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

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

COVER: Coyote Gulch, Grand Staircase Escalante National Monument, by Commissioner Michael S. Evans, Third Judicial District Court.

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. 3
April 2003

Letters Submission Guidelines:

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

Cover Art

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

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

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

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

The Utah Bar Journal

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Submission of Articles for the Utah Bar Journal

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

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

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

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

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

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

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

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

Marbury v. Madison

by John A. Adams

On February 24, 1803 the United States Supreme Court handed down its landmark decision in *Marbury v. Madison.* The decision firmly established the principle of judicial review and strengthened the judiciary's role as a co-equal and independent branch of government. Chief Judge John Marshall's opinion was a masterpiece. Lawyers everywhere recognize and quote his famous statements that it is emphatically the province and duty of the courts to say what the law is and that ours is a government of laws, not of men.

On February 24, 2003, the Utah State Bar celebrated the bicentennial of *Marbury v. Madison* by inviting high school students from throughout the state to spend part of a day with judges and court staffs at local courthouses and by providing teachers with lesson plans and resource materials for use in the classroom. More than 150 students from 49 high schools spent time with about 65 judges from the state and federal benches. Students in Salt Lake gathered at the Matheson Courthouse for a luncheon provided by the Salt Lake County Bar and heard remarks from Chief Justice Christine Durham and Chief Judge Dee Benson. The local county bar associations elsewhere in the state generously provided lunch and a speaker at other courthouses. The students who participated were very positive about their experiences. The Bar thanks all the judges and court staffs (particularly the coordinators Diane Cowdrey and Michelle Roybal from the state and federal courts) for making this a very memorable learning experience for the students.

Chief Judge Dee Benson speaks with local high school students about Marbury v. Madison *during a luncheon at the Matheson Courthouse.*

Chief Justice Christine Durham addresses high school students during the bicentennial celebration of Marbury v. Madison.

Along with the lesson plans and resource materials provided to all high schools, the Bar in conjunction with KUED 7 produced a 30 minute television program about *Marbury v. Madison* featuring Chief Judge Dee Benson, Professor Susan Olson from the University of Utah and Ted Capener, the host of *Civic Dialogue.* The program aired on KUED 7 and KULC 9 on February 24th.

Constitutional law Professor Richard Wilkins from the J. Reuben Clark Law School, who for the past 15 years has appeared as Ebenezer Scrooge in the Hale Theatre's production of *A Christmas Carol,* gave a five-minute monologue in period costume from the viewpoint of Chief Justice John Marshall that was included at the first of the broadcast. Professor Wilkins repeated the monologue in person on February 24th at the Moss Courthouse, the Matheson Courthouse, the Fourth District Courthouse and both law schools.

I hope that you saw the full-page, educational piece in color that appeared in the five daily newspapers in the state on February 24th. The combined circulation of the newspapers is 333,000. The educational piece gave the historical background of the *Marbury v. Madison* decision, explained the relevance of the decision today and explained what the "Rule of Law" means. Cal Grondahl, the cartoonist from the *Ogden Standard Examiner,* drew a cartoon of a family who were discussing the rule of law.

In addition, editorials and newspaper articles appeared in all five papers. Dean Scott Matheson of the S.J. Quinney School of Law and ex-officio member of the Bar Commission wrote an excellent op/ed piece about *Marbury v. Madison* that appeared in most papers. Chief Justice Durham was interviewed on radio station KCPW and Duane Cardall of KSL TV presented an editorial

Constitutional Law Professor Richard Wilkins gave a monologue, in period costume, from the viewpoint of Chief Justice John Marshall.

Utah State Bar President John Adams meets with Utah high school students during the Marbury v. Madison *celebration.*

on the subject. We are grateful to the publishers of the state's five daily newspapers who helped subsidize the printing costs. The Senior Lawyers Division of the American Bar Association (of which our own Judge J. Thomas Greene is a member of the national council) has been the catalyst for encouraging state and local bars to commemorate and teach about *Marbury v. Madison*. Charles Stewart, the Bar's pro bono coordinator, served as the point person for this project. He, along with other Bar staff under the direction of our very capable Executive Director, John Baldwin, did an outstanding job of planning and implementing this ambitious program.

The Bar has made a major commitment of time and resources this year to law-related education initiatives such as our Dialogue on Freedom and *Marbury v. Madison* projects. We feel that we are taking positive and informative messages to the public and into our schools. We look forward to building upon these efforts in the future. If you would like to learn more about *Marbury v. Madison*, I encourage you to visit the Bar's web site at www.utahbar.org/marburyvmadison.

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President-Elect & Bar Commission Candidates

President-Elect Candidates

N. GEORGE DAINES

George Daines has practiced law in Logan, Utah, for 27 years. He is a partner with the law firm, Barrett & Daines, and now serves as the elected Cache County Attorney. He graduated from *Yale Law School* where he was a member of the Board of Editors of the Yale Law Journal. He then served as a law clerk to David T. Lewis, Chief Judge, U.S. Court of Appeals, Tenth Circuit. In 1976 he returned to Logan to practice law and teach business and real estate law at Utah State University. His law practice focused on representation and litigation in the areas of real estate, government and financial institutions.

He has been elected twice to the Utah State Bar Commission representing the First District. He is serving as a member of the Bar Commission's Executive Committee. He is a member of the Judicial Evaluation Committee of the Utah Judicial Council. He is a Director of the Utah Prosecution Council. He has served on the Bar task forces on governance and delivery of legal services. He continues to serve on a variety of bar committees.

He is one of the founders and principal owners of Cache Valley Bank, a successful financial institution operating in the Cache Valley area. He has completed the historical renovation of several prime historic sites in Cache Valley. At present he is involved with the oversight, design and restoration of the historic Cache County Courthouse, an 1885 structure anchoring downtown Logan. He has served on a number of local committees involved with political and public affairs. One of these task forces pioneered the creation of the first council/executive form of county government in Utah (Cache). Another developed the Martin Harris Amphitheatre and Pageant in Clarkston, Utah. He also serves as Chairman of the Bear River Board of Health.

He and his wife Mindy are the parents of six children, ages 13 to 26. He is presently 9 pounds overweight, suffers from deteriorating eyesight and is slowly losing his hair.

Dear Colleagues:

I ask for your vote for President-Elect of the Utah State Bar. I am honored to be nominated for this position by the members of the Bar Commission with whom I have long served. The Bar Commission has been dealing with difficult issues during my service. Our Commission discussions go beyond administrative supervision and management. The Bar Commission assumes the mantle of responsibility for control and direction of our profession. We are doing all we can to meet and respond to the significant challenges to our profession. At times the Bar Commission members have differences. Their vote of confidence in me at this juncture is greatly appreciated. After 26 years of membership in the Utah Bar and five years of intensive involvement with the Bar Commission and its various committees and task forces, I am qualified to assume this new role. I have a desire to serve the Bar Association and its members. I want to give something back to the profession that has given me so much.

I am deeply impressed with those who serve the Bar both as a legion of volunteers and as employees and officers. We have a very fine Bar Association. Because of that, the Association can measurably assist our profession to respond to the significant challenges which lie ahead. Some of these criticisms and challenges include the following:

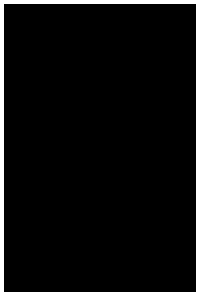
1. *Our struggle to provide cost effective legal services to the middle class.*
2. *The delay, inefficiency and expense of our processes.*
3. *Efforts to reconstitute dispute resolution systems.*
4. *Significant competition from other professions.*
5. *Changes which would marginalize our core values.*
6. *The ongoing threats to the independence of our state judiciary.*
7. *The difficulties of our public image.*

It is imperative that the Bar Association be a participant, if not a leader, in meeting all of these challenges.

The Bar Commission and its current leadership, of which I have been a part, are very proactive in responding to all of these challenges. My candidacy does not represent an effort to change direction, but would lend further support to the ongoing initiatives of the Bar Commission and its leadership. I am involved and supportive of the Bar's efforts to improve the delivery of legal services and develop an improved relation-

ship with the Utah State Legislature. At present our voice is not adequately projected in that forum. In addition to these particular efforts there are many ongoing projects and initiatives that deserve support and assistance. Thus, a vote for me would not be a dramatic change nor a significant redirection. However, the very nature of our present response to these challenges is to espouse and further changes in our profession. The Commission is not attempting to resist changes. For example, after preliminary investigation, I am generally prepared to recommend that the Supreme Court consider raising admissions requirements to the level of admissions requirements in surrounding states, i.e. Idaho, Oregon, and Washington. Because our standards are comparatively low, we are being selected as the state of choice nationally by law students seeking the easiest location for successful bar admission. We are also anxious to obtain reciprocity admission with these neighboring states and they expect that we would have equivalent admission standards.

Your vote for me would be a vote for the ongoing and continued proactive response of the Bar Commission to the challenges to our profession. I believe our best future will be to embrace and encourage changes in the practice of law that retain and enhance our core values.



RANDY S. KESTER

Randy Kester practices in the six lawyer firm of Young, Kester and Petro in Springville. He is a 1984 graduate of the J. Reuben Clark School of Law at Brigham Young University; Bachelor of Arts in Political Science from Brigham Young University and an Associate of Applied Science in Paralegal studies from Utah Valley State College. Randy has been a member of the Utah State and Central Utah Bar since 1984. He served as President of the Central Utah Bar Association in 1989, 1990 and has served as a Bar Commissioner for the Fourth Division, on the Utah Board of Bar Commissioners from 1997 to present.

Throughout his career, Randy has involved himself in public service and helping to make legal services available to all. He worked with those who initially founded the Law Help Project and Utah Volunteer Lawyers Project in Utah County, assisted as legal counsel for the ombudsman's office at Utah Valley State College, on numerous occasions, acted as a judge for the mock trial program, conducted several seminars, volunteered as a guest speaker on KSL radio, spoken at classes at Brigham Young University, and Utah Valley State College. At UVSC, he also served as an adjunct professor, Alumni Association Executive Board from 1988 to 1984, Counsel of 50 for the School of Business, was a member of the Advisory Board for Paralegal Studies and received the inaugural Outstanding Alumni Award in Humanities in 1996. He served as the State Representative for the Utah State Bar Association at the First National Conference on Improving Jury Service. Besides his professional work and associations, he also served a five year term as a member of the Executive Board, Utah National Parks Council, Boy Scouts of America, is a James E. West Fellowship recipient and is a member of the American Legion, having served in the U.S. Military 1972-74.

As a Commissioner, Randy is on the Executive committee as well as a variety of committees and section appointments including Ethics and Discipline, Needs of the Children, Litigation and Criminal Law. He was a Charter Appointee to the Access to Justice Foundation and presently serves on the Utah State Supreme Court Committees for Improving Jury Service and Juvenile Court Rules. His successful work on a high profile murder-for-hire case was the topic of a Tom Jarrill 20/20 program. Randy is also admitted to practice before the U.S. Supreme Court, was in the A. Sherman Christensen American Inn of Court I, 1989 thru 1992 and has been a member of the Utah Trial Lawyers from 1986 to the present time.

CANDIDACY POSITION STATEMENT

Dear Friends & Colleagues:

I have only "published" one other time in this Bar Journal; *an article about leaving things better than we found them, (it can be accessed through the Bar's Website). It was not meant to be a legal treatise but includes reflections about my father and my life. It probably tells you as much about me as the preceding resume synopsis.*

I appreciate the opportunity this forum allows to share some thoughts with my fellow lawyers and friends.

When I first came on the Board of Bar Commissioners, I had no concept of the unavoidable scope of issues managed by that body. Just by way of experiment, get out your January / February 2003 Bar Journal *and review the Commission highlights on pages 36-37. A similar agenda occurs each third Friday of every month. Imagine my sense of inadequacy at my very first meeting in the summer of 1997 facing such unfamiliar discussions.*

Since then I have had opportunity to learn, discuss and participate in these diverse Bar matters. I am presently in the last few months of my second three year term as a Bar Commissioner. In reviewing old and new notes and agendas, I realize that I have been the fortunate beneficiary of a great education about these many Bar matters; the Bar's role in our system of government; the continuing challenge of service to and education of the public as well as those who serve in our co-equal branches of government. I have had confirmed that while serving the judiciary as officers of the court, we must also keep in mind that we still remain citizens and members of that same public to whom we have a commitment. That commitment is to share our understanding about the role our courts and the Bar play in maintaining the checks and balances of an effective government while, at the same time, as practitioners, exercising our duty to ensure the protection of individual rights and liberties (including ourselves, family, neighbors and community) against a burgeoning government.

The Commission's work includes ongoing task forces and committees to study and implement the promotion of fairness and accessibility for women and minorities in the practice. Our admissions program has been recently addressed and vastly overhauled. Our Bar is the first to extend reciprocity of multi-jurisdictional-practice to our neighboring State Bars. Addressing the unmet legal needs of the middle class has been the recent focus of significant volunteer time and resources. The administration of discipline is a major responsibility of the Bar and demands our constant scrutiny and improvement. The Bar's budget is constantly monitored and is open to review and scrutiny by all members. Its management has resulted in no dues increase for over a decade. CLE Programs are varied, generally affordable and well presented. Our commitment to the ongoing objectives of the "and Justice for all" campaign and ad hoc Committee on Improving Access to Justice have evidenced the Bar's commitment to help make available legal resources to those whose needs might otherwise go unmet. The Bar's long range plan has provided a springboard for much of the innovative progress the Board has pursued. It is a solid foundation upon which the Bar can build many layers of fulfilled needs and innovation. It is a source to which we should look for help in providing answers to the Bar's ongoing and evolving needs and responsibilities.

Our Board and Judiciary have remained at the forefront in exploring and meeting the needs of a changing Bar and society. We have also had the very good fortune to have an exceptionally capable, talented and patient executive director in John Baldwin. The continuity of our goals and programs is assured by the presence of John and the staff. He and they are an incredible resource upon which we all frequently lean and from whom we all benefit a great deal; mostly by things that just seem to "happen" but which were the result of much unheralded behind-the-scenes work.

Our Bar is not the "good ole boys" group it was once perceived to be. The synergy created over the years by the many initiatives undertaken by the Supreme Court and the Board of Bar Commissioners has benefitted us all with a powerful, effective diversity in our Bar's governing body. I firmly believe that diversity of color, gender and practice on our board and in our profession should be fostered. Each one of us benefit from it. I believe it is a powerful tool in solving the many ongoing challenges within and outside of the Bar.

While serving on the Board of Bar Commissioners, I have since learned most of the acronyms (MDP, OPC, MJP, etc) and have gained a greater appreciation for the role of lawyers as a component of the Judicial Branch, officers of the court, advocates and benevolent human beings. I refer you to the Jan/Feb 2003 Utah Bar Journal. *Read about "Uncle Bob," (pp 34-35), Ed Brass/ Food & Clothing Drive Volunteers (p 37) and Carman Kipp (P 43).*

The overwhelming majority of those lawyers and judges with whom I have become acquainted are decent, caring and hard

working; they are good neighbors and citizens; charitable and informed; devoted parents and frequently the backbone of the community. Yet, as a profession, we continue to be the subject of a variety of bad jokes, stereotypes and innuendo. How often do you hear an acquaintance or neighbor disparaging lawyers, but upon seeing you says, "But I am not talking about you."

We are scrutinized, depersonalized and criticized by our fellow public servants from other branches of government and are rarely portrayed positively by the press. So, why are law schools still getting more applicants than can be seated? Why are parents still proud when they talk of their daughter or son who is a lawyer? Why do people still seek out a lawyer when the things most important to them are at stake? Because lawyers help people and because being a lawyer is a good thing! I enjoy the work we do in seeking to improve all aspects of the practice. I was proud to be a lawyer the date I graduated from law school and that has not changed. I want to continue to carry that message to the legislature, the public and to our colleagues. I would like to do it as your President-Elect.

I am grateful for the opportunity I have had to serve these nearly six years on the Board. I have benefitted immensely; both personally in my association with all of you as well as professionally, in gaining a broader perspective about Bar issues and how they affect us personally and in our practice. I might add that nearly 30 years and 30 presidencies have past since a candidate from the Fourth Division served as Utah State Bar President. Certainly, that reason alone is no substantive reason for me to seek the confidence of your vote. However, to elect a candidate from that Division after 30 years, would certainly foster the spirit of community and participation envisioned by our direct election process. I feel I still have a great deal to contribute and that my work is not yet complete. I would appreciate your vote in order to allow me to continue putting to work what I have learned; to return to my colleagues as your President-Elect and as a continuing member of the Board, the benefit of the experience I have gained. I look forward to that continued work with all of you and hope that you might find me a suitable representative deserving of your vote.

Third Division Candidates

NATE ALDER
Utah State Bar Member since 1995

Education and Employment
Indiana University, School of Law, J.D.

Indiana University, School of Public and Environmental Affairs, M.P.A.

Judicial Clerk, Hon. J. Thomas Greene, U.S. District Court, District of Utah

Shareholder, Christensen & Jensen

Bar Service (present)
Utah Supreme Court Advisory Committee on Professionalism

Admissions Committee

Bar Examiner Committee, Multi-State Performance Test Co-Chair

Young Lawyers Division, Past President

Alternative Dispute Resolution (ADR) Section, Vice Chair

Bar Service (past)
Bar Commission, Ex-Officio Member

Young Lawyers Division, President
(recognized as Section of the Year)

Governmental Relations Committee

ADR Section, Founding Member

Other Experience (present)
Guardian Ad Litem

Pro Tem Judge, Salt Lake City Justice Court

Board Member, Emma Lou Thayne Community Service Center (S.L.Community College)

To the Third District Bar Members:

I would appreciate your vote for Bar Commission. We face several important issues. To this end, I will provide effective leadership.

1. ***Legislature.*** *We must educate legislators and the public regarding legal services and the practice of law. This is a challenge, but also an opportunity. I support the Bar's effort to develop relationships with decision-makers.*
2. ***Admissions.*** *I support efforts to enhance our admissions policies, including improving the bar exam and applicant review process, as well as developing reciprocity agreements and working with national admissions organizations.*
3. ***Communication.*** *Awareness leads to involvement. The Bar has wisely invested in technology. I support on-line communication, including section newsletters and the admissions application.*
4. ***Outreach.*** *We must serve and reach our community. The Community Legal Center, "and Justice for all," and Dialogue on Freedom are landmarks. I support these and other volunteer efforts, including Tuesday Night Bars.*
5. ***Member Benefits.*** *I support the Bar's development of member benefits, including new opportunities like group on-line research, Lawyers Helping Lawyers, and other law practice enhancements.*

We are fortunate to have a strong Bar and a tradition where members serve. My strengths include an open mind, an ability to listen and understand, energy to get things done, and a deep commitment to our profession. I encourage you to call or write about an issue or concern, 801-323-5000 or nathan.alder@chrisjen.com. Thank you for your support.

NANCI SNOW BOCKELIE
Nanci Snow Bockelie received her law degree from the University of Utah College of Law in 1985, *Order of the Coif.* After graduation, she practiced law in New York City and Virginia, before returning to Utah in 1993. In Utah, she practiced with the commercial litigation firm of Bendinger, Crockett, Peterson & Casey, P.C. and Moxley & Campbell, L.C., before opening her own firm, the Bockelie Law Office, L.C., in 1999. Ms. Bockelie's practice focuses on business sales and purchases and other commercial and real property transactions. Ms Bockelie was initially elected Commissioner for the Third District of the State Bar of Utah in 2000. As Commissioner, she serves on the Bar Commission's Task Force on the Delivery of Legal Services to the Middle Class and the Board of Trustees of "and Justice for all". She is a Past President of Women Lawyers of Utah. In 2001, Ms. Bockelie served on the Governor's Commission on Women and the Family's Pay Equity Committee. She is Vice President, Resource Directory, of the Utah Women's Alliance for Building Community.

Dear Colleagues:

When I initially ran for a seat on the Commission in 2000, I promised to work on improving the public perception of lawyers and the Bar's fiscal responsibility, and to listen to your comments, suggestions and ideas. The past three years have rewarded me with many opportunities to work on these and other matters, and I ask for your vote so that I can continue the work on your behalf.

As Commissioner, I am currently sitting on the Board of "and Justice for all" and the Bar's Task Force on the Delivery of Legal Services to the Middle Class. Last summer, the Task Force met with middle-class people around the state. We learned that people hunger for education about legal issues and the services lawyers provide, and want better assistance in matching their legal needs with the right attorney.

I believe strongly that the Bar should be in the forefront of the effort to find better ways to serve the public, to ensure that our skills remain relevant and remunerative in an ever changing world. I believe that my efforts in this area can make a positive difference for all practicing lawyers, and request your vote in May.

BRIAN W. BURNETT

- Shareholder – Callister Nebeker & McCullough – 1988-Present

  Involved in a variety of energy, telecommunications, and related regulatory matters for clients. Also handles matters in the natural resources and environmental law areas.

- Assistant Attorney General – Office of the Attorney General, State of Utah – 1984-1988

  Represented the Division of Public Utilities, a Utah State agency, in hearings before the Public Service Commission of Utah and before the Federal Energy Regulatory Commission in Washington, D.C.

- Associate – Watkins and Faber – 1982-1984
- S.J. Quinney College of Law at the University of Utah, Juris Doctor Degree, 1982
- Utah State University, B.A. Degree, 1978, Cum Laude
- Former Chair of Administrative Practice Section – Utah State Bar

- Former Reporter for Utah Administrative Law News – Utah State Bar
- Energy, Natural Resources and Environmental Law Section – Utah State Bar

I would appreciate your vote for Bar Commissioner representing the Third Division. I have had an opportunity to work for a small firm, the Attorney General's Office, and a larger firm. This variety of experience has given me a broad perspective regarding the practice of law in Utah. This experience base would be helpful in addressing the many issues which are confronting the Bar at this time. I am willing to contribute my time to assist the Bar as it faces the challenges ahead. Thank you for your support.

YVETTE DONOSSO DIAZ

- Born in East Los Angeles to Colombian immigrants.
- Lived in Miami, Florida prior to settling in Utah.
- Majored in Anthropology at Brigham Young University.
- Graduated from J. Reuben Clark Law School in 1999.
- During law school, worked at Utah Legal Services, Utah County's Public Defenders Association, the Attorney General's Office and the Task Force on Racial and Ethnic Fairness.
- Clerked for Judges Bohling, Dever, Medley and Thorne in Utah's Third Judicial District Court.
- Clerked for current Chief Justice Christine M. Durham in Utah's Supreme Court.
- Associate at the firm of Manning Curtis Bradshaw & Bednar LLC, practicing employment litigation.
- President of the Utah Minority Bar Association. Recruitment Committee member of the Academy of Math, Engineering and Science; past Chair, Governor's Hispanic Advisory Council.
- Married to Marco Diaz, children: Alexandra, Christian and Erica.

Statement of Candidacy:

I want to help improve the Bar's relation with the public, including communities of color. I support the Bar's initiative to explore alternative means of delivery of legal services to low and middle class individuals. I also encourage the voluntary contribution of our members' money and time to initiatives like the "And Justice for All" campaign and the Muticultural Legal Center. The public's perception of our profession and of the fairness of our legal system stems from their everyday experiences. Thus, the Office of Professional Conduct must be accessible to all segments of the public, and must perform its disciplinary function within reasonable bounds. For this reason, I appreciate the good work being done by the Lawyers Helping Lawyers Committee. The Bar has an important role in providing adequate delivery of services to all lawyers, including solo practitioners, lawyers at small firms and lawyers practicing law outside of Salt Lake City. I have an open mind and am committed to advancing the needs and interests of all the members of the Bar in a proactive and professional manner. I would appreciate your vote and welcome your input at ydiaz@mc2b.com.

Fourth Division Candidates

BRENT H. BARTHOLOMEW

Brent Bartholomew is an attorney with the Office of the Guardian ad Litem, Fourth District. He is court-appointed to represent the best interests of children in District and Juvenile Court. Prior to becoming an Attorney Guardian ad Litem, Mr. Bartholomew represented the indigent in non-criminal cases at the Provo office of Utah Legal Services.

As an attorney, I represent the best interests of children. Before becoming an Attorney Guardian ad Litem, I represented the indigent in non-criminal matters at Utah Legal Services.

I was admitted to the Utah State Bar Association in 1984, and I am also a member of the Central Utah Bar Association. I pursued my higher education at Brigham Young University and earned graduate degrees in both law and business administration.

My past bar activities include being on the Delivery of Legal Services and Needs of Children committees, volunteering for the Tuesday Night Bar, participating in Law Day activities, acting as a co-facilitator for last year's Dialogue on Freedom *in local high schools, and being an attorney advisor to a local junior high team for a Bar-sponsored mock trial competition.*

I became an attorney to make a difference and want to be a Bar Commissioner for the same reason. I am hard working, willing to listen, and promise to serve only one term. I believe the Utah Bar should serve the needs of all its members, and I will pro-actively work toward that end.

ROBERT L. JEFFS

Employment:
Shareholder, six member firm, Jeffs & Jeffs, P.C.

Primary emphasis in litigation – Personal Injury, Commercial Litigation, Insurance Defense

Mediator/Arbitrator in Commercial and Personal Injury Litigation

General Practice of Law, 1984 – Present

Education
Juris Doctor, 1984 – J. Reuben Clark Law School

B.S. Business Management, 1981 – Brigham Young University

Member, J. Reuben Clark Board of Advocates

Bar Associations, Admissions & Professional Organizations
Utah State Bar, 1984

U.S. District Court, District of Utah, 1984

Tenth Circuit Court of Appeals, 1984

American Bar Association, 1984

Utah Defense Association, Member – Board of Directors – 1997-1998

Utah Trial Lawyers Association, Member

Central Utah Bar Association Member

Utah State Bar Litigation Section Member

Utah State Bar, Legal Economics Committee – 1985-1987

American Inn of Court I, Barrister – 1998-1991

American Inn of Court I, Master of the Bench – 2002-Present

Defense Research Institute, Member

Other
Riverside Country Club, President – 1996

Riverside Country Club, Board of Directors – 1994-1996

East River Bottom Water Company, Director/Secretary – 1994-1996, 2002

Ducks Unlimited, Provo Chapter, Chairman – 1996-1998

In the 18+ years that I have practiced in the Fourth Division, the Utah State Bar Association and its commission, staff and committees have played an increasing role in how we practice law and how we, as lawyers, are perceived within the broader community. From lawyer discipline to continuing legal education programs, from the Bar Association's participation in the legislative process to its Lawyers Helping Lawyers Program, the mission of the Utah State Bar Association affects all of us.

The lawyers that make up our division and the legal services we provide to the public have also changed dramatically. With the increasing demands of clients for new ways of delivering legal services or resolving problems, the Bar Association will undoubtedly continue to play an increasingly larger role in how we practice law. I view the Bar Association's primary function as an organization designed to support the practitioners and to advance the professionalism of the members in addition to being a service to the community at large.

My experience in interacting with the attorneys in our division and across the state, as a litigator, a mediator and an arbitrator has provided me an opportunity to discuss the concerns of attorneys from solo practitioners to large law firms, government attorneys and corporate counsel. I look forward to the opportunity to serve on the Bar Commission, if elected, and to represent the interests of the members of the Fourth Division.

THOMAS W. SEILER

Mr. Seiler was born in Palo Alto, California on November 7, 1950. He graduated with a Bachelor of Arts from Brigham Young University in 1972 and with a Juris Doctorate from the J. Reuben Clark Law School, Brigham Young University, in 1977. He was admitted to practice in Utah in September of 1977. Since 1992, he has been a member of the Utah Advisory Committee to the Supreme Court on the Rules of Evidence and since 1994 has been a Utah State Bar Examiner on torts. In 1992, Tom co-founded Law Help at Brigham Young University, the free legal advice system in Utah County. He has been a Master of the Bench with the American Inn of Court I since 1990. For two years he was the advisor to the Brigham Young University Board of Trial Advocates and coached the Law School's traveling Trial Advocacy Team. He has coached, judged and advised moot and mock trial competitions extensively, assisted interns and counseled many who sought his advise on legal careers. He is a past president of the Central Utah Bar Association in 1992, a sustaining member of the American Bar Association, the Association of Trial Lawyers of America, the Central Utah Bar Association and the Utah Trial Lawyers Association. He has had an active trial practice since being admitted to practice in 1977. Since 1988 he has been a partner in the firm of Robinson, Seiler & Glazier, LC, Provo, Utah.

For the past 25 years, Tom has been actively engaged in the practice of law in Provo and Orem representing home owners, contractors, title agencies, small business owners, injury victims, physicians, lenders, and others in both litigation and non-litigation matters.

Tom and his wife, Nancy, have four children, two married. They are Matthew (27), Melissa (25), Alexa (12), and McKenna (7). Tom and Nancy have four grandchildren: Marty (4), Adrianna (4), Alaina (2) and Talon (1).

Dear Members of the Utah State Bar Association, Fourth Division:

I am proud to be a lawyer. I enjoy counseling with clients and representing their position in court. I enjoy my association with other attorneys. As a group, lawyers are hard working, honest and compassionate.

***Communication:** The Bar as a whole does need better communication. Communication should be improved with the general public, between lawyers and the bar association, and between lawyers and the State Legislature. By way of example:*

1. *The general public should understand how much volunteer work lawyers do, both in the area of law and in other areas. By way of example, in the area of law, the small Claims Court judges are volunteer lawyers. We have a pro bono program in the Fourth Division that is currently operated out of the BYU Law School called Law Help. Many volunteer organizations have lawyers sitting on their boards or voluntarily advising their boards. Lawyers are Scoutmasters, bishops, tutors, etc. all on a volunteer basis. This type of information should be communicated on a regular basis to the public to let the public understand what valuable service lawyers as a group are to the community and to remind lawyers of volunteer opportunities..*
2. *Members of the Fourth Division should have ready access to Bar information. There are many committees, educational groups and associations which are not governed by the Bar Association. These should not be governed by the Bar Association, but the Bar Association should have a way to make its members aware of these groups and to help members join or be exposed to them.*
3. *The State Bar Association must continue to communicate with the State Legislature. Of all professions and occupations, the practice of law is most heavily affected by the work in the legislature. As a practical matter, many people turn to members of our profession to help them understand what a statute or group of statutes mean.*

Bar Admission: *In the last two years, the Utah State Bar Commission has focused many of its efforts in the area of admissions. That process needs to continue. As an association, we need to consider our high passing rate. It may well be a direct result of having two exceptional law schools in the State. On the other hand, it may well be a result of having too low of expectations.*

Bar Complaints: *I believe that there should be a continuing and ongoing examination of how we handle bar complaints. I believe that the vast majority of us have no understanding of what happens in that process. I know there are varying perceptions as to the fairness and evenhandedness of the process. Those perceptions should reasonably be explored and, to the extent the process is inequitable or is not evenhanded, that should be corrected. To the extent it is equitable and is evenhanded, it should be supported.*

I would very much appreciate your support in my candidacy for the Utah State Bar Commissioner from the Fourth Division. If you have questions or concerns, please feel free to contact me at 80 North 100 East, P.O. Box 1266, Provo, UT 84603; phone (801) 375-1920; email tws@rsglaw.com.

Fifth Division Candidates

Uncontested Election . . . According to the Utah State Bar Bylaws, "In the event an insufficient number of nominating petitions are filed to require balloting in a division, the person or persons nominated shall be declared elected."

V. Lowry Snow is running uncontested in the Fifth District and will therefore be declared elected.

V. LOWRY SNOW

It has been a privilege to serve this past term as Commissioner representing the Fifth Division. I am requesting your vote of confidence so that I may continue in your service for the next three years. I believe it is important that the Bar continue to maintain its relevancy to its members throughout the entire state. It is also important that the Bar provide leadership and direction on all critical issues that affect lawyers and the way we practice law. I practice law in a small firm in Southern Utah. My beginnings as a lawyer include a period of time spent in solo practice. It has been my focus on the Commission to provide an active voice representing the concerns and needs of lawyers living some distance from the Wasatch front, and for those practicing alone or in the small firm. I intend to continue with this same emphasis during my second term. At the same time, I intend to continue to work hard to ensure the fiscal well being and the sound operation of the Bar for all its members. Thank you for your vote and for your expressions of support and confidence entrusted to me.

Demotion and Discharge of Municipal Employees in Utah

by Ellen Kitzmiller, Esq.

Although employment in Utah is generally presumed to be "at-will," many Utah municipal employees enjoy statutory guarantees of due process with respect to significant decisions affecting their employment status. Moreover, employees who are shielded from discharge without "sufficient cause" have a proprietary interest in continued employment, which interest is protected both by the United States Constitution's Fourteenth Amendment guarantee that "no state shall deprive any person of property without due process of the law," and by the Utah Constitution's analogous provision under article 1, section 7.[1]

The following discussion focuses on due process rights of Utah's municipal employees with respect to discharge from their public employment. After identifying the statutory sources of these rights, it reviews Utah state court opinions describing appropriate procedural mechanisms for insuring their protection. Importantly, the principles and legal standards set forth in these opinions would apply as well to disputes involving demotion or discharge of public employees generally.

I. Statutory Sources of Due Process Rights for Utah Municipal Employees

The Utah Municipal Code governs all municipalities within the State of Utah, "except as otherwise specifically excepted by the home rule provisions of Article XI, Section 5 of the Constitution of the State of Utah."[2] Each municipality's executive branch is vested with responsibility for drafting a municipal administrative code to "prescribe rules and regulations which are not inconsistent with the laws of this state, as it deems best for the efficient administration, organization, operation, conduct and business of the municipality."[3] While many municipalities look to standard models for guidance (*see, e.g.,* the Utah League of Cites and Towns' Municipal Document Library, accessible online at www.ulct.org/resources/ordinance_codes/minidocs.html), each municipality enjoys the freedom to craft its own, unique municipal administrative code. As a result, practitioners must be careful to identify from the outset the particular statutes, rules and regulations that govern any particular dispute involving a municipal employee.

A. The "Classified Civil Service"

The Utah Municipal Code identifies classified civil service employees as follows:

> The classified civil service shall consist of . . . the police department and the fire department of each city of the first and second class, and the health department in cities of the first class, except the head of the departments, deputy chiefs of the police and fire departments and assistant chiefs of the police department in cities of the first and second class, and the members of the board of health of the departments.[4]

Further,

> Any person [in the classified civil service] suspended or discharged [by the department head] may, within five days from issuance by the head of the department of the order suspending or discharging him, appeal to the civil service commission, which shall fully hear and determine the matter. The suspended or discharged person shall be entitled to appear in person and to have counsel and a public hearing.[5]

The Civil Service Commission "has the statutory authority to conduct appeals brought by suspended or discharged employees,

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and in that regard, to make two inquiries: (1) do the facts support the charges made by the department head, and if so, (2) do the charges warrant the sanction imposed?"[6] The second prong "breaks down into two sub-questions: First, is the sanction proportional; and second, is the sanction consistent with previous sanctions imposed by the department pursuant to its own policies."[7]

A department head's determination to discharge or suspend a subordinate cannot be remanded or modified by the Civil Service Commission. Instead, the Commission's only options are either to uphold or to vacate that determination.[8] Thereafter, "[a]ny final action or order from the commission may be appealed to the Court of Appeals for review. The notice of appeal must be filed within 30 days of the issuance of the final action or order of the commission. The review by the Court of Appeals shall be on the record of the commission and shall be for the purpose of determining if the commission has abused its discretion or exceeded its authority."[9]

B. Other Municipal Employees

Municipal employees who are neither among the classified civil service, nor employed as department heads or superintendents, "shall hold their employment without limitation of time, being subject to discharge or dismissal only as hereinafter provided."[10] Thus,

> (1) . . . In all cases where any officer or employee is discharged or transferred from one position to another for any reason, he shall have the right to appeal the discharge or transfer to a board to be known as the appeal board which shall consist of five members, three of whom shall be chosen by and from the appointive officers and employees, and two of whom shall be members of the governing body.
>
> (2) The appeal shall be taken by filing written notice of the appeal with the recorder within ten days after the discharge or transfer. . . . [T]he appeal board shall forthwith commence its investigation, take and receive evidence and fully hear and determine the matter which relates to the cause for the discharge or transfer.
>
> (3) The employee shall be entitled to appear in person and to be represented by counsel, to have a public hearing, to confront the witness whose testimony is to be considered, and to examine the evidence to be considered by the appeal board.

> (4) In the event the appeal board upholds the discharge or transfer, the officer or employee may have 14 days thereafter to appeal to the governing body whose decision shall be final. In the event the appeal board does not uphold the discharge or transfer the case shall be closed and no further proceedings shall be had.
>
> (6) In the event that the appeal board does not uphold the discharge or transfer . . . [t]he employee [may] report[] for his assigned duties during th[e] next working day.[11]

Under these provisions, there is no right of appeal in the Court of Appeals.[12] Consequently, the Appeal Board has ultimate authority to uphold or vacate the contested discharge or transfer.

II. The Right to a "Full Hearing"

A suspended or discharged classified civil service employee is "entitled to appear in person and to have counsel and a public hearing" before the local civil service commission.[13] While hearings before a civil service commission are not subject to the Utah Administrative Procedures Act (*e.g. Lucas,* 949 P.2d at 755-56), the Court of Appeals has endorsed "the basic approach" employed by the UAPA in connection with claims of disparate treatment, in particular with regard to the burden of proof analysis:

> Under this framework, the burden [is on the petitioner] to establish a prima facie case that [the department head] acted inconsistently in imposing [disciplinary] sanctions by presenting sufficient evidence from which the Commission [can] reasonably find a relevant inconsistency. This burden of proof is not unlike claims of disparate discipline of public employees on the basis of race, where the disciplined employee must first make out a prima facie case by pointing to specific instances or statistics, rather than relying on an unsupported assertion of inconsistent punishments. While there is no requirement in this context that [the petitioner] show the disparity is motivated by race or even animosity, she must, at a minimum, carry the burden of showing some meaningful disparity of treatment between herself and other similarly situated employees.[14]

The Court of Appeals interpreted that minimal showing to require "similar factual circumstances leading to a different result without explanation."[15]

> "An employee's right to fair notice and an opportunity to 'present his [or her] side of the story' before discharge is not a matter of legislative grace, but of 'constitutional guarantee.'" Post-deprivation procedures, while not constitutionally guaranteed, must comport with due process requirements providing for a fair hearing. . . . . [B]efore termination, *minimum due process entitles an employee to oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity for the employee to present his or her side of the story in "'something less' that a full evidentiary hearing."*[16]

The right to a full and fair hearing is not without limits. "The fundamental requirement of due process is the opportunity to be heard, at a meaningful time and in a meaningful manner, and, when this opportunity is granted a complainant, who chooses not to exercise it, the complainant cannot later plead a denial of procedural due process."[17] These limits were pressed by the petitioner in *Joseph v. Salt Lake City Civil Service Commission,*[18] Joseph appealed his termination from the police department to the Salt Lake City Civil Service Commission. His appeal was dismissed as a sanction for egregious failure to cooperate during discovery.[19] He challenged the dismissal in the Court of Appeals, arguing that imposition of such a drastic discovery sanction deprived him of his due process right to a full hearing before the Commission.[20] While noting his statutory right to a post-termination hearing before the Commission, the appellate court nevertheless found that right to be conditioned on the petitioner's cooperation in the process; Joseph's "willfulness, bad faith . . . fault, or persistent dilatory tactics" justified the imposition of sanctions, including dismissal of his appeal.[21]

III. Review by the Utah Court of Appeals

The Utah Municipal Code provides that:

> [a]ny final action or order of the commission may be appealed to the Court of Appeals for review. The notice of appeal must be filed within 30 days of the issuance of the final action or order of the commission. The review by [the] Court of Appeals shall be on the record of the commission and shall be for the purpose of determining if the commission has abused its discretion or exceeded its authority.[22]

The Court of Appeals states its standard of review as follows:

> We review the final decision of the Commission only "for the purpose of determining if the commission has abused its discretion or exceeded its authority." Our review is limited to "the record of the commission. 'Discretion may be best viewed as an arena bounded by the law, within which the [Commission] may exercise its judgment as it sees fit.' Unless the commission 'has stepped out of the arena of discretion and thereby crossed the law,' we will affirm the

> Commission's order." Insofar as . . . the Commission's factual findings [are concerned], we employ a clearly erroneous standard.[23]

The Court of Appeal's powers of review are limited to affirming or reversing the decision below, described by Judge Orme in *Kelly* as "an all-or-nothing proposition."[24] Just as is the case with the Civil Service Commission, the Court of Appeals has no power to remand or modify the employment decision on appeal.

IV. Misconduct Justifying Termination from Public Employment

A. Sufficient Cause For Termination

In *Kelly v. Salt Lake City Civil Service Commission,*[25] a ten-year veteran of the Salt Lake City police department was discharged after an incident involving her overdose of Ambien, a prescription sleep aid, and then repeatedly telephoning police and fire dispatchers in the wee hours of the morning with a barrage of threats, false fire reports, and sexual innuendos directed to the dispatch operators and a co-worker. Thereafter, the police chief made the decision to terminate her employment, prompted in part by "the need to protect the citizens of Salt Lake."[26]

The basis for Kelly's termination was the incident described above in combination with a "history of sustained complaints" ranging from attendance and performance issues to two suicide attempts, both involving overdoses of prescription drugs.[27] Following the second attempted suicide, Kelly's "fitness for duty" evaluation concluded that she had a substance abuse problem. The police chief warned her in a disciplinary letter that her continued employment was conditioned on her participation in a monitored treatment program and indefinite absolute sobriety, and any similar future conduct "will be cause for further disciplinary action up to and including termination."[28] Nevertheless, Kelly displayed an "uncooperative attitude" in connection with her substance abuse treatment program, and shortly thereafter was involved in a single-car accident in her police vehicle.

A few months before the incident leading to her termination, Kelly called in with a series of excuses for not reporting to work: she was waiting for an exterminator to arrive at her home, the exterminator had arrived, she had to visit her pet's veterinarian. These excuses alerted her supervisor's suspicion and, in the course of an internal investigation, Kelly admitted she had lied. Her division commander recommended she be terminated, but the police chief issued a reprieve and stated in a letter "You are hereby put on notice that ANY future violation of Department policy will not be tolerated and if such violation(s) occur, your employment status will be in jeopardy."[29]

Interestingly, in a subsequent appeal of the termination decision to the Court of Appeals, "both sides agree[d] [that the single incident immediately prior to Kelly's termination] *was not enough, by itself, to warrant Kelly's termination."*[30] It was only in combination with the other past misconduct that Kelly's conduct described in the first paragraph of this section warranted termination.[31] This distinction strongly suggests that a single incident of misconduct will rarely provide sufficient basis to terminate a public employee. The court characterized the incident as the "final straw" and emphasized that Kelly had been made aware of the risk she ran by engaging in further misconduct and, in particular, misconduct involving substance abuse.[32]

B. Insufficient Cause For Termination

In *Lucas v. Murray Civil Service Commission,*[33] a police officer was terminated in the wake of an internal affairs investigation into an "excessive force" charge. Prior to the incident, Lucas had never been reprimanded, disciplined or investigated and was, by all accounts, an outstanding officer. However, it was concluded by his lieutenant that Lucas had responded dishonestly to questions regarding whether or not he pulled his gun out of its holster while

searching an arrestee. This conclusion was based on conflicting accounts by Lucas and fellow officers present at the station-house during the search. Lucas' lieutenant recommended termination, which the police chief carried out.[34]

On appeal, Lucas asserted, *inter alia,* that his discharge was in retaliation for previous complaints against his lieutenant and the police chief. The Court of Appeals found that inconsistent evidence regarding the various officers' uncorroborated accounts of the events in question was inadequate proof that Lucas had lied.[35] Moreover, the Court found that Lucas' termination was disproportionate by comparison with discipline meted out to other similarly situated officers. The Court was especially moved by Lucas' outstanding service record over his twelve years with the Murray City Police Department. "Even assuming that Lucas was dishonest about the position of his gun [in or out of its holster], termination was so disproportionate under the facts of this case to the charge of dishonesty that it amounted to an abuse of the Chief's discretion."[36] Accordingly, the Court of Appeals reversed the termination decision, and reinstated Lucas with backpay.[37] This result reinforces the conclusion that a single incident of misconduct will rarely constitute an adequate basis for discharge from public employment.

Conclusion

To avoid unwitting due process violations, it is critical that Utah municipalities, like all public employers, educate themselves about the legal limitations on management and discipline of their employees. As employees become increasingly aware of their rights in the workplace, and increasingly willing to fight for those rights, a prudent employer will take care to implement procedural protections in accordance with the governing statutory framework, as well as to create appropriate channels for employee grievances. Ideally, the result will be a system of management that is viewed as consistent and fair by all who are affected by its actions. Pragmatically, the employer will be able to defend those actions before a reviewing tribunal.

1 *Lucas v. Murray City Civil Service Comm'n,* 949 P.2d 746, 752 & n.3 (Utah Ct. App. 1997); *see also Worrall v. Ogden City Fire Dep't,* 616 P.2d 598, 601 (Utah 1980).

2 *Utah Code Ann.* § 10-1-106; *see generally Utah Code Ann.* §§ 10-1-1 through 10-17-105.

3 *Utah Code Ann.* § 10-3-815; *see also Utah Code Ann.* §§ 10-3-1221 & -1227.

4 *Utah Code Ann.* § 10-3-1002.

5 *Utah Code Ann.* § 10-3-1012.

6 *Kelly v. Salt Lake City Civil Service Commission,* 8 P.3d 1048, 2000 UT App 235, ¶ 16.

7 *Id.* at ¶ 21.

8 *Salt Lake City Corp. v. Salt Lake City Civil Service Comm'n,* 908 P.2d 871, 877 (Utah Ct. App. 1995).

9 *Utah Code Ann.* § 10-3-1012.5.

10 *Utah Code Ann.* § 10-3-1105.

11 *Utah Code Ann.* § 10-3-1106.

12 *Accord Gord v. Salt Lake City,* 434 P.2d 449, 453 (Utah 1967) (holding that "the final ruling on the [municipal employee's] discharge rested with the City Commission.").

13 *Utah Code Ann.* § 10-3-1012.

14 *Kelly,* 2000 UT App. 235, ¶¶ 29-30 (adopting burden-of-proof analysis proposed in Justice Durham's dissenting opinion in *SEMECO Industries v. State Tax Comm'n,* 849 P.2d 1167, 1174 (Utah 1993)).

15 *Id.* at ¶ 31.

16 *Lucas*, 949 P.2d at 753 (emphasis added) (internal citations omitted) (citing *Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985)).

17 *Utah Dep't of Transportation v. Osguthorpe,* 892 P.2d 4, 8 (Utah 1995).

18 53 P.3d 11, 2002 UT App 254.

19 *Id.* at ¶¶ 4-5.

20 *Id.* at ¶ 10.

21 *Id.* at ¶¶ 12-13.

22 *Utah Code Ann.* § 10-3-1012.5; *see also Joseph,* 2002 UT App 254, ¶ 9 (noting expansion of appellate court's jurisdiction beyond scope of its authority pursuant to *Utah Code Ann.* § 78-2a-3(b)(i)).

23 *Kelly*, 2000 UT App 235, ¶ 11 (internal citations omitted). *Cf., Lucas,* 949 P.2d at 758 (appellate court applies "the 'substantial evidence' standard applicable to a state administrative agency's findings of fact").

24 *Id.* ¶ 23 (citing *Salt Lake City Corp. v. Salt Lake City Service Comm'n,* 908 P.2d 871 (Utah Ct. App. 1995)).

25 8 P.3d 1048, 2000 UT App 235.

26 *Id.* at ¶ 6 (internal punctuation omitted).

27 *Id.* at ¶¶ 6-8.

28 *Id.* at 9.

29 *Id.* at 11.

30 *Id.* at 24 (emphasis added).

31 *Id.*

32 *Id.* at 25.

33 949 P.2d 476 (Utah Ct. App. 1997).

34 *Id.* at 749-51.

35 *Id.* at 758.

36 *Id.* at 762.

37 *Id.* at 763.

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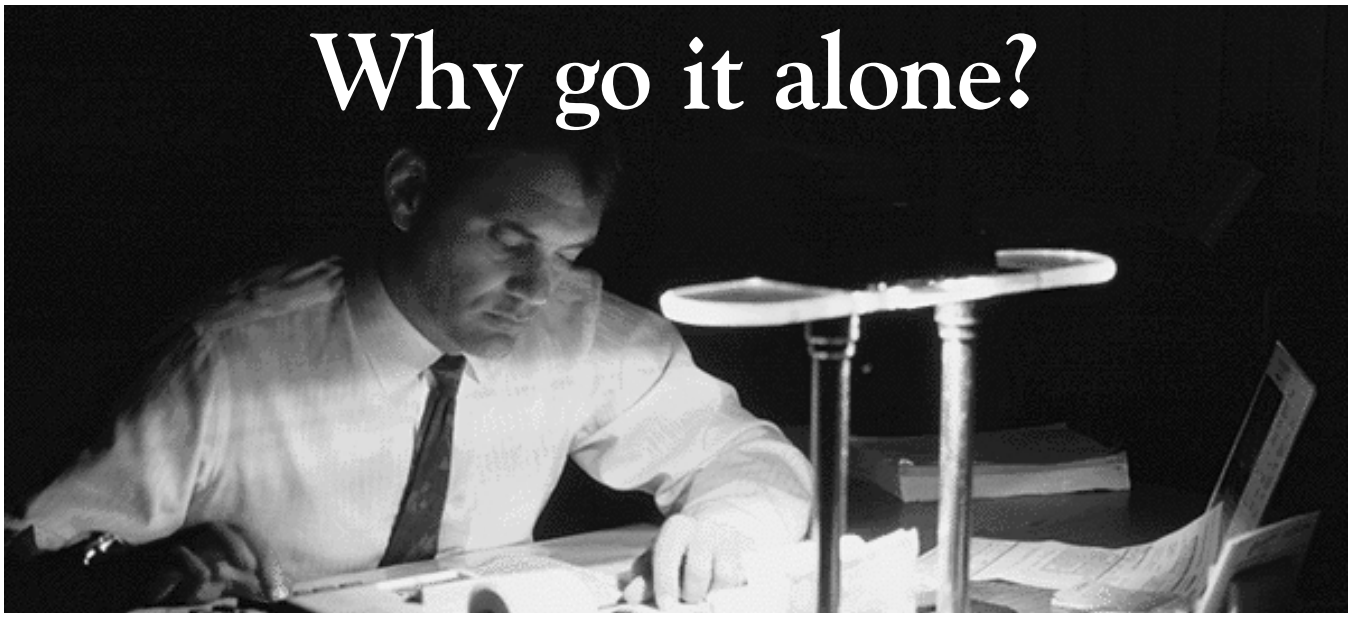

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Practice Pointer: Using "& Associates" in a Firm's Name

by Leslie J. Randolph

Firm names are trade names. They are protected commercial speech. There are, however, permissible restrictions on firm names. The restrictions are delimited in Rule 7.5 of the Rules of Professional Conduct [RPC]. Rule 7.5 expressly addresses trade name usage, law firm names in multi-jurisdictional practice, use of names of lawyers who are holding public office and firm names which imply various associations between firm members. The comments to Rule 7.5 provide additional guidance concerning trade names, common examples of which are use of deceased partner names, which is permissible, and use of joint names in office sharing situations, which is not.

Overriding all Rule 7.5 prohibitions and guidelines is the first statement in the rule: "A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1."[1] Rule 7.1 begins: "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."[2] It is impermissible and misleading to include in a firm name information which inaccurately portrays the type of service a law firm provides or inaccurately identifies the lawyers in the firm. This article will focus on one example of the latter, the sole practitioner who uses the firm name, "Solo & Associates." May a sole practitioner use this firm designation without violating the RPC? No.

Mr. and Ms. Solo have a number of explanations for using "& Associates:" "Well, I used to have another attorney in my office and even though she left, I don't want to spend the money changing my firm name, letterhead, business cards and shingle," (pure economics). Or, "I'm planning on having another attorney in my office in the future," (at least aspirational). Or, "it's okay because I tell all prospective clients as soon as we start to talk that I'm a solo," (objective met, client walked in). Or, "I share office space with other attorneys," (could be convenience). Or even, "I'm the only attorney in my office but I have paralegals and other support people," (ignores or misapprehends the definition of "associates").

The solos offering these explanations are generally quick to defend against suggestions that use of "& Associates" misleads the public. They are wrong. Very few admit to using the designation to make their firms look bigger and more attractive to clients. But, it is this reality that misleads the public and proscribes its use under Rule 7.5.

This conclusion is supported by Utah's Ethics Advisory Opinion Committee and the ABA Committee on Ethics and Professional Responsibility. At least one state supreme court agrees.

A 1994 opinion of Utah's Ethics Advisory Opinion Committee states, "a sole practitioner who uses the name 'Doe & Associates' implies that attorneys other than Doe are in practice in the firm. This would be misleading to the public as a 'material misrepresentation of fact' under Rule 7.1(a) and, therefore, would be in violation of Rule 7.5."[3] The Committee concludes: "a sole practitioner may not use a firm name of the type 'Doe & Associates' if he has no associated attorneys, even if the firm formerly had such associates or employs one or more 'associated non-lawyers such as paralegals or investigators.'"[4] Utah's Ethics Advisory Opinion Committee does not define "associates" in Opinion 138.

In Formal Opinion 310, dated June 20, 1963 the ABA Committee on Ethics and Professional Responsibility addressed appropriate uses of the designation "& Associates" and in doing so defined "associates" as that term is used in law practice. The ABA Committee concluded "& Associates" is properly used for "attorneys who are employed by another attorney or law firm and do no share responsibility or liability for the acts of the firm."[5] It defines the term associates as "a junior non-partner lawyer, regularly employed by the firm."[6] The opinion expressly eliminates from the "associates" category attorneys who are partners and share the responsibility and liability of each other and attorneys who simply share office space and some costs of practice. The ABA Committee would find improper a sole practitioner's use of "& Associates" in his or her firm name.

The Florida Supreme Court agrees. A member of the Florida Bar practiced law under the name "The Law Team, Fetterman and

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Associates." When the firm was established Fetterman employed two attorneys. Thereafter he always employed at least one attorney. According to the court, the term "associates" has a precise meaning in the legal profession context. It means "a salaried lawyer-employee who is not a partner of the firm."[7] Therefore, it concludes, so long as the firm employs even one lawyer employee the designation "& Associates" does not mislead the public.[8] The court also expressly excludes from its "associates" definition paralegals, secretaries, non-lawyer law clerks, office managers or other support personnel.

It also is likely the United States Supreme Court would uphold a construction of Rules 7.1 and 7.5 which prohibits using the firm name "Solo & Associates." The Court has not addressed trade names used by law firms, but it has held that trade names used in the optometric business, while constitutionally protected as commercial free speech, are appropriately regulated to avoid misleading or deceiving the public.[9]

No explanation or excuse offered by a sole practitioner using "& Associates" in the law firm's name eliminates the suggestion to the public that the solo is not a solo at all. Such a suggestion by a sole practitioner misleads the public and violates Rules 7.1 and 7.5 of the RPC.

If you practice as a solo but use "& Associates" in your firm name and you have an explanation or reason you believe to be a defense to violating Rules 7.1 and 7.5 of the RPC, you might want to call the Ethics Hotline (531-9110) to discuss your view with an OPC attorney.

1 Rule 7.5(a), Rules of Professional Conduct.

2 Rule 7.1, Rules of Professional Conduct.

3 Utah State Bar Ethics Advisory Op. Comm., Op. No. 138 (1994).

4 Utah State Bar Ethics Advisory Op. Comm., Op. No. 138 (1994).

5 ABA Comm. on Ethics and Professional Responsibility, Formal Op. 310 (1963).

6 ABA Comm. on Ethics and Professional Responsibility, Formal Op. 90-357 at 3 (1990) (quoting ABA Comm. on Ethics and Professional Responsibility, Formal Op. 330 (1972)).

7 *Florida Bar v. Fetterman,* 439 So.2d 835, 838 (Florida 1983).

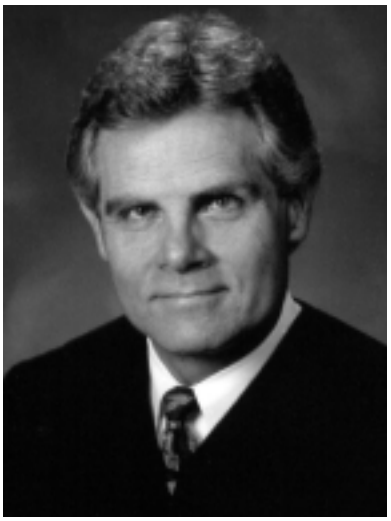
8 At least one local bar association would find use of "& Associates" permissible only if the named lawyer employs *two or more lawyers. See* D.C. Bar Assoc., Legal Ethics Comm., Op. No. 189 (1988).

9 *See Friedman v. Rogers,* 440 U.S. 1 (1979).

Practices of Successful Lawyers Appreciated by Trial Judges

by Judge Michael D. Lyon

I have been asked to share with the Utah Bar my perspectives on courtroom practices of successful lawyers, especially those that I appreciate as a trial judge. My emphasis is not on techniques but more on behavior or conduct. As I do so, I really have in mind the younger members of our profession. Thus, I hope that the more seasoned in our profession will forgive me if, at times, I state the obvious. I will begin with some general observations, and then I will focus my comments on motion practice, trial practice, professionalism, and civility.



General Observations

In more than 21 years that I practiced law and in more than ten years that I have served as a district judge, I have watched very carefully eminently successful lawyers and the things that they do to enhance their effectiveness, credibility, and professionalism. I have come to the settled conclusion that they pay attention to small details and they manage them well. They may delegate ministerial tasks to staff but they remain accountable, and they know it. They loathe making excuses. They have the capacity to look objectively at their cases through the eyes of the judge or the jury or their adversary, and they adjust their strategies accordingly. They see the rules that govern the law practice as applying to them and not just to the other lawyer. They strive carefully to comply with the rules because they know that they lubricate the machinery of the judicial system and instill predictability in the law practice.

Motion Practice

Successful motion practice always begins with a clearly focused motion or response and a thoughtful and well-prepared memorandum of points and authorities. Successful lawyers make it their business to learn how to write well and effectively. They realize that they may never be as good as what they write, but they know that they will never be better. They pay attention to the mechanics of good writing (grammar, punctuation, syntax, diction, voice, etc.) and sentence and paragraph organization, as well as to the substance of what they have to say. They write high-impact legal briefs. They state clearly, directly, and up front the relief they seek; the factual predicates underpinning that relief; and the legal bases supporting it by way of statutes, rules, or case law. They cogently analyze the facts in the context of the law, and then they finish with a strong conclusion. They do these things as succinctly as they can, excising all surplusage, for they know that there is power in brevity and clarity. They use forceful verbs and nouns, and they use adjectives sparingly and selectively. They submit case authority during the briefing process rather than during oral argument, except in extraordinary circumstances, knowing that withholding the case law until the hearing places their opponent and the court at an unfair disadvantage.

"In those cases where a hearing is granted," Rule 4-501(3)(e) of the Utah Code of Judicial Administration requires that "a courtesy copy of the motion, memorandum of points and authorities and all documents supporting or opposing the motion shall be delivered to the judge hearing the matter at least two working days before the date set for the hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the hearing." There are no exceptions to this rule. A lawyer may delegate to his or her assistant the assignment to deliver courtesy copies to the judge, but the lawyer remains responsible to see that the judge gets them. I like to highlight and to write notes and questions in the margins of memoranda, and I cannot do that with originals filed with the court. Because of the press of court business, I sometimes need to take home matters for the next day's calendar. I appreciate very much lawyers who give me courtesy copies because I can then just take home the pertinent motions and supporting memoranda, affidavits, and case law, rather than

pack voluminous case files.

As I approach the reading of the motion and memoranda from both sides, I appreciate a non-ex parte letter from one of the lawyers telling me what motions are scheduled for hearing and the titles of the memoranda that have been filed from both sides. Thus, I can quickly focus on just those matters for hearing or decision. A reply memorandum, even if it just tells me that the lawyer has nothing further substantive to say, so that I know that the file is complete and ready for decision, is also very helpful. I really appreciate lawyers who promptly call my clerk after they have resolved a motion prior to the hearing, thus relieving me of needlessly reading memoranda.

In preparing for oral argument, I will have read all of counsels' memoranda, and often pivotal cases cited in the memoranda, before oral arguments. Therefore, lawyers do not need to unduly recite facts. During oral argument, I want lawyers to focus on the analysis in the memoranda and to persuade me.

I go into oral argument with a tentative decision if the issues have been well-briefed. It is my part of being prepared, just as I expect the lawyers to be prepared. But I remain fluid. I have an attitude of wanting to be taught. The lawyer should do so without being condescending or demanding (e.g., "I invite the court's attention . . . ." rather than "I direct the court's attention . . . ."). Lawyers should concede obvious weaknesses in their cases, not overstate their position (otherwise it falls of its own weight), and answer my questions forthrightly and directly.

Finally, successful lawyers avoid subordinating issues to personalities. They restrict their statements in their memoranda and in oral arguments to their opponent's arguments or to the issues before the court, rather than discrediting their opponents personally. A sarcastic, insulting, or intemperate remark or tone is unprofessional of the lawyer speaking and demeaning of both lawyers.

Trial Practice

The hallmark of truly great trial lawyers is meticulous preparation. Preparation is the hardest and most brutal part of being a trial lawyer. Consummate trial lawyers master the facts of their case, know the law applicable to the case, and have a clear theory of the case long before trial. They avoid the temptation to "dump" the facts on my bench and expect me to sort them out to fashion a proper result. They carefully plan which witnesses will prove each element of their cases, and they plan ahead with timely subpoenas. Prior to trial, they prepare their witnesses for trial to ensure that the evidence is forthcoming and to make the client feel comfortable on the witness stand. As a result, these lawyers on direct examination do not have to ask leading questions to let a witness know where the lawyer is going; the witness knows. Likewise, these lawyers minimize damage to their cases on cross-examination because their witnesses reasonably know what will be asked of them. By knowing exactly what they want to prove through arduous forethought, successful trial lawyers make their questions direct, simple, clear, and purposeful.

Because they are prepared, successful lawyers more often settle their cases. They are pragmatic by focusing on the real issues and by avoiding inane fights over inconsequential matters. Judges and juries see them as being reasonable, fair, and professional. These lawyers also avoid creating unrealistic expectations in their clients that cannot be satisfied even with a just decision.

Because they are prepared, they confer in advance of trial with opposing counsel in an effort to resolve motions *in limine;* or, if necessary, they file those motions with the court before trial, where possible, knowing that they will likely receive a more considered, accurate ruling from the court when the judge has had an opportunity to study the law and to thoughtfully reflect on the issue.

Because they are prepared and have given forethought to their case, successful lawyers come with charts and summaries. They recognize that some judges (and I am one of them) and jurors are visual in their problem-solving approaches; these judges and jurors understand more readily when they see pictures and summaries. Moreover, if I take a case under advisement, charts

and summaries help me to readily recall the evidence later. These lawyers' forethought about their cases enables them to come to court with courtesy copies of exhibits for the court and opposing counsel, as opposed to expecting me to interrupt the trial for the bailiff to make copies. They place their voluminous exhibits in binders or folders behind numbered tabs to allow me during bench trials to quickly locate exhibits during witness examination, instead of expecting me to hunt for an exhibit through a disheveled pile of exhibits on the bench.

Because they are well-prepared, they come to court with clear, thoughtful, powerful opening statements that allow the fact-finder to see exactly what their cases are about and how they are going to prove them. There is a tendency by some lawyers, perhaps out of fear of trespassing on the court's time, to waive opening statement, especially in a simple or one-issue case. This is a mistake. I want to hear from the lawyers because I want to appreciate the relevance of the evidence as the lawyers introduce it. Lawyers live with cases for months, sometimes years, and assume that the case is clear and understandable because it is clear to them, without realizing, sometimes, that the judge or the jury will hear the evidence for the first time during trial and must immediately understand it.

During trial, successful lawyers ask only proper questions to maintain their credibility and professionalism. If they want to ask leading questions, such as when plowing through preliminary background information, they ask permission of their opponent, and then they accept gracefully the opponent's decision without sarcasm or a grimace, regardless of the time that will be wasted. When they need to object to inadmissible evidence, they make a specific legal objection: "Objection, hearsay." They avoid offering an argument instead: "Objection. The witness should be asked only what he knows, not what someone else told him." I want to hear argument, if necessary, only after counsel makes a specific legal objection. In handling objections, lawyers should address only the court, not their opponents.

Attorney fees are often an important part of a trial. Successful lawyers present the requisite evidence to prove the reasonableness of their fees (actual time, necessity of the fees, customary rate, and, possibly, other factors provided in the Code of Professional Responsibility). In point, a court may not infer these requisites, and it is reversible error for it to do so. In alimony cases, for example, the court also needs evidence of the requesting party's financial need for fees and of the other party's ability to pay them. Again, by being prepared for trial, successful lawyers introduce foundational evidence for a request for fees long before they ask for them at the close of the case.

Successful lawyers always make a closing argument, even if their opponents waive it. Lawyers do not need to worry about encroaching on my time; I want to hear from them. This is their opportunity to confirm reality for me, to refresh my memory, to clarify a confusing point, to relate a piece of evidence to a theory of the case, to shape the evidence to their point of view, and to persuade me.

In jury trials, I permit lawyer voir dire. To the credit of the lawyers that have appeared in my courtroom, I have not had a bad experience yet. I conduct preliminary voir dire, consisting of the statutory qualification for jury service; whether any prospective member of the jury has knowledge of the case or has a current or past relationship with any of the lawyers, parties, or witnesses; and each juror's general background. Afterwards, I will permit each lawyer to ask questions. I expect the lawyers to use this time only to expose potential bias and to obtain information in order to exercise their peremptories on an informed basis. This is not a time to argue the case, to gain commitments, or to ingratiate themselves to the jury panel. If a lawyer has a concern about the propriety of a question, he or she can resolve it in chambers in the trial management conference immediately before trial.

During the trial, successful lawyers never argue a ruling in the presence of the jury, for fear of alienating the jury and hurting their credibility. If they believe that I have erred, they ask for a bench or chambers conference. When the court sustains their objections, they do not thank me for the favorable ruling (because I have simply done my job) but instead they just move on. They also show respect for others by not interrupting or talking over other people, such as witnesses or the judge. These lawyers do not ask the court to recognize their witness as an expert in front of the jury but instead they lay a foundation for the court to recognize the expert and then just move forward to elicit the expert's opinion, unless there is an objection. Standard 17 from the Civil Trial Practice Standards, promulgated by the American Bar Association, February 1998, states : "Qualifying' Expert Witnesses. Except in ruling on an objection, the court should not, in the presence of the jury, declare that a witness is qualified as an expert or to render an expert opinion, and counsel should not ask the court to do so."

Professionalism

Lawyers should dress professionally for court. Many lawyers today wear business casual clothes to the office; however, they should not appear in court wearing them. When they come to court, they should wear dignified clothing befitting the decorum of a courtroom and the serious nature of the work they conduct there. Accordingly, male lawyers should wear a coat and tie. Jeans or an open collar shirt are inappropriate.

A lawyer's decorum in the courtroom bespeaks his or her professionalism. I commend to every reader an excellent article from

the San Diego County Bar Association, entitled "50 Tips from the Bench." This is found on the Utah State Bar's Litigation Section's web page, Judge's Bench Book, under the "Courtroom Conduct" tab: www.utligsec.org. Here are nine suggestions from the article that will enhance every lawyer's professionalism in the courtroom:

1. Be on time, even early.
2. Stand when addressing the court.
3. Formally state your appearance by giving your name and the party you represent. For example, "Good morning, Your Honor. (Your name), appearing for the plaintiff, the moving party."
4. Properly address the court, such as, "May it please the court?" "Your Honor" should only be used as a form of address, not as a personal pronoun or a possessive. For example, do not say, "In light of Your Honor's ruling...." Rather, say "In light of the Court's ruling...." Never address the court as "Judge" in court; this is a form of address that should be restricted to social occasions. In court, the address should always be "Your Honor." Likewise, never address the court as "you" or refer to "your" ruling.
5. Do not interrupt the court or counsel.
6. Argue to the court, not with the court, by pointing out the weaknesses in the other party's position or argument, not the failings of the court's tentative opinion.
7. Stop arguing after the court's ruling. Acquiesce for the time being, and reserve your reargument for appeal.
8. Avoid visual displays of pique, such as through frowns or gestures, that could be construed as disapproval of the court or of its rulings.
9. Exhibit grace and style by concluding your appearance with a genuine "Thank you, Your Honor," even if you lost. After all, you had the court's attention and the opportunity to present your argument.

The suggestions for lawyers to stand when they address the court and to address the judge in open court as "Your Honor" have nothing to do with the aggrandizement of the judge; they have everything to do with the sophistication and urbanity of lawyers and their unconditional respect for courts as essential institutions in our democratic society. (In contrast, judges, as individuals, must **earn** their respect, just like anyone else.)

Civility

The lawyers respected by everyone are invariably civil to everyone – opposing counsel, opposing parties, witnesses, judges, and clerks. Civility encompasses not only courtesy, politeness, and consideration for others, but it also embodies an abiding respect for "another's aspirations and equal standing in [our] democratic society."[1] Civility requires that lawyers practice the Golden Rule; exhibit restraint and forbearance; turn the other cheek; extend courtesy and respect, regardless of an opponent's behavior; and remain focused on the high road. Lawyers practice civility because they are urbane and decent when they do so and because this practice, especially in the crucible of the courtroom, infuses the process of justice with uplift.

Successful lawyers approach litigation as an art practiced by educated and skilled professionals, not as a war campaign or a street fight, typified by "win-at-any cost," "in-your-face," or Rambo strategies, without regard for fairness or justice. In the hot cauldron of litigation, resentment, hostility, and anger between the parties seems inevitable sometimes, but lawyers and judges should resist the temptation to reflect those sentiments. They ought to reflect the spirit expressed by the character Tranio in Shakespeare's *The Taming of the Shrew:* "And do as adversaries do in the law, strive mightily, but eat and drink as friends."[2]

Thus, in their dealings with opposing counsel, successful lawyers treat him or her, not as the "enemy," but as an "honored opponent."[3] They are courteous, polite, and firm, rather than rude, abrasive, confrontational, and boorish; they know how to disagree without being disagreeable. They see incivility, manifested in dilatory, obdurate, and vexatious conduct, as generating an

Nominations for the Peter W. Billings, Sr. Outstanding Dispute Resolution Service Award

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enormous layer of unnecessary expense, delay, and paperwork for lawyers and for courts.[4] They understand painfully that incivility in acrimonious litigation causes stress and emotional tumult in their lives, sucking job satisfaction out of the law practice and inevitably and perniciously invading the peace and quiet of their private lives. In contrast, they have learned that civility makes the practice of law more enjoyable. As a Pennsylvania lawyer Jack Gallagher said, "Civility is what makes the practice bearable. It's the flesh that softens the hard bones of the rules."[5] A man, respected very much in this state, said that "civility . . . gives savor to our lives."[6]

In their relationships with other lawyers, successful lawyers make promises sparingly but keep them faithfully. Their word is their bond. They know that it takes years to attain a reputation of honesty, but they know that it can be lost in a moment of bad judgment. They give their opponents the presumption of good faith; they do not impute malice if it can be explained by thoughtlessness or stupidity. (I heard former Chief Justice Michael D. Zimmerman give the preceding wise counsel at an Annual Meeting of the Utah State Bar some years ago, except he said it better.) "In the absence of living with angels, we must live with human beings, and this includes their interests as well as their varying degrees of wisdom and folly."[7]

In their relationships with clients, successful lawyers make it plain to clients that "civility should not be equated with weakness."[8] They see themselves as professionals, not as hired guns, and they zealously preserve their independence from their clients. They tell clients, up front, that they reserve the unfettered right to grant accommodations (continuances, extensions, etc.) to opposing counsel without conferring with them, so long as it does not prejudice the client's interests. Above all, they listen to their consciences when they experience disagreements with their clients. Clients have a right to receive a lawyer's loyal, committed services in lawful and proper objectives only. When appropriate, a lawyer should politely inform his or her client that the client's case has no merit, for example, or that he or she will not engage in tactics primarily for delay. He or she is not afraid to unequivocally say "no," even if that means losing a long-standing client. These lawyers see themselves as members of a noble profession steeped in a great history. They never allow themselves to be *used* unseemly as mercenaries or gunslingers.

The rule of law is the sizing in the fabric of our society, but society's respect for the law is predicated on its respect for and its attitudes about lawyers and judges. In their conversations with clients, lawyers, judges, and the public in general, successful lawyers avoid the gratuitous deprecation of members of the bench and bar because they know that it diminishes our profession and erodes confidence in our courts. For the same reason, they do not repeat tasteless, insulting lawyer jokes. They know that if they want the public to respect members of the legal profession, then its members must respect each other. Much of the public's contempt for and derision of lawyers and the media's abuse of them is unjustified, but some of these things are self-inflicted.[9] I am not advocating a Pollyanna attitude toward our profession and its members. Legitimate criticism is not wrong, but we should have constructive motives and be cautious, objective, and balanced in our criticism. I like the Four-Way Test of Rotary International: "Is it the truth? Is it fair to all concerned? Will it build goodwill and better friendships? Will it be beneficial to all concerned?"

Conclusion

As lawyers and judges, we offer to society not only our skill and education but also ourselves. May we always offer our "best" selves by giving our best thought and our most conscientious effort and by serving with honor, professionalism, and civility.

1 Justice Anthony M. Kennedy to the American Bar Association, 8 *Nevada Lawyer* 10 (Nov. 2000).

2 Act I, Sc. II.

3 *See* Judge Brent E. Dickson and Julia Bunton Jackson, Professionalism in the Practice of Law: A Symposium on Civility and Judicial Ethics in the 1990s: Renewing Lawyer Civility, 28 Val. U. L. Rev. 531, at 532.

4 *See* Nora C. Porter, The Best of Times, The Worst of Times: Two Views on the State of the Profession: Part I: Lawyers Speak, 20 *Pennsylvania Lawyer* 16 (Nov. -Dec. 1998), at 20.

5 *Id.* at 20.

6 Gordon B. Hinckley, *Standing for Something* 53 (Times Books, a division of Random House 2000).

7 Justice Allen Crockett from an unidentifiable source that I read more than 25 years ago.

8 Jeffrey Simmons, George Washington Esq.: A Model of Civility, 34 *Arizona Attorney* 16 (Oct. 1997).

9 *See* Judge Marvin E. Aspen, Professionalism in the Practice of Law: A Symposium on Civility and Judicial Ethics in the 1990s: The Search for Renewed Civility in Litigation, 28 *Val. U. L. Rev.* 518 (Winter 1994).

Judge Lyon was appointed to the Second District Court in July 1992 by Governor Norman H. Bangerter. He serves Weber, Morgan, and Davis Counties. He has served as associate presiding judge and presiding judge of the Second District Court, as a member and chair of the Board of District Judges, and as a member of the Child Support Guidelines Advisory Committee. Prior to his judicial appointment, he practiced in general litigation with the law firm of Lyon, Helgesen, Waterfall & Jones, P.C., in Ogden. Judge Lyon received his bachelor's degree from Weber State College in 1968 and his juris doctor degree from the University of Utah College of Law in 1971.

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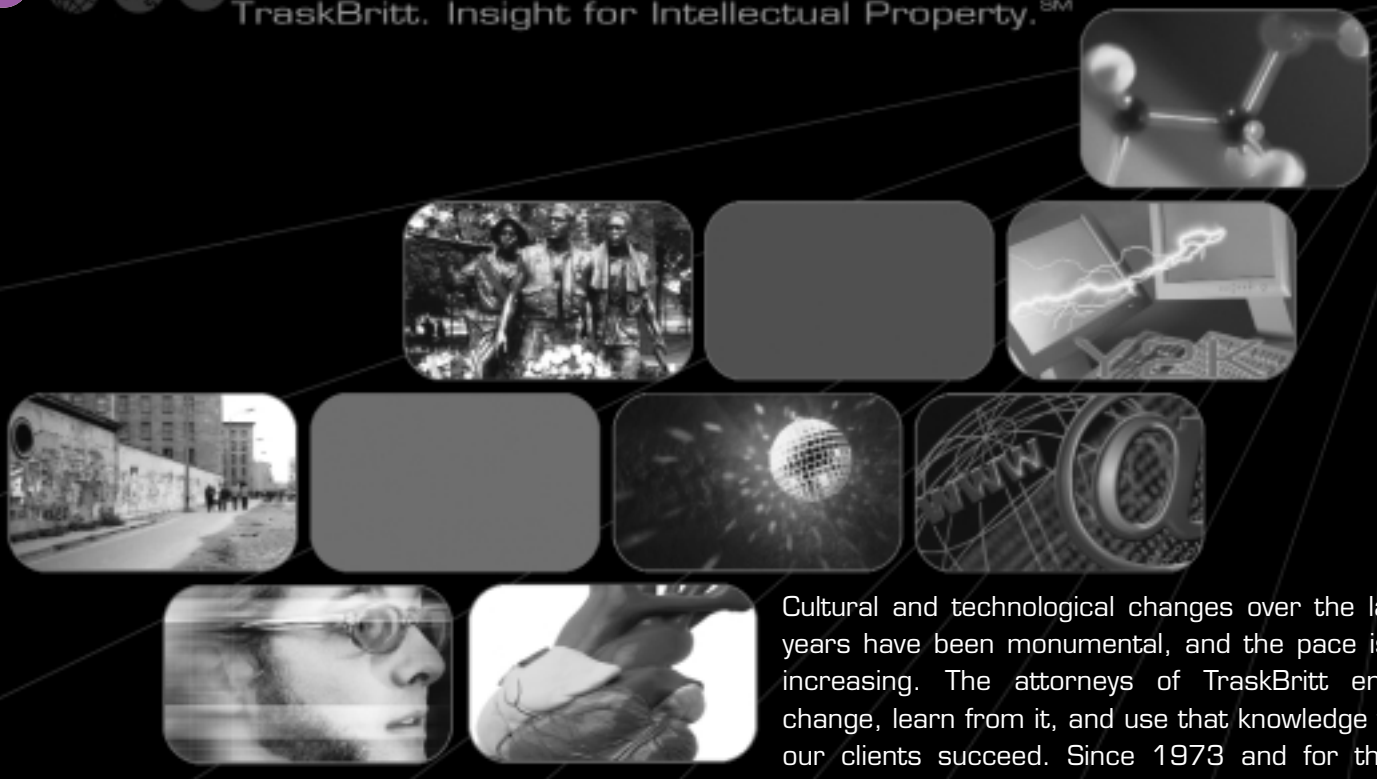

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Important Utah Decisions, 2002

by Justice Michael J. Wilkins & Judge Gregory K. Orme

EDITOR'S NOTE: *Supreme Court Justice Michael J. Wilkins and Court of Appeals Judge Gregory K. Orme addressed some of last year's important Utah appellate decisions at a Salt Lake County Bar Luncheon on February 26, 2003. Although the information will be of more limited utility for those not in attendance, the Utah Bar Journal thought its readers might find the case summaries, distributed as handouts during the presentations, to be of interest. Accordingly, the handouts are reprinted here, with the speakers' permission. Especially because readers will not have the benefit of the narrative commentary provided by the speakers, readers are cautioned that the summaries should not be relied on for any purposes other than calling attention to these opinions and explaining what each case generally involves.*

Selected Cases Decided by the Utah Supreme Court in 2002

by Justice Michael J. Wilkins

COMMON LAW

Riddle v. Perry, 2002 UT 10
A witness in a legislative hearing has a common law privilege to speak unmolested, even if the comments amount to defamatory statements, so long as the testimony given has some relation to the proceedings in which they are made.

Trespass:

Breiggar Properties v. H. E. Davis & Sons, 2002 UT 53
Road debris was dumped on adjoining property. Suit for trespass was dismissed under the three year statute of limitations. The court clarified that "permanent trespass" means that the act of trespass has ceased, and the statute of limitation has begun to run from the date of the last act of trespass. Similarly, "continuing trespass" means that the acts of trespass have not ceased, and that the statute of limitations begins to run anew from each new act of trespass for damages arising from that new act.

JUVENILE COURT CASES

Search and seizure:

State in the interests of A.C.C., 2002 UT 22
A juvenile court probation order providing for random searches of the juvenile deprived the juvenile of any reasonable expectation of privacy, as a matter of law, and the drug paraphernalia seized was not subject to suppression as the result. The search did not violate the Fourth Amendment, or Article I, Section 14 of the Utah Constitution. The order was a lesser intrusion than secure confinement, which the court could have imposed.

Juvenile Court jurisdiction:

State v. Houskeeper, 2002 UT 118
State v. Tunzi, 2002 UT 119
Once certified to stand trial as an adult, the district court retains jurisdiction for all purposes unless the juvenile is acquitted on the charged offense, and on all related charges arising from the same incident.

State in the interests of W.A., 2002 UT 126
State in the interests of W.A., 2002 UT 127
Termination of parental rights actions involving child legally in Utah, and parents located in two other states. Parents challenge personal jurisdiction. The court affirmed juvenile court's finding of jurisdiction on two basis: 78-3a-110(13) specifically grants the juvenile court jurisdiction over the absent parents; and the status of the child vis-a-vis the parents constitutes an exception to the ordinary requirements of the due process clause of the Fourteenth Amendment.

State v. Schofield, 2002 UT 132
A person over the age of 21, no matter at what age the offense occurred, is subject to the jurisdiction of the district court, and not eligible for the 'exclusive' jurisdiction of the juvenile court. Juvenile court jurisdiction is an aid in reforming juveniles prior to adulthood, not a lesser penalty for adults whose crimes occurred while they were juveniles.

CRIMINAL CASES

State v. Martinez, 2002 UT 80
Nineteen-year-old defendant had sexual intercourse with a fifteen-year-old girl. Defendant sought to introduce evidence that girl had represented herself as seventeen-years-old to address question of intent to have sex with 14 or 15 year old. In affirming the conviction, and the exclusion of the proffered age evidence, the Court held crime of sexual activity with a minor is one of strict liability, and the only intent necessary has to do with the act, not the age of partner.

Victims Rights:

State v. Casey, 2002 UT 29
The child victim of sexual abuse asked the prosecutor to be heard by the court at the defendant's change of plea hearing. The prosecutor failed to inform the court, and the change of plea was accepted without comment from the victim. The victim appealed. The court held that the victim had a right to appeal the denial of opportunity to be heard, that the change of plea hearing qualified under the victims' rights laws as one during which the victim was entitled to be heard, and that the prosecutor had a duty to inform the court of the victim's request.

Discovery of rape victim records:

State v. Blake, 2002 UT 113
Defendant sought juvenile victim's juvenile court records and counseling records seeking evidence of prior reports of rape by the victim. The court held that juvenile court records are governed by statute, and not subject to Rule 16. Counseling records of a rape victim are only available after defendant has satisfied the "reasonable certainty" test of *State v. Cardall* 1999 UT 51, 982 P.2d 79.

State v. Hansen, 2002 UT 114
Defendant sought trial court in camera review of rape victim's mental health records "to determine if any of them were material to his defense." The trial court directed the prosecutor to review the records and report back, inviting the defendant to raise the issue again if unsatisfied. Defendant failed to raise the issue thereafter, and court held the matter had been waived for purpose of appeal.

State v. Gomez, 2002 UT 120
The absolute privilege accorded communications between a rape victim and the rape crisis center under 78-3c-4 (1996) is constitutional.

CIVIL CASES

Rule 41(a) dismiss:

First Equity Federal v. Phillips Development, 2002 UT 56
Two voluntary dismissals under Rule 41(a)(1) of a civil action constitute dismissal with prejudice. However, a dismissal resulting from a motion to dismiss that is granted does not trigger the consequences of the rule.

Open Courts:

Laney v. Fairview City, 2002 UT 79
Berry v. Beech Aircraft, 717 P.2d 670 (Utah 1985) is still good law.

Citizen Initiative:

Gallivan v. Walker, 2002 UT 89
Multi-county signature requirement for placing a citizen initiative on the general election ballot is unconstitutional under both the fundamental rights provision and the Equal Protection Clause.

APPELLATE PRACTICE

Civility:

"We feel it necessary to comment on the briefs in this case. Appellant's counsel has submitted briefs that are replete with pejorative remarks and epithets regarding opposing counsel, the trial court, [a witness], and indirectly, this court. Statements such as [Appellee's] arguments are 'supercilious,' 'absolutely foolish and asinine,' and 'ridiculous,' that [Appellee] is 'ignorant,' that the trial court 'ignored . . . every opinion every written by this [c]ourt' and 'fail[ed] to read and comprehend the actual language' of the applicable statute, that [the witness] is 'notorious' and a 'charlatan,' and that [the witness's] opinion is 'inarticulate' and an 'absurd legal opinion' are wholly inappropriate in an appellate brief. Statements that small claims judges are not 'real judge[s]' and that this court disregards the truth by prefacing an argument with '[o]n the outside chance that the truth matters' are likewise inappropriate. Such remarks are merely argumentative and repugnant to fundamental and rudimentary notions of civility and decorum expected of attorneys, and as we have stated before, '[d]erogatory references to others . . . ha[ve] no place in an appellate brief and [are] of no assistance to this [c]ourt in attempting to resolve any legitimate issues presented on appeal.'" *Prince v. Bear River Mutual Insurance,* 2002 UT 68, citations omitted.

Marshaling the facts:

"When challenging a jury's verdict [or findings made by a trial

court], a party must 'marshal the evidence in support of the verdict [or finding] and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the verdict [or judgment].' Put differently, a party incurs an obligation to marshal *all* of the *evidence that arguably supports the jury's conclusion.* This means that it must marshal 'every scrap' of evidence that supports the jury's finding. It also requires that the party contesting the verdict assume the role of 'devil's advocate.' The party challenging the jury's verdict must therefore temporarily remove its own prejudices and fully embrace 'the adversary's position.'" *Harding v. Bell,* 2002 UT 108, at Para. 19, citations omitted.

Selected Cases Decided by the Utah Court of Appeals in 2002

by Judge Gregory K. Orme

CIVIL CASES

Macris & Assocs. v. Neways, Inc., 2002 UT App 406, 60 P.2d 1176.
Common law third-party litigation exception, allowing recovery of attorney fees as consequential damages where defendant's wrongful conduct foreseeably caused plaintiff to incur attorney fees through litigation with third party, may be applied to causes of action that arise under the Uniform Fraudulent Transfer Act, Utah Code Ann. §§ 25-6-1 to -13 (1998 & Supp. 2002).

Dowling v. Bullen, 2002 UT App 372, 58 P.3d 877.
Therapist's affair with former husband did not arise out of "health care" rendered to wife where both husband and wife were in individual therapy with therapist. Thus, the Utah Health Care Malpractice Act's two year statute of limitations did not apply, and wife could bring alienation of affection cause of action under the generally applicable four year statute.

Alvey Dev. Corp. v. Mackelprang, 2002 UT App 220, 51 P.3d 45.
An appurtenant easement is extinguished when, after the division of the dominant tenement, the newly created parcel does not abut the servient tenement. Utah is among the minority of jurisdictions that follow this view.

American Interstate Mortgage Co. v. Edwards, 2002 UT App 16, 41 P.3d 1142.
It is not an abuse of discretion to refuse evidence of a party's attorney fees as a sanction where the party failed to properly supplement discovery requests regarding documents it intended to use in trial. Additionally, the holder of a sheriff's deed to property has an ownership interest in the property, thus giving the holder standing to intervene in a foreclosure action.

Premier Van Schaack Realty, Inc. v. Sieg, 2002 UT App 173, 51 P.3d 24.
It is not a sale or exchange of property where the owner "retains essentially the same ownership interest in the property as he had prior to the conveyance, with plans to develop the property by improving it with the possibility of future gains or losses, and can prevent the record owner from encumbering the property without his permission."

Nunez v. Albo, 2002 UT App 247, 53 P.3d 2, *cert. granted,* 59 P.3d 603 (Utah 2002).
Medical doctor employed by University of Utah was acting within the scope of his employment when conducting activities of the type he was employed to perform, within the hours and "spatial boundaries" he was assigned, and that served the interests of his employer. Additionally, amending complaint to include the University was proper because notice to governmental entity was sufficient, amendment properly related back to the original complaint, and amendment was not so late in the litigation process as to be prejudicial.

Salt Lake County v. Metro West Ready Mix, Inc., 2002 UT App 257, 53 P.3d 499, *cert. granted,* 59 P.3d 603 (Utah 2002).
A purchaser of property was found to be a BFP even where the seller had no legal title to the property because the purchaser was legally justified in concluding that the seller was the owner of the property based on the lack of record evidence, the seller's possession of the property, and the County's failure to post signs or carry on any activity that would raise questions about the seller's title to the property.

McKeon v. Crump, 2002 UT App 258, 53 P.3d 494.
Retention of earnest money by a seller constitutes an election to retain the deposit as liquidated damages. Once a seller has elected a remedy, it cannot be waived.

Trench Shoring Services, Inc. v. Saratoga Springs Development, L.L.C., 2002 UT App 300, 57 P.3d 241.
Utah's Payment Bond Statute entitles an equipment lessor to recover rent for equipment supplied to a construction site from a property owner who fails to secure a payment bond, given statutory reference to "equipment supplied." The lessor is entitled to recover the reasonable value of the equipment furnished, up to but not exceeding the contract price. Improvement of the owner's land is not a condition for recovery under the statute.

Bank One Utah, N.A. v. West Jordan City, 2002 UT App 271, 54 P.3d 135.
For purposes of determining when the one-year window for filing a notice of claim against a political subdivision begins, a plaintiff's claim is considered to have "arisen" when both of the following have occurred (1) the plaintiff's interests are harmed and (2) the responsible party's identity is determined.

CRIMINAL CASES

State v. Schultz, 2002 UT App 297, 56 P.3d 974.
The Utah Board of Pardons and Parole has authority to issue restitution orders, but only while the offender is under its jurisdiction. Jurisdiction over an offender is terminated when the offender's sentence and parole are terminated.

State v. Schultz, 2002 UT App 366, 58 P.3d 879.
The admissibility of expert testimony concerning canine accelerant detection as an investigative tool is subject to rule 702 of the Utah Rules of Evidence. But the admissibility of expert testimony concerning canine accelerant detection as substantive proof that an accelerant was used in a fire, without laboratory confirmation, is subject to the heightened standards of *State v. Rimmasch,* 775 P.2d 388 (Utah 1989).

State v. Collins, 2002 UT App 253, 53 P.3d 953, *cert. denied,* 2003 Utah Lexis 8.
There is a statutorily implied authorization to conduct a search when taking someone into protective custody due to mental illness pursuant to Utah Code Ann. §§ 62A-12-231 to -232. Such protective custody searches do not violate the Fourth Amendment prohibition against unreasonable searches and seizures.

State v. Hardy, 2002 UT App 244, 54 P.3d 645.
Protective order statute is not overbroad in proscribing all contact, including "innocent contact." State has significant interest in protecting citizens from domestic violence, and statute is narrowly drafted to burden speech no more than is necessary to accomplish this goal.

State v. Pooler, 2002 UT App 299, 56 P.3d 979.
State's evidence of prior convictions for purposes of enhancement are entitled to a presumption of regularity. To rebut that presumption, a defendant must present some evidence that the prior proceedings were irregular.

State v. Mogen, 2002 UT App 235, 52 P.3d 462.
In the course of a routine traffic stop, defendant remained seized within the meaning of the Fourth Amendment when the police officer kept his overhead emergency lights on, returned defendant's license, issued a verbal warning for speeding, turned around and headed toward his patrol vehicle, stopped, returned back to defendant's vehicle, and then asked to search his trunk.

State v. Johnson, 2002 UT App 431, 463 Utah Adv. Rep. 3.
Utah has jurisdiction to prosecute resident fathers for criminal nonsupport of nonresident children

State v. Chavez, 2002 UT App 9, 41 P.3d 1137.
Defendant's Confrontation Clause rights were violated when trial court, based on State's generalized references to safety concerns, denied defense counsel the opportunity to cross examine State's witness about his ongoing relationship as a DEA informant and the fact that he was currently incarcerated awaiting sentencing. Such error was prejudicial because it was likely the witness's testimony heavily influenced the jury.

State v. Comer, 2002 UT App 219, 51 P.3d 55, *cert. denied,* 59 P.3d 603 (Utah 2002).
Reliable domestic disturbance report, by itself, did not suggest an immediate medical emergency of the degree necessary to trigger the emergency aid exception to the Fourth Amendment's warrant requirement.

FAMILY LAW CASES

Garcia v. Garcia, 2002 UT App 381, 60 P.3d 1174.
Former wife's homosexual relationship fit legal definition of cohabitation for purposes of terminating husband's duty to pay alimony.

Elman v. Elman, 2002 UT App 83, 45 P.3d 176.
The trial court did not exceed its discretion in concluding a wife who managed marital properties was entitled to share in appreciation on husband's premarital partnership assets based on the number of years the husband actively managed the partnership assets during the marriage to the exclusion of helping manage the marital estate. The trial court appropriately accounted for appreciation due to inflation by subtracting a reasonable rate of return. The trial court did not exceed its discretion in basing its valuation of marital property upon evidence presented by one spouse where the other spouse failed to present any contrary evidence.

In re D.B., 2002 UT App 314, 57 P.3d 1102.
Before terminating parental rights, a court must find both that the parent is unfit and that it is in the child's best interest to terminate the parent's rights. Although a parent's incarceration alone probably does not justify a finding of unfitness, the additional factors of the child being in DCFS custody and the child being deprived of a normal home for more than one year may justify such a finding.

Commission Highlights

During its regularly scheduled meeting of January 31, 2003, which was held in Salt Lake City, Utah the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Steve Waterman, co chair of the Admissions Committee, presented the Committee's recent and unanimous recommendation to modify proposed Admission rule 10.4 to eliminate averaging and for the Bar to implement a rounding policy on the scaled written component that is consistent with the rounding methodology used by the NCBE on the equated MBE. He further recommended that because scores will not be combined and averaged, that the reappraisal grading guideline be implemented for scores falling between 258 and 260. The motion passed .
2. John Adams reported that the Supreme Court amended Rule 6(a) of the Rules of Lawyer Discipline and Disability to override its previous decision *Utah State Bar v. Benton Petersen* which acknowledged the power of the Utah State Legislature to regulate the unauthorized practice of law.
3. Vickie Kidman, chair of the UPL Committee and Marsha Thomas (former Chair) reported on the work of the Committee.
4. John Adams reported that the Supreme Court had appointed Thomas Mitchell to the Ad Hoc Records Committee. John also mentioned that the Bar had co-hosted a retirement reception for Justice Richard Howe at the Matheson Courthouse and presented him with several gardening gifts.
5. John Baldwin stated that the Bar was trying to limit the volume of e-mail communications to members. A monthly e-mail will be sent, consolidating items of importance in a bullet point type format.
6. John Adams announced that the Supreme Court recently approved the MJP petition and issued an order. He advised that we will notify other states of the new admission rule but that one of the members of the so-called Tri-State Consortium, Oregon, had indicated its reluctance to extend reciprocity due to Utah's low passing score of 130. Other members of the consortium are Idaho and Washington; Idaho has also expressed some reluctance.
7. David Bird led a discussion of current legislative issues.
8. John Adams reported that he, Debra Moore and John Baldwin recently met with the Supreme Court to discuss Bar business including the new court rule on UPL and the *Marbury v. Madison* program as well as other law education programs and the constitutional law class for legislators.
9. John Adams updated the Commission on the new *Marbury v. Madison* Bicentennial project.
10. John Adams reported on the Law Day activities.
11. John Baldwin reviewed the agenda meeting calendar, including lunch with the Southern Utah Bar Association before the Mid-Year commission meeting.
12. Bob Merrell reported on the Budget and Finance Committee's recommendation regarding Commission grants and contributions pursuant to "outside" requests.
13. The Commission voted on *Utah Bar Journal* covers of the year, with Dana Sohm's photo on the April 2002 issue of the *Journal* coming out the winner.
14. John Adams reported on the September local "mini" convention plans in progress. The CLE event will be targeted toward those Bar members comprising solo practitioners, small firm practitioners and government lawyers.
15. John Adams reviewed the proposal on response to judicial criticism.
16. Discussion of the usage of the attorney's lounge in Matheson courthouse was held and the Commission approved a 60-day trial run of permitting legal aid service interviews in the attorney's lounge.
17. Nanci Snow Bockelie and George Daines reported on the sunset review of general Bar committees including Governmental Relations, LRE, Courts and Judges and Needs of the Elderly. Government Relations sponsored a breakfast for the legislators this year, Needs of the Elderly is active and workable transition of leadership process is in place and LRE needs a new chair. Bob Merrell reported that the Consumer Assistance Program provides good service and is cost effective. Lowry Snow reported on the CLE program review and stated that the program did an excellent job meeting Bar member's CLE requirements and that the program was fairly self-sustaining except for paying for outside convention speakers. John Adams reminded Commissioners that addi-

tional program reviews had been scheduled: (1) Client Security Fund, (2) Member Benefits and (3) Fee Arbitration.

18. Denise Dragoo was selected for the Dorothy Merrill Brothers Award for the Advancement of Women in the legal profession and John Hill was selected for the Raymond S. Uno Award for the advancement of minorities in the legal profession. Nelda Bishop was nominated for the Distinguished Service Award and the motion passed unanimously.

19. Paul Moxley and Charles R. Brown gave the ABA report. Charles will be drafting a Bar Journal article on the Sarbanes-Oxley Act and Paul has been slated as President-elect of the NCBP.

20. Dane Nolan gave the Judicial Council report covering both the meetings on December 16th and January 14th. In the latter meeting, the Council adopted a proposal which gives district courts authority to issue Certificates of Probable Cause. The Council also voted to oppose S.B. 93 relating to the issue of retention election of justice court judges. Dane reports that budget issues continue to be a problem.

21. Debra Moore gave a report on the Delivery of Legal Services Task Force. The Task Force has concluded that there are substantial unmet needs among the middle class and that approximately 50% of that group never access legal services to resolve the issues. Among the greatest needs are family law, personal injury, and consumer issues as well as demand for estate planning (wills) and review of contracts. A final report is due in March.

22. George Daines reported on the Judicial Performance Evaluation Committee proposal for judicial assistance program.

A full text of minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

Mailing of Licensing Forms

The licensing forms for 2003-2004 will be mailed during the last week of May and the first week of June. Fees are due July 1, 2003, however fees received or postmarked on or before August 1, 2003 will be processed without penalty.

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

If you need to update your address please submit the information to Arnold Birrell, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111-3834. You may also fax the information to (801) 531-9537.

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

New Policy for Addressing Criticism of Courts and Judges

On March 13, 2003, the Bar Commission approved the final version of a new policy addressing criticism of courts and judges. The program was adopted because the restraints placed on members of the judiciary by both tradition and the Utah Code of Judicial Conduct and the ethical obligations imposed by the Utah Rules of Professional Conduct for lawyers, often makes it difficult for the judicial system to explain or defend itself. The program was instituted to provide for appropriate and timely response to unfair, inaccurate, serious or harmful criticism of courts and judges. The policy can be accessed on the Bar's website (www.utahbar.org) or copies may be e-mailed or provided by mail by calling Diana Gough at (801) 297-7057.

Discipline Corner

ADMONITION

On February 25, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.3 (Diligence), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client concerning a child custody matter, but did not file an appearance of counsel until three years later. Hearings were stricken because of the attorney's lack of diligence and failure to appear. The attorney also failed to pursue a formal hearing as requested by the client. The attorney filed a Petition to Modify the Decree of Divorce seven years after retention. The attorney filed a Notice to Submit for Decision and a day later, a Motion for Leave of Counsel to Withdraw. The client collected the file from the attorney and learned that the attorney had done no legal work in the matter for four years. In exchange for legal work, the client performed repairs on the attorney's home. The attorney failed to establish with the client the basis upon which fees would be charged, and/or how the client's work would be credited towards the bill, and failed to advise the client of tax consequences of their barter arrangement.

ADMONITION

On February 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 8.1(b) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a divorce modification matter. The client filed a bar complaint against the attorney. The Office of Professional Conduct ("OPC") requested information from the attorney. The attorney failed to respond to the OPC's requests for information and Notice of Informal Complaint.

ADMONITION

On February 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.1 (Competence), 1.5(a) and (b) (Fees), 3.1 (Meritorious Claims and Contentions), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client seeking post-conviction relief and to assist in a civil rights action. The attorney failed to provide competent representation with the thoroughness and skillful preparation necessary for the work undertaken. The attorney charged the client an excessive fee, failed to communicate the basis for the fee, and failed to obtain a written fee agreement. The attorney brought claims on behalf of the client that were dismissed as frivolous and procedurally barred.

ADMONITION

On February 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.15(a) and (b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
While representing the interests of an investment company, an attorney used funds deposited in the attorney's trust account by a third party for the benefit of a client before the client had given the consideration due the third party. The attorney failed to provide the requested accounting to the third party.

PUBLIC REPRIMAND

On February 7, 2003, the Honorable Gordon J. Low, First Judicial District Court, entered an Order of Discipline: Public Reprimand, reprimanding Robert W. Gutke for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Gutke was also placed on six months unsupervised probation.

In summary:
In one matter, Mr. Gutke was retained to represent a client in a civil lawsuit and was paid a portion of the legal fees. Mr. Gutke obtained a trust deed against the client's house to secure future legal fees. The client requested an accounting of charges incurred for the legal services, but Mr. Gutke failed to provide it. Mr. Gutke also failed to keep the client reasonably informed of the status of the case. In another matter, Mr. Gutke was retained to represent a client in a divorce. He failed to promptly finalize the client's divorce and failed to keep the client reasonably informed of the status of the case. As to each complaint, Mr. Gutke failed to cooperate with the Office of Professional Conduct's requests for information. Mr. Gutke also failed to comply with an order of the First Judicial District Court concerning discovery.

PUBLIC REPRIMAND

On February 26, 2003, the Chair of the Ethics and Discipline

Committee entered an Order of Discipline: Public Reprimand, reprimanding Jerald N. Engstrom for violation of Rules 1.1 (Competence) and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Engstrom was retained to assist another attorney in criminal appeals for the Weber County Public Defenders Office. Mr. Engstrom researched and drafted the appellants' briefs, which the other attorney reviewed. The attorneys decided together which issues to raise in the appeals. Mr. Engstrom failed to provide competent representation to his clients: he lacked the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the completion of the appellate briefs. Errors in the appellate briefs included failing to cite the proper standard of review, failing to marshal the evidence, failing to provide legal authority and meaningful legal analysis, and failing to identify the relief sought. Mr. Engstrom negligently mischaracterized the record evidence in one brief. Mr. Engstrom engaged in conduct prejudicial to the administration of justice by repeatedly failing to provide competent representation as a court-appointed attorney for indigent clients after receiving warning from the court that the briefs previously submitted had been inadequately briefed.

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

PUBLIC REPRIMAND

On February 26, 2003, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Public Reprimand, reprimanding B. Maurice Richards for violation of Rules 1.1 (Competence) and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Richards was retained, with the assistance of another attorney, to handle appeals for the Weber County Public Defenders Office. The attorneys decided together which issues to raise in the appeals. The other attorney drafted the briefs, which Mr. Richards reviewed. Mr. Richards failed to provide competent representation to his clients: he lacked the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the completion of the appellate briefs. Errors in the appellate briefs included failing to cite the proper standard of review, failing to marshal the evidence, failing to provide legal authority and meaningful legal analysis, and failing to identify the relief sought. Mr. Richards negligently mischaracterized the record evidence in one brief. Mr. Richards engaged in conduct prejudicial to the administration of justice by repeatedly failing to provide competent representation as a court-appointed attorney for indigent clients.

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

Follow the Money

Marilu Peterson, CLA-S – Legal Assistant Division Chair

As mentioned in previous articles, all members of the Legal Assistant Division 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. The principal reason may well be the apparent lack of understanding of a very important part of the entire issue. In other words, the money.

In the following pages, Robyn Dotterer, CLA, the Division's Utilization Chair, discusses the "Dollars and Sense" of utilizing of legal assistants: how much they cost, how much they bill, how much income they bring in, how they free up the lawyer to bill on other matters, and why "utilize" is the right word. 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 how and why of utilizing legal assistants effectively.

Because there is more to the concept that just the money, there is much to consider in these articles, not only for attorneys but also for their legal assistants, including the possibility of expanding the legal assistant's current role in the delivery of legal services to the attorney's clients. We hope so.

In the meantime, the third Thursday in May has been set aside as Legal Assistants' Day. This year, the Legal Assistant Division and the Legal Assistants Association of Utah will pay tribute to legal assistants and their supervising attorneys at a luncheon at Grand America on May 15, 2003. Our featured speaker is Bar President-elect, Debra J. Moore. In light of recent developments in the legislative arena, Ms. Moore's remarks promise to be interesting and thought-provoking. We hope you will join with us in honoring Utah's legal assistants.

The Dollars and Sense of Utilization of Legal Assistants

by J. Robyn Dotterer, CLA – Legal Assistant Division Utilization Chair

In the upcoming months the Legal Assistant Division of the Utah State Bar will be contributing articles regarding utilization of legal assistants in a number of practice areas. Our goal is to assist the legal community in understanding the role we can play in all areas of the practice of law. In the December, 2002, issue of the *Utah Bar Journal* Marilu Peterson, Division Chair, provided the Utah State Bar Guidelines for the Utilization of Legal Assistants.

With that information available and the articles dealing with specific areas of law coming out, I wondered what I could say about the utilization of legal assistants that would catch the attention of practicing attorneys. So I contemplated the definitions of "utilization" and what it really means to the practicing attorney.

The American Heritage Dictionary of the English Language defines "utilize" as: "To put to use for a certain purpose."

That seems appropriate. Putting legal assistants to use for a certain purpose. But what is the purpose? The American Heritage Dictionary defines "purpose" as: "The object toward which one strives or for which something exists; goal; aim."

Even better. The purpose for which a law firm would utilize a legal assistant. Now we're getting closer.

The most important definition of proper utilization of a legal assistant may well be "A resource whereby attorneys increase their efficiency, productivity and bottom line." My definition. The purpose of a legal assistant when properly utilized could be, to a law firm, as simple as dollars and cents. Dollars and cents coming into your practice to bolster your bottom line.

The costs involved in utilizing a legal assistant are similar to those associated with associates – and the benefits have a similar upside. In models published in the ABA Section of Law Practice Management book *"Leveraging with Legal Assistants: How to Maximize Team Performance, Improve Quality, and Boost Your Bottom Line",*[1] the authors have demonstrated the financial benefits of billable hours generated by a team of attorney and legal assistant. Many of the examples also demonstrate a cost savings to the client. With their permission, I will use some of their examples to demonstrate how you can make this work in your own practice.

Additionally, several years ago Judge David Nuffer presented a CLE seminar entitled "Leveraging with Legal Assistants" and used a number of the ABA's models from *Leveraging with Legal Assistants.* And then in 2001 a presentation was made at the Bar's Annual Convention in Sun Valley on utilization. It's clear this is not a new topic. But perhaps a reminder might be appropriate.

Legal assistants can make you money.

Legal assistants do substantive legal work that would otherwise be performed by the attorney. This is not to be confused with the practice of law; but rather doing those things that do not require the attorney do them personally. The ABA's definition of the role of a legal assistant is:

> Legal assistant associates are persons, qualified through education, training, or work experience, who are employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.

When you consider the types of work the legal assistant will be doing, you will realize that hours will be freed up that the attorney, who would otherwise be doing the work, will be able to use doing other tasks that only the attorney can perform. For example, the work that would be done by an attorney would include:

- Accepting a case
- Evaluating the case and charting its course
- Performing legal analysis
- Giving legal advice
- Formal judicial process (i.e., depositions, hearings, trials, etc.)
- Supervising the legal assistants

The work that would be performed by the legal assistant would include:

- Obtaining facts from the client
- Communicating information to and from the client
- Interviewing witnesses
- Performing limited legal research to assist the attorney with the legal analysis
- Obtaining documents (i.e., police reports, medical records, employment records, deeds, photographs, plans, probate records, weather records, etc.)
- Preparing summaries, chronologies, itemization of claims, drafts of pleadings, interrogatories and production requests and responses
- Preparing outlines for the attorney to use in deposing witnesses and in argument
- Indexing deposition transcripts and preparing summaries of the evidence
- Preparing exhibits and lists[2]

The separation of these tasks will allow the attorney to handle more cases and offer services to the client at a lower cost.

One of the attractions of utilizing legal assistants is the lower cost of legal services to your clients. The ABA "Leveraging" models demonstrate that clearly.

In our example, assume all the work is performed by the attorney at a rate of $150

Example 1

Interview with Client	2 hr.	$ 300
Interview Two Witnesses	2 hr.	300
Gather information	2 hr.	300
Review Documents	2 hr.	300
Legal Research and Analysis	3 hr.	450
Draft Pleading	2 hr.	300
Trial Preparation	4 hr.	600
Trial	4 hr.	600
TOTAL	21 hr.	$3,150

The attorney invests 21 hours in the case and bills the client $3,150.

Example 2

This is the same case with a substantial portion of the work being delegated to a legal assistant at $60 an hour.

Interview with Client		
Attorney	2 hr.	$300
Legal Assistant	2 hr.	120
Interview Two Witnesses		
Legal Assistant	2 hr.	120
Gather information		
Legal Assistant	2 hr.	120
Review Documents		
Legal Assistant	2 hr.	120
Legal Research and Analysis		
Attorney	1 hr.	150
Legal Assistant	2 hr.	120
Draft Pleading		
Legal Assistant	2 hr.	120
Trial Preparation		
Attorney	1 hr.	150
Legal Assistant	3 hr.	180
Trial		
Attorney	4 hr.	600
Legal Assistant	4 hr.	240
Total	27 hr.	$ 2,340

In this example the attorney invests 8 hours, the legal assistant 19; billing is $2,340, saving the clients $810.[3]

But perhaps as important, saving the attorney 13 hours of time on this case that could be used to work on another case – freeing up time for tasks that only the attorney can handle.

That example also demonstrates a significant involvement by the legal assistant in the case. By utilizing the legal assistant to the fullest extent, depending, of course, on experience and skill level, the attorney can significantly decrease the number of hours required on a given case. With a limited involvement by the legal assistant, the attorney's hours would be considerably higher. More extensive examples of this are outlined in "Leveraging," but I won't take the time and space to outline them again here. Take my word for it. It will save your client money and the attorney valuable time to utilize a legal assistant.

In the arena of insurance defense, which is the area in which I

have spent my professional time as a legal assistant, it is common for insurance carriers to indicate in their billing guidelines areas of responsibility based on the necessary skill level to accomplish a task from the attorney to the associate to the legal assistant and on to the secretarial/clerical skill level. Clients in other practice areas are also becoming aware of the divisions of responsibility that are available in most law firms. The task can be accomplished by the lowest cost denominator, not the highest.

To derive a financial benefit from the use of legal assistants, the work must be properly managed and adequately priced. An economic analysis of how legal assistants can generate profits for attorneys is necessary to determine how a legal assistant can be a financial asset in your firm. The elements to consider in that financial analysis include the following:

- Revenues from legal assistant hours
- Any increase in the attorney's hourly rate that is justified by shifting a larger portion of the work to a legal assistant with a lower rate
- The increase in the attorney's billable hours that results from moving nonbillable work from the attorney to the legal assistant[4]

The ABA model in "Leveraging" also recommends an analysis of the costs versus the revenues. Costs can be determined by allocating the same categories of expenses to legal assistants as are shared among the partners and associates. That allocation would be based on the makeup of the firm and requires making subjective judgments. Costs that can be specifically allocated include:

- Salary – The salary figure of each individual should be specifically allocated.
- Fringe benefits – The fringe benefit expense can be allocated by specific individual or can be broken down by category of time-keeper: partners, associates, and legal assistants.
- Secretarial support – Each individual can be charged with the specific expense of his or her secretary or portion thereof (includes salary and fringe benefits).
- Office space – Each individual can be charged with his or her pro rata share of the office space or it can be broken down by category of timekeeper: partners, associates, and legal assistants.
- Dues, meetings, and CLE – These expenses may be specifically allocated, depending on the firm's control of these items.

Other expense allocations will probably have to be estimated. For example:

- Supplies
- Library
- Administrative salaries
- Telephone, postage, copying, data processing
- Equipment
- Advertising, marketing and client development[5]

A test to determine if your legal assistant is of economic benefit to you is the "Rule of Three." This rather straight forward analysis simply says that the test of profitability is met if the revenues that are generated by the legal assistant equal three times the salary. For example:

Hourly Rate	X	Billable Hours	=	Revenues	: 3 =	Salary
$80		1,600		$128,000		$42,666
$80		1,400		$112,000		$37,333[6]

Though it is considered that by this time the "Rule of Three" may have suffered some erosion due to increasing law firm costs so that the equation may be more of a "Rule of Three and a Half", this model may help you determine how to set the firm's financial goals and costs.

Taking a serious look at the composition of your practice, your client base and your future plans for building and expanding your practice should include an analysis of the utilization of legal assistants in your practice. Consider these dollars and sense issues of how to increase your profitability and efficiency in your practice. As legal assistants, we are of value – financial and otherwise – if we are utilized properly.

[1] *Expanding the Role of the Legal Assistant – Why Do It,* Arthur G. Greene and Kathleen Williams-Fortin, Chapter 2, *Leveraging with Legal Assistants: How to Maximize Team Performance, Improve Quality, and Boost Your Bottom Line,* Arthur G. Greene, ed., ©1993 American Bar Association. All Rights Reserved. Reprinted by Permission.

[2] *Leveraging with Legal Assistants,* Judge David Nuffer, Utah State Bar CLE, November, 1997

[3] *Expanding the Role of the Legal Assistant – Why Do It,* Arthur G. Greene and Kathleen Williams-Fortin, Chapter 2, *Leveraging with Legal Assistants: How to Maximize Team Performance, Improve Quality, and Boost Your Bottom Line,* Arthur G. Greene, ed., ©1993 American Bar Association. All Rights Reserved. Reprinted by Permission.

[4] *Id.,* p. 11

[5] *Id,* pp.11-12

[6] *Id,* p. 13

CLE Calendar

Annual Spring Seminars Start April 2003

Case Law Update – Legislative Update – General Practice Information

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
04/17/03	**Real Property:** 8:30 am – 1:00 pm. Luncheon 12:30. Justice Durham – Utah Supreme Court Update, Judge Orme – Utah Court of Apeals Update, Scott Sabey – Legislative Update, Residential Lien Recovery panel discussion, Billy Walker – Ethics. $70 section members, $90 non-section.	4 (1 hr. Ethics)
04/24/03	**Collection Law:** 10:00 am – 1:00 pm. – lunch included. Bryan Cannon – Commercial Collections, Doug Short – Legislative Update, Judge Peuler – Issues Surrounding Collections and Collecton law attorneys $50 section members, $70 non-section members.	3 (1 hr. Ethics)
05/01/03	**Corporate Counsel:** Agenda Pending	
05/09/03	**Family Law.** 8:30 am – 4:20 pm. Lunch included. Ethical Conduct in a ProSe World. Check full agenda on-line. $125 section members, $155 non-section.	8 (4 hrs. Ethics)
05/18/03	**Business Law:** Agenda Pending	
05/21/03	**Labor & Employment:** Agenda Pending	
06/27/03	**Legal Assistant Division Annual:** 8:30 am – 4:15 pm. The preservation issue, internet research, time keeping, public record searches, corporate record keeping. $90 LAD members, $100 non-LAD.	

Additional Seminars Offered This Spring

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
04/24/03	**Bankruptcy Law Practice in Utah.** 5:30 – 8:30 pm. $50 Young Lawyer, $60 others. A nuts and bolts primer for practicing bankruptcy in Utah. This seminar will start from the beginning with the appropriate initial filings, how to get paid and see you through the 341 hearing to the conclusion of the bankruptcy or conversion.	3 CLE/NLCLE
05/02/03	**Advanced Cross-Examination: How to Dominate the Courtroom –** with Larry Pozner and Roger Dodd. Sponsored by: Litigation Section Utah State Bar. 8:45 am – 4:00 pm. $125 Litigation Section Members – $175 others.	6.5
05/22/03	**Securities Law Practice in Utah.** 5:30 – 8:30 pm. $50 Young Lawyer, $60 others.	3 CLE/NLCLE
05/22/03	**The 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

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.

NOTICE

Last Will of Ruth A. Calamia – If you have in your possession or know of the whereabouts of a last will of Ruth A. Calamia, please contact Kent H. Collins at Parr Waddoups Brown Gee & Loveless, 185 South State Street, Suite 1300, Salt Lake City, Utah 84111, (801) 532-7840.

Looking for will of Ruth Alice Calamia – If you know of any original or copy of a will of Ruth Alice Calamia, born June 24, 1910, and died in Utah March 1, 2003, please contact Langdon T. Owen, Jr., Parsons Kinghorn Peters, 111 E. Broadway 11th Floor, Salt Lake City, Utah 84111, telephone 801-363-4300.

POSITIONS AVAILABLE

Kane County has immediate opening for Deputy County Attorney. Salary up to $45,000.00 DOE, full benefits, plus potential of contracting with local municipalities for prosecution. For a complete job description contact the Kane County Attorney (435) 644-5278. Send resume to Kane County Human Resources, 76 North Main, Kanab, UT 84741.

LITIGATION ASSOCIATE: A mid-size downtown SLC full-service law firm needs a litigation associate with 0-2 years experience. Competitive salary and benefits. Please send resume to P.O. Box 45101, SLC, UT 84145.

Tort Litigation Attorney – The Salt Lake City Branch Legal Office of Farmers Insurance Exchange is seeking a tort litigation attorney with a minimum of eight years insurance defense experience. Spanish speaking preferred. Salary commensurate with experience. Excellent benefit package including a company car. EOE. Send confidential inquiries to Petersen & Hansen, c/o Debbie Rasmussen, 230 South 500 East, Suite 400, Salt Lake City, Utah 84102. (801) 524-0998 (fax)

OFFICE SPACE/SHARING

Office Space Available: Attorney office space available. Great downtown location. Please call (801) 575-5000.

Deluxe office space for one or two attorneys. Avoid the downtown/freeway congestion. 7026 South 900 East. Includes two spacious offices, large reception area, file storage, convenient parking adjacent to building. Call 272-1013.

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

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.

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ASSET INVESTIGATION...NOT ASSET REPORTING. We do not rely solely on computer data base information to discover hidden and/or transferred assets. Our experienced staff will conduct In depth research and access frequently hard to obtain information to provide you with accurate, verified data. We have over 18 years experience with a client list including FDIC, and over 700 attorneys nationwide. We are able to research all states and several foreign countries. Excellent references provided. Please call (801) 572-1464.

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.

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.

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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 Request for 2003-2004 Committee Assignment

The Utah Bar Commission is soliciting new volunteers to commit time and talent to one or more of 18 different committees which participate in regulating admissions and discipline and in fostering competency, public service and high standards of professional conduct. Please consider sharing your time in the service of your profession and the public through meaningful involvement in any area of interest.

Name _____ Bar No. _____

Office Address _____ Telephone _____

Committee Request

1st Choice _____ 2nd Choice _____

Please describe your interests and list additional qualifications or past committee work.

_____

_____

_____

_____

Instructions to Applicants: Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday.

Committees

1. **Admissions.** Recommends standards and procedures for admission to the Bar and the administration of the Bar Examination.
2. **Annual Convention.** Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.
3. **Bar Examiner.** Drafts, reviews and grades questions and model answers for the Bar Examination.
4. **Bar Exam Administration.** Assists in the administration of the Bar Examination. Duties include overseeing computerized exam-taking, security issues, and the subcommittee that handles requests from applicants seeking special accommodations on the Bar Examination.
5. **Bar Journal.** Annually publishes editions of the *Utah Bar Journal* to provide comprehensive coverage of the profession, the Bar, articles of legal importance and announcements of general interest.
6. **Character & Fitness.** Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.
7. **Client Security Fund.** Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.
8. **Courts and Judges.** Coordinates the formal relationship between the judiciary and the Bar including review of the organization of the court system and recent court reorganization developments.
9. **Fee Arbitration.** Holds arbitration hearings to resolve voluntary disputes between members of the Bar and clients regarding fees.
10. **Ethics Advisory Opinion.** Prepares formal written opinions concerning the ethical issues that face Utah lawyers.
11. **Governmental Relations.** Monitors proposed legislation which falls within the Bar's legislative policy and makes recommendations to Bar Commission for appropriate action.
12. **Law Related Education and Law Day.** Organizes and promote events for the annual Law Day celebration.
13. **Law & Technology.** Creates a network for the exchange of information and acts as a resource for new and emerging technologies and the implementation of these technologies.
14. **Lawyer Benefits.** Review requests for sponsorship and involvement in various group benefit programs, including health, malpractice, disability, insurance and other group activities.
15. **Mid-Year Convention.** Selects and coordinates CLE topics, panelists and speakers, and organizes social and sporting events.
16. **Needs of the Elderly.** Assists in formulating positions on issues involving the elderly and recommending legislation.
17. **New Lawyer CLE.** Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality and conformance with mandatory New lawyer CLE.
18. **Unauthorized Practice of Law.** Reviews and investigates complaints made regarding unauthorized practice of law and recommends appropriate action, including civil proceedings.

Detach & Mail by May 31, 2003 to:
Debra J. Moore, President-Elect • 645 South 200 East • Salt Lake City, UT 84111-3834

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Edith DeCow
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Web Site: www.utahbar.org

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