we do not have these issues to deal with. The public is well served by our present retention election system where voters decide whether to retain a judge in office, free from partisan labels and campaign contributions. Utah judges can concentrate on their work without the worry of raising campaign funds. More importantly, public trust and confidence in the judiciary is not eroded by the knowledge that the judge before whom your case is tried has accepted campaign contributions from many sources. Utah's system is the best. It should not be compromised or altered.

EDITOR'S NOTE: *Justice Richard C. Howe retired from the Utah Supreme Court at the end of the year, following decades of service to the citizens of Utah. The* Utah Bar Journal *congratulates Justice Howe on his long and distinguished career and wishes him health and happiness in his retirement. We are pleased that he was willing to share these parting observations with our readers, and take this opportunity to highlight a few of his accomplishments.*

Justice Howe was born January 20, 1924, in South Cottonwood, Utah. He was educated in the schools of the Granite School District, graduating from Granite High School in 1941. He went on to graduate from the University of Utah in 1945, earning a B.S. degree in speech. He obtained his J.D. degree from the University of Utah College of Law in 1948. He was admitted to practice law in Utah in 1949. His first employment was as a law clerk to Chief Justice James H. Wolfe of the Utah Supreme Court, followed by appointment as judge in the Murray City Court from 1951-52. He then established a private law practice in Salt Lake County which lasted until 1980.

While his practice was general in nature, he concentrated on real property sales and conveyances, title problems, and probate practice.

Elected as a Democrat, he served for twelve years in the Utah House of Representatives (1951-58) and (1969-72), where he became Speaker of the House for the 1971-72 session. He was minority leader in the 1957-58 session. Elected to the Utah Senate in 1972, he served there until 1978. He was assistant minority leader in the 1973-74 session. During his eighteen years in the House and Senate, he served on every major committee. He introduced and sponsored legislation to adopt the Model Business Corporations Act and the Model Criminal Code, and legislation to establish a Judicial Council and Court Administrator in Utah. He sponsored the Circuit Court Act, which replaced City Courts with a state court of record, the Circuit Court, and made City Judges members of the state judiciary.

Justice Howe was one of the original members of the Salt Lake County Merit Council, where he served for nine years and became its chairman. He also served as an examiner for the Utah State Bar and became chairman of the Examiners Committee. He served for ten years (1977 to 1986) as a member of the Utah Constitutional Revision Commission.

In 1980, he was appointed a Justice of the Utah Supreme Court by Governor Scott M. Matheson. He served as Associate Chief Justice for eight years, and in April 1998, he was elected by his colleagues to a four-year term as Chief Justice. He retired from the Court, where his legal career had begun over fifty years earlier, on December 31, 2002.

He is a former member of the Board of Directors of the Conference of Chief Justices and was appointed last year by Chief Justice William H. Rehnquist to the Advisory Committee on the Rules of Appellate Procedure of the United States Judicial Conference, where he will continue to serve. He was made an Honorary member of the Order of the Coif at both the University of Utah and Brigham Young University law schools. He and his wife Juanita are the parents of three sons and three daughters and grandparents of eighteen grandchildren. He has been active in his church and in civic affairs, and is an accomplished gardener. Those who have enjoyed his renowned sweet corn in summers past sincerely hope that his retirement will not extend to his avocation as an urban farmer.

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Robert Wayne Swenson, University of Utah College of Law

by John K. Morris

Robert Wayne Swenson, legendary law professor for 50 years at the S.J. Quinney College of Law, died suddenly and unexpectedly on November 17, 2002 during a family dinner surrounded by the people who he loved most and who cherished him as a gentle, loving father, grandfather and husband.

At first glance, Bob's professional biography looks conventional enough. He received his undergraduate and law degrees from the University of Minnesota, worked in New York City for a large company, became an associate at Davis, Polk, a Wall Street law firm, took permanent academic positions at Drake and then Utah, where he was the James I. Farr Professor of Law, and took visiting positions at many other schools, including Stanford, NYU, Hastings, and Texas. Bob published important works in the property law area and was recognized as a national expert on water law.

This conventional biography does not begin to capture the career or the man. For example, while at Davis, Polk, Bob had the opportunity to provide services to the then Duke and Duchess of Windsor and to J. P. Morgan. Nor does this dry recitation hint at Bob's greatest professional passion and accomplishment, teaching three generations of law students.

Dean Scott Matheson says of Bob's teaching: "Bob Swenson taught more years, more courses, and more students than any other member of the law school faculty. As a teacher of property law, he would no doubt have something to say about being described as a fixture of our law school, but there is no question that he was."

Bob was the antithesis of *The Paper Chase.* He was unfailingly polite and kind while at the same time persistently rigorous. One of his students from the 1980's tells a story of her participation in a program with students from other law schools. Bob would be proud to hear her tell that "I was the only one in the group who understood the Rule Against Perpetuities." It was almost an obsession with Bob that his students understood this obscure and complicated doctrine. One rainy day in the early 1990's, Bob walked into the law school lobby waving a tabloid newspaper and exclaiming to all within earshot "it's true, it's true, there is a reason for the Rule Against Perpetuities." In Bob's hand was a copy of the *National Enquirer* with a front page headline declaring "Ninety Two Year Old Woman Has Baby," finally proof that the fertile octogenarian was a real possibility.

Bob used a couple of unusual but effective techniques in the classroom. He was, to my knowledge, the only law professor in the country who could face the classroom, reach over his shoulder, and write legibly on the board, to his delight and the delight of his students. Bob was notorious for becoming completely absorbed in a point and losing track of whatever else he might be doing, such as the time he taught most of a class with a sweater hanging halfway on and halfway off his arm.

Of course, these stories all reflect a very profound feeling – love – that characterized all of Bob's relationships with students, colleagues, friends and whoever else happened into his orbit. Every person I talked to in preparation for writing this piece used the word "love" at some point or another in describing Bob. Love was reflected in the twinkle in his eye, in his fight for respect and equality for black athletes in the early 1950's, and in his unfailingly equal treatment of others, no matter their age, background, education or wealth.

Love also lived in his close and happy 56 year marriage with his wife, Peggy. One student recalls being in Bob's office to discuss some legal issue and hearing the phone ring. Of course, in those days there was no way of knowing who might be calling but Bob and Peggy were so close that Bob was able to say to the student "that's my wife on the phone; I'd better take it." Love also lived in his relationships with his three children who recall Bob at their games, and staying up all night with a cool wash cloth to make them comfortable when they were sick.

Unknown to most, Bob was a gifted and accomplished artist. He was awarded a music scholarship and played the piano beautifully although, true to the personality of this humble man, very few ever heard him play. Bob was also a gifted painter who did large murals on at least two walls of his and Peggy's long time home on Butler Avenue. And, unknown to almost everyone, Bob was a gifted three sport athlete.

However, Bob was not perfect. Sometime shortly after moving to the West, Bob and his close friend and colleague, Dan Dykstra, decided to take their children camping. Not only did they come home after one night, vowing never to go again, but they left all the camping gear behind. If Bob were here to respond, he would no doubt say "well, why bring it back, we sure as hell were never using it again." Nor did Bob enjoy overwhelming success as a theologian (or church politician). While a young man living in New York, Bob was appointed to chair a committee of the local Episcopal Church he belonged to. The charge to the Committee was to determine whether God existed. Bob's report came back with a negative conclusion.

Bob Swenson was the sweetest, gentlest, man I have ever known. Every day of his life he lived the truth that manliness and tenderness are synergistic qualities. Bob taught these qualities in the most effective way – by living them – with countless students over 50 years, students who were forever changed by the unique opportunity to learn, not just the Rule Against Perpetuities, but the principles of human decency. Bob's influence on those he left behind and those yet to come is immeasurable and, in the end, that is what counts: how we have affected the world we have lived in, how we have left it, and how it will be in the future because of us. Robert W. Swenson, "Bob," "Uncle Bob," "Bobsie," "Swenny" succeeded on all counts and we are all better off for his too brief presence here.

Commission Highlights

During its regularly scheduled meeting of December 6, 2002, which was held in Salt Lake City, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Commission held a discussion regarding Legal Aid's request on using the lawyers' lounge in the Matheson Courthouse for a pro bono conference area. The Commission voted to refer the request to the Courts & Judges Committee for their recommendations.
2. John Adams reported that he had attended the Committee on Professionalism's last meeting and expressed the Commission's support to that group. He offered to include the topic on the Annual Convention's agenda and provide space in an upcoming *Bar Journal* issue.
3. John Adams reported that the Bar would co-sponsor with AOC, a reception for the retirement of Justice Richard Howe, which has been tentatively scheduled for January 15th, 2003. John Adams mentioned that the Bar probably would also be asked to co-sponsor a reception for Justice Leonard Russon when he retires from the Court this May.
4. Clayton Simms reported that Yvette Diaz has been busy planning for the "First Hundred Minority Bar Members Celebration". Richard Dibblee and Debra Moore will both be assisting Yvette in her work. The question was asked how do we define "minority"? John Baldwin replied that we largely rely on voluntary self-identification on the annual licensing form.
5. The Commission will forward the names of Thomas A. Mitchell and Robert Thorup to the Judicial Council for its consideration on the Supreme Courts *Ad Hoc* Records Committee.
6. John Adams requested that the reports of the subcommittees to review the Bar programs from last year (Support to Bar Committees, Consumer Assistance Program and Continuing Legal Education Program) be finalized and submitted for the upcoming January meeting. The Bar programs currently scheduled for review are: (1) the Client Security Fund Program; (2) the Fee Arbitration Program; and(3) the Member Benefits program. John Baldwin explained that the Court had previously issued an order directing the Bar to periodically review its programs to determine if they are an efficient and effective use of Bar resources.
7. John Adams reported that the ABA's NCBP mid-year meeting will be held in Seattle this year and he strongly encouraged Commissioners to consider attending.
8. The Commission reviewed the agenda for meeting with the Supreme Court. John Adams reminded the Commission that in order to continue building a sound relationship and enhance communication, periodic meetings were being scheduled with the Court.
9. The Commission discussed Bar licensing cards and Bar branding, and asked if there was interest in changing the appearance of the current Bar licensing card. The Commission asked John Baldwin to look into this issue further and get back with more information relating to options for design, costs, etc.
10. Nanci Bockelie reported on the Legislative constitutional law class. January 9th will be the first class taught by two law professors. John Baldwin will check into whether CLE class credit would be available for the lawyer legislators.
11. Karin Hobbs distributed copies of the April 18, 2003 CLE presentation, "Utah Judicial Selection: State and Federal Courts". It was suggested that the presentation be videotaped (and packaged with hard-copy materials) so that Bar members unable to attend the actual presentation could have access to the information at a later time.
12. John Adams reported that the Bar's Government Relations Committee is planning a meeting for lawyer legislators and members of the Commission before the 2003 legislative session convenes. This meeting would be a good opportunity to strengthen relationships and encouraged Commission members to attend
13. John Adams distributed a proposed letter drafted by Scott Sabey and Lori Nelson advising legislators that the rules for Integration and Management allowed for the Commission's and Government Relations Committee's "technical assistance" to the Legislature on the efficacy and functionality of proposed laws. Commissioners were asked to provide any feedback relating to the draft to David Bird by 12-13-02.
14. Debra Moore reported on the Delivery of Legal Services Committee. She said that George Daines and Nanci Bockelie had recently attended the ABA Workshop on Lawyer Referral Services. A discussion followed the report.
15. Steve Waterman and Joni Seko presented the final, recommended changes to the Bar's Rules Governing Admission. A lengthy discussion followed. The Commission voted to adopt

the Rule 7-5 (c) as amended, and also Question 30 on the application for admission as amended. The Commission also voted to approve the remaining changes previously submitted at the October Commission meeting as well as those currently included in December's materials.

16. John Baldwin advised the Commission that the Bar will be sending out a monthly e-bulletin to lawyers who have provided their e-mail addresses. The e-mail will be concise and highlight timely issues of importance to Bar members.

17 John Baldwin discussed recalculation of CLE seminar split with sections. There was discussion concerning the tendency of sections not to spend the monies they accumulate and the wisdom of augmenting those increasing accounts as well as the equities of a more reasonable division of revenues. This topic will be put on January agenda for further discussion.

18. Felshaw King directed the Commission's attention to three separate resolutions: (1) creation of an Office of Professional Protection/Respondent Ombudsman; (2) new requirements to amend Bar's annual budget after approved; and (3) establish criteria for appropriation of Bar funds pursuant to "outside" requests. Felshaw emphasized that the resolutions were intended as points of discussion rather than items for immediate action. A lengthy discussion followed and the groups were asked to have a preliminary report ready for the March Commission meeting.

19. It was noted that the former law professor and law school Dean Lee Teitelbaum would be returning to re-join the faculty at the S. J. Quinney College of Law.

20. Dane Nolan reported that the Utah Supreme Court's Study Committee on the Delivery of Legal Services had been released to the legislative leadership at the end of November and that it would be available on AOC's web site.

21. Mary Cline, Chair of the Needs of Children Committee, reported on the demise of the Committee. She said that the Needs of Children's issues were basically being addressed by the Young Lawyers Division and the Family Law Section so that there was no real role left open for the Committee to fill at this point.

22. Mary Jane Ciccarello distributed a memo outlining the Needs of the Elderly Committee's activities and accomplishments for the year 2001-2002. She reported that the Committee was trying to expand its programs and that members were in the process of drafting an elder law manual setting forth basic practice pointers and relevant law. Once completed, the Committee would like to have the material translated into Spanish and post it on the Bar's web site.

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.

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 five truck loads of donated items, received approximately $2,000 in cash donations to specific shelters and $2,500 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.

Leonard would also like to extend a special thanks to his wife, Stacy, who acted as a one person firm and collected clothing from her friends that amounted to the largest single truck load of donations received.

Thank you all for your kindness and generosity.

Leonard Burningham
Toby Brown
Sheryl Ross
Marjorie Green

SPOTLIGHT *on Professionalism*

Edward K. Brass was appointed by the Supreme Court to serve as a "court assistant" in the mandatory appeal of Roberto Arguelles in a death-penalty case. His extraordinary contribution was recognized in a concurring opinion, which reads in its entirety as follows:

HOWE, Justice, concurring: *I concur. I express my appreciation and thanks to our court assistant appointed by this court to brief and argue the issues presented in this mandatory statutory appeal. I am mindful of countless hours of effort expended by him working through voluminous records and researching the difficult and sensitive issues in this capital case. All of this was done by him without monetary compensation.*

State v. Arguelles, 2002 UT 104, ¶133, 459 Utah Adv. Rep. 3

Heard or seen something similar?
E-mail your anecdote to: jorme@email.utcourts.gov

Request for Comment on Proposed Amendments to the Local Bankruptcy Rules of Practice

Please be advised that the U.S. Bankruptcy Court for the District of Utah has proposed amendments to the Local Bankruptcy Rules of Practice. All written comments on the proposed amendments are due by March 14, 2003, and must be submitted to the clerk of court no later than that date. The U.S. Bankruptcy Court will conduct an *en bank* hearing on Friday, April 4, 2003 at 10:00 a.m., 350 S. Main Street, Salt Lake City, Utah, Courtroom 369, at which time any party who has timely submitted a written comment may appear and be heard.

Copies of the proposed amendments to the Local Bankruptcy Rules of Practice are available at the office of the clerk without charge, or may be obtained by writing the clerk and enclosing a self-addressed stamped envelope with $3.95 postage affixed. Copies may also be obtained in person at the Utah State Bar Office, or from the Court's website, at www.utb.uscourts.gov.

Notice of Direct Election of Bar President

In response to the 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 nominated 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 pm on March 3, 2003. Potential candidates will be invited to meet with the Bar Commission in the afternoon of March 13, 2003 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 2nd. The President-Elect will be seated July 16, 2003 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,
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297-7028
or e-mail
jbaldwin@utahbar.org.

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Supreme Court Seeks Attorneys to Serve on Advisory Committee

The Utah Supreme Court is seeking applicants to fill vacancies on its Rules of Juvenile Procedure Advisory Committee. Each interested attorney should submit a resume and a letter addressing qualifications to:

Alicia Davis – Administrative Office of the Courts
P.O. Box 140241 • Salt Lake City, Utah 84114-0241

Applications must be received no later than January 31, 2003. Questions may be directed to Ms. Davis at (801) 578-3800.

Notice of Amendment to Rules of Lawyer Discipline and Disability

As of January 1, 2003, the Utah Supreme Court amended the Rules of Lawyer Discipline and Disability. The amended rules have not yet been updated on the courts' websites, but have been updated on the Utah State Bar's website at www.utahbar.org.

Notice of Election of Bar Commissioners

Third, Fourth & Fifth 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 two members from the Third Division and one member from the Fourth and Fifth Divisions, 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 30. Ballots will be counted on June 2.

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 3.**

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 3, 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.

Notice of Petition for Reinstatement to the Utah State Bar by Isaac B. Morley

Pursuant to Rule 25(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of a Petition for Reinstatement ("Petition") filed by Isaac B. Morley in *In re Isaac B. Morley,* Third District Court, Civil No. 950906429 on December 30, 2002. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

2003 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 2003 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 Friday, April 25, 2003. 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

IN MEMORIAM

Farewell to Carman E. Kipp

12/16/27 – 12/13/02

Carman E. Kipp founded Kipp and Christian (formerly known as Kipp and Charlier) in 1950, the year of his admission to the Utah State Bar. His energy and enthusiasm for his professional life equaled that which he had for life outside the practice of law. He served as a Bar Commissioner from 1975 to 1981 and served as President of the Utah State Bar from 1979 to 1980. He was named Utah Lawyer of the Year by the Utah State Bar in 1987. In 1995, he was named Utah Trial Lawyer of the Year by American Board of Trial Advocates. He was a Fellow in the American College of Trial Lawyers and was State Chairman of that organization in 1990. These are but a few of many examples of Carman's service and dedication to our profession.

To us, Carman was a teacher, example and friend. His daily example was that of a creative and persistent advocate. He taught that approaching the practice of law with discipline and perspective freed time for the enjoyment of life with family and friends. Many of Carman's prescriptions for the practice of law were delivered through clever, funny and, sometimes, not so discreet parable and metaphor. Without exception, however, their wisdom was revealed – for the lucky when the crow, while bitter, was young and relatively palatable, for the unlucky when the crow had aged to a rancid unpalatable state. On those latter occasions, Carman was the first to provide the support and perspective that aids in the rejuvenation of confidence and spirit. He was a true partner in the practice of law.

Carman was of the old school. He believed the legal profession involves more than billing and that a real professional works to solve the client's problem in the most efficient way. The objective was not to beat the other side, but to heal contention with civility and order of process. He often denounced the growth of "unilateral reciprocity" whereby opposing lawyers expected him to accommodate their needs procedurally but seemed to lose the courtesy when he needed accommodation. He knew to stay away from the edge of the ethical cliff and was disappointed in those that practice law standing as close to that edge as they could. The old label has depreciated of late, but he was, in the end, a gentleman.

To the extent a law firm can hold a spirit and personality, we will proudly endeavor to hold those which Carman gave this firm over his 50 years of practice. It is with sadness yet with gratitude and very wonderfully colored memories that we wish Carman farewell.

The Lawyers and Staff of
Kipp and Christian, P.C.

Discipline Corner

PUBLIC REPRIMAND
On November 15, 2002, the Honorable James L. Shumate, Fifth Judicial District Court, entered an Order of Discipline: Public Reprimand, reprimanding Douglas D. Terry for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a)(Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Terry was retained to represent a client in a personal injury matter. Mr. Terry prepared and filed a Complaint on behalf of his client, but failed to serve it upon the defendant. The case was dismissed for failure to prosecute; Mr. Terry refiled it. Mr. Terry received discovery requests from the defendant, but failed to file discovery responses, claiming he could not locate his client, although the client had provided her new address. The case was eventually dismissed with prejudice against Mr. Terry's client. A few months later, Mr. Terry met his client by chance and told her that he would attempt to rectify the matter. Afterthat meeting, Mr. Terry did not return his client's telephone calls, or rectify the matter, or compensate her for any errors he made.

Mitigating factors include: absence of prior record of discipline; absence of dishonest or selfish motive; and remorse.

Mr. Terry also has made restitution to his client.

ADMONITION
On November 5, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.2(b) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In one matter, the attorney was retained to negotiate a settlement in a client's divorce. The fee agreement stated that the client's fee was non-refundable. When the attorney did not obtain a settlement, the attorney did not alert the client that an answer to the divorce petition needed to be filed, and the attorney did not answer the divorce complaint on behalf of the client by the deadline. The client received a default notice and immediately went to the attorney's office for advice. The attorney did not advise the client that the attorney would not attend the default hearing and that the client should attend; an order of default was entered against the client. After the default was entered, the attorney would only agree to attempt to negotiate the matter for an extra fee. The client retained a new attorney to seek to set aside the default, and eventually reached a settlement with the former spouse. The attorney refunded the client's fees, and agreed to change the non-refundable clause in future fee agreements.

In another matter, the attorney was retained to represent a client in a divorce and child custody matter. The attorney's fee agreement stated that the client's fee was non-refundable. The attorney did not keep the client informed about the case and did not consult with the client about matters as they arose. The parties agreed to hire an independent child custody evaluator but the evaluator was not retained. The attorney failed to keep the client reasonably informed about the case and to explain the matter to the extent reasonably necessary to enable the client to make informed decisions regarding the appointment of a child custody evaluator. The attorney also failed to inform the client that the opposing party filed a motion to bifurcate the divorce from the other issues in the case until after the court granted the motion and the time for an appeal had run.

Mitigating factors include: absence of a prior record of discipline; absence of a dishonest or selfish motive; full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings; good character or reputation.

ADMONITION
On November 12, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney represented a client in a criminal matter. The client entered a guilty plea and, as advised by the attorney, waived his right to a pre-sentence investigation. After sentencing, the client moved to withdraw the guilty plea. The court ordered an alienist report. For the next thirty months and despite three court orders, the attorney failed to arrange for and obtain the report. Throughout this time the attorney failed to communicate with the client, who remained jailed. The client finally requested new counsel and the court, finding ineffective assistance of counsel, granted the request.

ADMONITION
On November 15, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.3 (Diligence), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a probate matter. The attorney performed work for three months, but thereafter failed to give the matter the attention it required. When the client attempted to terminate the attorney's services, the attorney convinced the client to continue the representation. The attorney provided limited services and again stopped giving the matter appropriate attention. The attorney changed employment during representation of this client and failed to timely and formally withdraw from the client's matter.

Mitigating factors include: absence of a prior record of discipline; absence of a dishonest or selfish motive; full cooperation with the Office of Professional Conduct; and good character and reputation.

ADMONITION
On November 21, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 8.4(a) (Misconduct), 8.4(c) (Misconduct), and 8.4(d)

(Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was paying alimony to a former spouse, who was involved in a new relationship. The attorney completed magazine subscriptions in the name of the former spouse's new partner, addressed to the former spouse's home. The attorney did not introduce, or attempt to introduce the magazine subscriptions as evidence during an action concerning alimony; the conduct served no purpose other than to inconvenience the magazine businesses, the former spouse, and the spouse's partner.

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

Mitigating factors include: no prior record of discipline; suffering from personal or emotional circumstances; demonstrated a cooperative attitude towards the proceedings by admitting to the underlying conduct; good character or reputation in the legal community; and remorse.

DISBARMENT
On December 31, 2002, the Honorable L. A. Dever, Third Judicial District Court, entered an Order of Disbarment, disbarring Mark C. Jahne from the practice of law for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.15(a) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 3.1 (Meritorious Claims and Contentions), 4.4 (Respect for Rights of Third Persons), 8.1 (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In one case, Mr. Jahne was retained to represent a client in a workman's compensation case with the federal government. The client gave Mr. Jahne a retainer of $750. Mr. Jahne did not provide any meaningful legal services on behalf of the client. Mr. Jahne sent the client a refund check from his trust account, but the trust account check was returned because of insufficient funds. Mr. Jahne responded to the OPC's investigative letter and indicated that he had repaid the funds and that he did not have a trust account. Subsequently, in a personal bankruptcy filing, Mr. Jahne listed the money owed to this client as an outstanding debt. The personal bankruptcy filing also indicated that Mr. Jahne had not filed income taxes for several years.

In another case, Mr. Jahne was opposing counsel in a small claims matter. A settlement agreement had been reached in the case, but as a condition, the defendant was to provide the address of the defendant's sister so that she could be served with a summons. The defendant provided the information, but the information provided to Mr. Jahne was incorrect. The defendant immediately attempted to rectify the error. However, despite the earlier agreement, the defendant still was required to appear at court because Mr. Jahne did not dismiss the suit, although he had sufficient time to do so. At court, Mr. Jahne directed the defendant into the wrong courtroom. The defendant realized the deception and proceeded to the correct courtroom, however, Mr. Jahne and his client did not appear for the hearing and the matter was dismissed. Mr. Jahne failed to respond to the Office of Professional Conduct's ("OPC's") Notice of Informal Complaint ("NOIC").

In a third case, Mr. Jahne was retained to represent a client in a divorce matter. Mr. Jahne failed to answer the divorce complaint. As a result, a default judgment was entered against his client. Mr. Jahne entered into a settlement agreement with his client to compensate the client for his loss due to Mr. Jahne's failure to represent him. Mr. Jahne missed several payments and then stopped paying the client. Mr. Jahne failed to respond to the OPC's NOIC.

Aggravating factors include: dishonest or selfish motive, pattern of misconduct, multiple offenses, obstruction of the disciplinary proceeding, submission of false evidence, false statements or other deceptive practices, lack of good faith effort to make restitution or rectify consequences of misconduct, illegal conduct, and substantial experience in the practice of law.Mitigating factors include: absence of prior discipline.

RESIGNATION PENDING DISCIPLINE
On November 20, 2002, the Honorable Christine Durham, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline concerning Bryan C. Robinson.

In summary:
Mr. Robinson issued checks in his capacity as a licensed insurance agent. The checks were returned because there were insufficient funds in the Title Escrow Account. Additionally, Mr. Robinson did not properly disburse funds he held in trust. Mr. Robinson failed to respond in writing to the Office of Professional Conduct's Notices of Informal Complaint concerning ten complaints against him.

ADMONITION
On December 12, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5(a) (Fees), 1.7(b) (Conflict of Interest: General Rule), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to secure a release from prison, or a firm parole date or parole hearing. The attorney was the managing director of a prison reform corporation. The attorney agreed to hold the client's retainer in trust until research into the merits of the claim was concluded, and agreed the prison reform corporation would cover some of the legal fees. The client subsequently learned that the attorney was barred from having contact visits with inmates because the attorney had violated Utah State Prison regulations. The attorney charged the client to lift the attorney's contact restrictions. The prison reform corporation was not funded and could not contribute to the legal fees. The attorney's ability to represent the client was compromised because of his interest in the prison reform corporation.

ADMONITION
On December 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters),

and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in negotiating a settlement with the IRS or to represent the client at trial. The attorney failed to keep the client advised of notice of a trial, and did not properly withdraw from the representation. The attorney failed to respond to the Office of Professional Conduct's specific request for information concerning why the client was not advised of the notice of trial setting.

ADMONITION
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.16(d) (Declining or Terminating Representation) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a criminal matter. The client paid the attorney a fee to cover the case, excluding any appeal. The client entered into a plea agreement, agreeing to obtain counseling and within six months provide proof of counseling and file a motion to dismiss. The attorney failed to file a motion to dismiss at the end of the six month period and the court issued an order to show cause. The order to show cause was mailed to the attorney, who forwarded it to the client. The attorney did not appear at the show cause hearing, and although the client provided proof of counseling, the court ordered a bench trial. During the show cause hearing, the court noted that the attorney was still counsel of record. The prosecutor prepared an order dismissing the case, which was signed by the judge.

ADMONITION
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to recover back wages. The attorney filed a complaint on behalf of the client. The client did not receive any communication from the attorney concerning the status of the case. Approximately one year later, the client contacted the court and learned that an order to show cause for failure to prosecute had been issued and the case was to be dismissed in one week. On the day the case was dismissed, the attorney filed a response to the court's order to show cause. One month later, the attorney filed a motion to set aside the dismissal and for a scheduling conference. No opposition was filed to the motion, no notice to submit for decision was filed, and no further action was taken on the motion. The case remains dismissed and the attorney did not file a withdrawal of counsel.

ADMONITION
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to prepare a citizenship application for the client's minor adopted child. Approximately one year later, the attorney told the client the application had been filed and to wait eighteen to twenty-four months for a reply. The client contacted the attorney nearly three years later to ascertain the status of the application. The attorney advised the client to contact the Immigration and Naturalization Service ("INS") directly. The INS told the client it had not received the application. The client contacted the attorney, who agreed to investigate the matter. Thereafter, the attorney failed to return numerous telephone calls from the client. When the client spoke to the attorney, the attorney informed the client there was nothing to report. The client requested a refund and the return of the file within two weeks. When the refund and file were not returned promptly, the client attempted to contact the attorney, without success. The client later learned the child became a citizen under the Child Citizenship Act of 2000. The attorney did not inform the client of the new legislation during their previous telephone conversation. The attorney eventually refunded the retainer fee to the client.

ADMONITION
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney filed an appearance to represent a defendant in a criminal matter pending in Justice Court. The attorney failed to appear at court for a hearing on a motion to suppress, and failed to request a continuance of the proceedings, or make other alternate arrangements with the court and the prosecutor.

ADMONITION
On January 7, 2003, 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), 1.4(b) (Communication), 1.5(c) (Fees), 3.2 (Expediting Litigation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a personal injury matter who was assaulted. The attorney accepted the case for a contingent fee, but did not prepare a written contingency fee agreement. The attorney served a complaint on the employer of the assailant. The attorney did not timely pursue discovery to identify the assailant. The attorney did not communicate with the client regarding the case status. The attorney allowed the client's case to be dismissed because of failure to prosecute. Additionally, the attorney did not explain the client's rights to the client to the extent necessary for the client to properly protect the client's ability to reverse the dismissal.

Why the Runner Didn't Do It

Marilu Peterson, CLA-S – Legal Assistant Division Chair

I can almost hear the teeth grinding. Something absolutely, positively has to be filed, recorded, delivered, picked up . . . something. But it didn't happen: wrong time, wrong place, just plain wrong. It's pretty easy to just blame the runner or the secretary or the process server or the copy shop or whoever else.

But let's consider the possibility that the problem is in the instructions. The most frequently expressed complaint in the working relationship between the lawyer and the legal assistant is the quality of communication -- something that is inherent to how well we work together. Obviously, this extends to our relationships with those to whom we delegate tasks.

So, just how good are we at communicating what really needs to be done? It sounds pretty simple.

A. Just tell them what you are going to tell them.
What is the purpose? Why is it important? *Our deadline is today so this must be filed with the court in Provo today.*

B. Then tell them in detail.
What is it? How does it work? *This is an answer to a complaint with a counterclaim. You will need this check to pay the filing fees. I need the receipt for our files. These are the directions to the courthouse. These are a couple of tips for dealing with the parking problems.*

C. Have them confirm the instructions verbally.
You need this filed today at the courthouse in Provo. There is plenty of free parking in the lot on the north side. I have the check for the filing fee and I will bring the receipt back to you.

D. As confirmation, briefly review your instructions.
That's right. This has to be filed today in Provo and I need the receipt. Do you have any questions?

The last item is particularly important – be open to answering the questions. That little pause may be all it takes to get it done right, on time, the first time.

Like I said, seems simple. Now take a deep breath and give it a whirl.

What We've Been Up To: The Legal Assistant Division Highlights

The Legal Assistant Division has:

- Presented 2 Brown Bag CLE events in Salt Lake City
- Presented 1 Brown Bag CLE in Ogden (the first ever for legal assistants)
- Scheduled Brown Bag CLE in St. George
- Presented 1/2-day CLE on November 22, 2002, on issues relating to delivery of legal services
- Scheduled full day CLE for June 20, 2003, in conjunction with LAD Annual Meeting
- Encouraged participation of membership in "Dialogue on Freedom" project
- Worked with Bar practice sections to enable LAD members to participate in CLE events; LAD members are now included in CLE event mailings from the Young Lawyers Section, Litigation Section, the Family Law Sections, and the Business Law Section. In addition, LAD members are now eligible for non-voting membership in the ADR and Collections Sections, and in the Franchise Law Section (subject to the approval of the chair)
- Appointed a director (Robyn Dotterer) to work with the Young Lawyers Section on CLE events, community projects and a possible joint article for the *Bar Journal*
- Appointed a director (Tally Burke) to actively participate on the Bar Mid-year and Annual Meeting Committees
- Will sponsor one full track of CLE at the Mid-year meeting in St. George
- Arranged for inclusion of LAD members in the upcoming issue of The Professionals Directory published by the Lorraine Press/Intermountain Commercial Record
- Published an article in each issue of the *Bar Journal*
- Appointed one delegate (Deb Calegory) and an alternate (Ann Bubert) to the Delivery of Legal Services Committee
- Appointed three directors (Denise Adkins, Sanda Kirkham and Danielle Davis) to the Governmental Relations Committee
- The Division has 126 members – 113 in Region II, 2 in Region I, 2 in Region III and 9 in Region IV

The Law Firm of

KIRTON & McCONKIE

is pleased to announce that:

BENSON L. HATHAWAY, JR.,

formerly of Stirba & Hathaway, Salt Lake City,
has joined the Firm as a Senior Associate and will continue
his practice in Business & Construction Litigation.

RANDY K. JOHNSON,

formerly general counsel of Daw Technologies, Inc., Salt Lake City
has joined the Firm as a Senior Associate and will continue
his practice in General Corporate & Business Law.

STEPHEN W. GEARY,

formerly of Sidley & Austin
(now known as Sidley Austin Brown & Wood), Los Angeles,
has joined the Firm as a Senior Associate and will continue
his practice in all areas of Business Litigation.

ALEXIS V. NELSON,

has joined the Firm as an Associate and will continue
her practice in Intellectual Property.

KIRTON & McCONKIE

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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P.O. Box 45120 • Salt Lake City, Utah 84145-0120
Utah County (801) 223-9666 • Fax (801) 321-4893
Telephone (801) 328-3600 • www.kmclaw.com

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
02/05/03	**Estate Planning Part II: Constructing a Basic Will and Living Trust.** 11:00 am – 1:30 pm. $45 Young Lawyer, $60 others. Brunch served beginning at 10:30 am. Instructor: Laurie Hart, Callister Nebeker and McCullough.	3 CLE/NLCLE
02/12/03	**ADR Academy: Mock Mediation Part II.** 5:30 – 6:45 pm. $40 Young Lawyer, $50 ADR Section Member, $60 others. Second part of the January 8 seminar.	1.5 CLE/NLCLE
02/20/03	**Practicing Water Law in Utah.** 5:30 – 8:30 pm. $50 Young Lawyer, $60 others. Program Planner: Steve Vuyovich, Holme Roberts & Owen.	3 CLE/NLCLE
02/21/03	**Collection Law Update.** 9:00 am – 12:00 pm. $20 Section Members, $60 others (includes lunch). UACPA update, case law update, legislative update, questions.	3
02/28/03	**Intellectual Property Mid-Winter Institute.** City Centre Marriott. 8:30 am – 5:00 pm. $170 I.P. Section Members, $190 others. Guest speaker: Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy, U.S. Patent and Trademark Office. Full agenda on-line.	9 includes 1 hr. Ethics
03/13–15/03	**Mid-Year Convention – St. George, Utah, Dixie Convention Center.** $190 before February 21, 2003, $215 after.	10 includes up to 3 hrs ethics & 6 hrs NLCLE
03/27/03	**Securities Law Practice in Utah.** 5:30 – 8:30 pm. $50 Young Lawyers, $60 others.	3 CLE/NLCLE

To register for any of these seminars: Call 297-7033, 297-7032 or 257-5515, OR Fax to 531-0660, OR email cle@utahbar.org, OR on-line at www.utahbar.org/cle. Include your name, bar number and seminar title.

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)):

(1) _____ (2) _____

(3) _____ (4) _____

Name: _____ Bar No.: _____

Phone No.: _____ Total $ _____

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

☐ AMEX Exp. Date _____

Classified Ads

RATES & DEADLINES

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

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

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

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

INFORMATION WANTED

Last Will and Testament for Rose M. Connors. Please contact Gary Weston at Nielsen & Senior, 532-1900, if you have any information regarding the above document.

FOR RENT

Honolulu – Oceanfront – Waikiki. Spectacularly gorgeous designers condo. 1BR + murphy bed, 2 BA. Available Dec 15 – Mar 30. Heated Pool. Literally over the water on the Gold Coast. 4 doors down from the Outrigger Canoe Club. No children. 808-384-7775 or 808-923-4343 or vicstr@gte.net.

FOR SALE

1984 BMW 533i, 4 door sedan. Metallic tan with leather interior. New air conditioning. Great condition. $3,500. Call 582-3545.

POSITIONS AVAILABLE

Private equity fund/boutique investment bank seeks associate with minimum 3 years experience in securities law, transactional work and SEC filings. Salary negotiable plus incentives. Send resume to Greg Kofford, Cogent Capital Corp., PO Box 1362, Draper, UT 84020 or email gkofford@cogentcapital.com

Commercial/Real Property Litigation Associate. Mid-size Salt Lake firm seeks associate with 2-5 years experience for commercial/real property litigation practice. Strong writing skills required. Please respond to Christine Critchley, Utah State Bar, Confidential Box #35, 645 South 200 East, Salt Lake City, UT, 84111 or e-mail ccritchley@utahbar.org.

Sick of the grind and want a life? OR Just want to get back into the practice but have no desire to go full time? Sandy area law office seeks a **part-time lawyer** (approximately half-time) doing general business related work. Some flexibility in scheduling can be arranged. 3+ years experience in general business related law or litigation is required. Compensation is negotiable. No benefits will be provided. Send resume including minimum hourly compensation you may require to: Christine Critchley, Utah State Bar, confidential box #28, 645 South 200 East, Salt Lake City, Utah 84111-3834 or reply by e-mail to ccritchley@utahbar.org. Inquiries will be kept confidential.

EXCEPTIONAL OPPORTUNITY – Established Salt Lake firm seeks lateral hire with some existing business for long-term relationship. Firm is medium sized with well-controlled overhead. Compensation based primarily on production. Any practice area will be considered. All inquiries confidential. Please submit resume to Christine Critchley, Confidential Box 26, c/o Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Major Salt Lake City law firm seeking real estate associate. Requires 2-4 years of significant experience in real estate transactions. Inquiries will remain confidential. Please send resume which details real estate experience to: Christine Critchley, Utah State Bar, 645 South 200 East, Confidential Box #31, Salt Lake City, UT 84111.

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

AV rated Salt Lake City law firm focusing on Family Law seeks associate with family law experience. Excellent benefits. Salary negotiable. Please respond with resume to confidential PO box #30, c/o Utah State Bar, 625 South 200 East, Salt Lake City, Utah 84111.

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Deluxe office space for one or two attorneys. Share with other attorneys. Includes large private offices, reception area, parking adjacent to building, computer networking capability, law on disc, fax, copier, telephone system. Easy client access in the heart of Holladay. Must see to appreciate. 4212 Highland Drive. Call 272-1013.

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SERVICES

Paralegal/Legal Assistant – Independent Contractor 2002 Graduate of Golden Gate University School of Law seeks independent contract work as a Paralegal providing the following services: research, writing, document review, miscellaneous projects. Rate is $15 per hour. Evenings/weekends possible by prior arrangement. Contact Tricia Jeffrey (801) 598-2380.

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COURT ORDERED CUSTODY EVALUATIONS John D, Perovich, Psy.D., a licensed clinical psychologist, provides expert court ordered custody evaluations and comprehensive psychological services from his main office in Layton and satellite offices in Salt Lake and Tooele. 1454 North Hillfield Road, Suite 1, Layton, Utah 84041. Phone (801)593-9145 Fax: (801)593-6033.

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