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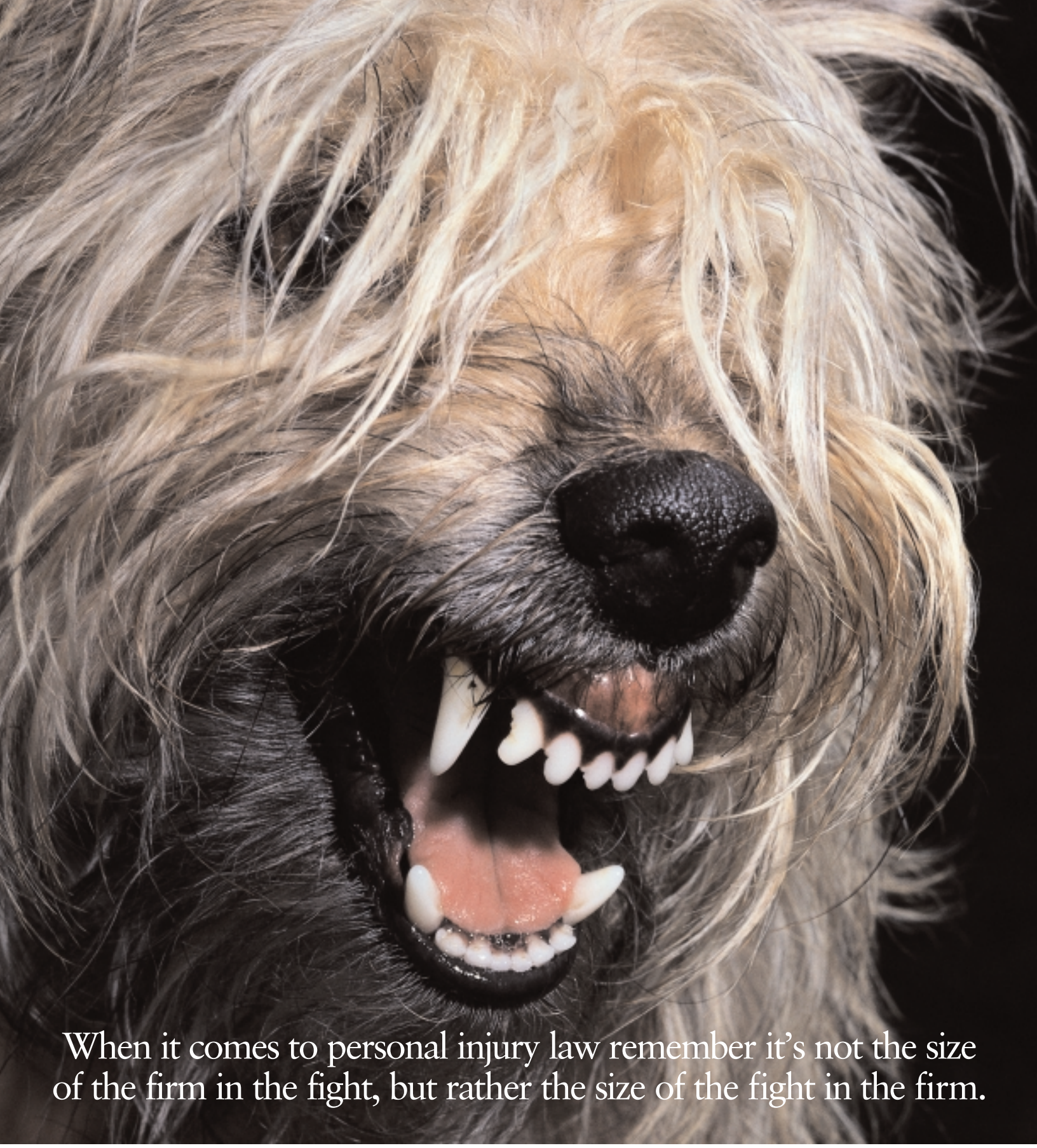

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MISSION OF THE BAR: *To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of, the law.*

COVER: Sunset viewed from the top of the Alpine Loop in Utah County. Taken by first-time contributor, Jill Jasperson of Orem, Utah.

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Letters Submission Guidelines:

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

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The Utah Bar Journal

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Submission of Articles for the Utah Bar Journal

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

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2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.
3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.
4. Content: Articles should address the *Bar Journal* audience, which is composed primarily of licensed Bar members. The broader the appeal of your article, the better. Nevertheless, the editorial staff sometimes considers articles on narrower topics. If you are in doubt about the suitability of your article for publication, the editorial staff invites you to submit it for evaluation.
5. Editing: Any article submitted to the *Bar Journal* may be edited for citation style, length, grammar, and punctuation. Content is the author's responsibility–the editorial staff merely determines whether the article should be published.
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Managing Pandora's Box: Recognizing and Handling the Privacy Risks Associated with Electronic Access to Court Records

by Cameron L. Sabin & Kenneth B. Black

Introduction

The Internet is rapidly changing the ways in which federal courts handle records. While these changes offer advantages to courts and practitioners alike, they also open a potential Pandora's Box with respect to the privacy of client information. In 2001, the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files (the "Judicial Conference Committee") first recommended a policy for federal courts to begin making court records available over the Internet through the Public Access to Court Electronic Records system ("PACER").[1] Consistent with that policy, the United States District Court for the District of Utah has, for several years now, made certain court filings available electronically over the Internet through PACER. While not all documents filed in Utah federal court are currently available through PACER (for instance, exhibits and affidavits are not currently being scanned), those that are available can be obtained easily with a password and the click of a mouse. The document images currently available from the court are created by scanning documents delivered to the court for filing in paper form. In addition, beginning in 2005, practitioners will be able to file most court documents in Utah federal district court electronically through the Case Management Electronic Case Files filing system ("CM/ECF"). Electronic filing through CM/ECF will become mandatory for almost all court documents. This means that many more court documents will be available electronically to anyone willing to pay seven cents per page to view, save, and/or print them.

The transition to the PACER and CM/ECF systems is part of an effort within the federal court system to provide greater and more convenient access to court records by making them available over the Internet.[2] Electronic access to and filing of court documents offers practitioners a number of advantages over traditional paper filing systems. For instance, electronic access and filing systems afford attorneys the convenience of filing and obtaining documents remotely. They also reduce costs associated with manual filing, such as copying, postage, and courier costs. In addition, electronic filing provides instantaneous service of pleadings on the parties to an action.

Even so, electronic case management systems also present risks, particularly with respect to the potential disclosure or misuse of confidential client information. Although court documents have always been available to the public, traditional filing systems have required an individual to obtain physical records from a courthouse and manually review them for information. The attendant inconvenience has reduced the likelihood that private information contained in court records would be the subject of public misuse. However, on-line case management and filing systems make accessing court information simple and convenient,

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increasing the likelihood that confidential information will be available to a larger audience. After all, electronic filing systems are not restricted to legal professionals. While the extent to which electronic court records are misused is unknown, maintenance of court records in electronic, searchable databases raises the specter that misuse may become common – that electronic access will facilitate identity theft, corporate espionage, or other improper activities.

Documents filed under CM/ECF will almost all be in "text PDF" form, in which the text of the document is embedded in the PDF (i.e., "portable document format") image filed with the court. Text PDF documents can be created from any word processor, in a process similar to printing. It is possible to search text in a text PDF document and copy and paste text from such a document. These operations are not possible with a PDF document created by scanning, which is only an image with no embedded text.

The change in the *type* of PDF file – from a scanned PDF to a text PDF – enhances the possibilities for data miners' use of court files. Information harvesters can set up automated routines to search all filed documents (if they are willing to pay the per-page fee) and load them onto their own servers, or more critically, glean sensitive information, such as home addresses, social security numbers, and financial information.

Given that many court records filed in Utah federal district and bankruptcy courts are now available over the Internet, and that many more soon will be, in an even more accessible format for information harvesters, practitioners should be aware of (1) the privacy concerns associated with PACER and CM/ECF; (2) the potential liability they may face for failing to protect client information; and (3) the ways in which they can protect sensitive client information.

Privacy Concerns Associated with Electronic Access & Filing

Certain types of cases (for instance, bankruptcy, intellectual property, criminal and some commercial cases) inherently involve confidential client information. Such information may include: social security numbers; dates of birth; addresses; bank account numbers or other financial information; information about individuals' credit, medical or work histories; proprietary, trade secret or other business information; the names of minors; or an individual's criminal background. In other cases, a client may wish to protect specific, compromising or embarrassing

information. Clients plainly have a legitimate interest in protecting their confidential information from disclosure.

Nevertheless, in practice, confidential client information is frequently disclosed for various reasons. Disclosure may be required in some cases by statute, case law, or court rule. Counsel may also need to disclose sensitive information to strengthen a client's position or to make an argument more compelling. Finally, client information may be mistakenly disclosed in court filings. Regardless of the reason for disclosure, in light of the transition to PACER and CM/ECF, counsel should consider the privacy concerns associated with such systems in assessing whether disclosure – or disclosure in a particular manner – is indeed prudent. In particular, counsel need to be aware of privacy concerns related to inadvertent disclosure and intentional misuse of client information.

Inadvertent Disclosure

In this context, "inadvertent disclosure" may refer to two separate concerns. First, as one might assume, inadvertent disclosure may simply refer to the unintended disclosure of confidential information. However, it may also refer to the disclosure of information beyond its intended audience or for an unexpected purpose. For instance, information that a client expected only to be used for purposes of a motion may, to the client's surprise, be discovered and revealed to the public. Electronic access and filing systems accentuate both of these concerns.

While the unintentional disclosure of confidential client information may occur whether a document is being filed electronically or through paper filing, electronic filing creates new risks. For example, documents filed in the CM/ECF system must be converted into PDF files prior to filing. PDF files are generally considered to be safer than Word or WordPerfect files because they do not contain "metadata," or data fragments that can be reconstructed by a recipient to reveal edits or changes made to a document. Nevertheless, it has been shown that certain methods of redacting information using PDF software are ineffective or actually disclose information that was intended to be maintained in confidence.[3] Thus, an attorney filing an electronically redacted document may unwittingly reveal client information she intended to keep confidential.

Electronic access and filing systems also create risks that client information disclosed for purposes of litigation may be unexpect-

edly used for other purposes. As noted above, under traditional filing systems, the difficulty and inconvenience of obtaining court records reduced the likelihood that client information would be obtained and used for unintended purposes. However, documents made available electronically through PACER are accessible to anyone with a password to the system, and obtaining a PACER password is simple. An individual need only create a PACER account using a credit card and wait a few weeks to receive the password. Moreover, PACER is a searchable database, making it possible to locate cases by merely entering a party's first or last name. Thus, an individual interested in learning about his neighbor's bankruptcy, financial status, past criminal behavior, or other embarrassing information, may do so by entering his neighbor's last name into PACER and accessing documents linked to the case file. Given the ease with which information can be obtained through PACER, private investigators, collection agencies, the media, and others are highly likely to access it.

Intentional Misuse

Potentially more serious than concerns associated with inadvertent disclosure are those related to the intentional misuse of electronic court records. Information in court records may be used to facilitate identity theft, corporate espionage, unfair competition, unwanted solicitations, or other commercial activities.

Identity Theft

One of the greatest potential problems associated with on-line access to court records is that information disclosed in court filings may be used to perpetrate identity theft. As more personal information is maintained in the public domain, identity theft has become one of the fastest growing crimes in the United States.[4] It is not difficult to obtain the information necessary to perpetrate identity theft. The Federal Trade Commission has warned that, in order to steal an individual's identity or open a fraudulent credit account, a thief may need only a victim's name, social security number, and date of birth.[5] Given that this personal information is often contained in a case file, many have expressed reservations about the courts' decision to make records available over the Internet. These concerns are heightened due to the existence of the U.S. Party Case Index.

The U.S. Party Case Index is a national database that functions in conjunction with PACER. It contains a subset of information from cases filed in U.S. district, bankruptcy, and appellate courts and

was created to facilitate the rapid retrieval of case information across multiple jurisdictions.[6] The U.S. Party Case Index serves as a "locator index" for cases available on PACER.[7] By accessing the Index, an individual can search for cases by name, social security number (for bankruptcy cases), or by the nature of the suit.[8] Once the desired cases are identified, the individual can then access PACER to obtain more particular information about them.[9] Cases available in the Index often contain a link directly to PACER.

While the U.S. Party Case Index offers a convenient method for tracking court information nationally, it also provides identity thieves a simple means to obtain precisely the information they need to perpetrate their crimes. Since the Index allows searches to be conducted according to the type of claim, "[a] thief need only determine which type of claim would most likely require filings containing the information necessary to steal an identity and conduct the search."[10] Moreover, maintaining case records in an easily searchable format raises concerns about criminals' ability to run mass, automated data searches to mine particular information from court records throughout the country. Indeed, commercial providers are already developing software to navigate PACER, download information from cases, and print filings from those cases. If such programs are available commercially, then more treacherous versions of similar software likely exist privately.

Commercial Use and Misuse of Court Information

The use and misuse of client information for commercial purposes is another potential problem associated with electronic court records. Posting court information on-line makes it possible for individuals and companies to access court filings to obtain trade secrets, insider information, or confidential financial information. It also permits solicitors to obtain the information necessary to target parties with junk-mail, spam, or other unwanted solicitations.[11] In addition, court information may be gathered, repackaged, and then sold to insurance companies, "banks, realtors, investment firms, credit card companies, advertisers, landlords, retail merchants," etc.[12] The information may then be used to make insurability, credit, lending or leasing decisions. As one commentator puts it, "data is gold, and buyers will pay a premium for it."[13]

Added to these data-gathering issues are concerns about the accuracy of the information gathered. Companies compiling customer information from court records may make mistakes. When the erroneous information is then passed along to the end-user, it will be assumed to be accurate because it was derived from court records. The incorrect information could eventually prejudice a customer's ability to obtain credit, insurance, or other services.

Suffice it to say that, as courts have made records accessible electronically, numerous risks associated with including private client information in court filings have surfaced. With the evolution of technology, new risks will undoubtedly arise. Legal practitioners must be aware of these risks as they develop and

take steps to protect client information from disclosure or to limit the information that is disclosed. Otherwise, counsel may expose themselves to malpractice or other forms of liability.

The Potential for Malpractice and Other Liability

Practitioners' failure to protect confidential client information from disclosure or to limit the information that is disclosed in court filings may expose them to malpractice or other forms of liability. Indeed, some courts have held that an attorney's unauthorized disclosure of confidential client information or failure to protect confidential client information may constitute malpractice or a breach of fiduciary duty.[14]

To establish a claim for legal malpractice in Utah, a client must establish "(1) an attorney-client relationship; (2) breach of the attorney's fiduciary duty to the client; (3) causation, both actual and proximate; and (4) damages suffered by the client."[15] A demonstrated failure to adhere to ordinary standards of professional competence is the touchstone of malpractice: "The client must show that if the attorney had adhered to the ordinary standards of professional competence and had done the act he failed to do or not done the act complained about, the client would have benefited."[16]

When the Judicial Conference Committee first proposed making court records electronically available in 2001, it proposed recommendations for district courts' adoption.[17] These recommendations encouraged counsel and courts to take specific actions to protect client information that would be made available through PACER and to prevent its misuse. While these recommendations were perhaps intended only as guidance, some have suggested that they constitute much more – that they are evidence of standard practice and that noncompliance with them is evidence of malpractice.[18] Although this view has not yet been embraced by the courts, many courts, including the Utah federal district court, have adopted the recommendations and signaled that they may be more than just guidance. In a recent mailing entitled "News from the Court," the Utah federal district court warned practitioners to observe certain filing requirements "[t]o avoid possible liability."

Balancing Disclosure with the Privacy Concerns of Clients

Given the potential for liability and the privacy concerns associated with the transition to PACER and CM/ECF, practitioners may rightly ask how they can protect themselves from being squeezed between this apparent "rock and a hard place." While there are not ready solutions to all of the dilemmas counsel will face when dealing with PACER and CM/ECF, there are discrete steps that counsel can take to reduce the risks.

Protecting or Minimizing the Disclosure of Client Information

Practitioners may protect client information and themselves by taking steps to prevent the disclosure of certain information or to minimize the information disclosed in court filings. Law offices may develop internal protections to ensure that attorneys do not

intentionally disclose client information in court filings. Given that the Utah federal district court is moving to electronic filing, this may include ensuring that software programs function properly to protect client information from unintended disclosure. Counsel may also resort to traditional methods of protection, such as seeking protective orders or leave to file case materials under seal. And, in light of the E-Government Act of 2002, courts should be more inclined to allow parties to file documents under seal.[19]

Counsel may also take measures to limit the information that is disclosed in court filings. This may be done by redacting confidential information. For instance, the Utah federal district court has issued filing requirements mandating that counsel redact certain personal data identifiers from documents or, if they are required to be included, to disclose only part of the needed information. Specifically, the court's policy states:

- For Social Security numbers, include only the last four digits;
- For minor children, include only the child's initials;
- For dates of birth, include only the year;
- For financial account numbers, include only the last four digits;
- For home addresses, include only the city and state; if foreign, only the country.[20]

In addition, the court has advised that parties "exercise caution" when filing documents that include driver's license or other identifying numbers; information about medical treatments, diagnoses, or care; an individual's employment history or financial information; or proprietary or trade secret information.[21]

Counsel may also take steps to ensure that redaction techniques are permanent and effective. As technology has developed, this has become more difficult. Some methods of redacting documents electronically may be ineffective or easily bypassed. Moreover, in recent months, researchers have developed software techniques that will identify redacted words even in hard copies of documents.[22] Thus, counsel will likely have to determine the most effective way of redacting information in documents, given the type of information involved.

Finally, counsel may protect client information by limiting the information that is disclosed in court documents. This can be done by disclosing only information that is vital to the client's case. It can also be accomplished by entering into stipulations,

where possible, on undisputed issues so as to avoid the need to disclose certain information.

Despite their best efforts, counsel should recognize that some private or confidential information will be disclosed and made electronically available. Under the federal court policy approving of electronic access and filing, most information filed with the court is presumed to be "public" in nature. Moreover, a court may refuse to grant a protective order or a request for leave to file documents under seal. Thus, there will be instances in which a client may have to risk that information disclosed in court filings will be made public or misused.

Client Notification

Attorneys can also provide effective representation, while protecting themselves from liability, by discussing with clients at the commencement of a case the privacy concerns associated with electronic court records. For example, counsel may want to:

- notify a client of the potential that information disclosed in court filings may be obtained by others and potentially misused;
- identify specifically the information the client is concerned about disclosing in court filings;
- discuss what information must or may need to be disclosed during the course of a case;
- inform the client that the client has a responsibility to call the attorney's attention to any sensitive information that may need protection; and
- discuss ways in which information that is disclosed may be protected from further disclosure or restricted to limit the client's risk.

Finally, counsel may include information regarding the risks associated with PACER and CM/ECF in an engagement letter to the client. These steps will not only help clients understand the risks, but will offer counsel protection against malpractice or other claims.

Conclusion

The District of Utah's transition to PACER and CM/ECF offers practitioners an efficient, convenient way to file and retrieve court records. It also cracks open a potential Pandora's Box of confidential client information. Enjoying the convenience of online

access, while at the same time managing the lid on the Box, will require practitioners to remain vigilant. Counsel must in each case identify the information a client wants kept in confidence and must also understand the ways in which such information can be inadvertently disclosed or misused. Counsel should also stay abreast of ways in which they can avoid or limit the disclosure of confidential information. Given the rapid evolution of technology, lawyers and their firms face a continuing challenge. By staying educated on the risks associated with electronic access and filing systems and by implementing procedures to protect confidential client information, attorneys can ensure that the transition to PACER and CM/ECF does not put clients and their confidential information at undue risk and can assist the courts in developing ways to continue to protect that information.

The authors gratefully acknowledge the guidance and editorial assistance of The Honorable David O. Nuffer, United States Magistrate Judge for the District of Utah, who contributed substantially to this article.

1. *See* Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files, *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files* at 1 (adopted Sept. 2001), available at www.privacy.uscourts.gov/Policy.htm (last visited October 19, 2004) [hereafter referred to as "Report of Judicial Committee"].
2. *Id.*
3. *See* John Anderson, Maryland State Bar Association, Inc., *Document Security* (April 2004), available at http://www.appligent.com/news/news_articles/current_news_pdfs/MSBA0404.pdf; Betsy Reynolds, *Anticipating the Courts' Moves; Manatt Phelps Sets Up E-Filing Protocols,* Law Tech. News at 31 (July 14, 2004).
4. Tony Perry, *The State; 21 Indicted in Alleged Identity-Theft Scheme,* L.A. Times at B6 (Nov. 19, 2003); *see also* FTC, *FTC Releases Top 10 Consumer Complaint Categories in 2002* (January 22, 2003), available at www.ftc.gov/opa/2003/01/top10.htm (last visited Aug. 26, 2004).
5. FTC, *ID Theft: When Bad Things Happen to Your Good Name* 1, 3-4 (Nov. 2003), available at www.ftc.gov/bcp/conline/pubs/credit/idtheft.pdf (last visited Oct. 19, 2004); *see also* Michael Caughey, *Comment: Keeping Attorneys from Trashing Identities: Malpractice as Backstop Protection for Clients Under the United States Judicial Conference's Policy on Electronic Court Records,* 79 Wash. L. Rev. 407, 413 (Feb. 2004).
6. *Public Access to Court Electronic Records, U.S. Party Case Index Overview,* available at www.pacer.psc.uscourts.gov/uspci.html (last visited Aug. 25, 2004).
7. *Id.*
8. *Id.*
9. *See Kristen M. Blankley, Note: Are Public Records Too Public? Why Personally Identifying Information Should Be Removed from Both Online and Print Versions of Court Documents,* 65 Ohio St. L.J. 413, 426-27 (2004).
10. Caughey, *supra* note 6, at 413.
11. Sharon D. Nelson & John W. Simek, American Bar Association, *Going Online E-Filing Primer,* 18 *GPSolo* 41, 44 (Dec. 2001), available at Lexis.com (last visited Aug. 28, 2004).
12. *Id.* at 43.
13. *Id.*
14. *See, e.g. Johnson v. Sawyer,* 680 F.2d 1490, 1499 & n.36 (5th Cir. 1992) (noting that, under Texas law, a lawyer can be held to be statutorily liable for disclosing confidential client information); *Alleco, Inc. v. Harry & Jeanette Weinberg Foundation, Inc.,* 665 A.2d 1038, 1043 (Ct. App. Md. 1995) (holding that an attorney breaches his fiduciary duties to his client by disclosing confidential information to third parties); *Gaylor v. Hobdy, No.* B162110, 2003 Cal. App. Unpub. LEXIS 12184, at *14-16 (Ct. App. Ca. Dec. 30, 2003) (same); *Welty v. Criscio,* 2000 Conn. Super. LEXIS 1298, at *7 (Sup. Ct. Conn. May 16, 2000) (same).
15. *Roderick v. Ricks,* 54 P.3d 1119, 1125 (Utah 2002) (quoting *Kilpatrick v. Wiley, Rein & Fielding,* 909 P.2d 1283, 1290 (Ut. Ct. App. 1996)).
16. *Harline v. Barker* 854 P.2d 595, 600 (Utah Ct. App. 1993).
17. *See Report of Judicial Committee, supra* note 1.
18. *See* Caughey, *supra* note 6.
19. *See* E-Government Act of 2002, Pub. L. No. 107-347, § 205(c)(3); 116 Stat. 2915, 2914 (codified as 44 U.S.C. § 3501 (2004)).
20. Office of Clerk of the Court, U.S. District Court, District of Utah, *Notice to Members of the Bar and Litigants* (Updated Oct. 20, 2004), available at www.utd.uscourts.gov/documents/privacy_ntc.html (last visited Oct. 19, 2004).
21. *Id.*
22. *See* John Markoff, *Illuminating Blacked-Out Words,* N.Y. Times.com (May 10, 2004), available at www.nytimes.com/2004/05/10/technology/10crypto.html?ex=1085234968&ei=1&en=80ec08dacc3d3249.

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Justice Court – the People's Court

by Toni Marie Sutliff

In the mid-1980's, I got a speeding ticket while traveling one of Utah's beautiful backroads. The ticket instructed me to contact the local justice of the peace to resolve the matter. As a baby lawyer and having never been inside a court room, I decided to spread my wings a bit, and I demanded a jury trial.

In one of those fun twists of fate, almost 20 years later, I find myself working in the Salt Lake County Justice Court, the current incarnation of those original justice of the peace courts. I've finally learned what I was seeking then – just what does happen in justice court?

First, some background and history.

The Utah Constitution contemplates the creation of justice courts.[1] The original justice courts, known as justice of the peace courts, were established to provide a serious, though less formal, way for the people to resolve minor criminal matters. The justices of the peace were well-respected members of the local community who could, Solomon-like, administer justice at low cost and with high customer satisfaction. The court proceedings were not recorded, although the justices of the peace kept records on case filings and dispositions. The court was often located in the living room or extra room of the justice of the peace, and the justices were paid according to the fines they collected. From the beginning, justices of the peace have not been, and cannot be required to be,[2] lawyers.

Since 1989, the justice of the peace courts have been known as justice courts,[3] and the judges as justice court judges. Since then, justice courts have become more sophisticated, are certified and audited by the State Administrative Office of the Courts, and the judges are paid a salary rather than a percentage of fines collected. They are still not courts of record, and operate under the idea that minor matters can be resolved more quickly, efficiently, and successfully in these smaller courts.

What is a justice court?

Briefly,[4] justice courts are established either by the county or the city in which they operate.[5] They have jurisdiction over Class B and C misdemeanors and infractions[6] committed within their territorial jurisdiction, which extends to the physical boundaries of the entity that created them.[7] For example, the Salt Lake City Justice Court can hear cases occurring within the boundaries of Salt Lake City, while the Salt Lake County Justice Court has jurisdiction over matters occurring within the unincorporated parts of Salt Lake County and any incorporated municipality within the county that has not established its own justice court. In addition, the justice courts have jurisdiction over small claims matters arising within their jurisdiction.

Justice courts also share jurisdiction with the juvenile court over minors aged 16 and 17 that have been charged with traffic offenses, excluding automobile homicide, driving under the influence of alcohol or drugs, reckless driving, fleeing a police officer, and driving on a suspended license.[8]

Justice court judges are appointed by the city for city justice courts, and by the county for county justice courts.[9] County justice court judges stand for retention election,[10] while city judges are reappointed by the city unless good cause prevents the reappointment.[11] Justice court judges are still not required to be lawyers, but are required to undergo substantial training, both before taking office and on a continuing basis.[12] Judges must be high school graduates or the equivalent, citizens of the United States, at least 25 years old, and a resident of Utah for 3 years prior to their appointment.[13] County justice court judges must also be a resident of the precinct in which they are to serve, if the county has been divided into precincts,[14] and a qualified voter in that precinct.[15] City judges must be a resident of the county in which the city exists or an adjacent county for 6 months and a qualified voter in the county of residence.[16]

Justice court judges have the authority to issue search warrants and warrants of arrest on probable cause, which can be served throughout the state,[17] and to conduct proceedings to determine probable cause and bail requirements.[18]

The city or the county, as appropriate, must provide sufficient staff prosecutors, defense counsel for those determined to be indigent, and peace officers for court security,[19] and the court facilities,[20] court clerks and support staff,[21] and appropriate research and office materials.[22]

TONI MARIE SUTLIFF is the Court Manager of the Salt Lake County Justice Court.

So how does the Justice Court work?[23]

Approximately 75% of the cases filed in the Salt Lake County Justice Court are traffic matters, not including driving under the influence. In honoring the goal of providing efficient and effective service for its customers, the taxpayers of Salt Lake County, this court has created a Court Referee[24] and a Traffic Court, to handle the traffic caseload exclusively. This frees up the court's other two judges' time to hear the non-bailable traffic and misdemeanor criminal matters filed in the court. Our court is also open on Tuesday evenings for appointments with the court referee, traffic arraignments, and traffic school.

First, we'll see how a traffic case is handled, and then we'll turn to a misdemeanor criminal case.

Let's say you've gotten a speeding ticket.

Traffic tickets in this court are written primarily by the Salt Lake County Sheriff and the Utah Highway Patrol. By statute,[25] the law enforcement agency issuing the ticket must send a duplicate copy to the court within 5 days. We then enter the citation into our computer case management system, and send you a courtesy bail notice. The bail notice will identify the amount of bail the court will accept to close the case, or will indicate that you must appear in court. The citation tells you to appear within 14 days,[26] but in practice, our court allows you 14 days after the citation is entered into the case management system, or in other words, is filed.

After getting a traffic ticket, you have the right to pay the indicated bail and have the matter closed, or to contest the issue with the court, by appearing at arraignment, pleading not guilty and going to trial. This is where the court referee comes in. In the Salt Lake County Justice Court, before you can appear at arraignment on a bailable traffic offense, you must first meet with one of our court referees (we have two). The court referees can listen to your story and make modest accommodations to the fine amount, can sign you up for traffic school to avoid having the incident reported on your driving record,[27] and may make payment arrangements if you merely want to spread out the payment of the bail amount. Unless you are eligible and agree to go to traffic school, these other options are treated as a guilty plea and go on your driving record as such.[28]

If you cannot reach agreement with the court referee, you may then appear at arraignment, plead not guilty or guilty, and if you plead not guilty have the matter set over for trial. On the day of the trial, you will meet with the district attorney assigned to that

calendar, with whom you may reach a deal to resolve the matter. If not, you then proceed to trial.

What happens if you don't either forfeit the bail or contact the court for an appointment with the court referee within the allotted 14 days? First, the court will add $50 as a delinquent fee to the ultimate bail imposed. Then, if you fail to contact the court, either to pay the bail or to schedule an appearance within 40 days after the ticket was filed, a charge of failure to appear will be added to your case,[29] and a warrant will be issued for your arrest. The warrant will stay active until you finally appear before the judge, post bail or a bond, or have an attorney (not you!) enter an appearance of counsel.

Procedures in our criminal calendars are very similar to the Traffic Court.

Now let's assume you've been retained by someone charged with a Class B or C misdemeanor in Salt Lake County Justice Court. What can you do and what can you expect?

Well, first, some basics. You need to know whether your client received a citation, or whether the case was filed by an information prepared by the District Attorney's office. If the case was filed by citation, your client had 14 days to respond by requesting an arraignment date. If she didn't respond by at least 40 days after the citation was filed in the court, the court probably has already added the failure to appear charge and issued a warrant for your client's arrest. We will recall the warrant when you file your appearance of counsel, and if you also file a not-guilty plea, we will also set a date for a pre-trial hearing for you, your client, and the District Attorney.

If your client was charged by an information, she will receive a summons to appear for arraignment. If the arraignment date has not passed, you can enter your appearance and a plea of not guilty, and we will set a date for pre-trial. If, however, your defendant did not appear at the scheduled arraignment, the court will have issued a warrant for her arrest, and you proceed as I've already described.

Pre-trial hearings and trials are held just as they are in district court, following the Rules of Criminal Procedure, except that juries consist of only four members and no record of the proceedings is kept.[30]

In our court, again to respond to the public's desire for efficient and effective justice, we have special calendars for domestic violence matters and for all drug related matters.[31] These two special calendars are conducted slightly differently and deserve a little explanation.

All drug-related charges are first screened to see if the defendant is eligible for drug court. Your client is eligible if he has a prior drug conviction, and no offenses of violence or outstanding warrants. Those that are not eligible are handled as any other criminal matter in our court.

Admission into drug court is beneficial for your client.[32] He will plead guilty to the charges, which plea will be held in abeyance for a period of time to allow him to get treatment and counseling. Once your client enters the drug court, your work is at an end. Your client will be expected to submit to regular urinalyses, stringent treatment, and weekly check-in and review in court with the drug court team, which consists of the assigned Assistant District Attorney, the assigned Legal Defender, the case manager, the assigned law enforcement officer, and the judge. Failure to abide by the program rules will result in your client receiving graduated and progressive levels of sanction, sometimes by immediate transportation to the jail for short periods of time. Drug court clients are given very close attention and many opportunities to succeed, including rewards and recognition for good progress. If successful, the charges are dismissed.

The Salt Lake County Misdemeanor Domestic Violence Court is handled much like the regular criminal calendar, except that all domestic violence arraignments, hearings and trials are segregated and heard separately from the other criminal calendars. The Court has an arrangement with the Salt Lake County Sheriff that allows the Sheriff's deputies responding to domestic violence calls to write on the citation the time and date of the next domestic violence arraignment in our court, usually within a week after the citation is issued. Domestic violence cases filed by information are also scheduled for arraignment on an expedited basis. The concern is that the defendant appear in court before the cycle of violence progresses to the next phase.

After arraignment, the matter proceeds as any other criminal matter. In contrast to a drug court case, you remain active as your client's counsel in domestic violence court. You have all the normal options at your disposal, including an arrangement with the District Attorney for a plea in abeyance under appropriate circumstances. Defendants either pleading guilty or found guilty by the court are sentenced to stringent treatment and other terms, in addition to jail where appropriate.

Appeals.

Appeals from the decisions of the justice court are not true appeals, but rather requests for a trial *de novo* in the district court. You

have 30 days after the sentence is entered, a guilty plea is entered, or a plea in abeyance is accepted to file a notice of appeal requesting a trial *de novo* on behalf of your client.[33] You can also request a hearing *de novo* of orders revoking probation, orders entering a judgment of guilt under a plea in abeyance, orders of sentence under a revoked plea in abeyance, and orders denying a motion to withdraw a guilty plea.[34] In addition, the prosecution has the opportunity to request a hearing *de novo* of various justice court rulings.[35] The justice court then has 20 days to send the docket to the district court.[36] The sentence of the justice court is stayed pending resolution of the matter by the district court if the justice court issues a certificate of probable cause, finding that the appeal is not being taken for purpose of delay and that substantial issues exist.[37] Once a trial or hearing *de novo* is requested, the district court has jurisdiction over the matter and its decision is not appealable unless the district court rules on the constitutionality of a law or rule.[38] The clerk of the district court transmits the decision of the district court or other disposition to the justice court.[39]

The Good, the Bad, and the Ugly.

Justice courts come under regular scrutiny by members of the bar who are concerned with the somewhat less formal proceedings in these courts. Perhaps it is time to rethink their purpose and operation. Before we eliminate the justice courts completely, however, let's look at what they do well and what could be changed.

The good? Justice courts still operate under the assumption that most people prefer to receive punishment for minor misdeeds in a forum other than the foreboding criminal justice setting of the district courts. The justice courts do mete out justice in a relatively informal fashion, giving the opportunity for resolution of traffic matters through the court referee and not having the ticket on your record, for example. Also, the justice courts are primarily located in the communities they serve; defendants don't have to travel downtown or across the County for hearings. And finally, due to their proximity to the public and their smaller nature, these courts can operate with fewer resources and still meet the needs of the public for justice.

The bad? As members of the bar have noted, appeals from the justice court are an unruly animal. On one side, we can claim that the defendant gets two bites at the apple – a trial in justice court, and a second trial *de novo* in district court if the outcome is unfavorable to the defendant.

On the other side, sentences in justice court are often short and could be completed long before an appeal to the district court is perfected. There is no rule that requires the district court judge to stay the effect of the justice court's sentence pending the appellate proceedings, although many do.[40] Defense counsel laments that this is patently unfair to the defendant, who is at the mercy of an unrestrained justice court judiciary. Contrary to what some may believe, however, justice court judges are subject to review. They are answerable to the Judicial Council and the Judicial Conduct Commission and to the public through the retention or reappointment process.

On the court's side, the lack of official recordings of justice

court proceedings can be a detriment. Say that a justice court judge finds a defendant guilty and imposes a sentence that is rather more harsh than what he might ordinarily impose for the offense. The judge states that the severity of the sentence is based on evidence presented at trial, possibly prior similar offenses, and the defendant's demeanor, indicating a lack of contrition or the possibility of further criminal behavior. On review by the Judicial Council or the Judicial Conduct Commission on a complaint filed by the defendant, the judge has no record to support his decision.

The ugly? I don't know. The number of appeals of justice court decisions filed statewide, for any reason, is less than 1% of the total number of cases heard. Do the rare cases in which the justice court process is not efficient or sufficient outweigh the benefits of having a method of quick and just resolution of minor matters? It is a debate worth having.

Do you wonder what happened to my trial for speeding in the justice of the peace court 20 years ago? After several weeks had passed and I had heard nothing, I called the court to ask how to proceed. I was by then almost nine months pregnant, and I explained to the judge's clerk that I wanted to have the matter resolved soon so that I wouldn't have to travel to the hinterlands to attend court with an infant. She told me not to worry, that she would command her husband, the justice of the peace, to dismiss the ticket in the interest of justice. In my case justice was served!

1. Utah Constitution, Article VIII, Section 1
2. Utah Constitution, Article VIII, Section 11
3. Utah Code § 78-5-101
4. The justice courts' authority and operation are described in Utah Code §§ 78-5-101 *et seq.* A succinct description of justice courts is found on the Utah Courts website – www.utcourts.gov/knowcts/just/justice.htm.
5. Utah Code § 78-5-101.5
6. Utah Code § 78-5-104
7. Utah Code § 78-5-103
8. Utah Code § 78-5-105
9. Utah Code § 78-5-134. The specific authority for appointment depends on the form of government in the city or county. In cities with a traditional management arrangement, the judge is appointed by the chair of the city commission, city council, or town council. In cities with the council-manager operational form of government, the judge is appointed by the city manager. In cities with the council-mayor optional form of government, the judge is appointed by the mayor. In any of these three situations, the appointment must be confirmed by the city commission, city council, or town council, as appropriate. In counties having the county commission form of county government, the judge is appointed by the chair of the county commission and confirmed by the county commission. In counties having the county executive-council form of government, the judge is appointed by the county executive and confirmed by the county council.
10. Utah Code § 78-5-134(4)
11. Utah Code § 78-5-134(5)
12. Utah Code § 78-5-127
13. Utah Code § 78-5-137
14. Utah Code § 78-5-102(3). Salt Lake County, for example, used to be divided into several precincts, but has now been consolidated for purposes of the qualification of the Salt Lake County Justice Court judges. Judge Acomb originally sat in Precinct 4. Her courtroom in the Salt Lake County Justice Court is now known as Court 4.
15. Utah Code § 78-5-137(1)(d) and (e)
16. Utah Code § 78-5-137(2)(d) and (e)
17. Utah Code § 78-5-113
18. Utah Code § 78-5-106
19. Utah Code § 78-5-111
20. Utah Code § 78-5-108(2)
21. Utah Code § 78-5-110
22. Utah Code § 78-5-109
23. The processes and procedures of the Salt Lake County Justice Court may differ slightly from the others, but should for the most part be standard.
24. Most justice courts have established a court referee or similar process.
25. Utah Code § 77-7-20
26. Utah Code § 77-7-19
27. You may only pursue this option if you have no other offenses on your driving record and have not attended a traffic school within the past 3 years.
28. Utah Code § 77-7-21(c)
29. A Class B misdemeanor under Utah Code §§ 41-6-168 and 77-7-22
30. Although no recording is made of the proceedings, the court does maintain a docket of the charges, orders issued, documents received, and ultimate disposition of the case. This docket is a public record, except for certain confidential personal information regarding the defendant.
31. Many of the Justice Courts, especially in the Salt Lake valley, have special drug and domestic violence courts or calendars. Each operates differently, although the common thread is to reduce the incidence of drug abuse and domestic violence in our communities by diverting these defendants into treatment and preventing further escalation of the problem behavior.
32. We have a cap of 25 for drug court clients, due to funding restrictions. The drug court clients are also serviced by County Criminal Justice Services, for case management and treatment. We have to turn many potential drug court clients away due to this cap.
33. Utah Code § 78-5-120
34. *Id.*
35. *Id.*
36. URCrP 38
37. *Id.*
38. Utah Code § 78-5-120
39. URCrP 38
40. The Supreme Court's Advisory Committee on the Rules of Criminal Procedure has proposed a rule that would require such a stay. That rule is still pending. Comments submitted describe both the benefits and detriments of the current process.

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Justice Court Appeals: The Good, the Bad, and the Unintended

by Sam Newton

Your client has been charged with a criminal misdemeanor which is being heard in a justice court. What a lucky draw, right? The client gets two bites at the apple. He can run motions, and then he can try the case. If he wins, then he is done. But if he loses, then he has the option to appeal the case to District Court, wipe the slate clean, and start everything from scratch. What could be better? The Utah Court of Appeals agrees. In *Lucero v. Kennard,* 2004 UT App 94, the defendant wanted review of a justice court decision, and he did it by filing an extraordinary writ.[1] The Court of Appeals disagreed with defendant's decision to pursue a writ: "A trial de novo would have remedied any constitutional violations Petitioner may have suffered in the Justice Court." *Lucero,* 2004 UT App 94, ¶13. But is this statement true? Is the trial de novo the complete "fix-all"? Is it possible that pursuing a trial de novo may actually create problems for a defendant?

Everything is Not So Rosy

In Shakespeare's *Measure for Measure* one character laments: "O, what may man within him hide, Though angel on the outward side!"[2] The trial de novo process seems to be a perfect fix to most any problems which would occur in justice court. What could be better than a fresh start? But we may not consider (or realize) that pursuing a trial de novo may be unintentionally complicated or may bring unintended consequences.

I. No or Limited Review of Justice Court Judges' Legal Rulings

Supreme Court Justice William Brennan once said, "there are few, if any situations in our system of justice in which a single judge is given *unreviewable discretion* over matters concerning a person's liberty or property . . . ."[3] Because de novo review results in a case simply starting over as though it was never heard, the justice court judges are almost completely insulated from true appellate review. They have the power to make legal conclusions and to impose criminal sanctions which impact defendants' most fundamental constitutional rights. Yet the trial de novo remains the only procedure in place in Utah law to remedy any justice court problem. While the trial de novo gives our clients a fresh start, the justice court judge's legal rulings or sentence remain unchecked.

Outside of the United States Supreme Court, the justice courts are the only other body in this jurisdiction to have virtually no appellate review. Of course the trial de novo most often fixes or eliminates a poor justice court decision. But what is alarming is that in a system which thrives on the ability of higher courts to check the abuses of lower courts, the decisions of justice court judges cannot be checked or called into question. Sure, justice court sentences and convictions no longer stand when one successfully pursues a trial de novo, but the higher court is not able to tell a lower court that a particular process or practice is unconstitutional. The procedure lacks a mechanism to review a judicial officer's exercise of discretion. This essentially gives justice court judges free rein – they know that their specific rulings cannot be reviewed or their abuses of discretion called into question.

Interestingly, the Utah Code gives the prosecution an opportunity to have the district court review a justice court decision. If the justice court dismisses a case, invalidates a statute or ordinance, excludes evidence, or grants a motion to withdraw a guilty plea, then the prosecution is entitled to a hearing de novo in district court on that issue.[4] No such provision exists for the defendant. This is arguably because she has a better right: she can start the whole proceeding over and run all of her motions or arguments again in the district court. But the problem remains: a defendant lacks a procedural mechanism to ask a higher court to review a justice court decision.

Let's assume the worst. What if a justice court decided to illegally detain a defendant? Or what if that court refused to afford people their constitutional trial rights? What are defendants' remedies? They must plead guilty and appeal. Or they must go to trial and then appeal. Neither of these options fixes the problem that occurred below, and neither option slaps the justice court on

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the wrist. That court may engage in repetitively unconstitutional practices, yet Utah law lacks a mechanism which tells that court that it is in the wrong.

Some may assume that the extraordinary writ may keep a justice court in check. The writ may be used when a court "has exceeded its jurisdiction or abused its discretion."[5] Yet before one may pursue the extraordinary writ there must be "no other plain, speedy and adequate remedy" available.[6] But in the current state of the law, it appears that the availability of the writ may be questionable. The Court of Appeals in *Lucero v. Kennard,* 2004 UT App 94, held that a defendant who pursued an extraordinary writ should have pursued the trial de novo, even though that defendant was not represented by counsel in the justice court.

The problem is fundamental. The extraordinary writ may be the only way a defendant has to check a justice court judge's abuse of discretion. And while the appellate courts have reviewed justice court writs in the past,[7] *Lucero* illustrates that the appellate courts have become more reticent about using the writ as a method of review. They seem to prefer use of the trial de novo. The writ still seems to be an option that is out there, but there are no guarantees that the appellate courts will accept one.

Interestingly, the vast majority of persons encounter the criminal justice system through the justice courts. People think that because the justice courts only handle class B and C misdemeanors, they can only do limited damage to peoples' liberties. But recently the justice court sentencing practices have been coming under fire. That is, even though the justice courts lack the ability to punish severely, they make up for it in their more-frequent use of punitive measures.[8] This issue has become increasingly political with the release of a study commissioned by the Criminal Justice Advisory Counsel (CJAC) this last May. Because of massive overcrowding at the Salt Lake County Jail, the CJAC study made some rather drastic recommendations regarding the justice courts. Among others, the study recommended that the jail should discontinue accepting class B and C misdemeanants, that justice court judges should be given a limited number of beds at the jail based on their jurisdiction's population, and that defense attorneys should "adopt a policy of routinely appealing all justice court convictions that result in excessive or disproportionate sentences, especially when the sentence is in lieu of payment of a fine . . ."[9] Alan Kalmanoff, of the Institute for Law and Policy Planning, and the consultant on the study, said that justice courts have been overusing jail as a sanction: they have been incarcerating "those we're angry at," rather than "those we're scared of."[10]

Of course the majority of justice court judges act within their discretion and act to protect defendants. But it is not necessarily the justice court judges as a whole who are the problem. The problem is created by a *system* which allows judges to overstep the bounds of propriety. The concern is not that these judges should lack the authority to incarcerate defendants. The concern is that the current state of the law lacks a mechanism to check a justice court judge's abuse of that power.

If our clients plan on pursuing a trial de novo, and if we wish to allege some sort of unconstitutional error or practice in the justice court, we must realize that it may be extremely difficult to even get the appellate courts to take a look at the issue.

II. Custody Status Pending Appeal

Not only does a defendant lack the means to get a justice court decision reviewed, but he may suffer other collateral consequences by entering a plea or going to trial and then asking for a trial de novo.

Let's say that a person is arrested for simple assault on Friday. Under the law, he must be arraigned, his bail must be set, and he must be given a court date within a few days. Now let's take an identical defendant, but this time he enters a plea to simple assault in the justice court on Friday – and let's say that he is taken into custody. He files his appeal that day. This same defendant may not get his case heard in the district court, nor may he get his bail set for periods of up to twenty days or more. How can this defendant make sure that the justice court sentence is stayed

or that the district court hears his case within a reasonably prompt period of time?

According to Rule 38 of the Rules of Criminal Procedure, once a defendant has filed a notice of appeal *and* the justice court has issued a certificate of probable cause, the judgment of the justice court is stayed.[11] Yet interestingly, the rule states that once a defendant has filed a notice, then the district court must issue all further orders governing the case (with the exception of the certificate of probable cause) and must "conduct anew the proceedings."[12] But what happens with these defendants who are either in custody, or who are taken into custody, when the justice court enters its sentence? Are they instantly released from jail upon counsel's filing for the trial de novo? Is the justice court sentence automatically stayed?

These are unanswered questions.[13] According to Rule 38, in order to obtain a stay of the justice court sentence, two requirements must be met: 1) the defendant must file a notice of appeal, and 2) the justice court judge must issue a certificate of probable cause.[14] This matter starts to get complicated when one looks at the standard for obtaining a certificate of probable cause, which is found in Rule 27. According to Rule 27, in order to obtain the certificate, the judge must make two findings: 1) the appeal is not taken for purpose of delay; and 2) the appeal "raises substantial issues of law or fact reasonably likely to result in reversal . . ."[15] Add one more rule to the sticky pot: if the defendant is in custody or sentenced to jail, the judge must determine by clear and convincing evidence that the defendant is not likely to flee and that he does not pose a danger to the community if he were to be released.[16]

Now here's where it really gets messy. Utah Code Ann. § 78-5-120 contains the trial de novo standard, and is completely clear: "In a criminal case, a defendant *is entitled* to a trial de novo in the district court" when a notice of appeal is filed within thirty days of either 1) sentencing after a trial or a plea of guilty, or 2) after a plea held in abeyance.[17] Here is the problem: a defendant has an automatic right to a trial de novo. She doesn't have to make a showing. She doesn't have a burden. She files her notice on time and the statute automatically gives her a new trial.

But what is the justice court judge supposed to do with the issuance of the certificate of probable cause? The rules clearly require one to issue. Additionally, they require the justice court judge to make findings regarding whether the defendant raises a good question of law or whether the appeal is just a delay tactic. But she gets her new trial automatically, so arguably, the certificate should also issue as a matter of course.

Not all justice court judges agree. Some will automatically stay a sentence once a notice of appeal is received. Others want to go through the formalities of the certificate of probable cause – and it is not uncommon for a justice court judge to deny a stay based on some of the prongs traditionally required for issuing a certificate.[18]

The Court of Appeals seems to have agreed with justice courts who have automatically issued the stay. In a series of memorandum decisions, the Court held that defendants would not have to show a likelihood that they will prevail on appeal: "A defendant appealing a justice court judgment is entitled to a trial de novo without any demonstration of error in the justice court. In this context, we agree it appears unnecessary to require a defendant to demonstrate that the 'appeal . . . raises substantial issues of law or fact reasonably likely to result in a reversal . . . .'"[19]

Despite this pronouncement from the Court of Appeals, the rules still appear to be contradictory – and it appears that these questions remain unresolved in the minds of many district and justice court judges. When a defendant appeals, is her justice court sentence automatically stayed? Or does the justice court retain the power to hold the defendant? At what point may the district court step in and order a defendant's release or set an appropriate bail? As one can see, the questions are not answered by the rules and as a result, some defendants may get caught in the middle.

Counsel must realize that if a client is sentenced to jail in the justice court and is taken into custody (or the client is already in custody) that he or she may not get out of jail, nor may the justice court sentence be stayed, until counsel can get a district court judge to act on the matter.

The problem is further complicated because the district courts may not generate a file until they have received the file from the justice courts. In the event that the defendant is only being held on the justice court sentence, it may leave counsel with the only option of filing an extraordinary writ in order to have the district court hear the issue in the meantime. Some justice court judges think that because the Rule gives them twenty days to transfer the file to the district court,[20] that they can hold a defendant in custody for the full twenty days before transferring the file. This attitude only prolongs the amount of time our clients may sit in custody while we attempt to secure their release.

Securing our clients' release may be further complicated because different district court judges have different procedural approaches. Some will sign an order which stays the justice court sentence as a matter of course. Others want defense counsel to file a motion. Others want to wait until the district court clerks have generated a file. Some want stipulations from both counsel. Some want a formal denial from the justice court and an appeal of that denial. Others want counsel to use the

extraordinary writ. But what if the justice court sentences a defendant to twenty days jail and waits the full twenty to transfer the file? Or what if that court refuses to transfer the file at all? Then defense counsel must spend time at the district court to try to get a judge to act. We, as counsel, should not judge-shop. In the Third District Court in downtown Salt Lake City, there has been an attempt to solve this problem. The District Court will generate a file upon defense counsel's promise that an appeal is "on its way." The file is created then assigned to the judge on rotation for accepting new cases. Counsel can then file a motion with the newly-assigned judge and raise the issue. Then that judge has a case, and can begin making rulings on the matter.

It can be extraordinarily complicated to try to secure a defendant's release from custody, or to get a stay of the justice court sentence, pending one's appeal. Hopefully the rule can be clarified in the future to make appropriate resolution of some of these procedural problems.

III. Remand Without Notice

Another problem arises when our clients fail to appear at the initial stage of the trial de novo appeal. According to Rule 38, the district court may dismiss the appeal and remand the case back to the justice court if the defendant fails to appear or "fails to take steps necessary to prosecute the appeal."[21] While this may be helpful in practice, it may not be entirely fair to a defendant.

When counsel asks for a trial de novo, the justice court has the responsibility to transfer the file to the district court. The district court, in turn, will generate its own file and set a new court date. The problem is that defendants may not get notice of the new court date. This may be because the district court does not look for the defendant's address in the justice court file, or perhaps it is because the justice court does not put the defendant's address in its file. Of course, it can always be that the defendant has chosen, for whatever reason, not to appear. Whatever the problem may be, the fact remains that defendants often do not receive notice from the district court of their new date. As a result, they may not appear. Because of their failure to appear the district court dismisses the appeal and remands the case.

If we as counsel are planning to pursue a trial de novo, we must take great care to inform our clients of new court dates. Perhaps to avoid this problem, we should also advise our clients to call the district court and/or our offices periodically to find out the new date. That way we avoid the potential problem of losing our appeal for something that is not our client's fault.

IV. Loss of Privileges

The last complication of a justice court appeal is that a plea of guilty or a finding of guilt at trial followed by an appeal may subject a defendant to a number of collateral consequences. First, on drug, DUI, and reckless driving cases, the Driver License Division will most likely pull a defendant's license upon receipt of the conviction.[22] It does not matter to the Division that the defendant's conviction is actually wiped clean and that the process starts over with the filing of a notice of appeal in justice court. The Division treats the justice court plea or finding of guilt as a conviction and pulls the license. The problem is that the Driver License Division does not get notice of the trial de novo from the justice court. It's a classic situation of the left hand not knowing what the right hand is doing.

There are additional collateral consequences: defendants may lose their funding for student loans.[23] They may be subject to deportation or suffer other immigration consequences.[24] If the defendant is in the military, it is likely that he or she will not be able to bear arms because of the conviction.[25]

Counsel may not have considered that by entering a plea, her client may lose a significant number of privileges. Other independent agencies and/or government entities may take actions against the defendant, merely because he has entered a plea and a "conviction" has been entered. As of yet, there is no solution. The statute requires that there be a finding or verdict of guilt before a defendant may pursue the appeal.[26] What other agencies will do with that finding of guilt is slightly up in the air. Practically

speaking, they may do nothing. But the risk is there, and the fact remains that these agencies have been known to act following a guilty plea or such a finding.

Conclusion

There is no question that the justice courts serve a wonderful purpose. They alleviate the rather stressful burden of the district courts by taking jurisdiction over the class B and class C misdemeanors. Additionally, clients who are charged in justice court usually get two chances to have their cases heard. The benefits to these defendants are outstanding and crucial. But we must be aware that several complications may arise from trying to move the case from justice court to the district court. Outside of the extraordinary writ, justice court judges remain insulated from any sort of judicial review of the legal conclusions made in favor of the prosecution. Defendants may have great difficulty securing a stay of a justice court sentence pending the trial de novo. Defendants may not obtain notice of their new court dates. Finally, criminal defendants may lose a significant number of privileges merely because they have entered a plea or because they have been found guilty.

If we are aware of these consequences, then we can adequately advise our clients in pursuing their appeals in district court.

1. Arguably because Lucero could not take the trial de novo option.
2. Measure for Measure. Act iii. Sc. 2.
3. *Jones v. Barnes,* 463 U.S. 745, 757 (1983) (emphasis added).
4. Utah Code Ann. § 78-5-120(4).
5. Utah R. Civ. Pro. 65B(d)(2).
6. Utah R. Civ. Pro 65B(a).
7. *See e.g., Dean v. Henriod,* 1999 UT App 50
8. A Salt Lake County study done by the Institute for Law and Policy Planning found that nearly two-thirds of jail bookings were from misdemeanor offenses, with the justice courts accounting for 43 % of the jail population. The study also noted another problem: "Justice court judges recognize that they are key contributors to the jail's population. . . . [J]udges feel frustrated by the ability of the Sheriff/Jail Director to let inmates out before sentences are completed through early release and award of good time. This frustration has resulted in the use of consecutive sentences, resulting in inmates being in jail over one year and blocking early release while exacerbating crowding."
9. Salt Lake County Criminal Justice System Assessment, prepared for the Salt Lake County Criminal Justice Advisory Council, April 28, 2004, by the Institute for Law and Policy Planning. The study found that every sentence of "jail or pay a fine" originated from a justice court. This is arguably an unconstitutional practice. The Utah Constitution prohibits " . . . imprisonment for debt except in cases of absconding debtors." Utah Const. Art. I § 16.
10. *Report Says County Jail Need Not Be So Packed,* The Salt Lake Tribune, May 1, 2004; *Cooperation Called Solution to Jail Crowding,* The Salt Lake Tribune, May 6, 2004; *S.L. County Justice Overhaul Urged,* Deseret Morning News, April 29, 2004.
11. Utah R. Crim. Pro. R. 38(d).
12. Utah R. Crim. Pro. R. 38(e) and (f).
13. These questions may or may not be answered in the near future. The Utah Supreme Court has heard arguments on a case, *Bernat v. Allphin,* Case Number 20030567, which is awaiting a decision. In that case, defendant alleges that the current trial de novo scheme violates the double jeopardy clause. Unless a justice court sentence is automatically vacated upon filing the notice of appeal, he argues, then defendants are forced to keep vestiges of their justice court conviction throughout the trial de novo. It is unclear what the Supreme Court will do with the case, though it is possible they may address some of the stay questions brought up in this article. This will definitely be a case to keep an eye on.
14. Utah R. Crim. Pro. R. 38(d) and (e).
15. Utah R. Crim. Pro. R. 27(f).
16. Utah R. Crim. Pro. R. 27(b).
17. Utah Code Ann. § 78-5-120 (emphasis added).
18. This issue was interestingly discussed in 2001 in an article in the Utah Law Review. Bates, Benjamin. *Exploring Justice Courts in Utah and Three Problems Inherent in the Justice Court System,* 2001 Utah L. Rev. 731. In that note, the author recommends that the district court, and not the justice court, should make the determination regarding the certificate of probable cause.
19. *Ulmer v. Lubeck,* 2003 UT App 110; *Zakharian v. Burton,* 2003 UT App 111, though note 17, infra, refers to the possibility that the Supreme Court may take a look at this matter.
20. Utah R. Crim Pro. R. 38(c).
21. Utah R. Crim. Pro. R. 38(g). Another potential problem is Rule 38(g)(2). Exactly what does it mean to fail "to take steps necessary to prosecute the appeal"? Potentially any delay (i.e. continuances) subjects a defendant to dismissal for not moving the case on promptly.
22. Utah Code Ann. § 53-3-220(1) requires an automatic suspension of the driver license for several misdemeanors: DUIs, drug- and reckless-driving cases are among several offenses for which suspension is required.
23. 20 USCS § 1091(r). The 1998 Drug Free Student Loans Act denies federal grants, federally subsidized loans, and work-study funds to college students who have been convicted of any drug offense. This can be a felony or a misdemeanor, and includes sale or possession. If the conviction is for the purchase of a controlled substance, a person is ineligible for one year for the first offense, two years for the second, and indefinitely for the third. If the conviction is for the sale of a controlled substance, then the offender is ineligible for two years on the first offense and indefinitely for the second.
24. Most criminal convictions may subject a non-citizen defendant to immigration consequences. The Immigration & Naturalization Service (INS) defines a "conviction" as a formal judgment of guilt, or if a judgment is withheld, where there is some type of plea, and/or admission of facts warranting guilt and the imposition of some type of penalty. 8 USCS § 1101(a)(48); INA § 101(a)(48). Certain kinds of convictions may be deportable offenses and others may make a person ineligible for admission to the country. But the mere fact that a defendant enters a plea in order to pursue an appeal may be grounds for the INS to take administrative action. The following article in the Michigan Bar Journal has an excellent summary of immigration consequences. Ronald Kaplovitz, *Criminal Immigration: the Consequences of Criminal Convictions on Non-U.S. Citizens,* 82 MI Bar Jnl. 30 (Feb. 2003) (available online at http://www.michbar.org/journal/article.cfm?articleID=544&volumeID=41#fn5ref).
25. This is because of the Lautenberg Amendment, 18 USCS § 922(g)(9), which prohibits a person convicted of a misdemeanor from possessing a firearm or ammunition. The Utah Court of Appeals has agreed to hear this issue. In *Salt Lake City v. Gary Newman,* 20040452-CA, defendant has alleged that he had to file an extraordinary writ in order to obtain review of a justice court legal conclusion. His basis was that he could lose his military status by entering a guilty plea and pursuing the trial de novo.
26. Utah Code Ann. § 78-5-120(1).

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$3.10 million	trucking accident
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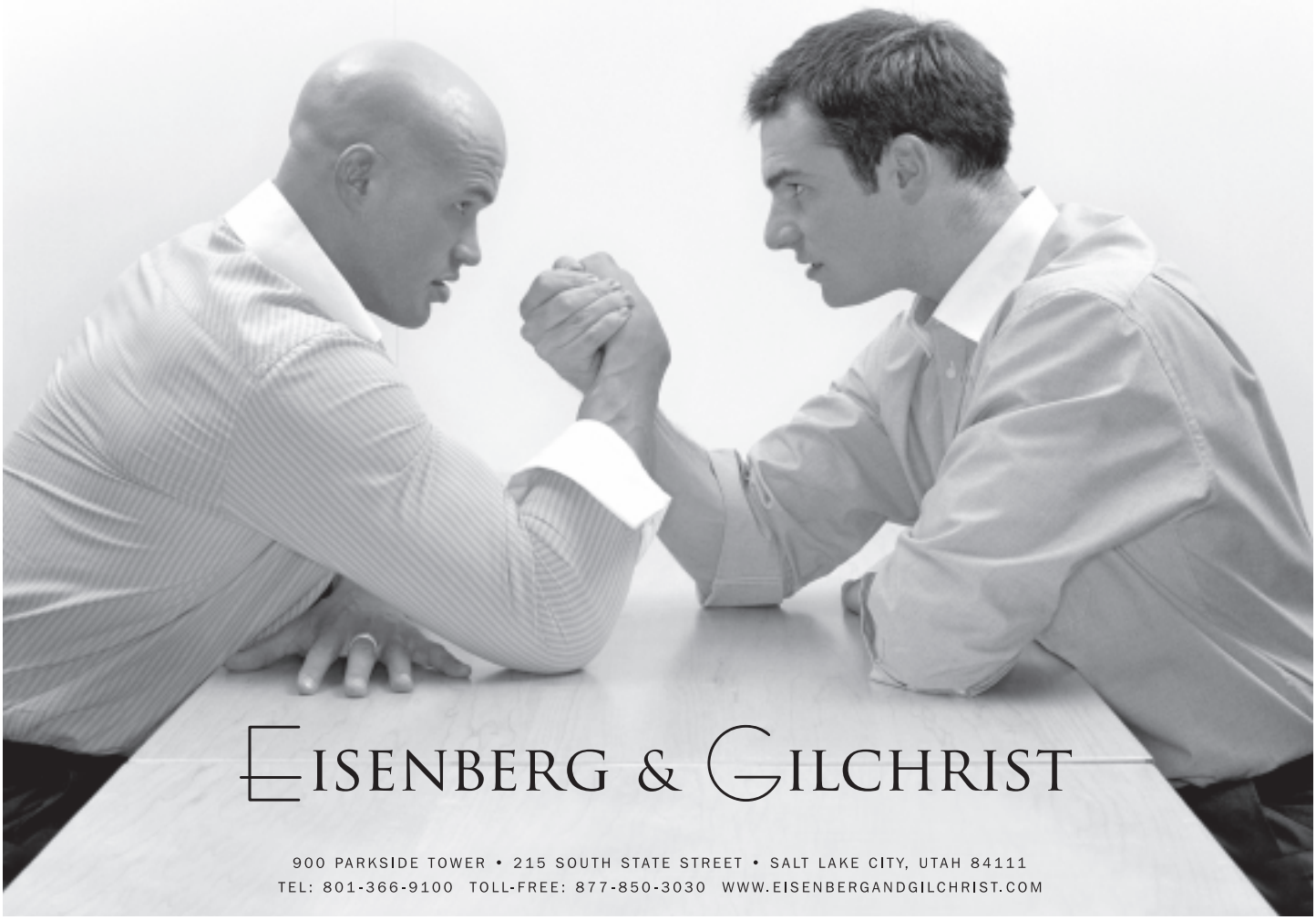

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Improving our Profession, and Theirs, Too, I Guess

by Just Learned Ham

I had a marketing professor at the U who told us the key to entrepreneurship was copying anything that sells. "You can't always be the first to have a good idea," was how he put it. I haven't forgotten him, or the great deals he gave us on pirated eight-track tapes. Have you ever noticed how Lynnyrd Skynnyrd sounds better and better as the tape deteriorates? And have you ever noticed how there's always some killjoy screeching about infringement when you come up with that one really big idea that's going to lead to early retirement? Patent law is just one big speed bump on the road to production – that was a quote from a client, I can't take credit for it, or they would probably sue me. And I can't practice patent law, either, or they would probably sue me. Anyway, intellectual property concerns aside, which is where I always stash them, we could learn a lot from other professions.

Take psychiatry for instance. Oh sure, we could all learn it was really our parents' fault that we went to law school instead of medical school – but we could learn useful stuff, too. Like the 50-minute hour. I used to think it was cheating. When you pay for a dozen doughnuts and only get 10, that seems wrong. But it's all a matter of perspective. 50 minutes of CLE seems like much more than an hour – so it probably evens out at some point. And nobody ever complains about a 2x4 being only an inch and a half thick (you didn't realize that psychiatrists actually control the building supply business, did you?). My 60 minutes just became 1.2 hours. Billables are up 20%. I feel better already. Probably don't need the shrink anymore.

And what about doctors? It's time we started thinking of them as something more than just potential defendants. They are in fact shrewd business persons. We should steal an idea they actually bought from us. You know that letter they make you sign before they'll even take your temperature? The one you wrote? The one that says you're probably going to die and it will probably be their fault but your estate will still buy all of their kids Hummers to drive to Stanford and your personal representative will never sue them and will only say good things about them? (Have I mentioned what a great abdominal surgeon I have?) Compare that letter to your engagement letter. Where's the part that says although your client's case may be ironclad, there's still an excellent chance they'll lose everything they own because of your incompetence, which of course won't prevent you from collecting $300 an hour. And where's the other part that says they'll never sue you or try to kick you out of the country club, even for intentional torts? Come on, folks, let's take a little of our own advice. I'll bet you don't have a will, either.

Professional sports. We need to start charging admission. As long as court is free to spectators, it will be taken for granted. People only appreciate what they pay for. And why just court? Let's sell tickets to real estate closings and out-of-court restructurings. Just imagine 20,000 screaming lunatics (at $30 a head) at an estate planning consultation. Put a number on everyone's back and rent a snow cone machine and just imagine what you could charge for front row seats to a partners' retreat (to say nothing about the cable contract). And if the city won't build you a new office, threaten to move to another community that will give you the kind of client support you deserve.

Dry cleaners. I have a little card that gives me one free shirt for every ten. I have seven stickers on it, and I guard that thing with my life. Why can't we give little cards offering . . . oh, maybe one free divorce after the first five. I could even throw in a free pre-nup.

And dentists – anyone in a position to throw away that much money on hare-brained limited partnerships in American Fork must be doing something right. I think it's the music. Why don't we have soothing music piped into our offices? Explaining the homestead exemption to your Chapter 7 client would go down a lot easier with Andy Williams softly warbling *The Days of Wine and Roses* in the background. And why should clients have to sit around in a lobby with nothing to look at but shelves full of *Am.Jur.* and dust and nothing to listen to but clocks ticking? How about coffee table books packed with beautiful photos of things you've never seen – like the Lehi Roundup? And Muzak? Nothing says "Relax, that paternity suit will soon be just a fading memory" quite like the Ferrante & Teicher rendition of *Free Bird.*

I want to be careful not to give the impression that everyone else has all the good ideas. They could learn a thing or two from us, too.

Have you ever gotten a second opinion from a doctor? Have you noticed how similar the second opinion is to the first one? "After a thorough review I concur with Dr. Slipscalpel's diagnosis. The wounds around the incision are clearly self-inflicted and the

inflammation is obviously the result of the patient's refusal to follow the doctor's advice not to scratch." Don't these people know anything about discovering the truth? They need an adversary system.

There should be three doctors assigned to every case: one to describe the most serious possible affliction consistent with the patient's symptoms, the second to describe the least troubling possibility, and the third to decide which is correct – which will be obvious after listening to the first two. The first two wear formal outfits made in Italy (surprisingly uncomfortable, given how well they fit) and try to intimidate each other with traditional Maori warrior grimaces while the third one isn't looking. The third wears a robe.

The patient enters, complaining of stomach pains.

All three doctors: *"Here, sign this."*

First doctor: *"You have no symptoms and no history of prior complaints. I've seen your kind before. You're either trying to get out of work, or you're a drug dealer trying to re-stock your inventory. You're fine. Go home. Be sure to make your co-payment on the way out."*

Second doctor: *"Your stomach has completely disappeared. Probably something like ebola, only serious. You'll be dead before you reach the parking lot. I hope you made your co-payment on the way in."*

Third doctor: *"I'm afraid I can't conclude that, as a matter of medicine, either of you is correct. The patient has the right to be diagnosed by a jury of her peers. Let's find 12 people who know nothing about stomach pains and ask them what's wrong with her. Did you get her insurance card?"*

And what about our greatest contribution to modern education, the Socratic method? (It seemed appropriate to phrase that as a question.) We should share it with other professionals (licensing fees to be negotiated). Music teachers, for example.

"Now Mr. Clubfinger, through a series of skillful questions I will prove that, in fact, you already know how to play that instrument. The accordion is based on natural, intuitive, and logical principles that are coded into your DNA. All it takes is a trained professional, such as me, to tease them out of you. Let's go. Now how would you propose to hold that thing? If you were a goat with bronchitis and got poked in the ribs by a four-year-old at the petting zoo, what kind of sound would you make? If Johan Strauss gets a statue next to the Danube, why doesn't Myron Floren at least have a brat named after him in Milwaukee? (Because there's no justice in the music business, that's why – that's another page they could take from our book – it was 1986 before they gave the first Grammy for polka music. See, this is an educational piece. Bonus points if you can name the artist. Hint: it wasn't Lynnyrd Skynnyrd.[1]) I think you've got the idea, now let's hear *Roll Out the Barrel,* Cleveland style. And pass me the mustard."

When you think about it – and I have – we have a lot to offer, and a lot to learn. And we better get started before some psychiatrist files a patent and demands royalties.

1. Frankie Yankovic. I can hear the palm of your hand slapping your forehead.

Utah Standards of Professionalism & Civility

By order dated October 16, 2003, the Utah Supreme Court accepted the report of its Advisory Committee on Professionalism and approved these Standards.

1 Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.

2 Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers abuse anyone or engage in any offensive or improper conduct.

3 Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

4 Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a "record" that has not occurred.

5 Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of another lawyer for any improper purpose.

6 Lawyers shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.

7 When committing oral understandings to writing, lawyers shall do so accurately and completely. They shall provide other counsel a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

8 When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately and completely reflect the court's ruling. Lawyers shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.

9 Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery, delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of settlement or inform opposing counsel that a response has not been authorized by the client.

10 Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not doing so.

11 Lawyers shall avoid impermissible ex parte communications.

12 Lawyers shall not send the court or its staff correspondence between counsel, unless such correspondence is relevant to an issue currently pending before the court and the proper evidentiary foundations are met or as such correspondence is specifically invited by the court.

13 Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel's opportunity to respond or to take other unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer's unavailability.

14 Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments, and admissions of facts. Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

15 Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall cooperate in making any reasonable adjustments.

16 Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is known, unless their clients' legitimate rights could be adversely affected.

17 Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

18 During depositions lawyers shall not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege for resolution by the court. "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences, lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

19 In responding to document requests and interrogatories, lawyers shall not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or information, nor shall they produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

20 Lawyers shall not authorize or encourage their clients or anyone under their direction or supervision to engage in conduct proscribed by these Standards.

Standard 18 – Deposition Conduct

by Francis J. Carney

Editors' Note: *A member of the Supreme Court's Advisory Committee on Professionalism will discuss one of the new Standards of Professionalism and Civility with each issue of the* Bar Journal. *The opinions expressed are those of the member and not necessarily those of the Advisory Committee.*

No area of practice generates more complaints of unprofessional behavior than depositions, and there was little dispute among the members of the Advisory Committee on the need to address it. We did so in Standard 18:

> *During depositions lawyers shall not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege for resolution by the court. "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences, lawyers shall engage only in conduct that would be appropriate in the presence of a judge.*

An obvious question is why create Standard 18 when we already have U.R.Civ.P. 30(d)(1):

> *Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (4).*

The Advisory Committee agreed that the 1999 amendments to Rule 30 seem to have helped to reduce obstreperous deposition behavior, but also considered that so much reported uncivil or unprofessional conduct arises in depositions, that the principles were worth repeating. The Committee members also agreed that the violation of a rule of procedure is not necessarily uncivil or unprofessional, and that a separate professionalism standard was therefore justified.

The general idea, expressed in Rule 30(c) and many published decisions, is that a deposition should be conducted as if the witness were testifying at trial, but with no judge present and with no need to make objections except for those required by Rule 32(c)(3). At trial, you don't get to confer with the witness before he answers a pending question, and you shouldn't be allowed to do so in a deposition. At trial, you don't get to break up the flow of cross examination with spurious objections; you don't get to take a timeout to coach your witness; you don't get to suggest answers in your objections. There's no reason a deposition should proceed any differently.

As unpleasant as it seems, there is no such thing as "defending" a deposition under the rules, the case law, or the professionalism standards. You, as deponent's counsel, don't get to defend anything, except against abusive, harassing, or overreaching tactics by examining counsel. You ARE a potted plant unless you have a legitimate objection. That's not necessarily all bad – you might as well know how your witnesses are going to hold up under cross examination, because they're not going to have you to protect them on the stand.

We considered making the "deposition" standard more detailed as in the Florida Bar's *Guidelines for Professional Conduct* (containing twelve admonitions about deposition practice) or in many of the other published guidelines, but we chose brevity over completeness, seeking a set of basic standards that could be put down on a single page or two. In retrospect, I wonder if

FRANK CARNEY is employed by the Salt Lake City firm of Anderson & Karrenberg.

we should have said something about examining counsel's behavior, such as this from the Florida Bar's *Guidelines:*

> Counsel should refrain from repetitive or argumentative questions or those asked solely for purposes of harassment. Counsel should not conduct questioning in a manner intended to harass the witness, such as by repeating questions after they have been answered, by raising the questioner's voice, or by appearing angry at the witness.

Florida Bar Guideline E(7).

Examining counsel can be jackasses too. But a standard could run on forever in attempting to describe every instance of incivility or unprofessionalism without covering it all. For example, I doubt that we could have anticipated the behavior in a recent New York case where the examining lawyer was sanctioned for barking like a dog at an unfriendly witness during a deposition. *Levine v. Angstrom,* New York Law Journal, May 17, 2004. Do we really need a standard for that?

The "aspirational" or "mandatory" nature of the guidelines was a source of controversy in the Advisory Committee from the start. There are those members who felt that generating another set of rules, aspirational or not, was unproductive when we already have a set of civil rules that aren't strictly enforced; why, these members say, would we be so foolish as to hope that "aspirational" standards will be followed when "mandatory" rules are ignored? They, obviously, were on the losing side of the debate.

To better make for uniform and aggressive resolution of discovery disputes, the Advisory Committee recommended that a Discovery Commissioner be appointed for the Third District, at least on a trial basis. The discovery commissioner program has been an outstanding success in Las Vegas, and we used it as our model. Our hope was to get a judicial officer dedicated to dealing with discovery disputes, one who would take the time to get to the bottom of the claims, one who would publish discovery opinions online for all to read, and one who would not be shy of awarding sanctions. Unfortunately, that recommendation is unlikely to ever see the light of day given the lack of funding.

The Advisory Committee also strongly recommended that judges get actively involved in dealing with professionalism issues, particularly in discovery disputes. Judges, listen up: this is not a problem that is going to be solved by asking lawyers to "please get along." Obnoxious "pit-bull" litigators exist because judges allow them to exist, and clients think they want to use them. Judges can change that.

As to the need for Professionalism Standards at all, whether aspirational or mandatory, the opinions on the Advisory Committee range from those who hope standards to have some salutary effect, to those of a more pessimistic bent, like me, who see professionalism codes as a well-intentioned waste of effort, except perhaps as a teaching tool for new lawyers. In this one lawyer's view, if the judiciary is really serious about changing lawyer behavior, it's going have to start making some very public – and very expensive – examples. The time for wrist-taps and admonitions by footnote is over. As one federal judge chided his judicial colleagues:

> Judges are wont to decry the lack of civility and cooperation amongst members of the trial bar. The judiciary, however, is not without blame. For some reason, too many judges have no trouble restraining their enthusiasm for resolving discovery disputes (this puts it mildly). Obviously, if a party wants to obstruct and delay, the inability to get a decision on a discovery dispute assists the obstructor. Members of the bench should keep in mind that the word "judge" is a verb as well as a noun.

Harp v. Citty, 161 F.R.D. 398, 402 (E.D. Ark. 1995)

In fairness, the judges can't handle this alone. Each of us needs to make a personal commitment to do better, if only for the long-term good of a profession under relentless attack, only some of it deserved. We all have our "moments," but we apologize, learn from them, and move on. We dishonor the profession by condoning those lawyers who confuse aggression with competence, equate civility with weakness, and elevate personal bitterness into professional virtue. True, civil litigation isn't designed to be an enjoyable experience for parties, but the malignant toads of our profession have unnecessarily driven too many fine people out of this career. We on the Advisory Committee have tried to make a fair, if admittedly halting, start at fixing this.


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Utah State Bar Announces Awards

The Utah State Bar is pleased to announce the awards recently presented at the annual Fall Forum event on October 22, 2004 at the University Park Marriott Hotel.

Community Member Award
Peggi Lowden was presented with the Community Member award. This award is given to a non-lawyer for making significant contributions to the legal profession. Ms. Lowden was instrumental in the forming of the Bar's Paralegal Division and served as its first Chair. As well she has served on a number of Bar committees, including an ethics screening panel for the past five years. Ms. Lowden currently works for the law firm of Strong & Hanni in Salt Lake City

Pro Bono Award
Lauren Scholnick was presented with the Pro Bono Lawyer of the Year Award. This award is given to a lawyer who has volunteered significant time and legal services to those in need in our communities. Ms. Scholnick volunteers in a number of ways, including the past 5 years with the Street Law Project. One night per week she also volunteers at the Guadalupe School Clinic, helping many non-English speaking clients with their legal issues. Ms. Scholnick is a founder of the law firm of Strindberg Scholnick and Chamness.

Professionalism Awards
In its inaugural presentation, 5 lawyers from around the state received awards for professionalism. This award recognizes lawyers whose actions and deportment represent the highest standards of fairness, integrity and civility.

First Division
For the Bar's First Division, which includes northern Utah, the Hon. Gordon J. Low received the Professionalism Award. Judge Low has set an excellent example of professionalism from the bench. His treatment of clients and lawyers in his courtroom is always given with great respect and courtesy.

Second Division
Richard Campbell was presented with the Professionalism Award for the Second Division which includes Davis, Morgan and Weber Counties. Mr. Campbell was noted in one of his many nominations as being "one of the most courteous and sincerely kind individuals in the practice of law." Having practiced law for over 50 years, Mr. Campbell has recently retired.

Third Division
Stephen B. Nebeker received the Professionalism Award for the Third Division for the Utah State Bar, which includes Salt Lake, Tooele and Summit Counties. At the award presentation it was noted that Mr. Nebeker "always remembered who he was, what he represented, and the value of professional courtesy in fostering the large goals of justice." Mr. Nebeker is Of Counsel with the firm of Ray Quinney & Nebeker in Salt Lake.

Fourth Division
M. Dayle Jeffs is the recipient for the Professionalism Award for the Fourth Division, covering central Utah. Mr. Jeffs has practiced law for four and a half decades in Utah County, most with the law firm of Jeffs and Jeffs. Mr. Jeffs service represents the highest example of professionalism within his firm and throughout Utah County.

Fifth Division
The Professionalism Award for the Fifth Division was presented posthumously to Ken Chamberlain. Mr. Chamberlain passed away in Spring of 2004 and prior to that had been practicing law in Richfield Utah since 1951. Mr. Chamberlain's courtesy and professional demeanor were known well throughout the southern Utah legal community.

Notice of Petition for Reinstatement to the Utah State Bar by Robert Louis Booker

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 Robert Louis Booker in *In re Robert Booker,* Third Judicial District Court, Civil No. 020907926 on December 6, 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 Election of Bar Commissioners

First and Third Divisions

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

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after January 3, and **completed petitions must be received no later than February 15.** Ballots will be mailed on or about May 2 with balloting to be completed and ballots received by the Bar office by 5:00 p.m. May 31. Ballots will be counted on June 1.

In order to reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost.

1. Space for up to a 200-word campaign message plus a photograph in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. *Campaign messages for the March/April* Bar Journal *publications are due along with completed petitions, two photographs, and a short biographical sketch* ***no later than February 1.***
2. A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their division.
3. The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates would be responsible for delivering to the Bar ***no later than April 18*** *enough copies of letters for all attorneys in their division.* (Call Bar office for count in your respective division.)

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

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

Utah State Lawyer Legislative Directory 56th Legislature 2005–2006

The Utah State Senate

Patrice Arent
Democrat – District 4

Education: B.S., University of Utah, 1978; J.D., Cornell Law School, 1981

Committee Assignments: Executive Office of Criminal Justice Appropriations Committee; Judiciary, Law Enforcement, and Criminal Justice Committee

Elected to House of Representatives, 1996; Elected to Senate, 2002

Area of Practice: Commercial Litigation

Gregory "S" Bell
Republican – District 22

Education: B.A., Weber State University; J.D., University of Utah Law School

Committee Assignments: Higher Education Appropriations Subcommittee; Health & Human Services Committee; Judiciary, Law Enforcement & Criminal Justice Committee; Revenue & Taxation Committee

Elected to Senate, 2002

Area of Practice: Real Estate Development

Lyle W. Hillyard
Republican – District 25

Education: B.S., Utah State University; J.D., University of Utah

Committee Assignments: Executive Appropriations Committee (Co-Chair); Judiciary, Law Enforcement & Criminal Justice Committee; Revenue & Taxation Committee

Elected to House, 1980; Elected to Senate, 1984

Areas of Practice: Criminal; Domestic; Personal Injury

Mark B. Madsen
Republican – District 13

Education: B.A., Spanish/American Studies, George Mason University, Fairfax, VA; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Commerce & Revenue Appropriations Committee (Co-Chair); Education Committee; Judiciary, Law Enforcement & Criminal Justice Committee; Workforce Services & Community and Economic Development Committee

Elected to Senate, 2004

Practice Area: General Counsel Office of Larry H. Miller

Dave L. Thomas
Republican – District 18

Education: B.S. Finance, Brigham Young University; J.D., College of William and Mary

Committee Assignments: Executive Offices & Criminal Justice Appropriations Committee (Co-Chair); Education Committee (Chair); Judiciary, Law Enforcement, & Criminal Justice Committee; Senate Rules Committee

Elected to Senate, 1988

John L. Valentine
SENATE PRESIDENT
Republican – District 14

Education: Savanna High School, Anaheim, CA; B.S., J.D., Brigham Young University

Committee Assignments: Executive Subcommittee; Capital Facilities & Administration Appropriations Committee; Public Education Appropriations Subcommittee; Health & Human Services Standing Committee; Revenue and Taxation Standing Committee

Elected to House, 1988; Appointed to Senate, 1998; Elected to Senate, 2000

Areas of Practice: Corporate; Estate Planning; Tax

The Utah State House of Representatives

Ralph Becker
MINORITY LEADER
Democrat – District 24

Education: B.A., American Civilization, University of Pennsylvania, 1973; J.D., University of Utah College of Law, 1977; Certificate in Planning, University of Utah 1977; M.S., Geography (Planning Emphasis), University of Utah, 1982

Legislative Assignments: Public Utilities & Technology Standing Committee; Executive Appropriation Committee; Capital Facilities & Administrative Services Standing Committee; Political Subdivisions Standing Committee

LaVar Christensen
Republican – District 48

Education: B.A., Brigham Young University, 1977; J.D., McGeorge School of Law, University of the Pacific, 1980

Legislative Assignments: Education Standing Committee (Vice Chair); Law Enforcement & Criminal Justice Standing Committee; Public Education Appropriations Committee

Areas of Practice: Business Transactions; Civil Litigation; Real Estate

Greg J. Curtis
SPEAKER OF THE HOUSE
Republican – District 49

Education: Brighton High School; B.S., Accounting, Brigham Young University, 1984; J.D., University of Utah College of Law, 1987

Elected: 1994

Legislative Assignment: Executive Appropriation Committee, Administrative Rules Review Committee, Legislative Managment Committee, Utah Constitutional Revision Commission

Practice Areas: Real Estate and Land Use and Development

Lorie D. Fowlke
Republican – District 59

Education: B.S., Law Enforcement, Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Legislative Assignment: Commerce & Revenue Appropriations Committee; Public Utilities & Technology Standing Committee; Judiciary Standing Committee

Ross I. Romero
Democrat – District 25

Education: B.S., University of Utah, 1993; J.D., University of Michigan Law School, 1996

Legislative Assignments: Judiciary Standing Committee; Revenue & Taxation Standing Committee; Commerce & Revenue Appropriations Subcommittee

Practice Areas: Civil Litigation; Labor & Employment; Intellectual Property/Information Technology; Government Relations & Insurance Tort

Stephen H. Urquhart
MAJORITY WHIP
Republican – District 75

Education: Williams College; J.D., J. Reuben Clark Law School, Brigham Young University

Legislative Assignments: Executive Appropriation Committee; Public Education Appropriations Subcommittee; Education Standing Committee; Law Enforcement & Criminal Justice Standing Committee

Scott L. Wyatt
Republican – District 5

Education: B.S., Utah State University; J.D., University of Utah School of Law

Legislative Assignments: Business & Labor Standing Committee; Judiciary Standing Committee; Higher Education Executive Appropriations Committee

Elected to House, 2004

Practice Areas: Municipal Law; Business Litigation; Family Law; Litigation

Notice of Direct Election of Bar President

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

Letters indicating an interest in being nominated to run are due at the Bar offices, 645 South 200 East, Salt Lake City, Utah, 84111 by 5:00 P.M. on March 1, 2005. Potential candidates will be invited to meet with the Bar Commission in the afternoon of March 10, 2005 at the commission meeting in St. George. At that time the Commission will select the finalist candidates for the election.

Ballots will be mailed May 2nd and will be counted June 1st. The President-Elect will be seated July 13, 2005 at the Bar's Annual Convention and will serve one year as president-elect prior to succeeding to president. The president and president-elect need not be sitting Bar commissioners.

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

Appointments

The Bar appoints or nominates for appointments to various state boards and commissions each year. The following is a listing of positions which will become vacant in the next twelve months. If you are interested in being considered for one or more of these positions, please send a letter of interest and resume to John C. Baldwin, Utah State Bar, 645 South 200 East, Salt Lake City UT 84111 or e-mail john.baldwin@utahbar.org.

	Term Ends
Child Support Advisory Committee	
Helen Christian	May 1, 2005
Stuart Ralphs	May 1, 2005
Ethics Advisory Opinion Committee	
Robert A. Burton	July 1, 2005
John D. Day	July 1, 2005
Linda F. Smith	July 1, 2005
Ethics & Discipline Panels	
Jone Foster	July 1, 2005
Harry Fuller	July 1, 2005
Craig L. Barlow	July 1, 2005
G. Scott Jensen	July 1, 2005
Janet Gillilan	July 1, 2005
Linda Gillis	July 1, 2005
Bruce Maak	July 1, 2005
Ryan Shaw	July 1, 2005
Bruce Jackson	July 1, 2005
Oliver W. Gushee, Jr.	July 1, 2005
Craig Adamson	July 1, 2005
Catherine Brabson	July 1, 2005
Clark Nelson	July 1, 2005
L. Stewart Olsen	July 1, 2005
Utah Legal Services Board of Directors	
Lisa Hurtado Armstrong	July 1, 2005
John A. Beckstead	July 1, 2005
Jody K. Burnett	July 1, 2005
Carol Clawson	July 1, 2005
Tom R. Roberts	July 1, 2005
Lauren I. Scholnick	July 1, 2005
Erik Strindberg	July 1, 2005
Roland F. Uresk	July 1, 2005

American Bar Association Convention to be held in Salt Lake in February

The ABA is holding its 2005 Mid-Year Convention in Salt Lake City in early February. This convention is an opportunity for Utah lawyers to make connections with lawyers from around the country and around the world.

The convention will run February 9 – 15, 2005 and will be headquartered at the Grand America Hotel in Salt Lake.

From the ABA web site (at www.abanet.org/midyear/2005/), you get an idea of how you might benefit from attending this convention:

The Midyear Meeting brings together more than 3,000 lawyers and their families. There is no registration fee for the Midyear Meeting, and you can register several different ways: online, by fax, by mail, or on-site at the Grand America Hotel. The deadline for advance registration is January 7, 2005. While the size of the Midyear Meeting does not match that of the Annual Meeting, the volume of business that is transacted does. In addition to the House of Delegates convening at the Midyear Meeting to review recommendations submitted by various entities of the Association, some Section and Association committees also meet to review the business of their groups. The Midyear Meeting hosts the Nomination Committee of the House of Delegates, which nominates the Association officers and members of the Board of Governors. The Fellows of the American Bar Foundation hold their Annual Meeting during the ABA's Midyear Meeting.

As well, if you are interested in getting involved in any ABA Sections, you can find a list of their Salt Lake meeting dates and times here: www.abanet.org/midyear/2005/entities.html

As it may be a while before the ABA brings another convention to Utah, you should consider taking advantage of this opportunity now.

THANK YOU!
Food & Clothing Drive
Participants & Volunteers

We would like to thank all participants and volunteers for their assistance and support in this year's Food and Clothing Drive. We delivered six truck loads of donated items and received almost $2,800 in cash donations to specific shelters.

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

Leonard W. Burningham
Toby Brown
Sheryl Ross
Marjorie Green

COLLABORATIVE FAMILY LAW

Collaborative divorce is an entirely new and considerably different approach to divorce for lawyers and other professionals than the more traditional adversarial process. For clients, the collaborative divorce permits them to experience a process that will allow them to achieve the best possible voluntary resolution as they see it.

To become a qualified collaborative professional, come to the training outlined below.

Date & Time: Friday, Jan. 28, 8:30 am to 5:00 pm,
Saturday, Jan. 29, 8:30 am to 1:00 pm
CLE available

Instructor: Brian Florence

Place: Law & Justice Center
645 South 200 East

Cost: $120

RSVP to Jennifer Dastrup, 801-521-6383

Update Your Address With The Bar And Get More Value!

With 2005 upon us, now is a great time to make sure the Bar has your current e-mail address and that it is correct and up-to-date. This is especially important with the implementation of Casemaker - the free online legal research benefit.

There are three convenient ways to update your e-mail address (or other contact information) with the Bar. First and easiest is via the web site at: www.utahbar.org/forms/member_address_change.html. Second, you can fax in your address change request to (801) 531-0660. And finally (and slowest) you can mail in your request to: Licensing Department, Utah State Bar, 645 South 200 East, SLC, UT 84111.

Although there are virtually 100's of reasons to update you e-mail address, here's the Top 10 for you to enjoy:

Top 10 Reasons To Update Your E-Mail Address With The Bar.

10. Current and soon-to-be clients can find you
9. You receive state Court rule change notices sooner
8. You get your Section news über fast
7. Excellent CLE programs are delivered to your computer
6. Colleagues can reach you quickly
5. The Bar won't share your address with anyone
4. Receive info about discounts on Member Benefit products and services
3. You receive the e-Bulletin and know things before everyone else
2. You will be able to access Casemaker (the free legal research benefit)
1. You will exude 'The Cool Factor' ... since you will be in the "know."

2005 Annual Convention Awards

The Board of Bar Commissioners is seeking nominations for the 2005 Annual Convention Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nominations must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Friday, April 22, 2005. The award categories include:

1. Judge of the Year
2. Distinguished Lawyer of the Year
3. Distinguished Section of the Year
4. Distinguished Committee of the Year

2005 Spring Convention Awards

The Board of Bar Commissioners is seeking applications for two Bar awards to be given at the 2005 Spring Convention. These awards honor publicly those whose professionalism, public service, and public dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession. Award applications must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Monday, January 17, 2005.

1. **Dorathy Merrill Brothers Award –** For the Advancement of Women in the Legal Profession.
2. **Raymond S. Uno Award –** For the Advancement of Minorities in the Legal Profession.

Discipline Corner

PLEASE NOTE: *The* Bar Journal *has been requested to clarify that the Charles C. Brown whose disciplinary action was reported in the November edition is not lawyer and former Bar President Charles R. Brown of the law firm of Clyde, Snow, Sessions and Swenson.*

INTERIM SUSPENSION

On December 13, 2004, the Honorable Joseph C. Fratto, Jr., Third Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 18 of the Rules of Lawyer Discipline and Disability immediately suspending Geoffrey L. Clark from the practice of law in Utah pending final disposition of the disciplinary complaints against him.

In summary:

On November 19, 2004, criminal charges were filed against Mr. Clark on two felony counts, i.e. distribution of or arranging to distribute a controlled substance and possession and possession or use of a controlled substance (Prior). Subsequent to this, on November 20, 2004, another felony charge of making false or inconsistent statements was filed against Mr. Clark.

On March 18, 2004, Mr. Clark had been previously convicted of the criminal misdemeanor charges of interfering with a legal arrest, driving with measurable controlled substance, possession of a controlled substance without container, and driving on revocation. And, on June 21, 2004, Mr. Clark pled guilty in justice court to charges of speeding and driving on a suspended license.

Mr. Clark does not in any way admit that he has committed the crimes which are the basis of the pending criminal charges against him. However, given the totality of the circumstances, Mr. Clark did not contest the Court's entry of the Rule 18 order.

RECIPROCAL DISCIPLINE

On November 4, 2004, the Honorable Sheila K. McCleve, Third Judicial District Court, entered an Order of Discipline: Disbarment disbarring Ben D. Hyde from the practice of law in Utah.

In summary:

On July 21, 1998, the Supreme Court of California entered an order disbarring Mr. Hyde from the practice of law in California. Mr. Hyde's misconduct in California included willful failure to comply with orders issued by the Supreme Court directing him to wind down his practice and notify clients of a previous suspension.

DISBARMENT

On November 30, 2004, the Utah Supreme Court entered an Order of Disbarment, disbarring Ray Harding, Jr. from the practice of law in Utah.

In summary:

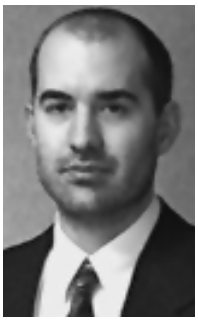
On or about July 13, 2002, after being called to Mr. Harding's home on a domestic disturbance call, law enforcement officers found cocaine, heroin and drug paraphernalia. Mr. Harding tested positive for cocaine, opiates, and Valium. Mr. Harding was arrested and charged with two felony criminal counts of unlawful possession or use of a controlled substance. Subsequently, Mr. Harding pled guilty to two counts of attempted possession or use of a controlled substance, a class A misdemeanor. Mr. Harding was a Fourth Judicial District Court judge for the State of Utah at the time of the criminal charges.

Aggravating factors included: After being charged, Mr. Harding continued to publicly maintain his innocence and malign his accusers for over a year. These protestations were widely reported in the media and disseminated to the general public. Mr. Harding did so with full knowledge of his culpability, as evidenced by his subsequent admission of guilt. Furthermore, despite being unable to hear cases due to the pending criminal charges, Mr. Harding continued to draw his full salary and otherwise enjoyed the emoluments of judicial office. Not only did such behavior bring disrepute upon the legal profession and undermine public confidence in the judiciary, it placed an undue burden upon his colleagues on the Fourth Judicial District Court and adversely affected those citizens served by that court. Compounding these abuses, Mr. Harding delayed his decision to resign until the last possible moment, and only did so under intense media coverage of the looming dual threat of impeachment by the Legislature and removal by the Utah Supreme Court.

Young Lawyers Continue in Their Commitment to the Community

by Peter H. Donaldson

Candace Vogel, YLD President



Paul Farr, YLD Treasurer

Debra Griffiths, President-Elect

Christian W. Clinger, YLD Past-President

2004 was an outstanding year for the Young Lawyers Division of the Utah State Bar ("YLD"). The YLD is proud to have received the 2004 Distinguished Section of the Year Award from the Board of Bar Commissioners. With several committees staffed by capable volunteers, the YLD continues to offer significant contributions to the Bar and the public. Here are some of the 2004 highlights from the YLD committees as well as a look at what is coming up in 2005.

YLD's Leadership/Executive: More than 2,000 YLD members had the opportunity to elect new officers this past summer. Candice Anderson Vogel, of Manning Curtis Bradshaw & Bednar, LLC was elected as the 2004-2005 YLD president. Paul Farr, of Suitter Axland, is Treasurer, and Jason P. Perry, of the Utah Department of Commerce, continues as Secretary. Debbie Griffiths, of Wrona & Parrish, is the President-Elect for 2005-2006, and Christian Clinger, of Clinger Lee Clinger, is the Past-President of YLD.

AND JUSTICE FOR ALL: (Kimberly Neville and Jeff Droubay, co-chairs) In conjunction with several individuals and law firms, the YLD sponsored the annual "Bar Sharks for Justice" pool tournament in November. Participants and spectators enjoyed themselves while raising money in support of Utah Legal Services, Disability Law Center, and Legal Aid Society of Salt Lake City. The committee's goal is to raise at least $20,000.00 this year. YLD is seeking volunteers and organizational committee members for the next "AND JUSTICE FOR ALL" fundraising event, which will be a phone-a-thon in March. The committee also plans to co-sponsor the Law Day Run this spring. Please contact Kim Neville at (801) 257-1846 if you would like to help.

Tuesday Night Bar: (David Hall and Amy Poulson, co-chairs) At "Tuesday Night Bar" members of the Bar volunteer to meet with individuals to discuss legal issues and assist them in obtaining counsel-all without charge. In addition, the YLD offers several CLE luncheons on legal topics frequently touched upon at Tuesday Night Bar. Tuesday Night Bar is held most Tuesday evenings between 5:00 p.m. and 6:30 p.m. at the Utah Law & Justice Center, 645 South 200 East. Please contact David Hall at 524-6614 if you would like to volunteer.

Continuing Legal Education: (Amy Hayes and Jami Momberger co-chairs) The CLE committee is planning a series of CLE luncheons for 2005. In 2004, YLD members taught and attended seminars on family law, landlord-tenant law, and the basics of bankruptcy law in conjunction with "Tuesday Night Bar." Watch for more information about the seminars planned for this year.

Needs of Children: (Marianne Guelker and Sonia Sweeney, co-chairs) The Needs of the Children Committee worked with the Junior League of Salt Lake in the "Coats 4 Kids" fundraiser last November, during which nearly 1,000 coats were provided to Utahns in need. The committee is organizing a toy drive to benefit the state's Children's Justice Center, which provides a child-friendly atmosphere and services for children during the

child abuse investigative process. Toys are kept at each of the 15 Children's Justice Center locations across the state, and each child who visits is allowed to choose a small stuffed animal to take home upon leaving. The program is funded by state appropriations, in-kind support, federal grants, and private donations. The committee will hold its "Have-a-Heart" Toy Drive from January 14, 2005 to February 14, 2005 and will distribute the toys on Valentine's Day. Please contact Sonia Sweeney at 652-8777 if you would like to help out.

Public Education: (Sammi Anderson and Chad Derum, co-chairs) After a busy 2004, which included coordinating efforts to teach students about the 50th Anniversary of *Brown v. Board of Education,* new educational projects are underway in 2005. Along with the Needs of Children Committee, the Public Education Committee is working with the ABA to bring the "We the Jury" project into Utah classrooms in order to teach young people about the value and importance of jury service. In addition, lawyers and their co-workers are encouraged to volunteer to help tutor children with their reading and writing skills on a weekly basis in the "Not Just Lawyers for Literacy" program. Please contact Chad Derum at 363-5678 to volunteer as a tutor.

Community Service: (Kelly Latimer and Christina Micken, co-chairs) The Community Service Committee worked hard this past November in sorting food for the Utah Food Bank. Upcoming projects include the annual "Law Suit" Day during which professional clothing is gathered and donated to the Road Home and JEDI Women's Shelter. In addition, a spring clean-up is planned for the South Valley Children's Justice Center. Please contact Kelly Latimer at 323-2243 to help.

Law Day: (Michael Young and David Bernstein, co-chairs) After a highly successful 2004 Law Day celebrating the 50th Anniversary of *Brown v. Board of Education,* this year's Law Day activities will focus on helping the public understand the importance of juries in our justice system. Plans are in the works for a Law Day luncheon to be held during the week of May 2-6. Watch for more information coming soon.

Utah State Bar Conferences: (Angela Stander and Kendra Shirey, co-chairs) The YLD sponsors and coordinates with various practice sections of the Utah Bar to organize the Back to Basics CLE sessions at the Bar's Spring and Annual meetings. The goal of the Back to Basics sessions is to provide valuable training to new lawyers in various fields of practice as well as refresher courses for more experienced practitioners. The YLD also organizes the family carnival and the 5k run at the Annual Bar Convention in Sun Valley.

Professionalism: (Sean Reyes and Wade Budge, co-chairs) The Professionalism Committee has been formed to be a resource to the Utah Supreme Court's Advisory Committee on Professionalism. The committee's focus is to reinforce the importance of professionalism and civility among the YLD membership.

Membership: (Doug Larson and Geoff Landward, co-chairs) The Membership Committee works to increase participation of the 2,000 young lawyers within the Bar. Attorneys who are under age 36 or in their first three years of law practice are automatically enrolled in YLD. There are no annual dues or membership fees for division membership. If you would like to be involved with the YLD or serve on a committee, please contact Doug Larson at (801) 363-5678 or Geoff Landward at (801) 366-0100. You can also visit the YLD web page: http://www.utahbar.org/sections/newyl.

Utah Minority Bar Association: (Sean Reyes, UMBA President and YLD liaison) Through fundraising, service projects, and other activities, the YLD supports the Utah Minority Bar Association. This year UMBA plans to give special recognition to the first 50 minority lawyers in Utah.

Paralegal Division: (Robyn Dotterer, chair) The Paralegal Division is pleased to join in supporting the Young Lawyers Division with its activities. The Division sponsored a half-day CLE seminar in November, 2004 and is planning several monthly Brown Bag CLEs for 2005. A fashion-show fundraiser for the legal profession will take place this Fall, with proceeds going to "and Justice for all." In addition, a Paralegal Utilization and Salary Survey will be online by mid-January, 2005. Finally, a "Paralegal Day" Luncheon for paralegals and their supervising attorneys will be held May 19, 2005 at the Grand America Hotel. Please contact Tally Burke at 531-7090 with questions about upcoming activities.

Utah Bar Journal: (Peter Donaldson and Nathan Croxford, co-chairs) The YLD Bar Journal Committee is seeking articles from young lawyers for publication in the *Utah Bar Journal*. If you have an idea for an article please write it up and submit it! Contact Peter Donaldson (pdonaldson@swlaw.com) or Nathan Croxford (ncroxford@swlaw.com) for more information.

The YLD is continuing with its commitment to serve our profession and the community as a whole. We want to thank the Bar, our members and volunteers, and all the organizations that supported us in 2004. We look forward to an exciting year in 2005!

Mentoring Legal Professionals

by Mary H. Black

Kim Ross, Second Vice President of the Legal Assistants of North Texas Association (LANTA), addressed the National Association of Legal Assistants (NALA) Education Conference in Sparks, Nevada, July 2004, about the value and the need of mentoring relationships in the legal profession. NALA's affiliated paralegal associations in Alabama, California, Texas, and Kansas each supports a mentoring program. But how does an organization initiate a mentoring program? And why?

Continuing legal education is an ethical and professional duty. Not all learning takes place in a classroom. Book learning is intensified with on-the-job training. Mentoring is another option in fulfilling this duty of education. Ms. Ross points out that paralegals are entrusted with greater responsibilities and are expected to have more specialized knowledge. Sources anticipate there will be a 33% growth in the paralegal profession in the next ten years as we seek to find ways to make legal services more accessible to all. Seasoned paralegals, now in the field, will be retiring and their places filled. Additionally, there is a constant focus on new careers, as people often change careers several times during their working lives.

Ms. Ross has distilled the experiences of LANTA's successful mentoring program into step by step basics:

Definition: Mentoring is the process of building a relationship between mentor and mentee that is mutually beneficial and enhances the self worth of both individuals through the sharing of expertise, ideas, support and success. The relationship between mentor and mentee is based on trust and mutual consideration for the other party's time and talents or potential. It is the ability to spot the handful of people who can make a difference in your life.

Informal mentoring has unspecified goals, unknown outcomes, and limited access between the parties. Mentors and mentees self-select based on "chemistry"; the length of the mentor relationship may vary; there is no formal training or support; and the organization (i.e., corporation, law firm, LAAU, Paralegal Division) benefits indirectly, but the individuals benefit directly.

Formal mentoring has established goals, evaluated outcomes, and open access to all who qualify; mentors and mentees are paired based on compatibility; training and support are provided, the mentoring time frame may be limited to five to twelve months, or extended, and the organization benefits directly.

Benefits of mentoring. For *mentees,* there can be a shorter learning curve, a clearer career plan, greater knowledge of technical aspects of one's job, higher visibility within the profession, higher productivity (e.g., "billable hours"), greater career satisfaction, increased confidence, networking, and enhanced people skills. For *mentors,* such a relationship can equate to reciprocal learning, recognition and respect of one's peers, personal satisfaction, nurturing a bond of loyalty to a co-worker and the firm, a sense of giving back to the profession, new perspectives to established duties, and validation. *Supporting organizations* benefit by increased loyalty and decreased burn-out and frustration levels from employees, by delegating some of the ethical responsibilities for training from the attorney to the mentoring paralegal; by increasing productivity through increased knowledge and experience; by passing on wisdom and culture of the profession; by increasing the positive reputation, visibility and marketability of the firm; and by having a process by which to develop future leaders in the profession.

The four-step process. 1. *Be ready!* Recognize the need for and benefits of a mentoring program. The Los Angeles Paralegal Association, for instance, provides the names of contact persons to serve as mentors to anyone interested in NALA's Certified Legal Assistant/Certified Paralegal (CLA) Examination. There are a

MARY H. BLACK, Certified Legal Assistant, is Liaison between National Association of Legal Assistants (NALA) and its affiliate, Legal Assistants Association of Utah (LAAU).

growing number of paralegal students in northern Utah requesting mentors to assist them as they enter the work force. Paralegals in Utah law firms and businesses may occasionally change firms or jobs, or be reassigned to a different area of law, or may be interested in moving from being a paralegal to becoming an attorney; these people, also, would benefit from a voluntary mentoring relationship with someone who has already followed that path. One might be a mentor and at a later time become a person desiring to be mentored.

2. *Establish a productive mentoring relationship.* Mentors should be enthusiastic, nurturing, patient, able to listen with a keen ear and effectively communicate information; set and keep a mentoring schedule; know their own strengths and weaknesses; be able to trust and respect others; admit their own errors, give constructive criticism tempered with deserved praise (a rule of thumb is four positive comments to every negative comment); have tact; not gossip; and keep confidentiality!

3. *Development/momentum.* At the first meeting of mentor and mentee, establish a goals and objectives list. Both sides should have questions ready about expectations. Touch base regularly. Subsequent meetings should include review of progress notes and feedback. Mentoring takes time – and gratitude should be expressed for the time spent. Encourage reading; it's been said that executives read at least one to five books a month, while the general population reads part of one book a year.

4. *Ending the mentoring relationship,* by agreement, when goals having been achieved. Celebrate your successes!

Understand the phases of the four-step process.
Initial Preparations. Determine leadership of your committee. Gather information as to the needs of potential applicants. Study print materials and internet sites on mentoring. (Among the latter resources, Ms. Ross recommends The Mentoring Group, www.mentoringgroup.com, National Mentoring Partnership, www.mentoring.org; and Corporate Mentoring; Shattering the Glass Ceiling, www.harrisheery.com/mentoring.html. Plug in "mentoring" or "paralegal mentoring" in the search engine to pull up many other sites and, on Amazon.com, hundreds of titles.) Organize the program's support team – those willing to act as a mentor. Develop a Statement of Purpose. Such a Statement might be similar to LANTA's: "To create an environment of

UTILIZATION AND SALARY SURVEY UP AND RUNNING!

The first on-line Utilization and Salary Survey under the auspices of the Utah State Bar web site is now on-line and ready to be taken! The survey will be available to members of the bar and the Legal Assistants Association of Utah and can be filled out by attorneys, paralegals or office legal administrators on line on the Bar web site at any time – day or night. Anyone who has access to the Utah State Bar web site can fill out the survey for themselves or their paralegals. We are hoping to reach as many of you as we reasonably can to make the survey as comprehensive as possible. Please keep in mind that the results of this survey will likely be used by paralegals negotiating salaries and benefit plans and by employers in determining what their compensation packages will include. The survey is located at
http://utahbar.org/sections/paralegals/paralegal_salary_survey.html

If you have a paralegal in your office who is not a member of the Paralegal Division or LAAU, please pass this information along to them to fill out the survey. If you want to fill it out yourself on behalf of your paralegal, that's fine too. Or, if you want your office legal administrator to fill it out for your firm, you can do that. The survey will be available from January 17, 2005 through February 24, 2005. Please take a few minutes to complete the survey today!! A report on the survey results will be published in a future Bar Journal issue. Watch for it!

mutual respect and sharing among professional paralegals through specifically designed, limited-time, and individually prescribed mentor/mentee relationships."

Develop a pilot program. Ascertain the program design and target audience, and whether the project will utilize a formal or informal structure. Determine a budget and operating procedures. Create an application form. Present the proposal for approval to the organizational board. Plan for support and recognition. Ms. Ross indicates that $200 may be a realistic initial budget to cover materials such as printing of brochures and folders to contain information for applicants.

Marketing/Recruitment. Some techniques could include an informational brochure, application, and introductory letter; word of mouth at schools, law firms and corporations; formal announcements in professional publications; and articles in the organization's newsletter. Both mentors and mentees will apply to participate in the program.

Implementation. Have a kickoff event, perhaps an orientation meeting; match participants – by goals or mutual interests, for instance; notify participants of selection; and provide resources:

1. Training: Orientation, workshops, resource materials.
2. Support: Communicate with participants; answer questions; monitor progress; provide resources (e.g. articles, workshops etc); troubleshoot; provide recognition of success.

Evaluation. Review your initiative early; obtain feedback from participants; thank everyone who participated; analyze the overall success; decide which aspects to repeat, modify or eliminate; expand the effort; and develop a procedural manual.

A strong mentoring program can provide far-reaching benefits to all who participate.

AUTHOR'S NOTE: *Thanks to Kim Ross of Legal Assistants of North Texas Association for permission to use extensive portions of her presentation in this article.*

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
01/19/05	**OPC Ethics School.** This course is mandatory for those admitted on motion. 9:00 am–4:30 pm. $125 before Jan. 7th, after $150.	6 Ethics/NLCLE
01/20/05	**Nuts and Bolts Workshop on Real Property:** Purchase and sale agreements, easements and restrictive covenants, mortgage loan transactions. 5:30–8:45 pm. $55 Young Lawyer, $75 Others.	3 CLE/NLCLE
02/04/05	**The Basics of Domestic Law.** $95 early registration before Jan. 28th, $120 after. $25 if you sign up for Pro Bono work. 9:00 am–4:00 pm, lunch included. Co-Sponsors AND JUSTICE FOR ALL, Legal Aid Society	6 CLE/NLCLE
02/09–15/05	**ABA Midyear:** Grand America Hotel – Salt Lake City. See www.abanet.org/midyear/2005/ for more information	
02/11/05	**Three Programs for Public Lawyers:** Creating the Best Public Law Office; Ethical Considerations in Public Sector Law; Pathways to Success for Women and Minorities in the Public Sector. 12:00–5:15 pm. Hilton Salt Lake City Center Hotel. Creating the Best Public Law Office–$20, Ethical Considerations in Public Sector Law–$20, Pathways to Success for Women and Minorities in the Public Sector–$10. (No charge for law students)	up to 4
02/17/05	**Wills and Estates Part 1.** Deals with Estates valued under 1.5 Million Dollars. 5:30–8:45 pm. $55 for YLD Members – $75 for all others.	3 CLE/NLCLE
02/18/05	**Utah IP Summit.** Downtown SLC Marriott, 75 South West Temple. 8:00 am–4:30 pm. $180 for IP Section Members and Associate IP Section Members, $200 for Non-Members of IP Section, $20 for Law Students. There will be an additional $20 fee after February 4, 2005.	6
03/10–12/05	**Spring Convention in St. George.** $200 early registration, $225 after 2/25/05.	8 (including 4 NLCLE & up to 3 Ethics)

To register for any of these seminars: Call 297-7033, 297-7032 or 297-7036, 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.

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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.

POSITION SOUGHT

Attorney/CPA – Thirteen year practicing attorney and 17 year licensed Certified Public Accountant, seeking associate position with partnership potential. Experience in tax litigation and transactions, corporate transactions, estate planning and commercial litigation. I can be contacted at (801) 578-3532 or attorneyposition_2@hotmail.com

POSITIONS AVAILABLE

JOB ANNOUNCEMENT: CITY ATTORNEY – City of Mesquite, NV (Salary range $92,560 - $120,328 DOQ, plus excellent benefits). Candidates must be a member in good standing with the Nevada State Bar Association and have at least five years experience in the practice of municipal law. A complete job description, other requisites, and a required City application may be obtained at www.mesquitenv.com or by calling Personnel at (702) 346-5295. Completed application and supplementary material must be received by 5 pm, Friday, March 11, 2005. EOE

Expanding bankruptcy firm seeking associate with bankruptcy experience. Salary plus percentage based on experience. Send resume to Law Firm PO Box 902161 Sandy UT 84090.

Small Av rated firm in Salt Lake County seeks associate with at least three years experience trying cases. Send resumes, with trial experience included, to Christine Critchley, Utah State Bar, Confidential Box #3 645 South 200 East, Salt Lake City, Utah 84111, or ccritchley@utahbar.org.

PRACTICE AVAILABLE

SOLO PRACTICE AVAILABLE – 20 year, profitable, solo practice specializing in real estate, business organizations, and estate planning. Probable 6+ month transitional period, during which buyer would need to be able to at least partially sustain him/herself. Excellent practice with wide reputation, favorable terms. Email boblawman@hotmail.com.

OFFICE SPACE/SHARING

"A" Office Space: looking for tenant to fill entire third floor of an office building located within a block of the courts and Trax, at 30 East Broadway. Features cathedral ceiling conference room with beautiful mountain view. Perfect setup for law firm, with built in bookcases, kitchen, bathroom facilities that include showers, and a private entrance from the covered parking garage. Additional space also available on the second and first floors if needed. Tenant has the option to rename the building after their company with a minimum five-year lease. To see the space call Annabel, North Star Real Estate: 801-322-3120 or 801-879-5237.

EXECUTIVE OFFICE SPACE, location and all the support of a large firm, 400 South and State across from the County Building and the Matheson Courthouse. Offices set up by an attorney for attorneys, guided by efficiency and ease, in a beautiful space. For solo or groups of attorneys. Services include telecommunications, reception (habla Español), DSL & online research materials, at amazing "group" rates, with copier and fax. Windows/high ceilings in every office with exercise equipment and kitchen in the space. "Early-move-in" rate of $425/month. Contact Elle at 801-330-4858 or cox@coxcorplaw.com. Now taking January move-in dates.

Utah Valley Prime Office Space – Provo-Orem area. Sale or lease. Designed as a law office. Perfect for expanding firm or office sharing. Three to six offices, reception, library, kitchen, work room, plenty of file storage. Available immediately. Furnished or unfurnished. Call (801) 226-0992.

Two offices now available at $1,000 month located in the Key Bank Tower, at 50 South Main, SLC. Amenities include: receptionist, conference rooms, fax, copier, and kitchenette. Contact Nedra at 531-7733.

NEW VIRTUAL OFFICE DOWNTOWN ideal for attorneys, 400 South and State, across from the County Building and the Matheson Courthouse. Meet clients in the ample, well-adorned conference room, and let a receptionist take all client/business calls. Services include receiving and forwarding mail, receptionist receiving and forwarding calls (habla Español), conference room use for $170/ month. Additional office support is available as needed at a low hourly rates. Contact Elle at 801-330-4858 or cox@coxcorplaw.com to reserve your spot. Services begin in January.

Lawyer office on main floor with reception area, secretary station $400 per month. Also conference room, kitchen area, lots of parking. Second large office downstairs for $210 per month. 7321 So. State, Midvale, Utah. 569-1826 (mornings) or 942-2780.

STOCK EXCHANGE BUILDING has several available spaces, two office suites containing two to three offices, conference room and file room, as well as two individual offices and two executive suites with full services. Prices range from $400 to $1,600 per month. One-half block from state and federal courts. Contact Richard or Joanne at 534-0909.

Furnished Office Space available, prime downtown location, in the historic Judge Building at 8 East 300 South, Suite 600. Receptionist, conference room, high speed Internet, fax machine, copy machine, and secretarial space included. Please call (801) 994-4646 and ask for Heather.

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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.

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Securities Attorney – Expert Witness: Case evaluation and strategy; expert reports and testimony; internal investigations and consulting. Civil and criminal litigation, administrative proceedings, arbitration and investigations: Securities and Exchange Commission; Department of Justice; state securities commissions; NASD and stock exchanges. Over 25 years major securities litigation and transaction experience including attorney for the U.S. Securities and Exchange Commission, New York Office – Divisions of Enforcement and Corporation Finance. Excellent CV and references. A. Thomas Tenenbaum, Tenenbaum & Kreye LLP, 6400 S. Fiddler's Green Cir. #2025, Englewood, CO 80111, (720) 529-0900, Fax: (720) 529-7003, att@tklawfirm.com.

Fiduciary Litigation; Will and Trust Contests; Estate Planning Malpractice and Ethics: Consultant and expert witness. Charles M. Bennett, 257 E. 200 South, Suite 800, Salt Lake City, UT 84111; (801) 578-3525. Fellow and Regent, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

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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, coersion, 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.

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.

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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Web Site: www.utahbar.org

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Sydnie W. Kuhre
MCLE Administrator
297-7035

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Tel: 297-7048

Certificate of Compliance

UTAH STATE BOARD OF CONTINUING LEGAL EDUCATION
Utah Law and Justice Center
645 South 200 East, Salt Lake City, UT 84111-3834
Telephone (801) 531-9077 Fax (801) 531-0660

For Years _____ and _____

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

Explanation of Type of Activity

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

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

B. Writing and Publishing an Article, Self-Study

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

C. Lecturing, Self-Study

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

D. Live CLE Program

There is no restriction on the percentage of the credit hour requirement, which may be obtained through attendance at an accredited legal education program. However, a minimum of twelve (12) hours must be obtained through attendance at live continuing legal education programs. Regulation 4(d)-101(e)

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

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

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

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

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

Date: _____ Signature: _____

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