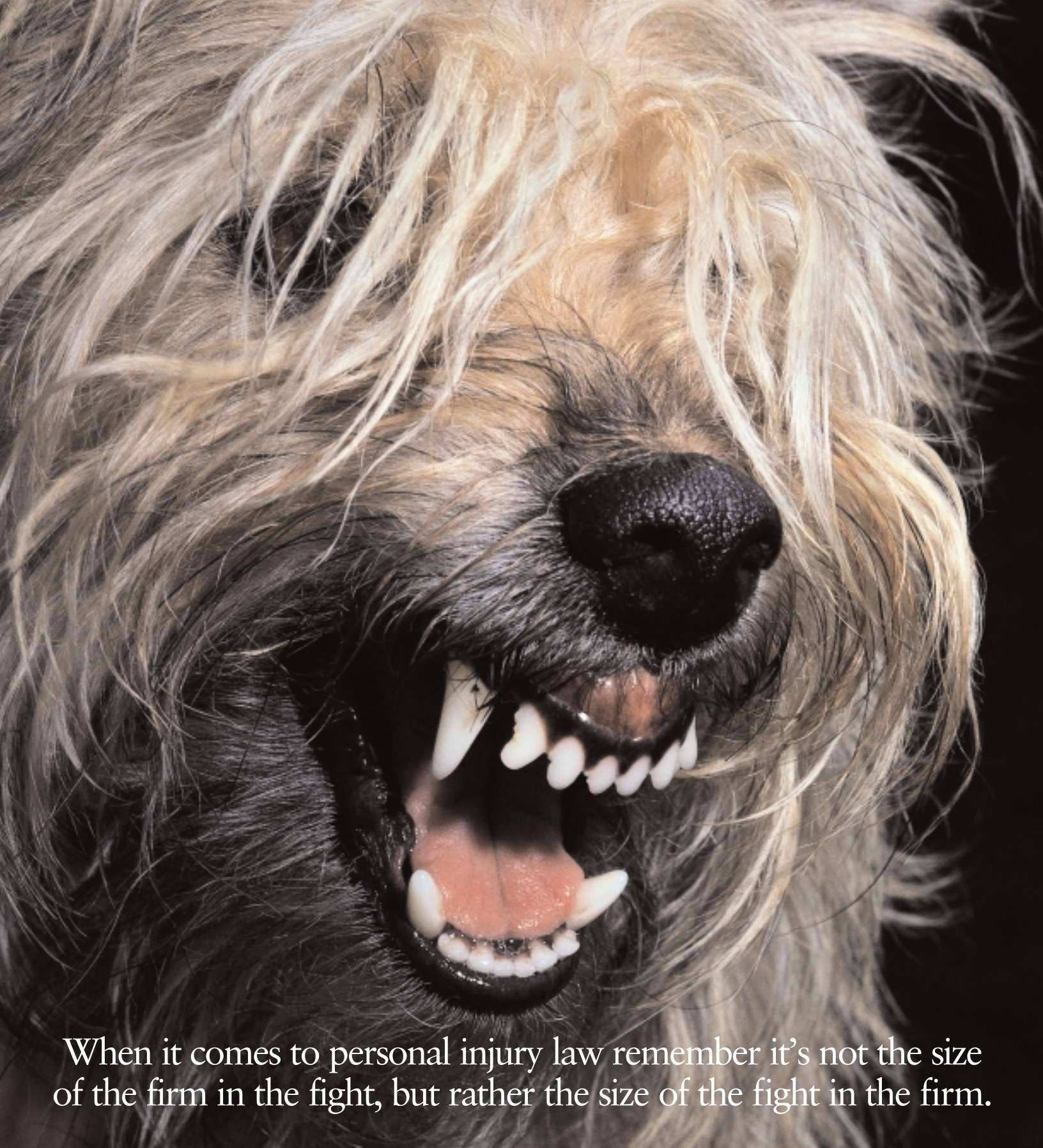


Utah Bar Journal

Volume 17 No. 5
June/July 2004





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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: Flowering cactus along Pa'rus Trail in Zion National Park, by Susan L. Grassli, Utah Attorney General's Office.

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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 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.

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

1. Length: The editorial staff prefers articles having no more than 3,000 words. If you cannot reduce your article to that length, consider dividing it into a "Part 1" and "Part 2" for publication in successive issues.
2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.
3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.
4. Content: Articles should address the *Bar Journal* audience, which is composed primarily of licensed Bar members.
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 follow *The Bluebook* format.
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That Went Fast!

by Debra Moore

It seems like yesterday that I was sworn in as Bar president, but with the end of my term approaching at “warp” speed, it’s time to review how the Bar has advanced its mission during the last year. I’m pleased to report that 2003-2004 has been an excellent year, thanks to the dedicated efforts of John Baldwin and the Bar staff, a great Board of Bar Commissioners, and stellar committee and section chairs and other dynamic volunteers throughout the Bar organization. Some highlights of the year include:

Delivery of Legal Services

The Bar has moved its goal of improving the delivery of legal services forward on several fronts. In July 2003, the Commission adopted the recommendations of its Task Force on the Delivery of Legal Services for improving access to justice for middle income clients. Those recommendations included seeking rule amendments to facilitate **limited task representation** or “**unbundling**” of legal services and raising awareness of methods of responsibly providing such services. The Bar invited a national expert on unbundling to present at the extremely well-attended inaugural **Fall Forum** convention for solo and small practitioners in Salt Lake City. In December, the Commission petitioned the Supreme Court to adopt unbundling rules. The Court has referred the petition to its Advisory Committee on the Rules of Professional Conduct for its recommendations. Once rules are in place, it will be important for the Bar to provide further opportunities for lawyers to learn how to unbundle successfully.

In November 2003, the Bar and the S.J. Quinney College of Law at the University of Utah co-sponsored the annual Fordham Debate, which focused on the topic of **statewide planning for access to justice**. The event included a half-day of stimulating workshops at which national experts shared their insights and recommendations with a highly engaged audience. In her 2004 State of the Judiciary address, Chief Justice Christine M. Durham emphasized

that “access to justice is a fundamental right in a just society” and called for the “creation of a network of providers, stakeholders, lawmakers, community leaders, consumers, lawyers, and court leaders who can address the issue of access to justice on a state-wide level.” In the succeeding months, the Bar has participated in discussions on forming such a network and has endorsed and pledged support for that endeavor.

Legislative Relations

The Bar took various steps to open new avenues of communication and shore up its relationship with the Utah Legislature. Several legislators took time from their busy schedules to actively participate on a Bar task force, chaired by President-Elect George Daines, to study a proposed increase in the jurisdictional limits of small claims court. Our Governmental Relations Committee worked closely with the legislature to provide valuable practical assistance concerning pending bills. John T. Nielsen skillfully advocated for the Bar’s positions on pending legislation, and John Baldwin and Richard Dibblee were visible on Capitol Hill throughout the session. This year’s repeal of the narrow definition of the practice of law that had been enacted last year, although probably not the last word on the issue, did signify a greatly improved relationship between the Bar and the legislature. The Bar’s efforts did not begin or end with the legislative session and must be part of a continuing program that builds trust, mutual respect, and understanding year-round and from year to year.

This Spring, the Bar collaborated with other organizations to present a wide-ranging, interesting, and fun series of events celebrating the 50th anniversary of ***Brown v. Board of Education***. Those events included a film festival, panel discussions, high school classroom presentations, a letters to the editor contest, an art and the law contest,



Jackie Robinson night at the Stinger's game, a KUED production, an educational newspaper supplement, and the Law Day dinner with ABA President-Elect Robert Grey as the guest speaker. With these events, the Bar effectively carried the many lessons of *Brown* into the community, fostering an appreciation for the rule of law.

In other developments of the year:

The Supreme Court published proposed amendments to its rule on the **unauthorized practice of law** that create safe harbors for non-lawyers. The Court approved the Bar's petition to join the **Casemaker** on-line legal research consortium, which will become available this Fall for free to all Bar licensees. The Commission voted to petition the Supreme Court to approve a

two-stage **increase in the passing score** for the Bar exam. The Bar and Supreme Court approved an emergency rule under which **military lawyers** stationed in Utah may now to provide free legal services to military personnel and their dependents. The Bar enhanced its communication with members through monthly **e-bulletins**; and the reach of **Lawyers Helping Lawyers** was expanded with the Bar's financial support of a full-time director position. Last, but definitely not least, the Bar entered its fifteenth year without an increase in **licensing fees**.

I'm most grateful to have had the enriching opportunity to serve as president. I thank my colleagues at the AG's office and my family for their tremendous support. And, I leave you in George's capable hands. Go, George!

Disability Income – read the fine print

To assist its members with obtaining some of the finest disability income protection available, the **Utah State Bar** recently approved a new program through which attorneys may purchase coverage at discounted premium rates through Berkshire Life Insurance Company of America.

Look closely and you'll see the difference between your current disability income policy and our Professional DI coverage – for both you and your practice.

We don't want you to sign on the dotted line until you really understand the difference between your existing disability income protection and what we can offer you. The benefits of our Professional DI coverage extend beyond own-occupation and non-cancellable/guaranteed renewable to age 65. Consider features such as cost-of-living adjustments, future increase options, residual recovery, lifetime extension, retirement plan contribution protection, and much, much more. We can customize a plan to your specific needs.

And while you're at it, you'll also want to look into our practice protection policies – Professional Overhead Expense, to reimburse you for many of the expenses of running your practice, Disability Buy-Out coverage, and term business loan repayment. For a complimentary examination of your disability needs, call:

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The View from the Electronic Bench

by David Nuffer

Judge Thurman's bench at the bankruptcy court, shown in the photo at right, looks more like the control deck of the Starship Enterprise than a traditional judge's bench. Two computer monitors are embedded in his bench, and a keyboard and mouse are his controls. No papers in sight! Similarly, my office desk has a two-headed computer, with one screen for documents I am creating and one screen for documents I am reviewing, retrieved from Westlaw or the court file. This will be the look of more and more judicial workspaces. Courts are following the business trend of moving from paper to electronic files which means the judge's file will be a computer file, not a paper file.

Electronic Files

The move to electronic files is a major transition for tradition-entrenched courts. State courts, where over 90% of all cases are filed, are taking multiple approaches to electronic filing. Massachusetts, for example, has different e-filing programs in its criminal, probate, civil and juvenile courts. Each court has adopted distinct programs. Some counties have their own e-filing programs.

In the federal court system, by the end of 2005 almost all trial courts will be on a uniform electronic file system. The federal court e-filing system is called CM/ECF, Case Management/Electronic Case Files. To date, 23 district courts and 60 bankruptcy courts have electronic files. Utah's Bankruptcy Court has been on this system since early 2003 and the district court is anticipated to be on the system in the summer of 2004. Many Utah lawyers working in the bankruptcy court or in other districts are already using CM/ECF.

Utah federal practitioners are familiar with PACER, which allows



access to electronic court dockets. Utah's district court has been ahead of the technology curve by including images of many case documents in PACER. Under Utah PACER, many court documents are available electronically. As of the date CM/ECF is implemented, all new case documents will be electronic in their original form, and very little new paper will be retained.

Electronic Filing by Attorneys

When the court's case file is electronic, there are compelling reasons to allow attorneys to file papers electronically. Now, almost all attorneys create court papers electronically, and then print, copy and deliver the papers to the court, which digests the papers into the docket, scans them into an electronic file, and files the paper original. The attorney also mails paper copies to other counsel. Under CM/ECF, all the "paper" steps of this process may be eliminated. Documents created electronically by attorneys can be transmitted electronically to the court, as the attorney digests the document into what becomes the docket entry. Immediately upon filing of a document, an electronic notice is mailed to the filing attorney, all counsel of record on the case and court personnel, including judges, responsible for the case. The electronic notice of filing includes a link to the document filed, so that all e-mail notice recipients can retrieve, view and save the

DAVID NUFFER is a United States Magistrate Judge for the United States District Court, District of Utah. He currently serves as Co-Chair of the Court Technology Advisory Committee and is a past president of the Utah State Bar.



document without charge. A document filed electronically is thus served electronically, within about 15 minutes of filing.

Most courts implementing CM/ECF have allowed electronic filing within a few months of the time the electronic file becomes the official record. Utah's bankruptcy court permitted electronic filing in September 2003, nine months after files became electronic. Some CM/ECF courts make electronic filing mandatory for attorneys after a longer period of experience with the system.

What a CM/ECF User Needs

The design of CM/ECF provides for low-cost user access to the system. Any modern PC with Internet access and Web browser software can access CM/ECF. Retrieving electronically filed documents requires the Adobe Acrobat Reader software, which is available at no cost from Adobe over the Internet. Software that can create PDF documents is required for filing. Any word processor can be used to create a document to be filed, and the PDF creation software will convert the document to PDF format. WordPerfect includes PDF creation software. A document that exists in paper, such as an exhibit, will need to be scanned for CM/ECF filing. Almost any scanner, when used with PDF creation software, can create a PDF version of the paper document.

Documents are filed and viewed through a web browser, such as Internet Explorer or Netscape Navigator. Notices under CM/ECF are received via e-mail. CM/ECF will likely cause an increase in practitioners' e-mail, so some training in e-mail management and storage may be required.

The steps all CM/ECF users should take are:

- Learn to use a keyboard, mouse, web browser and e mail.
- Sign up for PACER.
- Sign up for e-notice.
- Take the on-line CM/ECF Training.
- Take the live CM/ECF training.
- Register as a CM/ECF user.
- Use CM/ECF.

The first four of the above steps can be taken now. The following additional steps may be taken by designated persons in a firm, or by all users:

- Acquire software and learn to convert word processing documents to PDF format.



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- Acquire a scanner and learn to convert existing documents to PDF format.
- Decide how to manage e-mail notices of electronic filing, and the files created in your office and received by your office.
- Take advanced CM/ECF Training.
- Become a CM/ECF Trainer for your firm.

Questions

Any new system such as CM/ECF generates many questions. Most of these are answered on the general information pages referenced in the sidebar that follows this article. But a few short answers may be helpful:

- Pro se filers will not be required to e-file.
- Mailed notice will still be available to those attorneys not receiving e-notice.
- E-notice recipients still have the three days additional time tacked on under Fed. R. Civ. P. 6(e).
- Attorneys will retain original signed affidavits and declarations, filing scanned documents or electronic documents with an “/s/” signature.
- Large, color, or unusual exhibits will be retained in paper form.
- Cases will not be initiated by direct electronic filing under CM/ECF though electronic complaints may be e-mailed to the

court to be filed. A docket clerk must collect a fee, open a case and add parties and counsel to the court’s system.

- Judges may still require courtesy copies of papers and exhibits in dispositive or other significant motions.
- Some paper documents, such as indictments and judgments will be retained.
- Filing attorneys are required to redact some private information from documents before e-filing.
- If the system is down, there will be relief from filing deadlines in non-jurisdictional circumstances.
- Security and fail-over preparations mean that system outages of over an hour will be extremely rare, except for nightly backup which will probably take a few hours after midnight.

Prediction

Judge Thurman’s bench and my desk arrangement will be replicated in many offices as lawyers turn to electronic files and electronic filing. The use of paper will decline, but never disappear, as electronic files and filing increase access and reduce costs. The increased use of purely electronic media will lead to efficiencies in courts and law offices, enabling us all to serve more people.

AUTHOR’S NOTE: *The assistance of Cass Butler and David Leta in preparation of this article is greatly appreciated.*

For Further Information

FEDERAL COURT INFORMATION

Electronic (e-mail) noticing http://www.utsd.uscourts.gov/documents/enotice_info.html

PACER (Public Access to Court Electronic Records) – <http://pacer.utsd.uscourts.gov/>

Electronic case filing (CM/ECF) <http://www.utsd.uscourts.gov/documents/ecfpage.html>

This page includes on-line training modules, Q & A, and information about hardware and software, scanners and PDF, along with links to national court sites.

Privacy Policy http://www.utsd.uscourts.gov/documents/privacy_ntc.html

PDF SOFTWARE

Adobe Acrobat (full version – reads, writes and manipulates PDF files) <http://www.adobe.com/products/acrobat/main.html>


Adobe Acrobat Reader (free version – reads PDF files) <http://www.adobe.com/products/acrobat/readstep2.html>

CutePDF (free – writes PDF files) <http://www.acrossoftware.com>

PDF Factory (low cost – writes PDF files) <http://www.softwarelabs.com/pdf/pdfactory.htm>

State court electronic filing http://www.ncsconline.org/wcds/Topics/topic1.asp?search_value=Electronic%20Filing

State court electronic filing standards http://www.ncsconline.org/D_Tech/Standards/Standards.htm



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My Evolution from Paper-pusher to Key-clicker

by David E. Leta

I began practicing law in 1976. At that time, I was fortunate to work in an office that prided itself on having state of the art technology. Every secretary had an IBM Selectric Typewriter. We soon updated these typewriters to the amazing "Correcting Selectric," which could type backwards and lift the letters off the page to correct mistakes. It was a miracle, and certainly a vast improvement over carbon paper, onion skin, and white-out.

In general, however, our secretaries made very few typing errors because lawyers prepared legal documents in longhand, corrected their own mistakes in longhand through several revisions, and then gave the finished product to their secretary for typing. Cutting and pasting (literally) was a common technique for taking advantage of one's prior work product. Virtually all secretaries knew shorthand, which was an extremely useful and valued skill. Dictating machines were primitive, bulky devices that usually occupied several square inches of the lawyer's desk or credenza. Copy machines were slow and messy. Many of the early models functioned only with the aid of toxic chemical compounds that created a silky, shiny, bluish, photo-like product, and that, over time, faded from barely readable to invisible. Fax machines, personal computers, electronic research and the internet had either not been invented yet, or were not commercially available to the modern practitioner.

Almost every office had a law library. Law libraries, both public and private, were places where lawyers and their law clerks often could be found toiling at desks piled high with mountains of reporters, treatises and case digests — all essential tools for finding the law. The principal method of communication for the lawyer was either a face-to-face meeting or the telephone. Voice-mail had not yet been invented. Lawyers, or their receptionists, actually answered their phones during business hours. Cell phones also did not yet exist, at least in the private sector. Finally, the successful lawyer usually had a first name, working relationship with the staff in the clerk's office of the state and federal courts. If you wanted to see what had been filed in a case, you had to go to the clerk's office, ask to have the case file pulled from central records, and then physically review it in the clerk's office.

Flash forward to 2004. In the modern law office of today, it is difficult to even find an impact typewriter. After all, who needs one? Envelopes, forms, checks and nearly every other type of document can be generated, modified, completed and printed with a personal computer, off-the-shelf software and a low cost printer. In fact, why even bother printing the document? Simply attach it to an email and whisk it off into cyberspace. Software applications are readily available in mind-boggling varieties. Communication systems are integrated with networks, voicemail is accessible from remote locations, the internet is omnipresent, email has replaced the telephone as the communication tool of choice among professionals, and almost everyone has a cell phone and PDA with them at all times. Faxes can now be "digitized," and sent directly to the attorney's personal computer where they can be reviewed, printed, saved and forwarded with the click of a mouse. Photocopies are close to being passé, since huge volumes of information can now be scanned, saved as PDF files and stored on CDs. Voice recognition computer systems now allow the lawyer to speak to the computer and let the computer convert the words to text, thus skipping the entire step of dictation and transcription. Electronic legal research, either via the internet or from established service providers such as Lexis and Westlaw, has replaced the law library. Law books now function more as decorations than as tools. Individual case research also can be conducted now via the internet with search engines such as PACER.

About the only aspect of the law office that has not changed much in the last 30 years is the filing system. Paper files, filing cabinets and off-site storage of dead files are still common. But, this too is about to change.

DAVID E. LETA is a partner in the Salt Lake City law firm of Snell & Wilmer, L.L.P., where his practice concentrates on bankruptcy litigation, business reorganizations and creditor rights.



Recently the United States Bankruptcy Court for the District of Utah launched the CM/ECF filing system. The United States District Court for the District of Utah is making preparations now for implementation of the CM/ECF system sometime in the Summer or Fall of this year. Both systems operate in essentially the same way.

Lawyers gain access to the CM/ECF system through the internet. Any lawyer with a standard personal computer, an internet connection, an internet service provider, a browser running current versions of Netscape or Explorer, a standard word processing application, and Adobe Acrobat Reader / Writer can become fully functional on this electronic filing system. Once the lawyer obtains a minimal amount of training, the system can be accessed via the internet with a login name and password, and this login has the same effect as the lawyer's signature on the electronic document.

Cases, dockets and pleadings can be easily searched and viewed

from your computer. Pleadings can be quickly printed and saved, since they all have direct links that open up the document with a click of a mouse. More important, new pleadings can be filed by the lawyer directly from the lawyer's computer to the clerk's office, without any paper versions or copies ever being generated, and with instant verification of the filing via email notification. In Bankruptcy CM/ECF, filing fees are paid with the use of a credit card.

When I first started using the CM/ECF system last year, I was a bit skeptical about whether it actually would replace paper filings. Now, after using the system for several months, I am convinced that the real challenge is not using CM/ECF but converting my internal paper filing systems into a paperless office environment. In truth, electronic filing is easy, even for a computer-illiterate person like myself. But, once you start to function without paper, you quickly realize that your life is still full of paper. Paper is everywhere in your law practice, from the dead files taking up



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*See Rule 8.3(d), Utah Code of Professional Conduct.

warehouses of expensive space to your regular mail that gets delivered every day. Is it possible to do away with all these file folders, file cabinets, and warehouses of paper? Wouldn't it be wonderful to recycle all of that cellulose material into park benches and particleboard? Maybe we could even save a few forests in the process.

Is such a conversion really possible and practical for lawyers? Can we replace all of our comfortable paper with electronic files, optical scanners, CD writer/readers, faster, more reliable internet connections, speedier computers and larger, crisper flat panel monitors? Imagine the freedom if we could. A fully functioning law office could consist of a laptop computer, and high speed, wireless internet connection, and, perhaps, a cell phone. This vision is not farfetched. In fact, it is here today for some, and right around the corner for the rest of us.

Innovations are hard – at least at first. Then, once the improvement becomes commonplace, we wonder how we ever got along without it; much like the automatic garage door opener or the microwave oven. For lawyers, the challenges of a paperless office, among others, will be: (a) Where do I store these electronic files – on my computer, on a central server, off-site with access via

the internet? (b) Who should have access to these files? Will the material be safe from corruption and manipulation? (c) How can I be certain that everything I need will be located in the same electronic file or directory? (d) Do I need to convert all of my existing paper files to electronic files, or just start fresh and, eventually, eliminate paper filing by attrition? (e) Who will be responsible for "file maintenance?" (f) What about the mail? Do I need to scan it and convert it to an electronic format? (g) What if my computer crashes? Do I need to also keep a paper backup? Would a regular system of archiving and offsite storage in electronic format be sufficient? (h) What if software applications change? Will I still be able to read my old electronic files with the current software?

I don't claim to have answers to these questions. This is an evolutionary process. I can say, however, that change is coming and, whether we like it or not, all lawyers will need to adapt to these changes. In Utah, this transition should be easier for us because we have a strong tradition of electronic innovation. After all, Novell invented computer networking and WordPerfect invented word processing in our back yard. So, as Utah lawyers, it is only fitting that we all continue this tradition by evolving from paper pushers to key clickers.

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Ten Reasons You May Just Like CM/ECF

by Cass C. Butler

Introduction

Conversion to the Federal District Court's Case Management/Electronic Case Filing ("CM/ECF") system is a big step which will require significant adjustments and training. With CM/ECF looming on the horizon, many practitioners find themselves anxious about how they are going to adjust once CM/ECF becomes a reality or they are simply in denial, hoping that the Court will reconsider its decision. Instead of welcoming a new era of saving space and time by eliminating or reducing paper files, many are trying to see if the new system can still deliver reams of paper. Attorneys often think that we must hold and see real paper to do our jobs. Refusing to embrace the possibilities of being more efficient, mobile and effective, some attorneys have complained about what they perceive as a forced march. This article offers 10 reasons why CM/ECF might actually benefit your law practice after unfamiliarity, costs and challenges are overcome.

THE TEN REASONS

1. Pleadings In Portable Document Format (PDF) Will

Retain Traditional Appearance. After the conversion to CM/ECF, the District Court will only accept electronic pleadings in PDF format. PDF is a widely accepted digital format which is supported by Adobe Systems Incorporated. PDF offers at least two major advantages to practitioners: First, pleadings and other documents converted to PDF retain identical format and appearance regardless of the wordprocessor used to create such documents. Consequently, page breaks, font size, graphics, text positioning, etc. will remain consistent before and after conversion to PDF. Your PDF pleading will appear and print on opposing counsel's computer just as it appears on your computer regardless of whether you are using a HP Printer and opposing counsel uses an Epson Printer, or you use an Apple MAC and he/she uses an IBM. There are some minor exceptions to this rule involving certain font styles, which are discussed in the District Court's PDF Issue paper.

Second, PDF places all of the pages of a document into a single electronic file. This greatly assists in electronic document management inasmuch as it simplifies the process of accessing each page of a given document or pleading. Other electronic document formats (such as TIFF, BMP, JPEG, GIF, etc.) often require that each page be placed into separate electronic

document, which must be opened, one-at-a-time, to be viewed. PDF is not burdened with this weakness. Once you open the PDF file of a document or pleading, you will be able to easily move from page to page throughout the document. Jumping to a particular section or page number is as simple as thumbing through a paper brief.

2. Electronic Filing Will Enable Full Text Searching and Sophisticated Indexing. Documents filed in PDF allow for electronic text searching, a benefit you do not currently have with paper filings unless opposing counsel sends you pleadings on disk. You will also be able to cut and past selected sections from pleadings and other documents your office did not create, eliminating the need to retype such sections.

Documents in PDF format also allow you to navigate from the beginning to the end, and to jump to any page in between by a click of the mouse. PDF documents may also contain miniature previews of each page of the document, called thumbnails, which can also assist in finding quickly a desired page. Bookmarks can be added to serve as an interactive table of contents, which can assist in navigating to main topics or sections instantly. Practitioners who use Adobe's Acrobat can also add annotations to the document (electronic sticky notes), create full-text indexes on specific words or phrases, highlight text in yellow and even redact sensitive or privileged text.

3. Ready Access to Case Files. Court case files can be a valuable resource to practitioners for research and form or example pleadings and briefs. In the past, if you wanted a copy of the jury instructions used in another case, you or a staff member had to make a trip to the clerk's office to pull the file and then ask the clerk to copy the pages you wanted. Often the file was checked out or unavailable. Now, from your computer you will be able to access filings in your cases and

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all other cases in the CM/ECF system and download them to your computer for a cost of 7 cents per page, much less than the 50 cents per page charged by the clerk. This cost only applies to practitioners who are not counsel of record of that case. Counsel of record may access each document as it is filed on a one-time-basis and save them to their hard drive free of charge.

Conversion to CM/ECF will be on a forward basis. Thus, for all civil cases pending at the time of conversion, the Court will not convert the existing paper files to CM/ECF; only the newly filed materials will be electronic. Accordingly, all pending cases at the time of conversion will have a two-part file consisting of the conventional paper filed before conversion and the electronic filings after conversion.

4. Electronic Filing Can Occur 24/7 And From Anywhere.

Your ability to file pleadings and other documents at any time of day with the Court will be virtually unlimited. Thus, the legal fiction that the Court is always open will become a reality. No longer will practitioners need to deposit pleadings and other documents after hours in the mail box outside the Courthouse in accordance with the time/date stamp procedures of Local Rule 77-1(c). Filings can now occur from the convenience of your computer immediately after you have completed the brief or pleading, after stock markets are closed and the news media are not around to intercept the breaking news for their 10:00 p.m. broadcast. Moreover, an attorney in St. George can file just as easily as an attorney in Salt Lake City. Via the Internet, you will be able to access court case files from your home, library, hotel, Internet cafes, etc., with your password and login.

5. Enhanced Document/Case Management. Maintaining an entire case in electronic format will improve document and case management. Many practitioners already use Electronic Document Management (EDM) systems to index and manage the documents created in their office. EDM systems generally assign a unique number to each document created. The documents are also generally indexed by such elements as author, client, document name, date, type and other fields determined by the operator. The index can be searched later to quickly locate the document on the system. Other members of the firm may access the document by using search terms or by the unique number assigned to the document.

Some of the more popular EDM systems among attorneys include: Imanage, Worlddox 2002, ProLaw Software and Docs Open. Law firms using EDM systems will now want to import

pleadings received in PDF format into their EDM systems. Most of the EDM systems interface with Adobe Reader. Attorneys can then use their EDM system to store and review the PDF documents on their computer screens, rather than printing the PDF documents out and placing them into a hard paper file. Managing PDF case files on your EDM system is something that you should carefully consider before the conversion to CM/ECF. Your current EDM system may allow accessing to your complete case file from home or during travel via the Internet over a Virtual Private Network.

6. Viewing Documents On Your Computer In PDF Is Quick and Effective.

Viewing a PDF document on your computer screen will require that you have a 17" or larger computer screen or one of the new LCD screens unless you are willing scroll up and down on each page with a smaller screen. Adobe Reader allows an operator to maximize the screen size by typing Control L to toggle to a full screen containing only the document image.

7. CM/ECF Will Make Case Files Portable. Because court files will be electronic, you will be able to place complete cases on a CD or laptop so that you can view such files from your laptop computer while on a plane or in some other setting. The average CD will hold over 16,000 pages of PDF files, easily enough space to hold most case files.

8. Scanning Documents And Exhibits Is Less Expensive Than Photocopying. Scanning or imaging documents does not consume paper and ink as does photocopying. Consequently, scanning is less expensive than making a photocopy of a document. In addition, subsequent copies of the scanned document (often called blow backs), can be provided via the Internet or by disk at a much reduced cost to traditional photocopying.

If you do not already have a scanner, you should consider purchasing one or making arrangements to have your scanning needs out-sourced.

9. Practitioners Will Determine The Docket Description Of Their Filings. Once logged on to the Court's CM/ECF system through a password protected account, the civil practitioner is presented with a drop-down menu of 9 categories with over 110 civil events, including a catch-all "Miscellaneous Relief", to select from describing your filing. (7 categories and over 90 events for criminal filings). After selecting the event, you may add a description to the filing of up to 255 characters. For example, if your filing includes several exhibits or attachments,

you can give each attachment a detailed description such as "John Doe's Affidavit dated July 4, 2004" or "Graph Illustrating Plaintiff's Damages."

With this shift of responsibility for the docket descriptions, the consequences of mistakes can multiply when dealing with electronic filings. For example, if a pleading is not filed under the correct case number, the Judge assigned to that case and counsel of record may not know of the filing because they may not receive the email. To minimize these and other mistakes, CM/ECF will prompt a practitioner when attempting to file a pleading under a case number for which the attorney is not counsel of record. Also, the Court is considering local rules setting forth procedures for the correcting of technical mistakes.

10. Elimination of Mail and Delivery Costs. There will be no charge to file pleadings and other documents via CM/ECF. Mail and delivery costs to the Court and counsel of record will virtually be eliminated. These cost savings multiply when the number of people receiving a copy of the filing increases. CM/ECF users will know that a filed document is literally on the judge's desktop and in the office of opposing counsel minutes after filing.

Conclusion

The paperless office is now here. While we will experience significant adjustments during the conversion to CM/ECF, there are many who have paved the way before us in making this transition. The vast majority of the 60,000 attorneys and staff who have already made the plunge have found CM/ECF to be a significant improvement to their law practices and would not go back to the old paper system if given an opportunity to do so. You can find additional, up to-date information about the conversion to CM/ECF, training, frequently asked questions and much more at the Court's web site <http://www.utd.uscourts.gov/documents/ecfpage.html>, as well as at the Administrative Office of the U.S. Courts' web page cited above, and even blogs¹ such as <http://e-courtrecords.blogspot.com/>.

1. A blog is a web page usually made up of short, frequently updated posts that are arranged chronologically.

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Roska and the Warrant Requirement in Utah Child Protection Law

by John E. Laberty

In April of 2003, the Tenth Circuit Court of Appeals decision *Roska ex rel. Roska v. Peterson, et al.* bestowed upon Utah parents unprecedented legal protection against the removal of their children by state social workers.¹ Prior to the decision, Utah's child welfare laws authorized DCFS to remove a child from his or her home without a warrant, and without providing the parent with any pre-removal due process, whenever there was "a substantial danger to the physical health or safety of the minor" justifying removal. When an employee of the Utah Division of Child and Family Services ("DCFS") felt this standard was met, the removal process was a relatively simple one. The worker staffed the case with other DCFS personnel, ran the facts by the Division's legal counsel at the Attorney General's office, and, if the general consensus supported removal, the worker removed the child from the home. The State was not required to obtain prior judicial approval, nor were parents provided an opportunity to contest the removal beforehand. Instead, Utah law only afforded judicial review of the agency's decision – a "shelter hearing" in juvenile court – within seventy-two hours *after* the child had been taken into the State's custody. *Roska* put an end to this process in the vast majority of child welfare cases, on two separate constitutional grounds.

The *Roska* Decision

In *Roska*, parents and siblings of a Utah child removed by DCFS brought a §1983 civil rights lawsuit alleging, among other claims, that DCFS and the Attorney General's Office had violated their rights by removing the child without a warrant. In reviewing the trial court's dismissal of the suit on immunity grounds, the *Roska* court applied the Fourth Amendment's warrant requirement to child welfare cases and held that, absent exigent circumstances, state child protection workers could not legally remove a child from his or her home without a warrant. The court stated:

We find no special need that renders the warrant requirement impracticable when social workers enter a home to remove a child, absent exigent circumstances.... Simply put, *unless the child is in imminent danger*, there is no

reason that it is impracticable to obtain a warrant before social workers remove a child from the home.

328 F.3d at 1242. The Court reiterated the well-established principle that the exigent circumstances exception to the warrant requirement "is narrow, and must be 'jealously and carefully drawn.'" *Id.* at 1240 (*quoting U.S. v. Anderson*, 154 F.3d 1225, 1233 (10th Cir. 1998)). Indeed, the *Roska* court held that even a social worker's decision to seek legal advice prior to removing a child negated the existence of exigent circumstances, and made proper removal contingent on a warrant. *Id.* at 1242.

Second, the Court ruled that in order to protect a parent's Fourteenth Amendment due process right to maintain his or her family free from state government interference, the State could not remove a child from his home without first providing the parents with notice and a hearing. While an exception was made for "extraordinary situations," the Court narrowly defined such situations as "emergency circumstances," such as where there is "*an immediate threat to the safety of a child.*" *Id.* at 1245.

Utah Law After *Roska*: 3 Paths to Removal

The Utah Legislature amended the state's child removal laws to conform to *Roska* and, as of May 2003, Utah law prohibits the State from removing a child without a warrant unless "exigent circumstances" exist. *Utah Code* § 62A-4a-202.1.² Further, the court may not issue a removal warrant without first providing the child's parent with notice and an opportunity to be heard, unless providing such notice and opportunity would place the child in immediate risk of harm. *Utah Code* §78-3a-106(2).

Interestingly, while the *Roska* court limited its Fourth Amendment

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holding to the facts before it – namely, where a child is removed from his or her *physical home* – Utah’s legislature declined to do so. Instead, Utah law now appears to require a warrant whenever a child is taken into custody absent exigent circumstances regardless of where the removal physically occurs.

Path 1: Exigent Circumstances, No Warrant

The practical effect of these laws is to create three distinct categories of removals. First, there are those cases in which “exigent circumstances” exist, such that the delay required to obtain a warrant is likely to result in serious harm to the child. In such cases, the State may remove a child from his home without a warrant. Since no warrant application is ever brought before the court, §78-3a-106(2) does not entitle the child’s parent’s to notice or an opportunity to be heard prior to removal. In short, the State is permitted to use its pre-*Roska* removal procedures, and a parent’s first opportunity to be heard is at the shelter hearing. However, contrary to pre-*Roska* child welfare practice, the State’s decision to remove a child without a warrant must now be supported by facts sufficient to establish “imminent danger” – a much higher threshold than the “substantial danger” test previously applied, and one that can only be met in a small percentage of child welfare cases.

Path 2: The “Hearingless Warrant”

The second category of removal sanctioned by Utah’s post-*Roska* child welfare laws consists of those cases in which the delay required to obtain a warrant is not likely to result in serious harm to the child, but providing the child’s parents with notice and a hearing prior to removal could place the child in immediate risk of harm. In such circumstances, the “exigent circumstances” exception to the Fourth Amendment does not apply, and the State must have a warrant to remove. However, the Fourteenth Amendment’s pre-removal due process protections are excused. This “50-50” approach is appropriate in two limited types of cases: those in which parents are likely to flee the state with their child if advance notice is given of the State’s intent to remove, and those in which, after notice is given to the parent but before a hearing can be held, the parent is likely to punish the child for bringing the alleged abuse or neglect to the attention of the State. Further, given *Roska*’s admonition that a parent’s Fourteenth Amendment rights can only be dispensed with in extraordinary situations (“the mere possibility of danger is not enough to justify removal without appropriate process”), the juvenile courts should excuse the need for pre-removal notice and hearing only in cases where



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the State can demonstrate a *likelihood* of serious harm. A DCFS caseworker's general concerns for the safety of the child, without more, are clearly insufficient to satisfy *Roska*.

Path 3: Warrant and a Hearing Required

Finally, the third type of removal – and the category into which the majority of Utah's warrant applications fall – consists of those situations where the State can not establish that the child is at imminent risk of significant harm or death (i.e., there exist no exigent circumstances), and where providing a parent with notice and a hearing prior to removal would not create a likelihood of serious harm to the child. In such cases, a parent's Fourth and Fourteenth Amendment protections remain undiminished, and a child can only be removed (a) pursuant to a warrant, (b) issued by the court after the parent has been provided with notice and an opportunity to be heard.

Adapting to a Post-Roska World

Given the relative newness of Utah's post-*Roska* child removal statutes, it is still too early to determine the full extent to which the new laws will impact child protection practice. However, if Utah's courts are to comply with the law, the child welfare system must resolve several key issues. Most importantly, the juvenile courts, with the assistance of the Attorney General's Office, Office of Guardian ad Litem, DCFS, and parents' counsel, must move quickly to create and implement a uniform system for assessing warrant applications, providing notice to parents and scheduling and holding pre-removal warrant hearings. Obviously, these hearings should be scheduled as soon as possible after DCFS

makes the initial determination that a child is in danger. Given the compressed time constraints already attached to child welfare cases, and the high caseloads associated with this area of practice, this will constitute a significant challenge to everyone involved – particularly given the large percentage of cases in which hearings will be necessary.

The juvenile courts must also determine how the new laws can best be reconciled with Utah's existing shelter hearing requirement. At shelter hearings, the court must order the child released from the State's custody unless it finds removal was necessary by a *preponderance of the evidence*. See *Utah Code* §78-3a-306(9). If the courts apply a lower standard of proof than this (i.e., probable cause) at pre-removal warrant hearings, they will necessarily have to re-address the issue of original removal under the higher standard at the shelter hearing. Also, while it is uncertain whether a court at a shelter hearing is legally entitled to take judicial notice of evidence presented at the warrant hearing, it is clear that parents are entitled to present evidence and argument to the court at a shelter hearing. See §78-3a-306(5). As a result, current law appears to compel the juvenile court to determine the issue of removal twice within a period of three days – first at the pre-removal warrant hearing, and again at the post-removal shelter hearing.

Other issues must also be addressed and resolved. For instance, given *Utah Code* §78-3a-913's requirement that indigent parents be provided with court-appointed legal counsel "at every stage" of juvenile court custody proceedings, it is likely that court-appointed counsel must be provided at warrant hearings. And in cases where DCFS removes a child without a warrant, or the court issues a warrant without notice and hearing, will parents be allowed to challenge the removal process (in addition to the appropriateness of removal) at a shelter hearing? If so, what remedies will the court apply?

Utah's new removal laws raise a number of challenges, and will demand significant changes in juvenile court practice. It is now up to Utah's juvenile court judges, and the attorneys who practice before them, to ensure that these changes are made.

1. 328 F.3d 1230 (10th Cir. 2003) (*superseding Roska v. Peterson, et al.*, 304 F.3d 982 (10th Cir. 2002)).
2. The Legislature acted to amend Utah law after the original *Roska* decision was issued in September of 2002. While that decision, published at 304 F.3d 982 (10th Cir. 2002), was superseded by the current opinion after a rehearing, the court's Fourth and Fourteenth Amendment analyses in the two opinions are substantively identical.

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Practice Pointer: The Snitch Rule

by Kate A. Toomey

Nobody likes rats, and I'm not referring to the Order Rodentia.

This premise is readily supported by the fact that some of the most agonized calls to the Ethics Hotline are from attorneys seeking guidance on what triggers the reporting requirement. Likewise, the reporting requirement usually elicits the most grumbling during the Office of Professional Conduct's ethics CLE presentations, with some attorneys going so far as to announce that they would never, under any circumstances, report another lawyer's misconduct.¹ One more reason not to like it: the rule offers an ostensible cloak of "duty" for people who in my opinion are borderline tattletales,² reporting easily remedied transgressions and insults from opposing counsel, or attempting to use a Bar complaint as leverage for settlement.

So the reasons for hating the rule run the gamut from a gut-level distaste for turning on our friends, to concerns about the serious burden of having to deal with vexatious Bar complaints. It's more palatable, though, when you consider the rule in the context of the section in which it resides in the Rules of Professional Conduct: Maintaining the Integrity of the Profession. The comment following the rule reminds us that self-regulation requires members to initiate disciplinary investigations, even over "apparently isolated violation[s]." See Comment, Rule 8.3, R. Pro. Con. As the Supreme Court of Illinois has observed, discipline for breach of the duty "is animated by a desire to: maintain the integrity of the legal profession, further the ends of justice, and protect the public from unscrupulous attorneys." *Skolnick v. Altheimer & Gray*, 730 N.E.2d 4, 17 (Ill. 2000).

Although its application is controversial,³ the relevant portion of the rule is terse. "A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." Rule 8.3(a), R. Pro. Con. There's an important exception for information protected by the confidentiality provision,⁴ as well as for "information provided to or discovered by members of the Utah State Bar during the course of their work on the Lawyers Helping Lawyers Committee..." *Id.* at (c), (d). Otherwise, every lawyer potentially has an obligation to report certain types of misconduct among her colleagues.

Does it mean you have to report every perceived transgression? No. Only "those that a self-regulating profession must vigorously endeavor to prevent." See Comment, Rule 8.3, R. Pro. Con. Reporting "is especially important where the victim is unlikely to discover the offense." *Id.* There isn't a bright-line rule, such as a reporting requirement for all criminal convictions. In my view, any misappropriation, any fraud on a court, clients, or third parties, and any perjury, falls within the ambit of the rule.⁵ Other cases must be determined individually.⁶

But what about negligence? Assuming you have all the appropriate underlying facts, should you report another lawyer's failure to file an action for a client before the statute of limitations ran? In my opinion, the rule doesn't ordinarily require you to report a single instance of negligence, even if it's a whopper. In other words, if you're aware of a chronic problem that manifests itself in multiple violations (such as the attorney blowing the statute, then concealing this fact from the client), or a pattern of misconduct (for example, you see the attorney blowing statutes of limitation right and left), then you ought to report it, both in good conscience, and also within the prescription of the rule.

If the other lawyer's misconduct isn't something you actually *know*, you're off the hook in Utah. A mere suspicion, or even probable cause, isn't enough to trigger the requirement.⁷ The Preamble states that "'knows' denotes actual knowledge of the fact in question." See Preamble, R. Pro. Con.; see also Utah Ethics Adv. Op. Comm., Op. No. 98-12. This is a little tricky, though, because knowledge can be "inferred from the circumstances." *Id.*

The rule doesn't specify where the report should be made, but the comment identifies "the bar disciplinary agency, unless some other agency, such as a peer review agency, is more appropriate in the circumstances." Comment, Rule 8.3, R. Pro. Con. Lawyers Helping Lawyers, not being a disciplinary agency, and having no judicially-mandated responsibility for protecting the public, doesn't count; contacting that organization too might be a good idea, though, if the person you're reporting has substance abuse

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

or emotional problems.

Does the rule require you to report yourself? No.⁸ But your reporting obligation doesn't dissipate merely because reporting another person also implicates you through the imputed responsibility rule.⁹

What are some real-life examples of Utah attorneys reporting the misconduct of other attorneys? In my recollection, reporting most often has involved attorneys submitting information concerning various types of chicanery in the course of litigation. These are informal complaints made by the opposing counsel, often while litigation is pending, and although many of the alleged transgressions might constitute rule violations, often they do not arise to the level at which Rule 8.3 would have been invoked. That is to say, although they may be a legitimate basis for a Bar complaint, and some sort of discipline ultimately may ensue, these are reports that the reporter need not have made because the information did not raise "a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects..."

Second most frequently, the OPC receives reports of an attorney's theft of money, either from clients or from the attorney's firm. This type of information certainly falls within the "must report" category.

In third place are reports from judges involving extreme instances of litigation-related conduct that is prejudicial to the administration of justice. In my experience, judges hate having to do this, but most don't hesitate – especially when there are multiple instances, or when it involves the attorney's lack of candor to the court.

A distant fourth involves reports from colleagues about a lawyer's impairment to the point of incompetence in representing clients, often progressing into dishonesty in communicating with clients and others. These are some of the saddest cases, and in our experience, those who report this do so only as a last resort.

Is another person's report sufficient to absolve you of reporting? One court has said no. *See Himmel*, 533 N.E.2d 790, 792 (Ill. 1988). Also, even if your client directs you not to report it, the same decision says you must nevertheless. *See id.* The court noted, "A lawyer may not choose to circumvent the rules by simply asserting that his client asked him to do so." *Id.*

Here's my suggestion: reflect a little before you report anything short of serious misconduct. Examine whether the things you would allege, even if they might constitute technical rule violations, are more appropriately raised and addressed in another forum, such as a court. If the answer to this is yes, bring it to the



court first – after all, it's in a better position to determine what's happening within the context of the litigation. Then, assuming the court enters an order sanctioning the attorney for the misconduct, or specifically finding a violation of the Rules of Professional Conduct, by all means submit it to the OPC when the litigation is over. If the court declines, there may be little evidence to support a disciplinary investigation, in which case you might well decide not to pursue it. Taking this course also has the virtue of avoiding any appearance of using a Bar complaint as a means of harassing your opponent.

What happens if you don't report something that should have been reported, and that's the only violation you're charged with? The *Himmel*¹⁰ decision might be the first reported case on this subject, and it's been a source of hot debate ever since. Himmel was suspended solely for failing to report another lawyer's misappropriation of client funds. The client hired Himmel to recoup her money, and pursuant to her directive, participated in putting together a settlement agreement that called for repayment of the misappropriated funds in exchange for which no disciplinary action would be taken. All this came to light when the thieving attorney failed to repay the money, and the client sued on the contract. I'd guess that Himmel was shocked to discover that protecting the integrity of the profession and the interests of the

public trumped the directive of his client. The moral of this tale is that you have to report another lawyer's serious misconduct even if your client doesn't want you to, and at least in Illinois, you can be sanctioned for failing to do so even if you haven't transgressed the rules in any other fashion.¹¹

If you're having trouble deciding whether something falls within your duty to report, you can discuss it with an OPC attorney by calling the Ethics Hotline (801-531-9110). It's often a relief for callers to discover that the OPC doesn't think reporting is required in a particular situation. We're not trying to discourage anyone from filing a well-founded informal complaint, mind you, but there's a difference between what you *must* report and what you *may* report, and many attorneys would prefer not to unless they have to. With that said, taking the responsibility seriously is essential to maintaining this as a self-regulating profession – the system only works if everyone participates in making it work.

1. One court characterized a disbarred attorney's refusal to identify his accomplices in committing a crime as the "belief in a code of silence." *In re Anglin*, 524 N.E.2d 550, 554 (Ill. 1988). This continued belief prevented the former attorney from gaining readmission because the court believed it signified that "he would fail to report the misconduct of other attorneys if he, too, were involved in it," and this is inconsistent with the Illinois Code of Professional Responsibility. *See id.* at 555.
2. "Tattletales" isn't employed here as a term of art.
3. One authority notes that the duty has been historically disregarded. *See* Laws. Man. on Prof. Conduct (ABA/BNA) 101:202.
4. *See* Rule 1.6 (Confidentiality of Information), R. Pro. Con. Essentially, the obligation to protect confidentiality overrides the reporting duty. Remember, though, that there are some notable exceptions within Rule 1.6.
5. *See e.g. In re Rivers*, 331 S.E.2d 332 (S.C. 1984) (attorney reprimanded among other things for failing to report senior partner's role in improperly communicating through an investigator with jurors and their relatives); *Attorney U v. The Mississippi Bar*, 678 So.2d 963, 972 (Miss. 1996) ("a lawyer is not obligated to report every transgression of our disciplinary rules, only the most serious of them.").
6. *See Attorney U*, 678 So.2d at 972.
7. Jurisdictions vary on this point. *See e.g. Attorney U*, 678 So.2d at 970 (comparing several jurisdictions).
8. But be aware that if you make "full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct," this may be entitled to some weight as mitigation if you subsequently are found to have violated the Rules of Professional Conduct. Rule 6.3(e), Standards for Imposing Lawyer Sanctions.
9. *See* Rule 5.1 (Responsibilities of a Partner or Supervisory Lawyer), R. Pro. Con.
10. Failure to report may result in discipline. *See e.g. In re Galmore*, 530 S.E.2d 378 (S.C. 2000) (attorney reprimanded, among other things, for failing to report suspended attorney's offer to practice law during his suspension); *In re Anderson*, 769 A.2d 1282 (Vt. 2000) (attorney reprimanded for taking too long to report partner; mishandling of client trust accounts).
11. *See also In re Dowd and Pennisi*, 559 N.Y.S.2d 365 (A.D.2d 1990) (two attorneys received five-year suspensions for failing to report other attorney's demand for illegal kick-backs); motion for leave to appeal denied, 564 N.E.2d 672 (N.Y. Ct. of App. 1990).

LITIGATION ALTERNATIVES

- ◆ Family Law Mediation
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Enlightened Self-Interest

by Russell C. Fericks

On January 27, 2004 I was summoned, along with a number of other managing attorneys from Utah law firms, to attend a luncheon at the Panini restaurant in Salt Lake City. The summons was issued jointly by Chief Justice Christine Durham of the Utah Supreme Court and President Deborah Moore of the Utah State Bar.

The purpose of the luncheon was to discuss the increasing unwillingness of Utah's private practitioners to get involved in Bar Committees and Sections and to volunteer for Bar and law-related activities and services. Chief Justice Durham's and President Moore's pitch was diplomatic but direct: if the experienced members of the Bar don't take an active interest in its operations, its quality, and its stature in the community, we will lose a valuable professional platform; and the vacuum will be filled by other entities and organizations, such as the Utah State Legislature.

I have to confess that some of the comments around the table at the luncheon sounded like nostalgic reminiscing for the good old days when well-known patriarchs of the Bar controlled its governance and operations. Some of the comments also sounded a bit utopian, causing me to sound off about how hard it is to argue with altruism, but how equally hard it is to sell it to the overworked attorneys back in our firms.

I left the luncheon feeling a bit self-conscious about my impertinence. On the walk back through the much-too-empty streets of downtown Salt Lake City, it occurred to me that calls to duty/honor/country, to which the World War II generation responded automatically, were going to fall on deaf ears back in my firm. However, I was not discouraged. There are some big hearts and big minds among Utah's Bar. My firm is well-stocked with caring, capable professionals. If properly informed, they will respond with enlightened self-interest. So, upon arriving back at my office I sat down and prepared the following memo as a first step toward motivating our attorneys to become more involved.

MEMO

TO: All Attorneys
FROM: RCF
DATE: January 27, 2004

Ladies & Gentlemen:

I just got back from a meeting held by Chief Justice Christine Durham and Bar President, Deborah Moore. Ms. Durham and Ms. Moore summoned representatives from Utah's "major law firms" for a pow-wow on the status of the Utah State Bar and a

plea for more Bar involvement by attorneys in these firms. So, **HERE ARE 10 GOOD REASONS** to run for Utah State Bar Office, to serve on a Bar Section or Committee, to volunteer for one of the Bar's community service projects, to sit on the board of a pro bono legal services provider, to be a Small Claims Court Judge Pro-Tem, to give Tuesday Night Bar advice, to advise a legislative committee in your area of expertise, etc.

1. Real attorneys do it – to be one, ya' gotta talk and walk like one.
2. It'll make your life richer – find yourself in service to others.
3. It's bread on the waters – the best referrals come from other professionals.
4. It's items (1) and (2) of **Professional Undertakings and Contributions** at page 9 in the Compensation Manual.
5. The way to develop collegiality is to be collegial.
6. To get known, you gotta be involved.
7. It's your integrated Bar – use it or lose it (to the Legislature).
8. All work and no play makes
9. Rediscover that most attorneys are pretty intelligent and dignified, and some even have a sense of humor.
10. Virtue is its own reward.

Only time will tell if appeals like this draw more talent out of the ranks of those who live by the billable hour. I draw a glimmer of hope from our Management Committee's subsequent circulation to our attorneys of a list of all Bar Committees, Bar Sections, Bar offices, and Bar volunteer functions. I will be checking with some of my counterparts in other firms to see what approaches they are taking to entice talent and enthusiasm out of their offices and into the public trenches.

Fundamentally, I agree with Justice Durham and President Moore: if lawyers become a class of privileged but disconnected professionals, their future will be in the hands of others. And most of those "others" do not sufficiently appreciate or even understand the enormous contribution which lawyers make to the proper and effective functioning of our society. It's time to open some more eyes with hands on effort.

RUSSELL C. FERICKS is currently the managing attorney at Richards Brandt Miller & Nelson. He is Vice-Chair of the Bar Examination Subcommittee of the Admissions Committee for the Utah State Bar.

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2004 Legislative Update

by John T. Nielsen

The Legislative Affairs Committee of the Bar was again active and engaged in reviewing legislation pertinent to the interests of lawyers and the Bar. We had an enthusiastic, regular attending and active committee and we reviewed 70-plus bills that we felt required our scrutiny.

At the legislature this year, 419 total bills were passed which is up a bit from the 2003 session. This session was typical of those which occur during an election year and several high profile issues predominated discussion, such as the so-called Parker Jensen legislation, medical arbitration and others.

The Legislative Affairs Committee reviewed all legislation that we deemed relevant and recommended several positions to the Bar Commission. The bills upon which the Commission took a position are listed below, along with the final disposition of each.

As in past years, the Legislative Affairs Committee co-chairs, Scott Sabey and Lori Nelson, provided excellent leadership and organization to our efforts. They were both actively engaged in dialogue with legislators respecting matters relevant to their specialty areas as well as assisting with other Bar issues. Other members of the Bar were also active in amending and formulating legislation and it would be particularly noteworthy to recognize our Bar president, Debra Moore; Bar commissioner, George Daines, and others who played a prominent role with respect to important legislation relative to the Bar.

I. LEGISLATION SUPPORTED BY THE BAR COMMISSION

House Bill 62: Lien Recovery Fund Amendments – R. Curt Webb. This bill modified the Residence Lien Restriction and Lien Recovery Fund Act and made a number of changes which the Bar believed were productive including the creation of a Certificate of Compliance to certify when an owner has complied with the provision of the act and is seeking protection under the act. It also broadened the definition of a contract used in establishing compliance with provisions of the act. It will also delay judicial determination of the rights and responsibilities of an owner until the owner had time to establish compliance with the act. (Passed both houses)¹

House Bill 72: Release of Claims on Behalf of a Minor – John Dougall. Allows a person who receives funds on behalf of a minor to release the claim on the minor's behalf upon payment. (Passed both houses)

House Bill 200 First Substitute: Recognition of Foreign Adoptions – Wayne Harper. Gives full faith and credit to an adoption order issued by a foreign country for an alien child. (Passed both houses)

House Bill 219: Construction Bond Amendments – Michael T. Morely. Modifies provisions related to private contractor bonds and provides that the requirement that the owner obtain a bond from the contractor applies only to commercial contracts and increases the contract price amount to \$50,000 before the requirement becomes applicable. (Passed both houses).

House Bill 234: Sunset Extension of Unauthorized Practice of Law – Stephen Urquhart. Repeals the section defining the "practice of law" that was passed in the 2003 general session and extends the repeal date for the provisions relating to the definition of the "unauthorized practice of law" as contained in Section 78-9-101 for three years, from 2004 to 2007. (Passed both houses)

Senate Bill 116: County Recorder Amendments – Thomas Hatch. Amends provisions that establish certain county recorders fees and modifies provisions that define prohibited acts by a county recorder. (Bill failed)

Senate Bill 118: Judiciary Amendments – Lyle W. Hilliard. Expands the time period to file an appeal in small claims court from 10 to 30 days, allows parties to stipulate to a change of venue and requires a decision of the judge. Also clarifies the notice responsibilities in child welfare mediation. (Passed both houses)

Senate Bill 141: New Judge – Second District – Greg Bell. This bill adds a new judge to the second judicial district. (Passed both houses)

JOHN T. NIELSEN is a governmental lobbyist for the Utah State Bar.

Senate Bill 161: Judicial Conduct Commission – Michael Waddoups. Amends the Judicial Conduct Commission procedure to make conforming amendments to a recent Utah Supreme Court opinion by prohibiting the Commission from initiating a complaint against a judge. This bill also repeals the statutory authority of the Judicial Conduct Commission to issue private and formal orders of reprimand. (Passed both houses)

SCR 4: Resolution Recognizing 50th Anniversary of Brown vs. Board of Education – James Evans. This is a concurrent resolution of the legislature and the governor recognizing the 50th anniversary of the United States Supreme Court's decision in Brown vs. the Board of Education. (Passed both houses)

II. LEGISLATION OPPOSED BY THE BAR COMMISSION

House Bill 90S1: Access to Child Welfare Hearings – Michael Morley. This bill was opposed by the Bar Commission because there were pilot programs currently in place to review the propriety of granting greater access to abuse, neglect and dependency cases. The bill was substituted to provide a change in the date on which any person may be admitted to a child abuse, neglect and dependency hearing in juvenile court. The date was changed from July 1, 2005 to July 1, 2004, essentially abolishing the pilot programs. (Passed both houses)

House Bill 124: Small Claims Court Jurisdiction – Stephen Urquhart. This bill was an outgrowth of the Task Force on Access to Justice which met to review ways in which the public could be assured greater access to justice. The bill was originally opposed by the Bar Commission but subsequent amendments

which required conformity to Supreme Court rule made the bill acceptable. (Passed both houses)

HB 198 Second Substitute: Child Welfare Reports – Mike Thompson. This bill was substituted twice and differed from the original version reviewed by the Bar Commission. The bill in its substituted form amends the judicial code to create a disclosure requirement for information used in child welfare proceedings. The substitute was apparently a consensus bill, one acceptable to all parties to the controversy. (Passed both houses)

Senate Bill 41: Hate Crime Amendments – James Evans. Bar opposed this bill on language. It was the Senate alternative to the Hate Crime bill version filed by Representative Litvack in the House, House Bill 68. (Neither bill passed)

Senate Bill 102: Journal of Notary Public Acts – Peter Knudson. Would have required keeping of a journal with respect to the actions of Notary Publics. The bill was strongly opposed in committee and was ultimately sent back to Senate Rules. (Bill failed)

Senate Bill 219: Amendments to Justice Court Operations – Ed P. Mayne. Originally opposed by the Bar Commission because it would have allowed justice courts to operate only four days a week; it was subsequently amended to make the operation of such courts comply with the requirements of the Code of Judicial Administration. That amendment made it acceptable to the Administrative Office of the Courts. (Passed both houses)



Mark S. Altice

Relations Manager for Utah State Bar Members
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III. OTHER BILLS OF INTEREST TO LAWYERS – BY SUBJECT**CRIMINAL LAW**

HB 73:	Pattern of Unlawful Activity Act Amendments
HB 81:	Criminal Law Intent Amendments
HB 121:	Code of Criminal Procedure Amendments
HB 122:	Private Investigator Amendments
HB 161:	Law Enforcement Amendments
HB 165 S1:	Child Protection Registry
HB 179:	Vulnerable Adult Abuse Amendments
HB 180:	Death Penalty Provisions
HB 184:	Voyeurism Amendments
HB 222:	Robbery Amendments
HB 262 S1:	Penalties for Providing False or Misleading Information in Court
HB 335:	Penalty for Using Fake Identification
HB 364:	Profits From Sale of Crime Memorabilia
HR 7S1:	Driving Under the Influence Resolution
SB 16:	Identity Theft Amendments
SB 38:	Arson Offense Amendments
SB 49:	Competency to be Executed – Amendments
SB 62:	Stay of Execution Amendments
SB 63:	Witness Tampering Amendments
SB 73:	Escape Amendments
SB 80:	Capital Punishment Amendments – Excluded Days
SB 81:	Child and Family Services – Plea in Abeyance
SB 84:	Party to Felony Offense Enhancement
SB 119:	Prosecution Jurisdiction Amendment
SB 143:	Criminal Offense Attempt Amendments
SB 158:	Criminal Offense Amendments
SB 160:	Controlled Substance Act Amendments
SB 167:	Victim Restitution Amendments
SB 173 S1:	Bail Bond Reinstatement Amendments
SB 175 S2:	Protection of Private Lawfully-Obtained Property
SB 232:	Standard of Care for Emergency Vehicle Drivers

COURTS AND JUDICIARY

SB 262 S1:	Penalties for Providing False or Misleading Information in Court
SB 123:	Court Reporter Amendments
SB 150:	Judicial Confirmation Process Amendments
SB 196 S2:	Court Fee Adjustments
SJR 6:	Resolution on Impeachment Authority

CORPORATIONS

SB 144:	Corporation Sole Amendments
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DOMESTIC AND FAMILY LAW

HB 82 S1:	Virtual Visitation Amendments
HB 97:	Protective Order Amendments
HB 140 S3:	Child and Family Services and Related Judicial Code Amendments
HB 179:	Vulnerable Adult Abuse Amendments
HB 183:	Conditions for Release After Notice Regarding Arrest for Domestic Violence
HB 259 S1:	Special Needs Adoption – Pre-placement Evaluations
HB 268 S4:	Child Welfare Processes
HB 275 S1:	Adoption Amendments
HB 276 S2:	Adoption Law Revisions
SB 12:	Transportation of Children for Parent Time
SB 104:	Selection of Mental Health Therapist in Termination of Parental Rights
SB 136:	Uniform Interstate Family Support Act
SB 179 S1:	Expedited Appeals in Child Welfare Cases

NATURAL RESOURCES

HB 232 S1:	Water Well Amendments
SB 187:	Water Conservancy Districts Trustees

LOCAL GOVERNMENT

HB 131:	Eminent Domain Amendments
HB 205:	State Settlement Agreements Amendments
SB 10:	Amendments to Local Referendum Process
SB 55 S1:	Governmental Immunity Act of Utah

SB 157:	Authorization to Perform Marriages
SB 159:	Annexation of Public Land to Special and Local Districts
SB 183:	Local Governments – Authority for Design – Build Construction
SB 184:	Inter-local Cooperation Act Amendments
SB 215 S2:	County Powers Amendments

REAL ESTATE

HB 32:	Lien Amendments
HB 62:	Lien Recovery Fund Amendments
HB 96:	Statute of Repose
HB 136 S6:	Electronic Filing of Preliminary Lien Documents
HB 182 S1:	Construction Lien Amendments
HB 336:	Claims on Real Property
SB 9:	Property Rights Amendment
SB 111 S1:	Mechanics Lien Amendments
SB 147:	Condominium Amendments

TRUSTS AND ESTATES

HB 35:	Requirements of Trustees of Trust Deeds
SB 47 S2:	Uniform Trust Code
SB 122:	Payment of Claims on Deceased Settlor's Estate
SB 131 S1:	Uniform Principle and Income Act

TORTS

SB 214 S1:	Prohibition of Obesity Lawsuits
SB 245 S1:	Medical Dispute Resolution Amendments
SB 201:	Punitive Damages Amendments

MISCELLANEOUS

HB 72:	Release of Claims on Behalf of a Minor
HJR 16:	Resolution Amending Rules of Civil Procedure – Judgment
SB 239 S3:	Unfair Business Practices ²

1. Unless otherwise noted, if Bill passed both houses it was signed by the governor and went into effect on May 3, 2004.

2. Additional information on legislation can be found at the Utah Legislature's website, www.leg.state.ut.us.

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President-Elect and Bar Commission Election Results



*David R. Bird
President-Elect &
Third Division
Commissioner*

David R. Bird was elected President-Elect of the Utah State Bar. David received 1,171 votes to Gus Chin's 1,151. David R. Bird, Gus Chin and Scott R. Sabey were elected to the Commission in the Third Division. Gus received 1,014 votes, Scott received 848 votes, David 717 votes, Christian Clinger 637, Clayton A. Simms 569, and Irshad A. Aadil 525.

Felshaw King ran unopposed in the Second Division.



*Gus Chin
Third Division
Commissioner*



*Scott R. Sabey
Third Division
Commissioner*



*Felshaw King
Second Division
Commissioner*

Commission Highlights

During its regularly scheduled meeting of April 23, 2004, which was held at the Homestead in Midway, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Debra Moore reviewed the retreat agenda and invited all the Commission to brunch on May 7th with Robert Grey, President-elect of the ABA. It was noted that Deborah Threedy is the acting dean of the S. J. Quinney College of Law and Kevin Worthen will be replacing Reese Hansen at BYU and both have been invited.
2. Debra reported on Access to Justice Planning Council. This is a new organization and the goals include identifying needs in this area and pursuing enhanced efforts through additional collaboration to try to meet those needs. The Bar's pro bono program fulfills the Bar's "obligation" and no additional Bar resources are available at this time. Justice Ronald Nehring has been appointed to the Planning Council and the charge to Council members is to seek out appropriate support and resources from such entities as the legislative and executive branches of government. In commenting on the recent, first-time ABA-sponsored meeting in Atlanta discussing these issues, Debra observed that a Commissioner should be in attendance at these yearly planning meetings.
3. John Adams reported on *Brown v. Board of Education* project. He noted that part of the program had been approved for two CLE credit hours. Over 100 high schools have elected to participate in a short video presentation and subsequent dialogues to be led by volunteer lawyers and others. Materials to be used during these presentations have been prepared by the Litigation Section. The Young Lawyers Division, spearheaded by Christian Clinger and Yvette Diaz, has made valuable contributions to the program.
4. John Baldwin reviewed the Annual Awards Selection process as Judge of the Year, Lawyer of the Year and Section/Committee of the Year are traditionally awarded at the Annual Convention. These selections need to be made by June in time for the July meeting and input is needed. John noted that we had moved some of the remaining award categories to the Fall Forum.
5. Debra reviewed the ABA House of Delegates selection process. She announced that Charles Brown's second term as Utah's ABA State Delegate would be expiring in August and that he had requested re-appointment. Debra asked for discussion on the topic generally as to whom should be considered and added that this position traditionally has been filled by a former or current Commissioner. Discussion followed and it was noted that Utah is close to qualifying for a second delegate (which requires 7,000 active in-state members).
6. Debra stated that Nate Alder had provided three names to DOPL for nominations to the ADR Providers Certification Board:

Lisa Dator, Ruth Shapiro and Langdon Owen. Debra noted that Commission ratification was needed at this juncture but that we were not foreclosed from sending in additional names. The motion to ratify these nominees passed unopposed.

7. Sanda Kirkham, Peggi Lowden and Robyn Dotterer updated the Commission on the Paralegal Division. One of the original and current requirements for membership is an affidavit from the sponsoring attorney who directly supervises the paralegal's work. If the paralegal works for an independent contractor, corporate, academic or government sectors, they are no longer qualified to be a member. Discussion followed and it was determined that a committee needs to be formed to examine the issues.
8. Charles Brown gave the ABA report and stated that the ABA Mid-Year Meeting would be held in Salt Lake City with a tentative date of February 10th – 15th, 2005. He noted that the upcoming ABA Law Day in Washington, D.C. was to learn about aspects of effective lobbying and meetings are set-up for attendees with congressional leaders. Charles will be attending as well as another Commissioner. Charles noted that the proposed constitutional amendment for a national

“marriage bill” was a state issue and that the ABA should not and will not take a position. The Military Legal Assistance Model Rule was also a topic. The criminal jurisdiction bill was a controversial issue and tabled. Finally, the ABA has decided to review the prototype approved “auditors letter”.

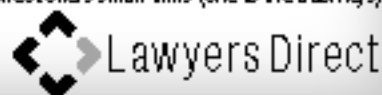
9. Debra Moore reported that there was a proposed ABA Model Court Rule on [Malpractice] Insurance that the Commission needs to review. The proposed rule would require lawyers to disclose on their annual licensing forms whether they have malpractice insurance. Discussion followed and the motion to form a committee to study the issue passed unanimously. Yvette Diaz, Rob Jeffs and Charles R. Brown volunteered for the committee.
10. John Baldwin reviewed March financials. He noted that there was more revenue than expected primarily because no expenditures had yet been made on the Casemaker project. Admissions, CLE and Licensing were all doing better than had been budgeted.

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.



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“and Justice for all” Law Day 5K Run/Walk – May 1, 2004

Under brilliant early spring skies, the annual “and Justice for all” Law Day 5K Run/Walk was held Saturday, May 1, 2004 to the delight of over 900 eager participants. Originally the Bob Miller Memorial 5K Run, the Run, now in its 22nd year is held in conjunction with Utah’s Law Day activities. The Run is a primary fundraiser for “and Justice for all,” the collaborative fundraising campaign which supports civil legal aid to indigent and disabled Utahns served by the Disability Law Center, Legal Aid Society of Salt Lake and Utah Legal Services. The Run begins and finishes in front of the S.J. Quinney College of Law located on the University of Utah campus.

Instead of the traditional pistol start, The Honorable Dee Benson, United States District Judge for the District of Utah, started the Run with a bang of his gavel – and promptly took his place among the stampeding runners and walkers (and won his division). The festivities were kicked-off with a welcome by Run chair, Lon Jenkins, followed by the singing of the National Anthem by Salt City Sound, a Sweet Adeline Quartet. Also included in the pre-run ceremony was the presentation of a check for \$1,000 to “and Justice for all” by the Student Bar Association of the S.J. Quinney College of Law from proceeds of its Barrister’s Ball & Casino Night fundraiser. Returning again for the third year was the popular division for our youngest participants – the “Baby Stroller Division” – which had 70 participants registered! And, once more, we hosted a division for those who preferred not to

run or walk the course – the “Chaise Lounge Division” – with mile markers that run past them and a finish line that sweeps across the exhausted sitters. In all, over 940 participants registered for this year’s event – just shy of the hoped-for 1000 (but there’s always next year!)

Many local businesses and organizations have generously under-written the costs of putting on the event – in both cash and in-kind donations – so that Run proceeds (\$16,000 this year!) will go to the “and Justice for all” campaign. Major sponsors included Iron Mountain, Utah State Bar, Temple Square Hospitality Corp. (Passages Restaurant), Utah Trial Lawyers Association, Systems West Computer Resources, Les Olson Company, Garcia & Love Court Reporting, PriceWaterhouse Coopers and Great Harvest Bread. We express our sincere gratitude to these invaluable sponsors of the event. The S.J. Quinney College of Law at the University of Utah and Dean Scott Matheson, Jr. again graciously allowed us the use of the law school facilities to hold the event.

In the “Recruiter Competition,” the law firm of Ray, Quinney and Nebeker recruited the largest number of entrants (a whopping 267... eclipsing the old record by 80 entrants!). The firm was awarded a traveling slate “and Justice for all” trophy and the team recruiter, Jill Christiansen, won a pair of round trip tickets on Southwest Airlines! Fastest time by a female in the race was established by Kathryn Connor; Jameson Jenkins was the fastest overall male. Congratulations!



“and
Justice
for all”

Thank You

to the following sponsors of the 2004 “and Justice for all” Law Day 5K Run/Walk

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The Law Firm of
KIRTON & McCONKIE

would like to congratulate

SAMUEL D. McVEY

on being appointed as a
Judge in the 4th District Court.

Good luck Sam!



**KIRTON &
McCONKIE**
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OF COUNSEL:
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Hisaka Yamamoto

Notice of Approved Amendments to Utah Court Rules

Under its emergency rulemaking authority, the Supreme Court has approved amendments to URCP 62(d). The amendments are effective May 15, 2004 but subject to further change after the comment period. The comment deadline is July 21.

Summary of proposed amendments: URCP 62. Stay of proceedings to enforce a judgment. Amend. Strikes from the rule the amendments made by HJR 16.

To see the text of the amendments and to submit comments, go to: <http://www.utcourts.gov/resources/rules/approved/>

To view the text of the amendments from the web page, click on the rule number. You will need Adobe Acrobat Reader 6.0, which you can download for free by clicking on the link to Adobe. Proposed rule amendments are also published in the Pacific Reporter Advance Sheets.

You can comment and view the comments of others by clicking on the "comments" link associated with each body of rules. It's

more efficient for us if you submit comments through the website, and we encourage you to do so. After clicking on the comment link, you will be prompted for your name, which we request, and your email address and URL, which are optional. This is a public site and, if you do not want to disclose your email address, omit it. Time does not permit us to acknowledge comments, but all will be considered.

Submit comments directly through the website or to:

Tim Shea

E-mail: tims@email.utcourts.gov (Please include the comment in the message text, not in an attachment.)

Fax: 801-578-3843

Administrative Office of the Courts

P.O. Box 140241

Salt Lake City, Utah 84114-0241

One method of submitting a comment is sufficient.

Thank You!

We wish to acknowledge the efforts and contributions of all those who made this year's Law Day celebrations a success.

We extend a special thank you to:

**Government Law & Military Law Sections,
Utah State Bar**

**Office of the Staff Judge Advocate,
Hill Air Force Base**

"and Justice for all" Law Day 5K Run/Walk
Lon Jenkins – Chair, Law Day Run/Walk Committee
and its members, and all those who participated.

Law Day Dinner/Awards

Young Lawyers Division – Christian Clinger, President
Michael Young & Kelly Williams, Co-Chairs

and the following:

Clyde Snow Sessions & Swenson

Holme Roberts & Owen

Jones Waldo Holbrook & McDonough

Parsons Behle & Latimer

Ray, Quinney & Nebeker

Attorney General Mark L. Shurtleff

Van Cott Bagley Cornwall & McCarthy

TO WIN EQUALITY BY LAW

Brown v. Board at 50

LAW DAY may 1, 2004

Mock Trial Competition

Utah Law Related Education Project
and all volunteer coaches, judges,
teachers and students.

**Salt Lake County
Bar Association**
Art & the Law Project

Utah Minority Bar Association
Letter to the Editor

*Thank you for your
participation!*

**Bar Commission
Law Related Education
and Law Day Committee**

***Notice of Petition for
Reinstatement to the Utah State
Bar by Russell T. Doncouse***

Pursuant to Rule 25(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of a Petition for Reinstatement ("Petition") filed by Russell T. Doncouse in *In re Russell T. Doncouse*, Second Judicial District Court, Civil No. 020900608 on May 3, 2004. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

***Notice of Petition for
Reinstatement to the Utah State
Bar by Frank A. Berardi***

Pursuant to Rule 25(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of a Petition for Reinstatement ("Petition") filed by Frank A. Berardi in *In re Frank A. Berardi*, Second Judicial District Court, Civil No. 000903564 on May 7, 2004. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

***Notice of Petition for
Reinstatement to the Utah State
Bar by Gary W. Pendleton***

Pursuant to Rule 25(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of a Petition for Readmission ("Petition") filed by Gary W. Pendleton in *In re Gary W. Pendleton*, Fifth Judicial District Court, Civil No. 040500801 on May 12, 2004. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

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Mailing of Licensing Forms

The licensing forms for 2003-2004 have been mailed. Fees are due July 1, 2004, however fees received or postmarked on or before July 31, 2004 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.

2004 Fall Forum Awards

The Board of Bar Commissioners is seeking nominations for the 2004 Fall Forum Awards; Community Member of the Year and Pro Bono Lawyer of the Year. 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 no later than September 14, 2004 to:

**Maud Thurman, Executive Secretary
645 South 200 East, Suite 310
Salt Lake City, UT 84111**

Utah Supreme Court Adopts Rule for Special Admission for Military Lawyers

The Utah Supreme Court has signed into effect Rule 11-303, of the Supreme Court Rules of Professional Practice-or ELAP-allowing qualified military lawyers who are stationed in Utah, but not licensed to practice law in Utah, to provide free legal services to military personnel and their dependents. The court approved the new rule under its emergency rule making authority, with an effective date of May 4, 2004.

The American Bar Association is urging jurisdictions nationwide to adopt an Expanded Legal Assistance Program (ELAP) Rule as a way to help military service members, who are in harm's way, with non-criminal matters.

At the Supreme Court's request, the Utah State Bar filed a petition with the court on April 2, 2004, to adopt the ELAP Rule. Military

Utah Bar Foundation Announces Grants for 2004-2005

The Utah Bar Foundation is proud to announce grants for the 2004-2005 year in the following amounts:

\$ 20,000	Utah Law-Related Education
\$ 20,000	Legal Aid Society of Salt Lake
\$ 20,000	Utah Legal Services
\$ 15,000	Multi-Cultural Legal Center
\$ 10,000	Disability Law Center
\$ 10,000	DNA People's Legal Services
\$ 5,000	International Rescue Committee

The Utah Bar Foundation is a non-profit charitable foundation that provides funding for legal services for the poor and for law related education. Our primary source of funding comes from IOLTA (Interest On Lawyers Trust Accounts) funds. The Utah Bar Foundation is the Utah Supreme Court designated recipient of IOLTA funds. Since 1984 when the IOLTA program was created, the Utah Bar Foundation has granted more than \$4.2 million in total awards. The Foundation is governed by seven-member board of trustees, all of whom must be a licensed attorney in the state of Utah in good standing.

For additional information on the Utah Bar Foundation or the IOLTA program, please visit our website at www.utahbarfoundation.org or call the Foundation office at (801) 297-7046. You can also visit our display table at the upcoming Sun Valley Convention in July 2004.

lawyers admitted under the rule are prohibited from representing themselves to be members of the Utah State Bar, and they may not convey the impression that they are licensed to generally practice law in Utah. Representation is primarily intended to benefit military personnel in enlisted grades E-1 through E-4 and their dependents who are under substantial financial hardship.

"ELAP is a worthy initiative," said Utah Supreme Court Chief Justice Christine Durham. "Many service members are at an income level that makes hiring an attorney financially impossible, and it seems the least we can do to help those protecting our nation."

Rule 11-303 is posted on the court's website at www.utcourts.gov/resources/rules/comments/ for public comment.

Discipline Corner

PUBLIC REPRIMAND

On December 31, 2003, the Honorable Roger S. Dutson, Second Judicial District Court, publicly reprimanded Samuel J. Conklin for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) and (c) (Fees), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Conklin was retained to represent a client in an employment matter. The time spent by Mr. Conklin on the client's case was not accurately reflected on the client's bill. Mr. Conklin admitted to the client that the work was overcharged, but he did not have time to look into the matter. Mr. Conklin did not respond to the client's inquiries concerning the bill and failed to promptly deliver the settlement funds to the client. Mr. Conklin also failed to respond to the Office of Professional Conduct's ("OPC's") requests for information.

In another matter, Mr. Conklin was retained to negotiate a settlement with a title company. The client was the spokesperson for the client's family. There was no written communication regarding the basis and rate of Mr. Conklin's fee, although it was reasonably foreseeable that the attorney's fees would exceed \$750. The case was settled and Mr. Conklin received the settlement check. The client inquired as to why the settlement check had not been forwarded to the client. Mr. Conklin did not promptly respond to the client and later claimed that the settlement check had not been forwarded to the client because it was being held against an outstanding debt owed to Mr. Conklin by the client's sibling for services rendered in another matter. Mr. Conklin charged the client a contingent fee based upon a percentage of the settlement amount, without a written statement. Mr. Conklin sent a letter to the OPC concerning health problems, but failed to respond to the OPC's requests for information.

Mitigating factors include: Mr. Conklin experienced personal problems during the period relevant to the complaints against him.

Aggravating factors include: Mr. Conklin has a prior record of discipline; there are multiple offenses; and Mr. Conklin has substantial experience in the practice of law.

RECIPROCAL DISCIPLINE

On March 15, 2004, the Honorable Ernie Jones, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline: Probation, placing Mark H. Gould on probation for a period of one year.

In summary:

In a disciplinary order of the United States Tenth Circuit Court of Appeals ("the Court") Mr. Gould was ordered to either pay a \$100 sanction or resign from the bar. Mr. Gould did not submit the sanction amount to the Court, nor did he tender a letter of resignation. The court issued a show cause order, but Mr. Gould did not respond. The Court then concluded that Mr. Gould should be disbarred. As a result of this, the United States District Court of Utah ("U.S. District Court") issued an order to show cause for reciprocal discipline. Mr. Gould responded. The U.S. District Court found that there was no evidence of misconduct involving fraud, dishonesty, or moral turpitude, and in consideration of Mr. Gould's mitigation of a psychological condition, the U.S. District Court concluded that Mr. Gould should be placed on one year probation and ordered not to commit any further violation of the Rules of Professional Responsibility or engage in other unprofessional conduct.

Mitigating factors include: Mr. Gould's personal and emotional problems are causally connected to the misconduct, other penalties and sanctions, and cooperative attitude toward proceedings.

ADMONITION

On March 16, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 8.1 (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a divorce modification. A trial was held and the court ordered opposing counsel to prepare the Findings of Fact, Conclusions of Law, and Order ("findings"), but opposing counsel did not do so. Several months later the attorney drafted and submitted findings to the court. The findings were entered by the court. Therefore, the opposing counsel also filed findings with the court. The two findings were inadvertently signed by the court. The attorney was still counsel of record at the time the two sets of findings were entered and a letter reflects that opposing counsel notified the attorney of the two signed findings. In response to requests for information from the bar and in initial testimony at the disciplinary hearing, the attorney denied knowledge of the other order, until the Bar complaint was received by the attorney. However, in subsequent testimony from the attorney at the disciplinary hearing, the attorney admitted to a conversation with the complainant prior to the filing of the Bar complaint, "Do you want me to take care of this other order?"

ADMONITION

On March 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client charged with serious multiple felonies. The attorney was also instructed to prepare a counterclaim in the client's civil case. The client retained the attorney's services in the criminal and civil matters concurrently. The client claimed that evidence of fraud on the part of the opposing party in the civil case was provided to the attorney, but the attorney failed to amend the client's civil pleadings to include a requested cause of action for fraud.

SUSPENSION

On March 29, 2004, the Honorable David L. Mower, Sixth Judicial District Court suspended Jeffrey P. Gleave from the practice of law for a period of three years for violation of 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Termination Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct. On March 19, 2002 the Court had previously entered an order placing Mr. Gleave on interim suspension pending final disposition of this disciplinary matter. The effective date of the Court's Order of Suspension is therefore March 19, 2002.

In summary:

Mr. Gleave had three client Bar complaints, where the Court found that Mr. Gleave had violated the Rules of Professional Conduct Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 8.1 (b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct). However, the most serious misconduct that the Court found was with respect to Mr. Gleave's criminal convictions leading to a violation of Rule 8.4(b) of the Rules of Professional Conduct. Mr. Gleave was convicted of Damage To Or Interruption Of A Communication Device, a Class B Misdemeanor; Assault, Domestic Violence, a Class A Misdemeanor; Child Abuse, a Class A Misdemeanor; Aggravated Assault Against A Peace Officer, a Third Degree Felony, and Possession Of A Controlled Substance, a Third Degree Felony. On February 23, 2001, Mr. Gleave was sentenced to one year in the Sevier County Jail with credit for time served. The statutory sentence for the conviction of each count was stayed with a thirty-six month probation period and numerous probationary requirements.

Mitigating factors include: Mr. Gleave is affected by a mental disability or impairment, and that mental disability or impairment causally contributed to his misconduct.

RESIGNATION WITH DISCIPLINE PENDING

On April 18, 2004, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Richard K. Crandall.

In summary:

The Office of Professional Conduct ("OPC") received four complaints against Mr. Crandall. Mr. Crandall submitted a Petition for Resignation with Discipline Pending to the Utah Supreme Court on March 18, 2004. Mr. Crandall's petition admits that the facts constitute grounds for discipline.

The OPC filed a formal complaint in the Third District Judicial Court on September 1, 1998 concerning two of the complaints. On March 21, 2003, the Third District Judicial Court entered an Order for Sanctions as a result of Mr. Crandall's failure to comply with discovery. In his Petition for Resignation with Discipline Pending, Mr. Crandall admits to the merits of the earlier default against him and also admits to the merits of the two pending complaints against him. In one pending complaint, Mr. Crandall was retained by a company, accepted fees, but did no work on behalf of the company. Mr. Crandall misrepresented the status of the case, failed to communicate with the company, and did not return the unearned portion of the fees. Mr. Crandall also failed to respond to the OPC's requests for information. In the other pending complaint, Mr. Crandall was retained by a client and the client's colleague to file a claim against their former employer. Although an action was filed, the case was dismissed for failure to prosecute. Mr. Crandall misrepresented the status of the case, as well as his actions in pursuing it, and thereafter failed to communicate with his clients.

ADMONITION

On May 14, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.5(b) (Fees), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a criminal case. The client paid the attorney a fixed fee for the representation. The client terminated the services of the attorney because they could not agree on an appropriate defense strategy. The client requested an itemized billing of services and requested a refund of the unearned portion of the fee. The attorney did not provide the client with a written fee agreement that communicated the basis of the fee and failed to indicate how a refund, if any, might be calculated. The attorney also failed to respond to the OPC's lawful

requests for information by failing to disclose a fact necessary to correct a misapprehension, and failed to provide an adequate explanation of the accounting and billing statement.

PUBLIC REPRIMAND

On May 30, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Sanford L. Beshear for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(a) (3) and (d) (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Beshear was retained to represent a client in a personal injury claim. Mr. Beshear did little or no work on the case. Mr. Beshear did not return most of his client's telephone calls and did not keep the client informed of the status of the case. Approximately two weeks before the expiration of the statute of limitations in the case, the client terminated Mr. Beshear's services and retained new counsel. The client's new counsel attempted to call Mr. Beshear

to inform him his services had been terminated and to obtain the client's file. Mr. Beshear failed to forward the file to the client's new counsel. Mr. Beshear then proceeded to file a complaint in court on behalf of the client when he knew, or should have known, that his services had been terminated. Mr. Beshear also failed to respond to the OPC's lawful requests for information.

PUBLIC REPRIMAND

On May 30, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Sanford L. Beshear for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Beshear was retained to represent a client in a personal injury case. There were long periods, even years, when Mr. Beshear provided no real or substantial work on the client's case. Mr. Beshear failed to respond to the client's requests for information in a reasonable and timely manner.

2004 FALL FORUM

**October
22, 2004**

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- ▼ What will the courts require?
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Jim Callaway serves on the ABA Techshow™ 2002 Board. He is an active member of the ABA Law Practice Management Section and is on its Practice Management Advisor's committee. He is also an active member of the ABA's General Practice, Solo and Small

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If you attended last year's Fall Forum you'll want to be here. If you didn't join us last year – don't miss out again!

To reserve your place visit www.utahbar.org/cle

ADMONITION

On May 25, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.2(a) (Scope of Representation), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a divorce case. On the day of trial, the Court was informed that it appeared the parties had reached a settlement, and opposing counsel was directed to prepare the stipulation for submission to the Court. The attorney failed to discuss the options in the case with the client after settlement stalled, and the Court issued an Order to Show Cause why the case should not be dismissed for failure to prosecute. The case was dismissed for lack of prosecution when the attorney and opposing counsel did not appear. The dismissal of the divorce case resulted in the dismissal of a protective order restricting the opposing party's contact with the children. The attorney discussed the dismissal of the case with opposing counsel and agreed to take no steps to reinstate the case until the parties were able to agree to a written settlement. The attorney did not

consult with the client about this agreement. The attorney did not inform the client about the dismissal of the divorce and possible effects the dismissal and agreement could have on the status of the protective order.

INTERIM SUSPENSION

On May 14, 2004, the Honorable Robert K. Hilder, Third Judicial District Court entered an Order of Interim Suspension, suspending Carlos Chavez from the practice of law pending final disposition of the Complaint pending against him.

In summary:

Mr. Chavez entered an appearance in a criminal case before the West Valley City Justice Court, but failed to appear for pre-trial hearing, did not return the Court's telephone calls, and to a letter requiring him to show cause why he failed to appear. The Court set two other hearing dates, but Mr. Chavez failed to appear. During a show cause hearing, Mr. Chavez admitted three counts of contempt of court, and on April 18, 2004, the Justice Court entered Findings of Fact and Conclusions of Law Re: Contempt of Court concerning Mr. Chavez's conduct.

United States Supreme Court Justice Stephen G. Breyer to address the Utah State Bar

July 21, 2004 • 12:00–1:30 pm

**City Center Marriott
220 South State Street • SLC**

Cost: \$25

1 hr. CLE

**Menu Selections: Lasagna or Chicken Caesar Salad
Please register by July 16**

**U.S. Supreme Court
Justice Stephen G.
Breyer** is a graduate
of Stanford University,
Oxford University
(Magdalen College), and
Harvard Law School.
During the United States
Supreme Court's 1964
Term he was law clerk to
Justice Arthur J.



Goldberg. In 1965–67 he worked as Special Assistant to the head of the Justice Department's Antitrust Division. From 1967 through 1980 he taught at Harvard University, as Professor of Law and at Harvard's Kennedy School of Government. He also worked as an Assistant Watergate Special Prosecutor (1973), as a Special Counsel to the Senate Judiciary Committee (1975), and as the Judiciary Committee's Chief Counsel (1979–80). In 1980 he was appointed Judge of the United States Court of Appeals for the First Circuit. He became the Circuit's Chief Judge in 1990. He has also served as a Member of the Judicial Conference of the United States and of the United States Sentencing Commission. He has written books and articles in the field of administrative law and government regulation. President Clinton nominated him as an Associate Justice, and he took office in August 1994.

To reserve your place visit www.utahbar.org/cle or call 257-5515

Farewell Message

by Sandra R. Kirkham, Chair – Paralegal Division

The Paralegal Division of the Utah State Bar is doing great things. The success of the Division is the result of many volunteers who participate in – and direct – our Division. It is also a tribute to our history of strong leadership, as well as continued support from the Bar. For a paralegal to improve his/her skills, network, experience leadership, and generally develop as a paralegal is to participate in the Paralegal Division.

The Division offers many opportunities to get involved. One such event is the Division's Annual Meeting and Seminar which will be held this year on Friday, June 18, 2004. In addition to a great lineup of CLE topics and speakers, members will be able to participate in the Paralegal Division Annual Meeting, and vote for new Directors. The seminar is also a great opportunity to complete the yearly 10 hours of CLE requirement. At the Annual Meeting, members will get the opportunity to meet their new Chair, Tally Burke, and to volunteer for committee assignments. We hope to involve many more of our members in the operation of the Division this coming year.

As this year comes to a close, I would like to publicly thank my outstanding board for their endless support and commitment to the Division and to me. These paralegals are leaders in the legal

community and have earned the respect of lawyers and judges throughout the State. We have met every month for the past year to tackle paralegal issues in the State of Utah as well as address concerns and hopes for the future. We have worked through some tough issues and have made tremendous strides. Division members can be proud of their representation from this wonderful board.

Due to a career change which takes me out of direct supervision of an attorney, I have turned the reins over to your new chair, Tally Burke, a little early. Let me take a minute to introduce you to Tally. She brings with her a long history of working in the legal profession. She is currently employed with Kruse, Landa, Maycock & Ricks where she works as a paralegal in the field of corporate and securities law. She is also an instructor at the Salt Lake Community College teaching paralegal studies. She has previously served in various capacities on the board of LAAU, the Legal Assistant Association of Utah. During my term as Chair, she has spearheaded the new Long Range Plan, served as finance officer to the Division, brought the opportunity for members to join Toast Masters, and served on various committees and sub-committees. In years past she has successfully chaired committees for volunteer community service projects. I have great confidence in Tally. She is aware of the issues of the paralegal profession. She cares and is passionate about her role as incoming Chair. I believe that Tally has the ability and confidence to lead our Division with vision and foresight. Please help me welcome Tally and her new board members at our Annual Meeting. You might even consider volunteering to serve under her direction this year.

As I leave office, I plan to continue my involvement in the paralegal community with a new perspective as an educator. I feel great promise for the future of the paralegal profession. I have loved serving and working with you. I am proud of the Paralegal Division and its members. Thanks to every member of the Division for your advice, your comments, your concerns and your friendship. It has been an honor.



The Paralegal Division of the Utah State Bar is proud to announce the first web-based Utilization & Salary Survey for paralegals in Utah – coming in September to a website near you. Watch for further announcements in the Bar Journal, Utah Bar News e.Bulletin and by post cards announcing the dates the survey will be available on line.

Attorney, law firm office managers and paralegal participation encouraged.

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
<p align="center">Utah State Bar 2004 Annual Convention July 14–17, 2004 in Sun Valley, Idaho Full online Brochure/Registration now available at: www.utahbar.org</p>		
07/21/04	U.S. Supreme Court Justice Stephen G. Breyer. City Center Marriott. 12:00 – 1:30 pm. \$25. RSVP to 257-5515 before July 20. Menu selection: Lasagna or Chicken Caesar Salad.	1
07/21/04	OPC Ethics School. Full day. \$125 before 07/09/04, \$155 after. Pre-registration recommended. Space limited. This seminar will accomodate those attending the Justice Breyer lunch.	6 Ethics Credit Mandatory course for those admitted on motion only.
08/20&21/04	Annual Securities Law Workshop. Sun Valley Idaho.	TBA

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

REGISTRATION FORM

Pre-registration recommended for all seminars. Cancellations must be received in writing 48 hours prior to seminar for refund, unless otherwise indicated. Door registrations are accepted on a first come, first served basis.

Registration for (Seminar Title(s)):

(1) _____ (2) _____

(3) _____ (4) _____

Name: _____ Bar No.: _____

Phone No.: _____ Total \$ _____

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

☐ AMEX Exp. Date _____

Classified Ads

RATES & DEADLINES

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

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

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

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

FOR SALE

Books to highest bid received by 5 PM Aug. 16. ALR, Federal Procedure (L.Ed.), Fed. Evid. Digest, Fed. R. Evid. Service, Pacific Digest, Uniform Laws Ann., law reviews, many others. Complete list and details from Lee Warthen, S. J. Quinney Law Library, 801-581-5344 email warthenl@law.utah.edu.

POSITIONS AVAILABLE

Smaller established AV Salt Lake firm seeking a lateral transfer to work with existing litigation team focusing on commercial and construction litigation. Send inquires to Christine Critchley, Utah State Bar, Confidential Box #25, 645 South 200 East, Salt Lake City, Utah 84111-3834.

EXPERIENCED REAL ESTATE ATTORNEY NEEDED

Ballard Spahr Andrews & Ingersoll, LLP, has an immediate need for an attorney in our Salt Lake City office with 2-4 years real estate experience and an excellent academic record. Interested candidates should have a commercial transaction background, including lender representation, preferably with multi-family, condominium, planned development, hotel and resort experience. Top salary, competitive benefits, pleasant work surrounding, and a firm culture that supports a balance between work and life. Please send resume to Shelley Powell, 201 South Main Street, Suite 600, Salt Lake City, UT 84111-2221, or email to powell@ballardspahr.com. (No phone calls, please.)

Large Salt Lake City law firm seeks associate with 3 to 5 years experience in water, environmental, and local government law, including litigation. Strong research and writing skills are required. Salary of approximately \$90k+ (depending on experience), with excellent benefits. Please send resume to Christine Critchley, Confidential Box #3, Utah State Bar, 645 S 200 E, Salt Lake City, Utah 84111 or respond via email to ccritchley@utahbar.org.

United States District Court District of Utah: Half-time Law Clerk to the Honorable Paul G. Cassell. One-year position with a possible extension to two years. Closing Date: June 25, 2004. Starting Salary \$24011 (JSP 11) to \$28778+ (JSP 12) or JSP 13, commensurate with qualifications and experience. Starting Date: October 4, 2004. Applicants should send letter, resume, writing sample and three references to: Ms. Yvette Evans, United States District Court, 350 South Main Street, Room 112, Salt Lake City, Utah 84101. Equal Employment Opportunity. Visit us on the web at utd.uscourts.gov.

Mid-sized AV-rated downtown firm seeking lateral transfer attorney(s).

We are a cohesive, congenial group with broad expertise, solid client base, great staff, fabulous offices and a rational compensation system that rewards both hard work and client attraction/retention. If you are looking to merge your own practice with an established firm, or simply want a change, please send your resume to Christine Critchley, Utah State Bar, Confidential Box #17, 645 South 200 East, Salt Lake City, UT 84111-3834.

Huntsman LLC, a global chemical company, is seeking an attorney with at least six years SEC reporting experience for its corporate legal department in Salt Lake City. Requirements: excellent academic credentials, superior writing and organizational skills, finance and corporate law expertise, familiarity with Sarbanes-Oxley requirements, SEC rules and practices, and experience drafting SEC filings. Please send inquiries to: Irene Howington (e-mail: irene_howington@huntsman.com) (fax: 801-584-5787).

Mid-size AV rated Salt Lake firm seeks associate with 2-5 years litigation experience for family law practice. Strong writing skills and good courtroom presence required. Please respond to Christine Critchley, Utah State Bar, Confidential Box #2, 645 South 200 East, Salt Lake City, UT, 84111 or e-mail ccritchley@utahbar.org.

Looking to get out of the rat race? Position available for attorney with five to ten years experience in transactional work and estate planning. Some established clients and litigation experience preferred. Please send resume to: Christine Critchley, Confidential Box #4, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111, or e-mail to ccritchley@utahbar.org.

Small Salt Lake City firm seeking an attorney with two to six years experience to handle referred cases, including domestic, probate, personal injury and misdemeanor matters. Salary commensurate with experience and existing client base. Please send resume to: Christine Critchley, Confidential Box #33, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111, or e-mail to ccritchley@utahbar.org.

Attorney: Medium sized Salt Lake City law firm seeks to hire associate with minimum two years experience in litigation, preferably personal injury, either defense or plaintiff. Send resume and transcript, if available, to Christine Critchley, Confidential Box #62, 645 So. 200 E., SLC, UT 84111 or e-mail ccritchley@utahbar.org.

POSITIONS SOUGHT

Attorney/CPA with taxation and estate planning background, and substantial litigation experience in government, business and insurance seeks position with law firm, corporation, government or association. Present firm breaking up. Contact Utah State Bar, Confidential Box #23, 645 South 200 East, Salt Lake City, UT 84111.

OFFICE SPACE/SHARING

SLC Offices Available Immediately: Classic 2 story brick Victorian office building: executive offices & conference room on 116 S. 500 East for sale @ \$460K or lease @ \$11/ft. Please contact Tom Brooks for details – AllPro Realty 1 (801) 534-1573.

Farmington Office Space for rent for one or two attorneys. Share with other attorneys. Fax, copy machine, conference room, kitchen, plenty of parking and easy access to freeway. Wally at 451-8400.

Historical Bld. on Exchange Place has spaces available: 844 square foot three office suite for \$975 monthly. Individual offices may be available within a law suite including amenities of receptionist, conference room, fax, copier, parking and optional DSL line, from \$500 to \$750. Half block from State and Federal courts. Contact Joanne or Richard @ 534-0909.

Draper Office Space (2) for rent. Easy access to I-15. Spacious ground level offices with great view of mountains. Two secretary stations, fax machine, copy machine, conference room, phone system, high speed internet. Available immediately. Contact: 801-495-3500.

Executive Offices and Virtual Offices now available in the Chateau Building. Includes receptionist, copy room, break room, law library and conference room. Secretarial and research services available. Secretarial bays also available. Rates from \$400 per month. Please call Michelle at (801) 373-1112 for more information.

SERVICES

Safety Services: 30+ years experience, masters degree, board certified in safety and industrial hygiene, teaching and many publications. Specialites: industrial, guarding, slips & falls, human factors, contractors and subcontractors, safety investigation, product safety, machine failure. Inquiries: dave.pierce@att.net or 801-842-2288.

California Probate? Has someone asked you to do a probate in California? Keep your case and let me help you. Walter C. Bornemeier, Farmington. 801-451-8400 (or: 1-888-348-3232). Licensed in Utah & California – 39 years experience.

CHILD SEXUAL ABUSE – DEFENSE. Forensic Statement Services provides a complete objective case analysis – Assess relevance of criminal charges – Identify and determine effects of evidence contamination, coercion, bias and prejudice – Evaluate for false allegations – Apply objective Daubert, peer-reviewed research to case evidence and motions to limit/suppress. B.M. Giffen, Psy.D. Evidence Specialist (801) 485-4011. Member: American Psychology-Law Society.

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PROBATE MEDIATION AND ARBITRATION: Charles M. Bennett, 257 E. 200 South, Suite 800, Salt Lake City, UT 84111; (801) 578-3525. Graduate: Mediation Course, the American College of Trust & Estate Counsel.

SEMINARS

Save the Date! Advanced Estate Planning Seminar – September 10 & 11, 2004. Sun Valley Resort, Sun Valley, Idaho. Sponsored by the Taxation, Probate & Trust Law Section of the Idaho State Bar. Highlights include IRS presentation on limited partnerships and presentations on asset protection and cross-state borders estate planning. For more information: (208) 334-4500 or kwoods@isb.state.id.us.

Membership Corner

UTAH STATE BAR ADDRESS CHANGE FORM

The following information is required:

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

***PLEASE PRINT**

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

NOTE: Date means months, day, and year. "Now," "Immediately," or other such phrases will not be accepted. If you do not provide a date the effective date of the change will be deemed to be the date this form is received.

2. Business Address – Public Information

Firm or Company Name _____

Street Address _____ Suite _____

City _____ State _____ Zip _____

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

3. Residence Address – Private Information

Street Address _____ Suite _____

City _____ State _____ Zip _____

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

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

_____ Business _____ Residence

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

Signature _____

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

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