Table of Contents

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: Frosty Trees, Spanish Fork, Utah, by Bret B. Hicken, Spanish Fork.

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. 2
March 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

Published by The Utah State Bar
645 South 200 East • Salt Lake City, Utah 84111 • Telephone (801) 531-9077 • www.utahbar.org

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.

Multijurisdictional Practice Rule Approved

by John A. Adams

In 1999, the Bar formed a task force to study multijurisdictional practice, commonly referred to as MJP, and on January 24, 2003 the Utah Supreme Court approved Utah's rule. A copy of the new rule appears in its entirety on page 10 of this issue and also on the Bar's website.

The key points associated with the new rule are as follows:

- The Utah Bar will offer admission without examination to attorneys licensed out-of-state if the jurisdiction where they are licensed will admit Utah attorneys without examination.
- Admission to Utah will be on the same terms that the foreign state would admit Utah attorneys. For example, if a Colorado attorney is seeking admission in Utah, he will need to meet the same practice requirements that Colorado would require of a Utah attorney. Colorado requires that an attorney have been in active practice for five of the past seven years, so Utah would require the same practice requirement of a Colorado attorney. If no practice requirement is set by the out-of-state jurisdiction, Utah's minimum practice rule would apply – the attorney must have been in active practice for three of the past four years.
- The Admissions office does not know the reciprocal admission requirements of each state. Interested candidates should contact the Bar where they are licensed to determine if that jurisdiction offers reciprocal admission and to obtain a list of that jurisdiction's admission requirements. Some bar admission offices can be accessed through the website of the National Conference of Bar Examiners: www.ncbex.org.
- Twenty-nine jurisdictions now offer attorney admission without examination. Among neighboring states, Utah attorneys will now enjoy reciprocal admission with Colorado, Wyoming, and Washington. They will not have reciprocity with Idaho, New Mexico, Arizona, Nevada, California or Oregon. (See chart on page 11).
- Attorneys must have passed a state bar examination and have graduated from an ABA-accredited law school to be eligible for admission without examination.
- Candidates should recognize that the process of reciprocal admissions is not intended to be pro forma and should not be confused with *pro hac vice* admission procedures which are simple and quick. **The only difference between bar examination applicants and reciprocal admission applicants is one of sitting or not sitting for the bar examination. The remainder of the application process remains the same, including submitting a completed application and full payment of application and licensing fees.** Applicants should plan on between 3 and 6 months for applications to be processed.
- Applicants eligible for reciprocal admissions must be in good standing with all bars where they are licensed and must demonstrate good moral character.
- Within 6 months of admission, the reciprocal admittee must complete 15 hours of continuing legal education in Utah, including attendance at Utah's Ethics School.

I express our collective thanks to the Bar's MJP task force, our Admissions Committee and our Admission's Director and Deputy General Counsel, Joni Seko, for their work in helping to shepherd through the MJP practice rule.

Constitutional Law for Legislators

On January 9, 2003, at the State Capitol, the Utah State Bar, in conjunction with the Office of Legislative Counsel and Research, sponsored a constitutional law presentation for newer members of the Legislature. Nineteen freshman legislators attended. Following dinner, Professors Kevin Worthen of the J. Reuben Clark School of Law, and Erik Luna of the

S.J. Quinney School of Law, led a discussion about basic principles relating to the United States and Utah Constitutions. They discussed the structure of the Constitutions and explained the differences between the Federal Constitution, which involves a grant of limited powers, and the plenary powers that exist under State Constitutions. Professor Worthen noted the vast range in length of State Constitutions. The presenters further elaborated on the concepts of separation of powers and individual rights and protections. A lively question and answer period followed, focusing in part on the limited resources available to help legislators perform their role as part-time legislators in short sessions where so much legislation is introduced. The Office of Legislative Counsel and Research, headed by Gay Taylor, provides much needed and valuable assistance to legislators.

We hope this will be a continuing event that may even expand in future years to include a presentation to the entire Legislature. I would like to acknowledge the work of Commissioner Nancy Bockelie in organizing this event and also acknowledge the excellent work of the Bar's Governmental Relations Committee chaired this year by Lori Nelson and Scott Sabey.

We believe that the Bar has forged closer ties with legislators this

State Senate

Patrice Arent
Democrat – District 04 (Salt Lake)
Education:B.S., University of Utah, 1978; J.D., Cornell Law School, 1981
Elected to House of Representatives, 1996; Elected to Senate, 2002
Area of Practice: Commercial Litigation

Gregory S. Bell
Republican – District 22 (Davis)
Education: B.A., Weber State University; J.D., University of Utah Law School
Elected to Senate, 2002
Area of Practice: Real Estate Development

David Gladwell
Republican – District 19 (Morgan, Summit, Weber)
Education: B.A., English, University of Utah, 1971; J.D., University of Utah Law School, 1974
Elected to House, 1996; Elected to Senate, 2000

Lyle W. Hillyard
Republican – District 25 (Cache, Rich)
Education: B.S., Utah State University; J.D., University of Utah
Elected to House, 1980; Elected to Senate, 1984
Areas of Practice: Criminal; Domestic; Personal Injury

Dave L. Thomas
Republican – District 18 (Davis, Weber)
Education: B.S. Finance, Brigham Young University; J.D., College of William and Mary
Chief Civil Deputy County Attorney, Summit County
Elected to Senate 2002

John L. Valentine – Majority Whip
Republican – District 14 (Utah)
Education: Savanna High School, Anaheim, CA; B.S., J.D., Brigham Young University;
Elected to House, 1988; Appointed to Senate, 1998; Elected to Senate, 2000
Areas of Practice: Corporate; Estate Planning; Tax

Pick up photo from Jan/Feb 2001

page 9

year than in times past. The Bar had a very successful partnership with State legislators who participated on a broad scale in our Dialogue on Freedom program. Approximately 75 legislators participated in Dialogue on Freedom by leading discussions in secondary classrooms throughout the State.

Each of us who is actively engaged in the practice of law understands the demands of our profession. Our own experience gives us reason to applaud the sacrifices and monumental efforts of our colleagues who take on the added responsibility of civic service by serving in the State Legislature. Some of our colleagues hold prominent roles in party leadership. Senator John Valentine is the Senate Majority Whip. Representative Greg Curtis serves as the House Majority Leader. Freshman Senator Greg Bell has been named as chair of the Senate's Judiciary Committee. Representative Patrice Arent won election to the Senate. New lawyer/legislators this session include Representative LaVar Christensen, Senator David Thomas and Senator Greg Bell. I hope that each of us will take the time to express to our colleagues our appreciation for their service. Let them hear from you about your ideas and opinions.

State House

Ralph Becker
Democrat – District 24 (Salt Lake)
Education: B.A., American Civilization, University of Pennsylvania, 1973; J.D., University of Utah, 1977; Certificate in Planning, University of Utah,1977; M.S., Geography (Planning Emphasis), University of Utah, 1982
Consultant; Adjunct Professor, Geography and Planning, University of Utah

LaVar Christensen
Republican – District 48 (Salt Lake)
Education: B.A., Brigham Young University, 1977; J.D., University of Pacific, McGeorge School of Law, 1980
Areas of Practice: Business Transactions; Civil Litigation; Real Estate

Greg J. Curtis – Majority Leader
Republican – District 49 (Salt Lake)
Education: Brighton High School; B.S., Accounting,
Brigham Young University, 1984; J.D., University of Utah, 1987
Salt Lake County Mayor's Office

Scott Daniels
Democrat – District 25 (Salt Lake, Summit)
Education: B.S., Brigham Young University; J.D., University of Utah College of Law
Area of Practice: Mediation

Mike Thompson
Republican – District 59 (Utah)
Education: B.A., Political Science, Brigham Young University;
J.D., Thomas M. Cooley Law School (Lansing, Michigan)

Stephen H. Urquhart
Republican – District 75 (Washington)
Education: Williams College, Brigham Young University Law School
Thompson, Awerkamp & Urquhart, St. George

Let's Celebrate the Soul in Solo

Other lawyers say you're a maverick. Maybe they have you figured right: You go your own way, make your own decisions — blaze your own law practice. *lexisONE*® likes your style. It's why we offer LexisNexis™ research priced by the day, week or month for solos. With our research packages, you're free to access the LexisNexis research tools and materials you need, for the times you need them.

Access:

- LexisNexis™ Enhanced Case Law
- Annotated Rules and Statutes
- *Shepard's*® Citations Service
- Public Records
- Administrative Materials
- Journals and Law Reviews
- News
- Matthew Bender® Analytic Content
- Expert Witness Directories
- Verdicts and Settlements

The price won't hold you back. Research packages from *lexisONE* include free printing and unlimited searching, and access to the LexisNexis™ Total Research System — to help you stay ahead of the pack. LexisNexis research from *lexisONE*. You can go your own way. *lexisONE*. Let's Solo.

www.lexisone.com/solo

lexisone®
The Resource for Small Law Firms

LexisNexis™
It's how you know™

A MEMBER BENEFIT OF

UTAH STATE BAR ORGANIZED 1931

AL5763

Rule for Admission of Lawyers Licensed in Other States or Territories of the United States or the District of Columbia to Practice Law in Utah

1. Reciprocal Admission

An applicant may, upon motion, be admitted to the practice of law in this jurisdiction if the applicant has been admitted to another state, territory or the District of Columbia where admission by motion is authorized and the applicant meets the requirements of 1(a) through 11 of this rule.

The applicant shall:

(a) Have been admitted by bar examination to practice law in another state, territory, or the District of Columbia;

(b) Hold a first professional degree in law (J.D. or LL.B.) from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the degree was conferred;

(c) Establish to the satisfaction of the Board of Bar Commissioners that the District of Columbia, or the state or territory that licensed the lawyer applicant, allows the admission of licensed Utah lawyers under terms and conditions similar to those set forth in these rules, provided that if the state or territory or the District of Columbia that licensed the lawyer applicant requires Utah lawyers to complete or meet other conditions or requirements, the applicant must meet a substantially similar requirement for admission in Utah.

(d) Have been substantially and lawfully engaged in the active practice of law (meaning fifty percent or more) for no less than three years in such jurisdiction, or have been substantially and lawfully engaged in the practice of law for any three of the four years immediately preceding the date of the filing of the application for admission under this rule.

(e) Present satisfactory proof of both admission to the practice of law and that he or she is a member in good standing in all jurisdictions where currently admitted;

(f) File with the application a certificate from the entity having authority over professional discipline for each jurisdiction where the applicant is licensed to practice which certifies that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter;

(g) Present satisfactory proof to demonstrate that the applicant has been substantially and lawfully engaged in the practice of law for the applicable period of time;

(h) Establish that the applicant possesses the good moral character and fitness requisite to practice law in the State of Utah and evidence of the applicant's educational and professional qualifications;

(i) Pay, upon the filing of the application, the fee established for such application; and

(j) File a duly acknowledged instrument, in writing, setting forth his or her address in this State and designating the Clerk of the Utah Supreme Court as his or her agent upon whom process may be served.

2. Active Practice Defined

For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice.

(a) Representation of one or more clients in the private practice of law;

(b) Service as a lawyer with a local, state, or federal agency, including military service;

(c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;

(d) Service as a judge in a federal, state, or local court of record;

(e) Service as a judicial law clerk; or

(f) Service as corporate counsel.

3. Unauthorized Practice of Law

For the purposes of this rule, the active practice of law shall not include work that, as undertaken, constitutes the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

4. Continuing Legal Education Requirement

All applicants admitted to practice law pursuant to this rule shall:

(a) Complete and certify no later than six months following the applicant's admission that he or she has attended at least

fifteen hours of continuing legal education on Utah practice and procedure and ethics requirements.

(b) The Board of Bar Commissioners may by regulation specify the number of the required fifteen hours that must be in particular areas of practice, procedure, and ethics. Included in this mandatory fifteen hours is attendance at Utah's Ethics School. This class is offered twice a year and provides six credit hours.

(c) The remaining nine credit hours must be made up of Utah's New Lawyer Continuing Legal Education ("NLCLE") courses.

(d) Twelve of the fifteen hours may be completed through self-study by access to Utah's on-line education system.

(e) The above fifteen hours will apply towards the twenty-seven hours required per two-year compliance period.

(f) Continuing Legal Education ("CLE") credit may be awarded for out-of-state activities that in the determination of the Board of Mandatory Continuing Legal Education ("MCLE Board") meet certain standards in furthering an attorney's legal education. Whether to accredit such activities and the number of hours of credit to allow for such activities shall be determined by the MCLE Board. Activities that may be regarded as equivalent to state-sponsored CLE may include, but are not limited to, viewing of approved continuing legal education videotapes, writing and publishing an article in a legal periodical, part-time teaching in an ABA-approved law school, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyers, legal assistants, or law students. Application by a member of the Bar for accreditation of a CLE activity must be submitted in writing to the MCLE Board. Forms and contact information regarding applying for accreditation is available on-line at mcle@utahbar.org. Out-of-state activities cannot substitute for the 15 mandatory CLE hours described in 4(b) and (c), above.

5. Subject to Utah Rules

All applicants admitted to practice law pursuant to this rule shall be subject to and shall comply with the Utah Rules of Professional Conduct, the Rules Governing Admission to the Utah State Bar, the Rules of Lawyer Discipline and Disability and all other rules and regulations applicable to members of the Utah State Bar.

Admission Without Examination

RECIPROCAL JURISDICTIONS	
Alaska	New York
Colorado	North Carolina
Connecticut	North Dakota
District of Columbia	Ohio
Georgia	Oklahoma
Illinois	Pennsylvania
Indiana	Tennessee
Iowa	Texas
Kentucky	Utah
Massachusetts	Vermont
Michigan	Virginia
Minnesota	Washington
Missouri	Wisconsin
Nebraska	Wyoming
New Hampshire	

NON-RECIPROCAL JURISDICTIONS	
Alabama	Mississippi
Arizona	Montana
Arkansas	Nevada
California	New Jersey
Delaware	New Mexico
Florida	Northern Mariana Islands
Guam	Oregon
Hawaii	Puerto Rico
Idaho	Rhode Island
Kansas	South Carolina
Louisiana	South Dakota
Maine	Virgin Islands
Maryland	

The above chart is based on information provided through the National Conference of Bar Examiners. Interested parties should check with the bar in question to verify this information.

6. Discipline
All applicants admitted to practice law pursuant to this rule shall be subject to professional discipline in the same manner and to the same extent as other members of the Utah State Bar. Every person licensed under this rule shall be subject to control by the courts of the State of Utah and to censure, suspension, removal or revocation of the applicant's license to practice in Utah.

7. Notification of Change in Standing
All applicants admitted to practice law pursuant to this rule shall execute and file with the Utah State Bar a written notice of any change in such person's good standing in another licensing jurisdiction and of any final action of the professional body or public authority referred to in 1(g) of this rule imposing any disciplinary censure, suspension, or other sanction upon such person.

8. Form and Content of Application
(a) A reciprocal applicant shall file an application for admission to the practice of law. The applicant must provide a full and direct response to questions contained in the application in the manner and time prescribed by the Rules Governing Admission to the Utah State Bar. The Board may require additional proof of any facts stated in the application. In the event of the failure or the refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application.

(b) An application shall include an authorization and release to enable the Board to obtain information concerning such applicant. By signing this authorization and release, an applicant waives his or her right to confidentiality of communications, records, evaluations, and any other pertinent information touching on the applicant's fitness to practice law as determined by the Board.

9. Timing of Application and Admission
(a) A reciprocal application may be filed at any time.

(b) Upon approval of the application by the Board of Commissioners, the Board shall recommend to the Supreme Court the admission of the applicant to the Utah State Bar. An applicant has two years from the date of notice of the approval to pay the required licensing and enrollment fees and take the oath of admission. Candidates who meet the requirements herein stated in this rule will have their name placed on a Motion for Admission to the Bar. Motions for Admission are presented to the Utah Supreme Court three times a year, in October, February and May.

Your Reputation. Your Firm's Assets. Your Future.

What do YOU risk by not having professional liability insurance?

We're entering turbulent economic times. **What was booming yesterday could bust tomorrow.**

Despite lawyers' best efforts and use of risk management practices, **lawyers are sued every day.**

The best insurance against the growing number of claims and suits against law firms is — well, insurance.

When selecting an insurance company, you will only have peace of mind if it is financially strong, with a track record of successfully defending lawyers.

Westport Insurance Corporation — Acknowledged for superior claim management expertise. Defending lawyers' reputations and assets since 1972. Awarded top industry ratings: S&P's AA+ "Very Strong" financial rating and A.M. Best's A "Excellent" rating for financial strength.

Is your future worth anything less?

To learn more, please call 1-888-466-0805 or contact Denise Forsman at denise@continsurance.com.

GE Commercial Insurance
Westport

CONTINENTAL INSURANCE AGENCY, L.L.C.

Endorsed by:

UTAH STATE BAR ORGANIZED 1931

A View From The Other Side of the Fence

by David K. Armstrong

It has been almost five years since I left my law firm in Salt Lake City, Utah and went in-house with a large manufacturing client in southern Indiana. During this period of time, I have learned to recognize beauty in cornfields as opposed to mountain vistas and have also learned what it is like to be on the client-side of legal matters. The purpose of this article is to share some of the insights that I have gained from the manufacturing sector and provide a view from the client's side of the fence of what strengthens and weakens the attorney/client relationship.

Quality Management

In the manufacturing industry, quality management and quality standards are at the forefront of customer service. Employees are consistently drilled with the idea that everyone, from the CEO to the janitor on the manufacturing floor, is responsible for quality. Metrics are established and measured on a regular basis. Important factors such as scrap rate, defective parts per million, on time delivery, safety, and equipment uptime are areas of keen focus. Continuous improvement projects are regularly undertaken to improve the manufacturing process and reduce costs. A law firm could benefit by adopting some of these concepts in providing quality legal services. For example, a program could be established to help the administrative staff realize that they are part of a team and that they can significantly add value in delivering a quality product. Other programs could be used to increase skill sets of staff members. Establishing an effective mentoring program for young attorneys is an excellent way to help new associates improve their quality. This type of program, if done right, should not only help the new attorney understand the mechanics of a major business deal or litigation matter, but also should teach that there is a difference between adding value and just billing hours. Other quality programs I have seen include standardizing forms and the creation of document resource banks. It may also be helpful to establish procedures requiring a quick on top review of important documents, memos or letters in order to catch any "defects" before sending them to a client.

A very strange phenomenon exists in the legal world: the more inefficient the process (in other words, time wasted, ineffective research, preparation of wandering memos, etc.), the higher the legal revenues. The problem is that if this happens more than once or twice, the client will flee to more competent counsel. The cost of poor quality is client dissatisfaction and loss of credibility and can even lead to malpractice exposure. The establishment of a quality management program will go a long way to improve service to clients. The best firms that I work with not only have a quality management program, but they consistently focus on it and excel at it.

No Surprises

One of my most embarrassing moments was when my sister threw a surprise party for me on my 17th birthday. The party did not go well and, frankly, I hate surprises. The trauma has stayed with me all these years. Many clients have similar feelings. It is very important that attorneys appropriately manage expectations with their clients so that surprises are avoided. No one likes bad news, however, most clients understand that the seas will not always be smooth. The disaster is when the bad news comes as a total surprise. Early legal analysis of a dispute is essential and will assist a client in controlling and minimizing litigation costs later on. I always appreciate frank discussions with outside counsel about anticipated exposure in litigation matters. This information is given to our Board of Directors for review and is also shared

DAVID K. ARMSTRONG is Senior Vice President and General Counsel for Accuride Corporation. Prior to joining Accuride he was a partner in the law firm of Snell & Wilmer.

with the accounting department so that appropriate accruals can be established. If outside counsel "sugar-coats" our exposure assessment it causes significant problems in a number of areas, including credibility of both the attorney and the general counsel. Expectation management is essential for a strong attorney/client relationship.

Communication

Communication is essential in building a strong relationship with a client. A client needs to be kept up to date on all matters at all times. I remember a few years ago I was in a meeting with our CEO discussing current legal issues. We reviewed one particular product liability matter that was not active and I had assumed was currently dormant. The attorney handling the matter had significant expertise and had worked with us on similar issues many times in the past. A few days later I received a surprise bill (I hate surprises) for about $38,000 from the law firm handling this matter. Unbeknownst to me, the matter had heated up and was in full discovery. In addition, the attorney who I thought was handling the case had transferred it to another partner in a different geographic office whom I had never met. To make matters worse, the new partner's billing rate was over $100 an hour higher than the partner who was familiar with our business. Needless to say I was not pleased. Not only was I not informed of the status of the case, but I had been kept in the dark on a unilateral re-assignment of our matter to a new and more expensive lead partner who knew almost nothing about our business. As it turned out, the time lag in my involvement caused significant internal problems as the case developed. The problems could have been easily avoided by improved communication.

On another occasion I received a bill from outside counsel handling a significant piece of litigation. As I read through the bill I was able to discern that we had won the case on summary judgment. This was the first communication I had received on the summary judgment verdict. Although I was very pleased that we were successful on the case, I was quite disturbed that I had not received a phone call or email on the outcome. One would think that communicating a victory to a client would be common horse sense, however, in this case the horse must have been left in the barn. Communication is essential in building a strong client relationship.

Return Phone Calls

Attorney accessibility is one of the most important factors in building a strong client relationship. Returning phone calls sounds very basic, however, this important piece of client relations should never be overlooked. I don't know of an easier way to destroy client relationships than through the neglect of phone calls. A client wants to think that he is the attorney's most important client. Whether or not this is true, it is important to let the client believe that fantasy. I work with certain attorneys that I am sure have many more important clients than my company, however, they effectively make me believe that my company is the most important by the way they respond to my calls and requests.

I have one particular attorney that will either promptly return a call or if she is not available, will have her secretary promptly return the call and let me know when I might be able to reach her. She also gives me a home and cell number and tells me to call anytime I need help. Although I try to respect her time away from the office, the offer goes a long way in building a solid attorney/client relationship.

I have also had experience in being neglected by an attorney. I had a new project that needed local counsel assistance and tried to contact an attorney that we had previously used in the area. After numerous calls with no response I was forced to take my business to another firm. I finally received a return call a day or so later, however, by that time I had already transitioned the project to a new law firm. Unfortunately, the first attorney lost a nice piece of business due solely to his inability to return a call.

Responsiveness

Along with returning phone calls it is also important to be responsive to client needs and requests. I have quite a bit of "spill over work." "Spill over work" consists of projects that would normally be handled in house, but due to current time restraints require outsourcing. I also have a bad habit of waiting until the matter becomes urgent before I realize that I am buried with other issues and need to call for outside help. An attorney who is familiar with a client's business and is available for time sensitive drop in projects is an incredible asset and a key part of a successful legal team. When an attorney gets me out of a jam by being quick and responsive to an emergency, he or she cements our relationship and I make a mental note to send more business their direction.

Know Your Client's Business

An attorney who wants to solidify his or her relationship with a client should become as familiar as possible with the various aspects of a client's business and particular industry. This requires an investment of non-billable time in client visits and outside reading but will pay significant dividends. The more you know about your client's business the more valuable you will be. The attorneys that know my business the best have transformed themselves from being "outside attorneys" to being "strategic business advisors." This assures them of being involved in all material legal issues that deal with their expertise.

Add Value

No client is overly happy about paying legal bills. However, most clients realize that legal fees are a necessary cost of doing business. The important thing to keep in mind is whether the amount charged was indicative of the value given.

Ask yourself – what service are you providing? Legal analysis, documentation of a transaction, research, legal memos? Those are all good answers but in reality, from the client's point of view, are you providing something of value? If you send a bill for services that does not meet the value criteria you will have an upset client. Upset clients will look elsewhere for legal needs.

I am involved in a national association of in-house attorneys. In our meetings, a common topic of conversation is the performance of outside counsel. In my view, most corporate clients do not have a problem with high hourly rates as long as they receive a prompt and succinct answer to their questions. They do have a problem, however, in paying for a 15-page law review style memo from a younger associate, complete with footnotes, that wanders around the point, raises a number of interesting issues but never really answers the questions that they raised. I certainly share this concern. One general counsel that I know recently complained of this type of situation. The responding attorney tried to justify the bill by explaining that the associate's additional time was accounted for by the lower hourly rate. The general counsel replied with an analogy of a painter who agreed to paint a client's house for $500. The painter then proceeded to paint a neighbor's house and sent the client a bill for $1,000 for the work performed. The message was that if the associate had done what was requested, the bill may have been justified. Since, however, the associate had not even come close to accomplishing

the task, the bill was rejected and the project was eventually sent to another firm. The new firm had much higher hourly billing rates, but the overall cost wound up being less than the amount charged by the original firm for the "non-answer." This general counsel commented that a "client should not be charged for value-less babble, even if it is accompanied with Blue Book conforming citations and footnotes." The point is, before you send out a bill, do your own evaluation and ask yourself whether appropriate value was added by the work that was done.

Customer Focus

Borrowing again from concepts used in the manufacturing industry, it is essential that your business have a significant customer focus. Customer focus recognizes dependency on customers (i.e., clients) and the importance of meeting their current and future needs. Key benefits include increased revenue and market share, and improved client loyalty leading to repeat business. Do you have a means of monitoring and measuring client satisfaction? If not, it would be wise to implement such a program. I know that if I take my Suburban to the local dealer I will receive a follow-up survey within 10 days or so to see if I was satisfied with the work done. This sends me a message that the dealer wants and values my business. Attorneys could adopt this type of customer service orientation through the use of annual client satisfaction surveys, client visits, or other tools. It may be helpful to occasionally send out client opinion questionnaires. These questionnaires could cover numerous issues including responsiveness to issues, timeliness of response, assessment of value provided, timeliness of returning phone calls, friendliness of staff, general satisfaction, and also contain a section where any additional concerns could be raised. This type of questionnaire can help law firms focus on areas that need improving and help attorneys understand how their clients view their work.

Hopefully these thoughts will assist you in improving the service you are providing to your clients and will help pave the way for stronger attorney/client relationships and additional business.

Practice Pointer: An Attorney's Duty to Maintain Confidentiality of Information Relating to Representation of a Client

by Kate A. Toomey

Attorneys often call the Office of Professional Conduct's Ethics Hotline with questions about when they may and when they must reveal information related to their representation of a client. In the course of answering these calls, I've discovered that many attorneys do not understand what the Rules of Professional Conduct require and permit, and that attorneys commonly confuse the ethical duty to refrain from revealing information relating to the representation with the evidentiary attorney-client privilege[1] and the statute governing privileged communications.[2]

The Confidentiality Rule

The Utah Rules of Professional Conduct[3] state that "A lawyer shall not reveal information relating to representation of a client . . . unless the client consents after consultation." Rule 1.6(a), Rules of Professional Conduct. The rule identifies exceptions, which are discussed below. But consider what is meant by "information relating to representation of a client."

For one thing, it encompasses more than communications from a client. As the Comment following the rule makes plain, the rule "applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." Rule 1.6(a), Comment, Rules of Professional Conduct. This means that communications from sources other than clients are covered by the rule. Note, too, that the client need not tell the attorney that the information is confidential to make it so.

Strictly interpreted, the rule could encompass all sorts of things that attorneys don't ordinarily think of as confidential, such as the client's identity. *See e.g. Dietz v. Doe,* 935 P.2d 611 (Wash. 1997) (lawyer for client sought in hit-and-run accident may withhold client's identity when disclosure would implicate client in criminal activity for which legal advice was sought).

The rule isn't limited to information acquired during the representation; it can apply before the formal relationship existed, and it can include information acquired later. When a prospective client consults an attorney to consider obtaining legal representation, the duty may arise even if the relationship is never formalized. *See* ABA Formal Op. 90-358 (1990). At the other end, the obligation of confidentiality persists even after the formal relationship terminates. *See* Rule 1.6(a), Comment, Rules of Professional Conduct.

A Client's Consent Avoids a Rule Violation, But Waiver Doesn't Apply

Even if the attorney's motives are benign, disclosure isn't allowed unless one of the exceptions identified in the rule applies. For example, although attorneys in the same law firm may discuss cases, an attorney consulting an outside attorney on a client's case can't transfer the file for review without the client's permission. The potential rule violation is readily avoided if the client consents after consultation.

The concept of waiver, seen in the context of the evidentiary privilege, has no place in the context of considering an attorney's ethical duty to maintain confidentiality of information. For example, the attorney's awareness that others know what the attorney knows doesn't release the attorney from maintaining confidentiality of the information. Technically, a lawyer can't even reveal those things that are commonly known or are a matter of public record.

The Rule Permits, But Doesn't Require, Disclosure in Some Circumstances

Nothing in the rule *requires* disclosure. *See* Rule 1.6, Rules of Professional Conduct; *see also* Utah Ethics Adv. Op. 97-12 (1998) (lawyer who suspects client of child abuse not required by rules to report suspected behavior). The scenarios the Office of Professional Conduct's attorneys are often asked about involve whether the rules allow an attorney to reveal information to prevent harm. Understand, however, that a decision to remain silent is not a violation of Rule 1.6, and this is the course that least exposes the attorney.[4] But silence itself sometimes comes at its own cost,

KATE A. TOOMEY is Deputy Counsel of the Utah State Bar's Office of Professional Conduct. The views expressed in this article are not necessarily those of the OPC or the Utah State Bar.

and many of the attorneys who call the Hotline are struggling to balance their professional duties toward their clients with their moral obligations to other human beings.

The rule is explicit about permitting attorneys to prevent harm: "A lawyer may reveal such information to the extent the lawyer reasonably believes necessary: (1) [t]o prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in imminent death or substantial bodily harm, or substantial injury to the financial interest or property of another." Rule 1.6(b)(1), Rules of Professional Conduct.

One Utah Ethics Advisory Opinion addressed this exception in the context of a client's announced intent to commit suicide, and this is one of the opinions I most frequently send to Ethics Hotline callers. *See* Utah Ethics Advisory Op. 95 (1989). The exception also applies when a client threatens another person with "death or substantial bodily harm." Hotline examples I've heard include client threats to kill the attorney, and client threats to kill family members. Reported cases from other jurisdictions include an attorney's disclosure of a client's intent to burn down a building from which the client had been evicted. *See Purcell v. District Attorney for Suffolk County,* 676 N.E.2d 436 (Mass. 1997).

The more troubling portion of the rule is the section permitting attorneys to reveal information to prevent a client from committing a criminal or fraudulent act that is likely to result in "substantial injury to the financial interest or property of another."[5] How to evaluate the likelihood and sufficiency of injury to someone else's financial interest or property isn't something I've been asked to consider on the Ethics Hotline, and in my recollection, no attorney has been disciplined for violating this portion of the rule in the seven years I've worked in the OPC. My speculation is that when financial and property interests are the only thing at stake, attorneys are less inclined to volunteer information that might prevent the harm.

Returning to the issue of matters that fall within the exception for "death or imminent bodily harm," I always encourage attorneys to consider the portion of the rule requiring a belief that the act will "likely" result in the harm. This is a matter left to the attorney's discretion, but it's well to consider that people who need lawyers are often in the throes of great emotional turmoil, and they sometimes say things they don't mean. On the other hand, if your client is someone with a violent criminal history, or is someone you know to have severe psychiatric problems associated with violent behavior, you may want to consider intervention.

Remember, though, that an attorney should only reveal the information "to the extent the lawyer reasonably believes necessary." This means considering who to notify – if you know of someone who can effectively intervene, confine your disclosures to that person – and revealing only what is necessary to prevent the harm.

A second exception is "To rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used." Rule 1.6(b)(2), Rules of Professional Conduct. If you were innocently the instrument of a client's crime or fraud, you have "a legitimate interest in being able to rectify the consequences of such conduct," with a "professional right,

although not a professional duty, to rectify the situation." Rule 1.6, Comment, Rules of Professional Conduct. I've seen this come up after civil court proceedings are entirely closed, and the attorney discovers the client's perjury. Again, you may, but you need not, disclose the information.

Another exception is that you may reveal information to protect yourself. You may "reveal such information to the extent the lawyer reasonably believes necessary: . . . [t]o establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client or to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved." Rule 1.6(b)(3), Rules of Professional Conduct. Respondents in disciplinary cases often ask if they can reveal information necessary to defend themselves, and the short answer is yes. But remember that you should limit what you disclose to that which is necessary to your defense. The same thing goes for establishing your claims against a client – such as collecting your fee. In other words, avoid unnecessary disclosure, and take precautions if you can.

The rule also permits you to reveal information "[t]o comply with the Rules of Professional Conduct or other law." Rule 1.6(b)(4), Rules of Professional Conduct. Among other things, we tell Ethics Hotline callers that if a court orders the attorney to reveal information, the attorney may do so. We caution, however, that the lawyer should attempt to limit the breadth of such an order. We also routinely tell callers that they may have an obligation to attempt to quash a subpoena if the client doesn't consent to disclose the information the lawyer is being asked to reveal. Indeed, some Bar ethics advisory opinions provide that an attorney must attempt to exhaust all such protections before revealing the information. *See* D.C. Bar Legal Ethics Comm., Op. 288 (1999).

The portion of Rule 1.6 that refers to complying with the Rules of Professional Conduct relates directly to the rule requiring candor to the tribunal. The duties set forth in that rule "continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6." Rule 3.3(b), Rules of Professional Conduct. This is a subject for another Practice Pointer, but in the meantime, it's a good idea to review the rule.

Conclusion

The safest course for avoiding a Rule 1.6 violation is to remain silent unless you are compelled to do otherwise by a court or by your obligation of candor to the tribunal. Bear in mind that the confidentiality rule is much broader in scope than the statutory and evidentiary privileges, and continues indefinitely. Depending upon the nature of your practice, you may someday find yourself confronting the awful dilemma of whether to make a disclosure against your client's immediate interests and wishes, or to take the safer road of keeping the information to yourself with the hope that no one suffers serious consequences. As always, if you think that it would be helpful to discuss a particular situation with an OPC attorney, call the Ethics Hotline.

[1] The evidentiary privilege applies to the use of information in court proceedings. *See* Rule 504, Utah R. Evid.; Rule 507, Utah R. Evid. Disclosures elsewhere aren't covered, and the privilege doesn't apply to information received from someone other than the client.

[2] The statute provides that "[a]n attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given regarding the communication in the course of his professional employment." Utah Code § 78-24-8. As the cases identified in the annotations following this section of the code demonstrate, the privilege belongs to the client, and may be waived through a variety of actions. It may not be waived or invoked by anyone else.

[3] Attorneys who are licensed in states in addition to Utah would do well to review Utah's confidentiality provision inasmuch as it differs in significant respects from the Model Rules of Professional Conduct and may substantially differ from the rule employed in other jurisdictions.

[4] The conspicuous exception to this arises from the attorney's duty of candor toward the tribunal. *See* Rule 3.3, Rules of Professional Conduct. Attorneys also must withdraw if continued representation will result in violation of the rules or other law. *See* Rule 1.16(a), Rules of Professional Conduct. Sometimes obtaining court permission to withdraw requires limited in camera disclosures.

[5] This is one of the substantial divergences between Utah's rules and the Model Rules of Professional Conduct. The Model Rules contain no exception for this type of harm.

Jones Waldo

is pleased to announce that

MARK J. WILLIAMS

KEN P. JONES

ALI LEVIN

CHERYL MORI-ATKINSON

and

MARIANNE SORENSEN

have joined the firm.

JONES WALDO HOLBROOK & MCDONOUGH PC

Salt Lake City

St. George

Dallas

Washington, D.C.

What's That on the Runway

by Markus Zimmer

Darkness was falling over the sprawling Rwandan capital of Kigali as Sabena Flight 465 descended through 10,000 feet. The flight from Brussels had been just over eight hours. Added to connecting flights from Salt Lake City to Atlanta and Atlanta to Brussels, I'd been flying for nearly 20 hours, not including layovers of several hours at each stop. Aside from its duration, the flight had been uneventful. Having spent time in the Balkans, I recognized some of the geography as we flew southeast of Europe and over Croatia's beautiful Dalmatian coastline. Leaving the Balkans and Greece with its islands nestled in the dark blue Aegean Sea, the plane traversed the Mediterranean, then crossed over Egypt. I was awestruck by the vastness of the African Continent and the stark contrast between the lush, fertile valley of the Nile and the lifeless expanse of northern Sudan's sun-baked desert extending far into the distance.

When the pilot announced in his staccato Flemish accent – he must have had an Italian mother – that the tower in Kigali had cleared our flight for landing, I shook off the grogginess, breathed a sigh of relief, and turned to look out the window as we made our approach. The airport in Kigali sits on a flat rise, slightly above the surrounding city perched on a series of gently rolling hills. The flashing signal lights marking the landing area slowly became visible as we gradually lost altitude on the approach. Kigali's city lights cast a quiet yellow glow over the darkening landscape. Because Rwanda ranks among the world's poorest countries, access to municipal power is available only in the largest towns and cities. At night, the more impoverished African cities give witness to their status by the sporadic manner in which they are illuminated, random patches of flickering light here and there with modest levels of traffic, even at rush hour, casting beams of light through the darkness. The encroaching night was calm and clear, and the plane held steady as we descended through the last thousand feet, heading for what appeared would be a smooth landing.

Without warning, the aircraft's engines roared back to full throttle and the plane suddenly shot back up, veering into a wide curve away from the airport as the lights of the terminal building swept by. A minute later the captain announced that our landing had been aborted because the runway was not clear. I looked around at the other travelers, several of whom wore expressions of fear. After a broad sweep that took us beyond the perimeter of light, the pilot eased the jet around and back toward the airport. Again, he announced we'd been cleared to land. Several minutes passed before the rows of lights outlining the runway appeared, first as a gentle blur that slowly defined itself as the plane approached. Some three hundred yards from touchdown, the plane shuddered again as the captain accelerated upward and off to the left, causing some passengers to gasp and others to cry out in anger. The captain, not without a trace of frustration, informed us that the runway still was not clear. He took the aircraft up several thousand feet and away from the airport.

Finally, some 15 minutes later, the plane was cleared to land. We all breathed a collective sigh of relief when the plane came to a stop. The poorly ventilated baggage retrieval area brimmed with passengers on the warm July evening, yielding a rich feast of scent and odor that stretched our capacity to smell, so guarded in our own country between air fresheners, filtered air conditioning, and the daily ritual of deodorizing oneself. And we had opportunity to savor it all as the luggage from two Boeing 767s disgorged from the stainless steel ramp, one solitary piece at a time, and traveled slowly down the belt. The impatience of some brooding western males, clad in levis and nondescript shirts, with thinning hair and sallow complexions, stood in stark contrast to the ebullience of the bright-eyed, coal black Rwandan women, many dressed in beautiful and brightly colored fabrics, rejoicing in each other's company. It occurred to me that we sympathetically refer to them as third world. There is more than one type of third world.

The State Department had invited a team of three of us back to Rwanda, one of the smallest countries in Africa, following an international conference on law reform and legal reform five months earlier in which we had participated. The conference culminated in recommendations for judicial and court system reforms which a small contingent of us had presented to President

MARKUS ZIMMER is Clerk of the U.S. District Court for the District of Utah. He has consulted with judiciaries in a dozen emerging democracies throughout the world.

Paul Kagame, the Rwandan Chief of State. His response was positive and encouraging. This time our mission was to build on those recommendations, to assess the training requirements of the Rwandan judiciary and to review what systems and programs were in place to respond to those needs.

Rwanda's system of justice was dealt a nearly fatal blow in 1994 when, in the space of 100 days, burgeoning ethnic unrest between the Hutus and Tutsis culminated in the violent slaughter, in many instances by former friends and neighbors, of nearly one million largely Tutsi citizens, the plundering of government offices, and the collapse of civil order. With a population of around seven million, approximately one out of every seven citizens was slain.

In 1996-97, after the fledgling Rwandan government debated and passed the law for the trial and punishment of those responsible for the genocide, tens of thousands of suspects were apprehended. By May of 1997, 65,976 were incarcerated, and by July of the same year, the number imprisoned had swelled to 112,000. The vast majority of those apprehended remain in custody in 2002. The inmate capacity of Rwanda's national detention centers in 1994 was 18,000. It has since been increased by over 30,000, but remains dramatically incapable of adequately housing the existing population. Of particular concern is the detention of adolescents and children accused of having taken part in the slaughter.

Conditions in these severely overcrowded prisons are substandard at best. With 70% of Rwandans surviving at an economic level defined as absolute poverty, government revenues are insufficient to adequately feed and care for this prison population. In spite of massive international aid targeting the rebuilding of the country, poor hygiene, diseases including AIDS, and malnutrition are widespread in these detention facilities. The more fortunate among the incarcerated are brought food by their families; tens of thousands are dependent on the food and other aid provided by the International Committee of the Red Cross.

The effort to bring these suspects to justice has been hampered by many factors, central among which was the virtual incapacitation of the Rwandan justice system during the genocide. Unlike the Holocaust, which featured well-orchestrated mass murder within a highly organized institutional framework, the Rwandan genocide was occasioned by mass social chaos, uncontrolled violence, and political upheaval that virtually shut down the infrastructure of government. Between April and July 1994, the Rwandan judiciary shrank from over 750 to fewer than 244 judges.

Some participated in the slaughter, then escaped to the Zaire, now the Democratic Republic of the Congo; others were victims; and many others fled to neighboring Zaire, Uganda, Burundi, or Tanzania. The population of court administrators plunged from 214 to 59, leaving many courts without staff. The ranks of prosecutors dropped even more precipitously, from 87 to 14, and investigators, from 193 to 39, leaving the prosecutorial system in shambles and largely incapacitated. The number of lawyers remaining to service a population of seven million was 19. Of the detainees in custody, the Rwandan government estimates that one-third do not have case files, largely because no adequately functioning police or prosecutorial system was in place to process them when they were apprehended.

The effort to restructure the justice system began with the appointment of a new Minister of Justice who was assigned to an office in one of many government buildings that were in ruins, their interiors gutted, their windows smashed, their files and archives vandalized. Paper was extremely scarce; office equipment, furniture, telephones, and supplies had disappeared. With a pretrial detention population exceeding 100,000, the government was in the unenviable position of having to reconstruct a justice system to process it virtually from the ground up.

Because the Hutu-dominated government actively sponsored, planned, initiated, and perpetuated the genocide; because Rwanda has a long and bloody history of ethnic conflict; and given the eviscerated condition of the justice system, the international community was skeptical of the government's ability to bring to justice those primarily responsible for planning and perpetrating the slaughter. Its response was to create an external mechanism. In November 1994, the United Nations Security Council authorized creation of the International Criminal Tribunal Rwanda (ICTR). By July of 1995, the ICTR officially began to function in Arusha, Tanzania. Its budget for 1996 was $40 million. By 2000, funding had more than doubled to $86 million, and for 2002, the Security Council approved circa $96 million. Since it began its work in 1995, the ICTR has expended over $400 million. In that time and using those funds, the ICTR has completed a handful of trials up to the appellate level. Since 1995, 59 suspects have been detained. The total number of convictions through 1992 was eight, an average of one per year.

Against this backdrop and with very modest resources, the Rwandan government is seeking to rebuild its justice system through a Commission on Law Reform chaired by one of the vice presidents of the Rwandan Supreme Court. Shortly after our arrival, we renewed our acquaintance with Judge Tharcisse Karugarama and scheduled visits to Rwandan courts, interviews with Rwandan judges and court staff, a meeting with the Minister of Justice, and visits to the National Judicial Education and Training Center and Kigali's central prison facility.

Formal legal training is a rare commodity among Rwanda's judges. Of 700 judicial officers, only 10% have the equivalent of a legal education. Others have university degrees in majors that have little, if any, grounding in law, and many have only a secondary or primary education. These levels of education in the judicial population reflect the government effort to quickly rebuild the judiciary after the genocide to bring the guilty to justice and to re-establish political and civic order. Developing a training plan that would address these deficiencies was a challenge for our small group, but we were invigorated repeatedly by the enthusiasm, the hope, and the vision of a better future relayed by officials of the new Rwandan Government.

Courthouses in Rwanda are relatively simple structures. The courthouses in the smaller outlying cities and towns are nicer and in better condition than those in the large urban center. The main city court in Kigali has two courtrooms, both of which are publicly accessible through entry doors with glass partitions on the front porch. The glass in the doors to one courtroom was broken. Public notices are pasted to the outside walls of the courthouse, creating a ragged look. Paint on the interior walls and ceilings of both courtrooms was peeling, and the bench areas were in disrepair. No security devices or officers were present. I was led to a room crowded with desks and mistakenly assumed it was a clerical area until I was introduced to a young female judge sitting at one of them. In Rwanda, the typical personal chamber of a U.S. district judge would be used to house as many as ten judges, none of whom would have either a secretary or law clerks.

The courthouse in Gitarama, a mid-size city west of Kigali, was better maintained. As we drove into the dirt parking lot, a small goat walking around on the porch of the courthouse decided to go inside. We found it wandering in the lobby, then making its way into a courtroom. A criminal trial was in process with the prisoner, dressed in the pink pajamas issued to inmates in Rwanda's prisons, addressing a panel of three robed judges from one podium while the prosecutor, also robed, stood at the other podium and listened. The courtroom brimmed with Rwandans, mostly women, many of whom were dressed in festive and brightly colored fabrics in stark contrast to the black robes of the officials. The judges, during our subsequent interviews, lamented having little in the way of legal research materials or decisions from the higher courts to further their understanding of the law.

Over the weekend, Judge Miles-LaGrange and I hired a driver to take us north to the Volcanic National Park where we met park rangers and guides who, accompanied by armed Rwandan soldiers, led us into the mountainous park. After hiking for not quite an hour, we came upon a family of Rwanda's mountain gorillas brought to the world's attention by Diane Fosse. While the adult males slept, the females kept a wary eye on us as their youngsters approached and playfully extended their small hands. These magnificent creatures are now protected both by park officials and by the military ever on the lookout for Congolese rebels and poachers.

The last day of our visit, we met with and interviewed the warden of Kigali's central prison. Following the interview, we were led onto the stage of a large covered hall in which several hundred prisoners, male and female with shorn heads and dressed in the characteristic pink pajamas, were quietly seated. The warden explained that all had been charged with various crimes relating to the genocide. He first asked us to address them, explaining our purpose, then permitted three of them to explain to us why they were there. The accounts were touching. One male prisoner, expressing great frustration, reported that he had been in the prison for eight years but had never appeared before a judge. He had confessed his role in the genocide to prosecutors but had not been sentenced or had access to defense counsel. All he wanted was some sense of what he needed to do to make good his debt to society so he could return to his family and to his former life as a simple farmer. There are tens of thousands languishing in the Rwandan prisons with similar stories.

The Rwandan Government did announce recently that it would conditionally release those prisoners who had exhibited good behavior and confessed to prosecutors their role in the genocide. Their cases will be heard in the newly created village-level Gacaca Courts where those who knew them will testify in open forums what they recall, and local village leaders who have been appointed as judges will review the evidence and sentence them accordingly. It is a grand but risky experiment in social justice. We observed a Gacaca Court in session on the ground and under the open sky, listened to local villagers recounting their memories of the horror. The orderly and respectful manner in which the proceedings were conducted gave us hope that the good people of this small country will be able to reconcile themselves to this chapter in their history and to move on.

Unbundle Your Practice: Increase Profits by Coaching Clients

by Forrest S. Mosten

> *"Unbundling is praised for cutting costs and Increasing Client Satisfaction."*
>
> *– Lawyer's Weekly*
> December 18, 1995

WHAT IS UNBUNDLING?

Unbundling is defined as follows: The client is in charge of selecting one or several discrete lawyering tasks contained within the full service package. The discrete tasks can be broken down into seven separate tasks:

1. Advising the Client
2. Legal Research
3. Gathering of Facts
4. Discovery
5. Negotiation
6. Drafting of Documents
7. Court Representation

THE FULL SERVICE PACKAGE

In the traditional full-service package, the lawyer is engaged to perform any and all of the tasks listed above, meeting the demands of the particular case. In unbundling of legal service, the lawyer and client work together to allocate the division of tasks. This allocation depends on the demands of the particular case as well as the needs and potential talents of the client.

DISCRETE TASK REPRESENTATION

The unbundled client specifically contracts for;

1. Extent of services provided by the lawyer;
2. Depth of services provided by the lawyer;
3. Communication and decision control between lawyer and client during the unbundled engagement.

You might be surprised to learn that you already unbundle in your law practice. There are very few lawyers who provide the complete package of services to all clients. Most of us sell discrete services on a fee for service basis or choose to give away discrete services for free.

- **Initial Consultation –** Do you ever see new clients or an existing client on a new matter for a consultation and it never goes any further? You provide advice and either the client decides to go no further or ends up hiring another lawyer (or non-lawyer) to do the work?
- **Drafting Documents –** Do you ever prepare a real estate deed, a power of attorney, or just write a letter – and do nothing else?
- **Second Opinions –** Do people who have retained other lawyers ever come in to see you just to get your views on how their case is being handled. After having the conference, do you find that the person stayed with their existing lawyer, changed lawyers (maybe to you, and maybe not) or decided to go it alone without a lawyer?
- **Telephone Advice –** Do strangers ever call you with an isolated legal question? You answer the question and never hear again from that person?

All of these common practice activities are examples of discrete task services that you already perform. So what's the big deal about unbundling?

The concept of discrete task representation is not new to clients either. Corporations hire in house counsel to handle part of the job and to manage which services will be purchased from other lawyers and on what terms. High income individuals know that it makes sense to use different lawyers for different tasks and to manage the lawyers' time effectively by having non-lawyers (accountants, business managers, personal assistants) do a good deal of the leg work. Frankly, poor people unbundle involuntarily when they pick up just a form from a community legal services

FORREST S. MOSTEN is President and founder of Mosten Mediation. A former Assistant Regional Director in Consumer Protection for the Federal Trade Commission, Mr. Mosten's commitment to legal access and dispute resolution has propelled him to national leadership in both law and ADR.

office since budget cuts preclude full service representation for most poor potential clients.

So unbundling is not new. However, both lawyers and consumers are unaware of its potential to both increase legal access and improve lawyer profitability for middle-income people.

Many clients are no longer willing to be treated like children. Today, clients are more active, more educated in the art of clienthood, more questioning, and more demanding in their quest to control the purchase and supervision of legal services.

Unbundling meets the needs of this new breed of client. In contrast to the traditional attitude that client anxiety is somehow reduced by lack of information and attention, unbundling empowers the client in an unbundled case. The client is the architect of the scope and tenor of the relationship. The unbundled client is the one who decides how the case is to be managed and what role, if any, the lawyer will play. Even more novel: the lawyer not only agrees to this shift of power but invites the public to enter the office on that basis.

BENEFITS TO CLIENTS

It is important to know and understand the benefits of unbundling to advise clients competently whether or not they choose to unbundle or you choose to add discrete task services to your present practice.

Unbundling Saves Money

Unbundling addresses the costs barriers of high lawyer fees in a number of ways:

- **No High Retainers –** Since clients are in charge of the amount of legal work, they pay as they go. Many unbundling lawyers do not charge any deposit with the understanding that the biggest risk will be losing a few hours work. When deposits or retainers are requested, they are only for the work requested.
- **Unbundling Lawyers Are Coaches –** Since unbundling lawyers are not counsel of record, a retainer is not needed to protect the lawyer in a runaway case where the lawyer must keep working even if the client owes money, or is uncooperative until the client consents to the lawyer stopping work, or the judge grants the lawyer's motion to withdraw. In unbundling, no payment, no more work.
- **Total Bills Are More Affordable –** Less work = lower fees. The lawyer's hourly rate may not differ in discrete task representation, but the cost to the clients will be more controlled and generally far less. Since clients are bearing more (if not most)

of the total load, you will be doing less work. This means that in addition to not being scared off by high deposits at the outset, lower overall fees increase lawyer use in two ways. First, clients will be willing to stick a toe in the water and start using your services without the overwhelming fear of being stuck with an unpayable bill at the end. Even though many clients don't pay full service lawyers (see unbundling benefits for lawyers), the vast majority of people want to pay their bills and often hate you when they don't pay – and hate you even more when they are pressured or sued to pay.

- **Focus on Top Priority Tasks –-** By limiting your scope, you can concentrate on the clients' most pressing needs. This should increase your efficiency for the tasks undertaken and hopefully reduce the costs to your clients.

Clients Have More Control

Probably the most fascinating finding of the 1993 ABA Study on Self- Representation is that over 50% of the self-representers could afford at least some form of legal representation. Still, they chose to go it alone.

Why? More than half of the self-representers had the money and had some college education. So they should know better – litigants with lawyers get better results. So why are so many litigants choosing this approach?

The answer is relatively simple. The need and desire for control over their own lives seems to universally describe unbundling consumers. They want control in a number of areas:

Control over the Process

The nature of unbundling is such that both lawyer and client say the words: "client is in charge of the process." This explicit agreement of the nature of the client-lawyer relationship defines the power balance and sets the parameters for the roles and expectations of both client and lawyer as to who is in charge and whose needs are paramount.

One of mediation's contributions to unbundling is that it gave clients with legal problems a taste of controlling their own process for resolution. We all bridle at being dependent or powerless, and unbundling supports the desire for clients to be treated like adults by the attorneys they choose to work with. This process control is seen in a number of different ways:

- The client decides what needs to be done to solve the presenting problem;
- The client decides whether the lawyer will be involved at all;
- The client decides the allocation of work between client and lawyer;
- The client decides whether the lawyer will actively monitor the situation or wait for the client to reinitiate contact.

Control over Choices

By remaining on the firing line, unbundling clients are faced with the same types of challenging decisions that you are when providing full service representation. Should I write a letter or have a personal meeting? Should I serve the Summons or request the other side to pick it up? Should I give in on 5 smaller issues in order to get a bit more on the big issue or just to reach finality?

These choices are the art of lawyering. They involve case strategy and they involve ultimate case decisions. Actually the line between the process of handling the case and the ultimate provisions of settlement is often so blurred that it becomes a distinction without a difference. Yet, when they are handling their own case, unbundling clients are confronted with these decisions directly and often want your help born from your training, experience, and just plain good judgment.

KEEPING LAWYERS OUT OF THE WAY

In addition to lowering costs and keeping control, many unbundlers truly believe that lawyer involvement does more harm than good – at any price! Whether stemming from a distasteful experience or the anti-lawyer atmosphere reflected in lawyer jokes, large segments of society believe that lawyers just make a bad situation worse by inflaming emotions, churning conflict, or being insensitive to the relationship and business-driven nuances that are the root causes and often the bases for solving human disputes.

By serving as unbundled managers of dispute resolution, discrete task lawyers can serve to both inform clients about options, and serve as buffers to the court resolution process that the public universally decries as not meeting their needs.

BENEFITS TO LAWYERS

The legal profession can certainly benefit from increasing its customer-centered orientation. The profession is beginning to recognize its vulnerability in the marketplace as clients are increasingly self-representing, turning to non-lawyer providers, or just living with a recognized legal need. Marketing courses for lawyers are the current rage, primarily because legal consumers (clients) are learning from their experience as consumers of other products and services to expect disclosure of relevant "sales information" and friendly client-oriented service. Tools such as

readable brochures, responsive customer hot lines, and employer marketing training help meet this growing consumer demand.

INCREASE YOUR MARKET SHARE

The resulting benefit of no or low deposits is that the public is more willing to utilize lawyers. Many people who are doing without lawyers can afford and are willing to pay limited fees for reduced service. [Bruce D. Sales, Connie Beck, Richard K. Haan, *Self Representation in Divorce Cases* 13-20 (1993), published by the ABA Committee on the Delivery of Legal Services.] Most people know that it is in their self-interest to use lawyers – only they can't afford to come up with the necessary starting fee. Many people will still not choose to pay a few hundred dollars and they'll still try it themselves or just endure. But many more will at least give lawyers a limited try – and if satisfied with the result, they will use lawyers again and again on the same case, to solve other problems, and will recommend that lawyer to others.

Learn from this consumer trend. Some innovative middle-income providers have developed thriving practices using client-oriented advertising, office availability in shopping malls, information and service hot lines paid immediately by credit card or by phone bill, and other experiments in service delivery.

YOU DON'T NEED TO REDUCE YOUR HOURLY RATE

Unbundling need not be confused with a reduced hourly rate. The fee arrangement may be "win-win" for both you and your client. The client pays significantly lower overall fees. However, you can charge (and clients generally expect to pay) a customary hourly rate for the limited services provided. Actually, some lawyers providing unbundled services may choose to offer such services at a higher than normal hourly rate based on a value billing concept, due to the malpractice risks.

YOUR BILLS GET PAID

Another advantage of unbundling is that satisfied clients pay their bills. Satisfied clients generally pay faster so you need to write off fewer fees.

Also, because bills do not skyrocket as fast and your work is better understood and appreciated by clients (who are actually making informed decisions about which tasks you will perform and how much time will be billed), accounts receivable do not become so out of control.

INCREASE YOUR PERSONAL SATISFACTION

Attorneys who sign on for the discrete task model may also find greater personal satisfaction and congruence with their personal values than in the bloodletting of a courtroom. Your belief in the creative opportunities, efficiency, and cost benefits of unbundling can often inspire and steady a client to persevere through a bumpy and painful process. That inspiration and belief alone may help clients achieve satisfactory resolution.

This article is based on Chapter One of Unbundling Legal Services by Forrest S. Mosten, published by The American Bar Association (2000)

Real World Descriptions of Legal Terms

by Judge Robert T. Braithwaite

I am retiring after sixteen years as a trial judge in Cedar City. There are new attorneys who only know legal terms from law school. I am writing this article to provide them insight into what some of those terms *really* mean, and to give some other observations.

Advisement: Experienced trial judges will say: "There are complex issues presented in your arguments regarding the Motion for Summary Judgment that I need to reflect upon, so I am taking this case under advisement." We say this because it makes us sound way smarter than being honest and blurting out: "Whoa, I'm in over my head – this is the first medical malpractice case (or whatever) I've ever seen, and I don't know what the hell you attorneys just said, so I gotta read the briefs again and watch the video tape of this before I do *anything*."

Common Sense: Not a legal term, but sometimes quoted as one by new lawyers. Example: "It's just common sense, your honor." When this is said in answer to the judge's question, "Do you have *any* statutes or cases supporting your position?," you might just as well start packing your briefcase. Unless, of course, the other side is saying the same thing. In which case the argument pretty much goes:

"It's just common sense your honor."

"It is not."

"Is too."

"Is not."

In which case the judge has to rule on what *he* or *she* thinks is common sense. And we all know *that's* a frightening prospect.

Constitutionalists: People who have access to the web and copy machines, and share their patriotic ideas with each other. They are characterized by a strong belief in the basic right to RANDOM CAPITALIZATION in pleadings, use of the term "admiralty law" in a landlocked state, the right of all Americans to ignore traffic laws because of the UCC (that's right – the Uniform *Commercial* Code), and an obsession with the thread color on flag borders – all of which are apparently covered by the Constitution of the United States of America. Who knew?

Cross Examination: A tough thing to do well, and I certainly was no master at it. Too often with new or rusty attorneys, cross examination is where an attorney has an opposing witness repeat damaging testimony, and argues with him as he goes along. The more damaging the testimony, the more times it is repeated, and the angrier the attorney gets. Also misused to let the adverse witness clear up any inconsistencies, rather than tactically saving those inconsistencies for exposure during closing argument. In sixteen years I never saw a true *Perry Mason* confession occurring as a result of the cross examination of a witness.

Domestic Commissioner: I've done a lot of divorce cases, and 95% of the time I'm on familiar ground, and know the statutes and case law (custody, property settlement, visitation, etc.). But if it's the other 5% of the cases and it needs an immediate answer (the kind you get reversed on – usually with conflicting orders from other states, and a confused cop asking me what to do as she holds the parents apart), I call a Domestic Commissioner. And surprisingly, they never say "No – you're not in my district," or, "If you don't know the answer – why do you get paid 10% more than me?" One time I called Mike Evans during a lunch break where we both had about ten minutes before going back into court. He fired off rapid answers that sounded like a cross between NYSE stock quotes and a *Gabby Gourmet* monologue. "Obviously Bob, what you have here are PKPA issues layered over a foundation of UCCJA considerations. Blend them in with 78-45c-101, then separate with the three

Jones prongs, and place on the counter to allow it to rise until bifurcated. Then place it in the courtroom and allow to simmer until done. And don't forget to use oven mitts." At least that's what it sounded like. But he'd reminded me where to start reading.

Evidence: Sometimes after a jury trial, a new attorney will ask me, "Why did I lose? What did I do wrong?" And I'll give them my opinion if I saw something I thought they might want to change. But often I tell them they have done *nothing* wrong; that they just didn't have the facts on their side. I don't think style wins out over substance. None of us are as smooth and resplendent as actors in a courtroom movie. (This isn't to say you can just sit back and expect your evidence to present itself and win the case – see *preparation,* below.) I meet with jurors after a verdict if they want to. More than once they have volunteered that they thought the attorney for the prevailing party didn't do a good job, or that they thought the losing attorney did a really good job – they just thought the plaintiff/defendant should prevail based on the evidence. (They just volunteer this – I have never asked jurors to critique lawyers, nor do I comment on their observations. I just say "hmmm.") By the same token, if a judge compliments both sides on the way the case was litigated, the judge means it. Judges love cases litigated well by both sides.

Ludicrous: A word some Northern Utah attorneys use (in Southern Utah we prefer the all-purpose phrase "fer ignernt") in correspondence and pleadings – usually in discovery battles for some reason. Example: "It is ludicrous for opposing counsel to even suggest that my answers to interrogatories were less than ...." By doing this, though, the author unwittingly alerts the trial judge that the court will be dealing with an emotionally overwrought attorney (the author – *not* the target of the insult). If *both* counsel sprinkle their papers with this word, and the trial judge *doesn't* cancel oral argument on pending motions and just go off the memoranda, *that* judge deserves the contentious hearing he or she receives. And while I'm on the subject, there is an idea being floated by the Utah Supreme Court's advisory committee on professionalism to have a specialized commissioner hear discovery disputes. On the one hand, this is an excellent idea applauded by trial judges. On the other hand, anyone willing to take *that* job should be administered a saliva test as part of the screening process.

Model of Clarity: This is one of those appellate court comments that indicates that the trial judge's performance was less than exemplary. Example: "The trial court's findings of fact, while not a model of clarity, are adequate for review...." Ouch! Kind of like opening the newspaper and reading: "The figure skater, while flailing his arms wildly and falling on his butt, did manage to complete the routine without serious injury." I haven't been the recipient of this barb, but I've worried about it. However, turnabout is fair play, and you too can use the phrase if you find an *appellate* opinion to be lacking. You just need to realize that if it shows up in the appeal transcript, you're going to be dead meat.

MUJI: Model Utah Jury Instructions. Excellent civil jury instructions crafted after years of painstaking work by a cross-section of experienced trial attorneys. Still, even if these instructions are read in segments, the judge who makes the mistake of making eye contact with the jury after reading the lengthy final instructions, will see expressions that range from drooling coma-stares, to homicidal rage, depending on the attention span of the individual juror involved.

Preparation: Attorneys who know the facts, what the witnesses are going to say, the strong *and* weak points of their case, and the relevant statutes or cases stand an improved chance of prevailing. When an attorney comes into court, the jury and I don't care where he or she went to law school, or what size of law firm they're in, or whether they won or lost their last case – all we care about is how prepared an attorney is to try that day's case.

Reasonable Doubt: Tough to define, and uniform criminal jury instructions are being studied now, too, *a la* MUJI. In one Utah Supreme Court decision, the following language was "approved" (that is – it wasn't reversed, which is as close to

"approved" jury instructions as you can generally get). I think a lot of courts use it:

> "....A reasonable doubt is a doubt based on reason and one which is reasonable in view of all the evidence. It must be reasonable doubt and not a doubt which is merely fanciful or imaginary or based on wholly speculative possibility. Proof beyond a reasonable doubt is that degree of proof which satisfies the mind, convinces the understanding of those who are bound to act conscientiously upon it, and obviates all reasonable doubt."

This language has always struck me as being disturbingly similar to the *Mr. Ed* theme song ("A horse is a horse, of course of course, unless the horse...." or however that song went.) If you look at the jurors at this point you will know who has been listening. They will be the ones with the *"Say what???"* looks on their faces. Judges are timid about changing "approved" instructions. The bravest I have been with this particular instruction is to change the word "obviate" to "eliminate," because when I first saw it, I didn't know what "obviate" meant, and no jurors I asked in two straight felony trials knew what it meant. (And to you Salt Lakers smirking and chuckling right now at us rubes, all I can do is paraphrase that legal scholar, Lt. Sippowicz, and say, "Obviate *this* you smog-breathers.") I looked in the dictionary and found a synonym (whatever that is) for "obviate," and everyone has been happy ever since.

Rulings: Don't take an adverse ruling personally. I rule against attorneys I respect every day, and so does every other judge. No judge thinks, "I'm going to enter judgment against plaintiff/defendant because I hate his attorney." We rule according to what we think is right. And sometimes we're wrong. I have to give this same advice to myself sometimes. When I get an envelope from an appellate court, I close the door, rip open the envelope, and scan the opinion for the overall ruling. Then I pretty much go bipolar. If it says "affirmed," I *feel* affirmed, and brilliant, and vindicated. This feeling lasts about three seconds. Then I think, "Of course I was affirmed. I was right. I'm *supposed* to do it right." And the euphoria evaporates. And if it says "reversed," I usually think "that was a close case – I wish I'd ruled the other way." But other times, I'm sorry to say, I feel stupid, and embarrassed, and angry. So I pull out the case file and re-read it. If I agree that I made a mistake I vow not to do *that* again, and if I feel that the appellate court was wrong and I was right – well .... hell.... I'm *still* stuck with the decision (like you usually are with mine) because it's what the person one step up the ladder thinks that is controlling, so I still vow not to do *that* again. I stew about it for a little while, and then mentally stick it on a shelf and close the cupboard door. I suggest you do the same thing, because we can't do nimble footwork in the courtroom if we have a death grip on a bunch of baggage. And it's not personal.

Voir Dire: Questions asked of jurors so that you can intelligently remove potential jurors with improper perspectives and biases that would hurt your client (*bad* juror), and select jurors with proper perspectives and biases that will be favorable to your client (*good* juror). This ensures an *impartial* jury – or so the thinking goes. I'm told "voir dire" is properly pronounced: "Vwaaah-dear." Kind of like Barbara Walters trying to say the word "water." (Okay, like Gilda Radner might have had Baba Wawa try to say "water.") But if you say it that way in Southern Utah, you'll sound like a "fancy-pants," and the auto mechanics on the jury will snicker. On the other hand, if (like me) you say it the other way, "Vore-die-yerr," all multi-syllabic, and slowly drawn out, you sound like a hick, and people will look to see if you scraped the manure off your boots before you came in. So I guess either way you're screwed.

"With all due respect to opposing counsel:" Say this just before firing below-the-belt, personal insults at opposing counsel. And if the other attorney says it, take a deep breath and tighten those sphincters, 'cause here it comes back at you.

Good luck, and you're welcome. (Oh, and don't bother to ask another judge if I speak for them – I don't. We all see ourselves as independent contractors.)

EDITOR'S NOTE: Robert Braithwaite is retiring after sixteen years as a Circuit and District Judge in Cedar City, having been appointed to the Fifth Circuit Court in July 1987 by Gov. Norman H. Bangerter. He became a District Court Judge in January 1992.

He received his law degree from the University of Utah College of Law in 1976. Judge Braithwaite was a member of the Utah Air Conservation Committee from 1977 to 1985. He was in private practice and served as City Attorney for Cedar City before his appointment to the bench. He is a past member of the Utah Judicial Council and served as Chairman of its Policy and Planning Committee.

Judge Braithwaite's retirement plans include regular service as a Senior Judge, working as a mediator, and lots of hiking. He insists that he has no plans to try his luck as a stand-up comedian.

P | K | P

PARSONS KINGHORN PETERS

(formerly Parsons, Davies, Kinghorn & Peters)

is pleased to announce the relocation of its offices to

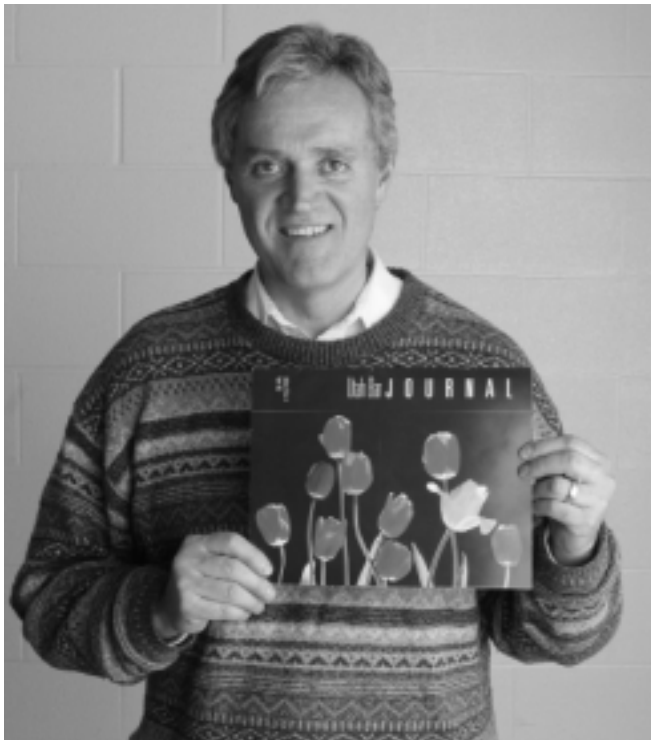
PARSONS KINGHORN PETERS
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
801 363 4300 Phone
801 363 4378 Facsimile
www.pkplawyers.com

Administrative Law, Arbitration and Mediation, Bankruptcy, Business Organization, Commercial Litigation, Construction Law, Creditor Rights, Domestic Relations, Employee Benefit Plans, Employment Law, Environmental Law, Estate Planning, Health Care Law, Local Government Law, Mergers and Acquisitions, Pension and Profit Sharing Plans, Probate, Real Estate, Tax Litigation, Taxation, Water Law

ATTORNEYS

John Parsons
Gerald H. Kinghorn
Bill Thomas Peters
Weston L. Harris
Langdon T. Owen, Jr.
R. Kimball Mosier
John N. Brems
David W. Scofield
Stuart W. Hinckley
John S. Bradley
Harold L. Reiser
Wm. Shane Topham
J. Scott Brown
Ronald F. Price
Glen E. Davies, Of Counsel

Bar Commission Selects 2002 Cover of the Year



Pictured is attorney and photographer, Dana Sohm, holding a copy of the winning Cover of the Year for 2002

The winner of the Utah Bar Journal Cover of the Year award for 2002 is the April issue. It features a beautiful photograph of red and yellow tulips against a black background, taken by Dana Sohm of Salt Lake City, Utah. Mr. Sohm is an attorney with the Small Business Administration. The photograph of Mt. Olympus on the January/February 2003 issue was also taken by Mr. Sohm. The Cover of the Year was selected by the Utah Bar Commission.

Mr. Sohm is one of 52 attorneys or members of the legal assistant division of the Utah Bar whose photographs of Utah scenes have appeared on at least one cover since August, 1988. Covers of the year are framed and displayed, along with winners from prior years, on the upper level of the Law and Justice Center. The editorial board of the Bar Journal welcomes your feedback about the covers.

Congratulations to Mr. Sohm, and thanks to all who have provided photographs for the cover.

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

Notice of Legislative Rebate

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

Advanced Cross Examination

How to Dominate a Courtroom

with

Larry Pozner & Roger Dodd

Authors of "Cross Examination – Science and Techniques"

Friday, May 2, 2003
8:45 am to 4:00 pm
Utah Law & Justice Center

Cross examination is a science, and it can be mastered if you are willing to learn. Two of the masters will show you how to do so in this entertaining and nationally-renowned seminar.

$125 for Litigation Section members, $175 for others
Register on-line at www.utahbar.org/cle or e-mail to: cle@utahbar.org
or call 297-7032, 257-5515, or 297-7033.

Sponsored by the Litigation Section of the Utah State Bar
www.utlitsec.org

Discipline Corner

RESIGNATION WITH DISCIPLINE PENDING

On January 21, 2003, the Honorable Christine Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline concerning Ronald W. Flater.

In summary:
The Office of Professional Conduct received three complaints against Mr. Flater concerning immigration matters. The complaints allege that Mr. Flater incorrectly completed or failed to complete immigration petitions on behalf of the clients. All three clients primarily dealt with Mr. Flater's assistant, although Mr. Flater reviewed and signed the documents. In two cases, Mr. Flater failed to respond to the clients or their attorney. In two of the cases, Mr. Flater failed to respond to the OPC's requests for information.

ADMONITION

On January 13, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.15(b) and (c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a personal injury matter, which occurred during the course of the client's employment. The Workers' Compensation Insurance providers had a statutory lien claim against any funds received as a result of the personal injury case. The attorney advised the client to set up attorney liens with the client's medical providers. The personal injury claim was resolved through arbitration. As a result of arbitration, the attorney received a check for the arbitration award. The attorney failed to notify the lien holders about the arbitration award. The attorney also failed to hold the award funds until there was an accounting and severance of the interests of the lien holders, the client, and the attorney. Instead, the attorney deducted attorney's fees and costs and issued a check to the client for the remainder of the award.

ADMONITION

On February 3, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.4(b) (Communication), 1.5(a) (Fees), 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 a criminal matter. The client required to communicate with the attorney through a family member, as the client was in jail and was not fluent in English. The attorney failed to take adequate steps to ensure that there was an understanding with respect to the representation between the client and the attorney. The attorney failed to send letters to the client and failed to determine whether the family members served as adequate and appropriate conveyors of information. The attorney failed to refund the unearned portion of the fee to the client, and failed to include refund language in the fee agreement in the event of termination or withdrawal. The attorney failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

STAYED SUSPENSION

On December 31, 2002, the Honorable J. Brent West, Second Judicial District Court, entered an Order of Discipline suspending Stuwert B. Johnson, from the practice of law for six months for violation of Rule 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed in favor of unsupervised probation for a period of six months. Mr. Johnson was also ordered to attend Ethics School within one year.

In summary:
In one matter, Mr. Johnson was retained by a client to prepare and file a request for a restraining order against the client's ex-husband. Mr. Johnson failed to file the request in a timely fashion, and failed to promptly return the client's retainer fee. In a second matter, Mr. Johnson filed a Complaint in the United States District Court on behalf of a client. Mr. Johnson failed to diligently prosecute the matter, failed to keep the client reasonably informed of the status of the case, and made misleading statements concerning the status of the case. In a third matter, Mr. Johnson represented a client in a personal injury matter. Mr. Johnson allowed a member of his staff to take the client's file home to work on the case. The staff member kept the file, delaying resolution of the matter. When the file was returned, Mr. Johnson failed to act with reasonable diligence in concluding the case, and delayed in paying medical providers. In another two matters, Mr. Johnson resolved the bar complaints by forgiving any outstanding attorney's fees he claims are owed by the clients.

Aggravating factors include: prior record of discipline, pattern of misconduct, multiple offenses, and substantial experience in the practice of law.

Mitigating factors include: substantial efforts to correct his office procedures so as to improve client communications, and more diligent representation.

"And Justice For All" Law Day 5K Run/Walk

April 26, 2003 · 8:00 a.m. · S. J. Quinney College of Law at the University of Utah

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

"Celebrate Your Freedom"

Sign-Up On-Line, By Mail, In Person. Sign-up the easy way. Try on-line registration at **www.utahbar.org.** Deadline for preregistration is April 18, with a registration fee of $20 ($10 for the Baby Stroller Division, see below) . . . Same as last year! Or send or deliver in person the completed registration form with fee to: Law Day Run/Walk, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111. Race day registration will be held from 7:00 a.m. to 7:45 a.m. with a registration fee of $25 ($12 for the Baby Stroller Division, see below).

Helping To Provide Legal Aid To The Disadvantaged. Your race registration fee helps provide much needed legal aid to the needy and disabled. Please consider a charitable contribution over and above the registration fee, too. Attorneys are encouraged and challenged to contribute the charge for two billable hours. Everyone, please dig deep! Funds benefit clients of Utah Legal Services, Legal Aid Society of Salt Lake, and Disability Law Center.

When? The "And Justice For All" Law Day 5K Run/Walk will be held Saturday, April 26, 2003 at 8:00 a.m. Arrive early, stretch out, warm-up and renew acquaintances . . . T-Shirts, race numbers, and race packets with goodies should be picked up in front of the Law School between 7:00 a.m. and 7:45 a.m.

Where? The Run/Walk begins (and ends!) near the S. J. Quinney College of Law at the University of Utah (just north of South Campus Drive on University Street (about 1350 East)).

Parking. Park in the parking lot next to the Law Library at the University of Utah Law School. This lot (about 1400 East) is accessible on the north side of South Campus Drive, just east of University Street. (It's just a little west of the stadium.) Limited street parking available. Even better: TRAX should be available from downtown Salt Lake at approx. 6:00 a.m.

The Course. We'll do our best to duplicate last year's course (a scenic route through the U of U campus). However, ongoing and ever-evolving TRAX construction on South Campus Drive and Wasatch Drive may require re-routing the course . . . we'll do our best to keep re-routing to a minimum. For race course updates as race day approaches, follow the links from **www.utahbar.org.**

Prizes For Individuals and Speed Teams. We'll all be rewarded and feel great for having participated in a worthy cause – and for having exercised so early on a Saturday morning. For those who want more, the top finishers in each age group (male and female) will receive awards and accolades and a prize will be given to the firm with the fastest team. Teams consisting of five runners (with a minimum of two female racers) can register to compete for the fastest overall time. All five finishing times will be totaled, and a special trophy will go to the winning team's firm or organization. Please be sure to specify your team designation on your registration form – there's no limit to the number of teams an organization may have. Eg., Ray, Quinney Team A, RQ Team B, etc.

Ready . . . Sit! . . . Or Push a Stroller. No one should be left out of the fun. For those non-runners and non-walkers, three years ago we introduced the ever-popular **Chaise Lounge Division** for your friends and family who really enjoy supporting their runners and walkers and want to be an important part of the festivities. Now they can register, don a cool T-shirt, pick up goodies, and enjoy refreshments. The Chaises will have their own special start (ready, set, SIT!), moving mile markers, and a finish line that sweeps across the sitters. (Chairs not included). And we want this year's Run/Walk to once again be fun for the whole family. So register yourself and the little ones in our **Baby Stroller Division,** introduced for the first time last year (strollers are welcome, but to get a t-shirt and goodies, you must register your little ones). The pre-registration fee for the Baby Stroller Division is $10 and the Race day registration fee is $12. Special prizes will be awarded to the top participants to cross the finish line (after completing the race course, of course) pushing a baby stroller. Registration for the stroller "pusher" is the general race registration amount ($20 pre-registration) . . . and each registrant in the **Baby Stroller Division** registers and competes *only* in the **Baby Stroller Division,** not the general race divisions. So, there's really no excuse to not involve the whole family in this year's event!

Charitable Competition. Once again, this year's event will have a "charitable competition." Designed to encourage camaraderie within firms or other organizations in the Utah legal community, but not limited to law firms – any organization can compete. Also designed to raise money for the "and Justice for all" campaign. The 2002 Competition Champion was the Salt Lake City law firm of Ray, Quinney & Nebeker which had the greatest number of individual registrants for the Race. Congratulations! So . . . to become charitable champion this year, focus on recruiting as many registrants from your office or organization as possible. The greater the number of registrants, the more funds we can donate to "and Justice for all." The group that recruits the most paid registrants wins!

Registration – "And Justice For All" Law Day 5K Run/Walk

April 26, 2003 · 8:00 a.m. · S. J. Quinney College of Law at the University of Utah

One registration form per entrant, please (except Baby Stroller Division)

Please send this completed form and registration fee to Law Day Run/Walk, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111. Make checks payable to "Law Day Run/Walk". If you are making a charitable contribution, you will receive a receipt for that portion of your payment directly from "and Justice for all."

Registration Information

Last Name _____ First Name _____

Address _____

City, State, Zip _____

Daytime Phone _____ E-mail Address _____

Age on April 26, 2003 _____ Birth Date (MM/DD/YR) _____/_____/_____

Recruiting Organization

_____
(must be filled in for charitable competition credit)

Speed Competition Team

_____
(team name)

Shirt Size

❑ Child S ❑ Child M ❑ Child L ❑ Adult S ❑ Adult M ❑ Adult L ❑ Adult XL ❑ Adult XXL

Both long-sleeved t-shirts and tank tops are available this year, **through pre-registration only.** If you'd like one, please specify and add $5 to your payment total. ❑ Long-sleeved t-shirt ❑ Tank top

Division Selection

Division	Male	Female	Division	Male	Female	Division	Male	Female
Baby Stroller		A ❑						
14 & under	B ❑	Q ❑	35-39	G ❑	V ❑	60-64	L ❑	AA ❑
15-17	C ❑	R ❑	40-44	H ❑	W ❑	65-69	M ❑	BB ❑
18-24	D ❑	S ❑	45-49	I ❑	X ❑	70-74	N ❑	CC ❑
25-29	E ❑	T ❑	50-54	J ❑	Y ❑	75 & over	O ❑	DD ❑
30-34	F ❑	U ❑	55-59	K ❑	Z ❑	Chaise Lounge	P ❑	EE ❑

Payment Amount

Preregistration (must be received by April 18, 2003) ..... $ 20.00
Long-sleeved t-shirt or tank top ($5.00 extra if chosen) ..... $ 5.00
Baby Stroller Division Registration (please indicate shirt size) ❑ 12m ❑ 18m ❑ 24m ❑ Child XS ..... $ 10.00
Charitable Contribution to "and Justice for all" (you will receive a receipt for tax purposes) ..... $ _____
Total Payment ..... $ _____

❑ Check to "Law Day Run/Walk"

Charge my ❑ Visa or ❑ MasterCard
Name on Card _____ +_____
Account Number _____ Expiration Date: month _____ year _____

Waiver and Agreement

In consideration of the privilege of participating in the Law Day Run/Walk, I waive and release from all liability the sponsors and organizers of the Run/Walk, the USATF and USATF-Utah, and all volunteers and support people associated with the Run/Walk for any injury, accident, illness, or mishap that may result from participation in the Run/Walk. I attest that I am sufficiently trained for my level of participation. I also give my permission for the free use of my name and pictures in broadcasts, newspapers, and event publications. I consent to the charging of my credit card submitted with this entry for the charges selected. I understand that the entry fees are not refundable.

Date: _____ Signature/Adult Entrant _____

Signature/Guardian _____ Print name of Guardian for minor entrant _____

for more info and rules, look for link at www.utahbar.org

Reversible Errors

by Scott Turow

Reviewed by Betsy Ross

What happens when a confessed killer turns out to be innocent? Though I have just given away the ending, the title itself probably already did that anyway. And in any event, the outcome of *Reversible Errors* is less important than the process, replete with philosophical discussions of the differing points of view involved in death penalty cases. His newest book is the platform for Scott Turow to discuss his views on capital punishment. I thought it timely to look at this issue again given recent events questioning application of the death penalty to minors and the mentally incapacitated, not to mention the persistent drumbeat of victims' rights.

Rommy Gandolph is on death row, having confessed to a triple murder. Arthur, a partner in a prominent law firm is assigned to represent him to ensure that "after ten years of litigation, no sound arguments remained" to save him. Thus begins the trek into capital punishment country, complete with all the usual suspects: the self-interested prosecutor, running for political office; the angry, vindictive son of one of the victims (I'm not sure if in victims' rights parlance he is also called a "victim"); the "black-and-white" cop who happens also to be in love with the prosecutor (no conflict of interest here-but wait, there's an even better one); and the aforementioned Arthur, the honest, if naive defense attorney (by inclination if not by actual trade), who himself falls in love with the judge who originally tried Rommy (without a jury).

Though this sounds like a set-up for superficiality, Turow achieves a well-rounded discourse, presenting the differing points of view of each of these character-types within the framework of an entertaining story. The greatest revelation is not whether Rommy is actually innocent or not, but the acknowledgment that truth can only be discovered by answering the question, "whose truth?"

The truth for the victim's son is that his father is dead, and he wants an object for his vengeance. He "assumed that when the right person died, the one who deserved to be removed from the planet, when that occurred, [his] lost loved one would come back to life. That was the pathetic logic of revenge, learned in the playpen, and of the sacrificial altar, where we attempted to trade life for life."

The truth for the cop is that he got a confession from the murderer and indeed is unable to see that he coerced that confession from him. When the prosecutor suggests that "even our best work and best judgment isn't always perfect. . . . I mean, it's possible [that we're wrong]," the cop can only respond "It's not possible."

The truth for the prosecutor is that she has a public to appease, and a professional goal of her own. And ultimately, the truth for Rommy is that the system failed him. He spent 10 years in jail, on death row, for a crime we come to be convinced, he did not commit.

The law does not always reveal truth, in part, because of the subjective nature of truth, a point Turow makes well with his characters. And a point entirely at odds with the death penalty. Thus, Turow's chance to speak out. And he does in this story, presenting a tale in which the flaws in the system are exposed. It is a tale Turow learned from life. Turow spent the past ten years doing death penalty litigation on a pro bono basis, and also spent two years as a member of a 14-person Illinois commission exploring the death penalty. The result of his time on that commission is his opposition to capital punishment. That opposition is based on what he claims is the faulty logic of the penalty: it is not, from his experience and the commission's 2-year study, the deterrent it is intended and believed to be. And furthermore, because it is not applied evenhandedly, it is at once illogical and discriminatory. So what *does* the death penalty provide? The finality and retribution desired by some – though not all. Turow has his prosecutor speak to this important issue:

"She'd seen three executions now, as a supervisor. At the first, the father of the victim, a mother of two who'd been shot down at a Stop-N-Go gas mart, came away embittered, angry that what had been held out as a balm had only made him feel worse. But the two later families claimed that they'd gotten something from it – an end point, a sense of an awful equilibrium being restored to the world, the peace of mind that at least no one else would suffer again from this dead bastard as they had. But hurting as she did at the moment, she could not really remember why inflicting more harm would make life on earth better for anyone."

Amen.

What Can a Legal Assistant Do for Me?

Marilu Peterson, CLA-S – Legal Assistant Division Chair

The Division has used this space in the past to introduce its officers and directors, to update Bar members on the activities of the Division, and to comment on issues of common interest including the ethical standards by which we, as legal assistants, are bound, and the utilization guidelines established by the Office of Professional Conduct for attorneys employing legal assistants.

All of our members work under the direct supervision of a licensed member of the Utah Bar. The opposite is not true, however – many Bar members do not use or employ legal assistants. There are a few good reasons, but the principal poor one appears to be a lack of understanding of the positive economic benefit. In other words, the money.

In future issues, we will have articles by legal assistants discussing their particular job duties in litigation, estate planning, probate, family law and other practice areas. All of this is with an eye toward giving lawyers a better focus on the benefits of utilizing legal assistants effectively.

Beyond that, we want to use this space for a public thank you to the firm of Strong & Hanni for its ongoing support of its legal assistants and the Division's Board of Directors in particular. The firm has made its conference rooms available to the Division's Board and has provided meals for its meetings. We sincerely appreciate the firm's generous support of our activities.

With considerable pleasure, I am announcing that Sanda Kirkham, CLA, will lead our Division next year as its Chair. The Division's first Bar Commission Liaison, Sanda achieved her CLA credential 1998. Sanda works with Bob Janicki and Stuart Schultz at Strong & Hanni in the areas of insurance defense and construction law litigation. Sanda also served as the Bar Liaison for LAAU. Currently, Sanda is our Professional Standards Chair.

And, on a similar note, the Division's annual meeting is on June 27, 2003, at the Law & Justice Center. We are arranging a full day of interesting CLE so do make note of the date. In the meantime, the Division is seeking nominations to its Board of Directors, as well as others interested in chairing the Division's various committees. Director nomination forms will be mailed to the members shortly. Participation in the leadership in the Division is an interesting and satisfying opportunity.

In the meantime, we hope you can join us at the annual legal assistant luncheon in St. George in conjunction with the mid-winter Bar meeting. In addition to the offerings by the Bar, there's an additional hour of CLE for attending this luncheon. The Bar Commission's Liaison to our Division, V. Lowry Snow, will be the speaker.

Sun, golf, tennis, CLE. Sounds good.

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
03/06/03	**Practicing Water Law in Utah.** 5:30 – 8:30 pm. $50 Young Lawyer, $60 others. Wendy Crowther, Clyde, Snow, Sessions & Swenson – Basic Issues of Utah Water Laws. Michael M. Quealy, Parsons, Behle & Latimer – Practicing Before the State Engineer. Zach Frankel, Utah Rivers Counsel – Environmental Issues in Utah Water Law.	3 CLE/NLCLE
03/13/03	**PLI: Copyright and Trademark Law for the Nonspecialist.** Tuition $299. 9:00 am – 4:00 pm. To register call 1-800-CLE-NEWS	6
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
03/20/03	**ALI-ABA: Limited Liability Entities.** Live satellite TV nationwide. Tuition $179. 10:00 am – 2:00 pm. To register call 1-800-CLE-NEWS	4
03/27/03	**Securities Law Practice in Utah.** 5:30 – 8:30 pm. $50 Young Lawyers, $60 others.	3 CLE/NLCLE
04/17/03	**Annual Real Property Seminar.** 8:00 am – 12:00 pm. Price and agenda TBA.	3
04/18/03	**Judicial Selection Process.** 8:30 am – 1:00 pm. $100 registration fee with lunch; $75 for Women Lawyers of Utah, YLD and Minority Bar members.	5
04/24/03	**Annual Collection Law Seminar.** Price and agenda TBA	3
05/22/03	**Securities Law Practice in Utah.** 5:30 – 8:30 pm. $50 Young Lawyer, $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.

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.

POSITIONS AVAILABLE

TEACHING FELLOWSHIP

The University of Utah S.J. Quinney College of Law invites applications for a full-time teaching fellowship in the Legal Methods Program for the 2003-04 academic year. Under the direction of the Legal Methods Program co-directors and assisted by student TAs, the teaching fellow would teach one section of about 35 first-year students legal reasoning, research, writing and other practice skills such as interviewing, counseling, negotiation and oral argument. Applicants must have a J.D. degree from an ABA accredited law school, excellent academic credentials, and demonstrated proficiency in legal reasoning and writing. Prior teaching experience, judicial clerkship or practice experience is preferred. The position offers a one-year academic contract and excellent benefits.

The University of Utah is an Equal Opportunity/Affirmative Action employer and encourages applications from women and minorities and provides reasonable accommodation to the known disabilities of applicants and employees.

Send letters of interest, resume, law school transcript, a short legal writing sample and the names of three references to Legal Methods Search Committee Chair, University of Utah College of Law, 332 South 1400 East Rm 101, Salt Lake City, Utah 84112.

UNIVERSITY OF UTAH
S.J. QUINNEY COLLEGE OF LAW

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.

LAW CLERK to the Honorable Judith A. Boulden – United States Bankruptcy Court, District of Utah. Starting salary: $46,689 (JSP 11) to $55,958+ (JSP 12) or JSP 13, depending on qualifications. Qualifications: One year of experience in the practice of law, legal research, legal administration, or equivalent experience after graduation from law school. Substantial legal activities while in military service may be credited on a month-for-month basis whether before or after graduation; OR a recent law school graduate may apply but must have graduated within the upper third of his/her class from a law school on the approved list of the A.B.A. or the A.A.L.S. or served on the editorial board of the law review of such a school or other comparable academic achievement. Send resume and transcript only to: Judge Judith A. Boulden, United States Bankruptcy Court, 350 South Main Street, Room 330, Salt Lake City, Utah 84101. Equal Opportunity Employer.

BANKRUPTCY LAWYERS NEEDED: National company seeking attorneys licensed in Utah in order to provide personal bankruptcy services. Cases assigned to attorneys on a referral basis. Fax qualifications to (410) 265-6767 Attention: Utah attorney recruiter or e-mail: drchargeit@cs.com for immediate consideration.

CENTRAL STAFF ATTORNEY – Court of Appeals. The Court of Appeals is seeking an attorney to provide assistance in docketing statements, motions, applications for certificates of probable cause, petitions for interlocutory appeal, petitions for extraordinary writs. Excellent legal research and writing skills are required. Must be a member in good standing of the Utah State Bar. Resume, transcripts and a recent writing sample must be submitted along with state court application. Hiring range $19.63 ($40,830) to $27.18 ($56,534) DOE, plus generous employer paid benefits. Closing date: March 24, 2003, at 5:00 pm. Complete job announcement and application may be obtained from our website at www.utcourts.gov or at Human Resources, Administrative Office of the Courts, 450 S. State Street, 3rd Floor North. Phone: 578-3890/3804. Return applications to Director of Human Resources, P.O. Box 140241, SLC, 84114-0241. Equal Opportunity Employer.

City of West Jordan City Attorney ($84,947–$103,254) Represents the City and provides legal counsel in all areas of municipal law including litigation, contract, land use, redevelopment, employment law, civil rights, criminal and property law. Must be member of Utah State Bar in good standing, eight years of increasingly responsible experience in the practice of law, including representation of municipal or local governmental entities. Civil litigation, criminal prosecution, and supervisory experience desired. City application (www.wjordan.com): Human Resources, City of West Jordan, 8000 S. Redwood Road, West Jordan, Utah 84088 or fax to (801) 569-5049 by 5pm, March 21, 2003.

Legal Reference/Instruction Librarian. The University of Utah S.J. Quinney Law Library has an entry level position for a Reference/Instruction Librarian. The librarian will be half time Reference and will have teaching responsibilities, be in charge of the library's faculty research assistance program, have oversight of the library's instructional and service brochures, and will have other duties as assigned. The applicant must have a Juris Doctor's degree from an ABA accredited law school. A Master's in Library Science from an ALA accredited school is preferred. This is a full time tenure track position with excellent benefits. For additional information, please contact Linda Stephenson (stephensonl@law.utah.edu or 801-581-5800). The University is an AA/EO employer and encourages applications from women and minorities, and provides reasonable accommodation to the known disabilities of applicants and employees.

OFFICE SPACE/SHARING

PROVO OFFICE SPACE. Downtown office space for one or two attorneys. 100 South 100 East, Provo. 2,000 square feet office, including conference room, phones, copier, fax, broadband internet, parking, and other resources. Close to Courthouse and county building. GREAT LOCATION!!! Please call (801) 375-1717, ask for Meg or Jim.

Law firm in historical Salt Lake Stock and Mining Building at 39 Exchange Place has large office space with secretarial area available now for $975. Amenities include receptionist, conference room, fax copier, law library, parking kitchen and optional DSL connection. Contact Joanne or Richard @ 534-0909.

SERVICES

SEX CRIMES/CHILD ABUSE Defense Consultant – Prepare defense for hearsay admission. Determine forensic statement reliability/validity. Assess for Daubert/Rimmasch standards. Detect unsupported allegations, investigative bias, error and contamination. Bruce Giffen, D. Psych. Evidence Specialist. (801) 485-4011.

2,000 Medical Malpractice Expert Witnesses, all specialties. Flat rate referrals. We'll send you to an expert you're happy with, or we'll send your money back – GUARANTEED. Or choose a powerful in case analysis by veteran MD specialists, for a low flat fee. Med-mal EXPERTS, Inc. www.medmalEXPERTS.com 888-521-3601

Lump Sums Cash Paid For Seller-Financed Real Estate Notes & Contracts, Divorce Notes, Business Notes, Structured Settlements, Lottery Winnings. Since 1992. www.cascadefunding.com. Cascade Funding, Inc. 1 (800) 476-9644.

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

Language – CTC Chinese Translations & Consulting Mandarin and Cantonese and other Asian languages. We have on staff highly qualified interpreters and translators in all civil and legal work. We interpret and/or translate all documents including: depositions, consultations, conferences, hearings, insurance documents, medical records, patent records, etc. with traditional and simplified Chinese. Tel: (801) 942-0961, Fax: (801) 942-0961. E-mail: eyctrans@hotmail.com

UTAH STATE BAR ADDRESS CHANGE FORM

The following information is required:

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

***PLEASE PRINT**

1. Name _____ **Bar No.** _____ **Effective Date of Change** _____
Note: If you do not provide a date the effective date of the change will be deemed to be the date this form is received.

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

Firm or Company Name _____

Street Address _____ Suite _____

City _____ State _____ Zip _____

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

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

Street Address _____ Suite _____

City _____ State _____ Zip _____

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

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

_____ Business _____ Residence

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

Signature _____

All changes must be made in writing. Please return to: UTAH STATE BAR, 645 South 200 East, Salt Lake City, Utah 84111-3834: Attention: Arnold Birrell, fax number (801) 531-9537.

DIRECTORY OF BAR COMMISSIONERS AND STAFF

BAR COMMISSIONERS

John A. Adams
President
Tel: 532-1500

Debra J. Moore
President-Elect
Tel: 366-0132

David R. Bird
Tel: 532-1234

Nanci Snow Bockelie
Tel: 536-5200

Gus Chin
Tel: 535-7992

N. George Daines
Tel: 435-716-8380

Karin S. Hobbs
Tel: 983-1300

Randy S. Kester
Tel: 801-489-3294

Felshaw King
Tel: 543-2288

Robert K. Merrell, CPA
Public Member
Tel: 584-3705

C. Dane Nolan
Tel: 531-4132

Stephen W. Owens
Tel: 983-9800

D'Arcy Dixon Pignanelli
Public Member
Tel: 328-2282

V. Lowry Snow
Tel: 435-628-3688

E. Russell Vetter
Tel: 582-3545

***Ex Officio**
(non-voting commissioners)

***Lauren R. Barros**
Women Lawyers Representative
Tel: 532-2666

***Victoria Coombs Bushnell**
President, Young Lawyers Division
Tel: 435-649-2525

***Charles R. Brown**
State Bar Delegate to ABA
Tel: 322-2516

***Scott Daniels**
Immediate Past President
Tel: 583-0801

***H. Reese Hansen**
Dean, Law School,
Brigham Young University
Tel: 801-378-6383

***Scott M. Matheson, Jr.**
Dean, Law School,
University of Utah
Tel: 581-6571

***C. Dane Nolan**
Judicial Council
Tel: 531-4132

***Paul T. Moxley**
ABA Delegate
Tel: 521-5800

***Joyce A. Nunn**
Legal Assistant Division Representative
Tel: 521-3200

***Clayton A. Simms**
Minority Bar Association
Tel: 328-3999

UTAH STATE BAR STAFF

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

Executive Offices
John C. Baldwin
Executive Director
Tel: 297-7028

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

Maud C. Thurman
Executive Secretary
Tel: 297-7031

Katherine A. Fox
General Counsel
Tel: 297-7047

Diana Gough
Assistant to General Counsel
Tel: 297-7057

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

Admissions
Joni Dickson Seko
Deputy General Counsel
in charge of Admissions
Tel: 257-5518

Christie Abad
Admissions Assistant
Tel: 297-7025

Bar Programs
Christine Critchley
Bar Programs Coordinator
Tel: 297-7022

CLE
Connie Howard
CLE Coordinator
Tel: 297-7033

Stephanie Long
Section Support
Tel: 297-7032

Consumer Assistance Coordinator
Jeannine Timothy
Tel: 297-7056

Conventions
Monica N. Jergensen
Tel: 463-9205

Finance
J. Arnold Birrell, CPA
Financial Administrator
Tel: 297-7020

Joyce N. Seeley
Financial Assistant
Tel: 297-7021

Lawyers Helping Lawyers
Tel: 579-0404
In State Long Distance: 800-530-3743

Lawyer Referral Services
Diané J. Clark
LRS Administrator
Tel: 531-9075

Pro Bono Department
Charles R.B. Stewart
Pro Bono Director
Tel: 297-7049

Technology Services
Lincoln Mead
Manager Information Systems
Tel: 297-7050

Samantha Lindsey
Web Site Coordinator
Tel: 297-7051

Receptionist
Edith DeCow
Tel: 531-9077

Other Telephone Numbers &
E-mail Addresses Not Listed Above

Bar Information Line: 297-7055
Web Site: www.utahbar.org

Supreme Court MCLE Board
Sydnie W. Kuhre
MCLE Administrator
297-7035

Member Benefits
Connie Howard
297-7033
E-mail: choward@utahbar.org

Marion Eldridge
257-5515
E-mail: benefits@utahbar.org

Office of Professional Conduct
Tel: 531-9110 • Fax: 531-9912
E-mail: opc@utahbar.org

Billy L. Walker
Senior Counsel
Tel: 297-7039

Kate A. Toomey
Deputy Counsel
Tel: 297-7041

Diane Akiyama
Assistant Counsel
Tel: 297-7038

Paul H. Proctor
Assistant Counsel
Tel: 297-7054

Leslie J. Randolph
Assistant Counsel
Tel: 297-7040

Ingrid Westphal Kelson
Paralegal
Tel: 297-7044

Rosemary Reilly
Paralegal
Tel: 297-7043

Rebecca Timmerman
Assistant to Counsel
Tel: 257-5514

Amy Yardley
Intake Clerk
Tel: 257-5517