


Utah Bar JOURNAL



Volume 19 No. 2
Mar/Apr 2006



It isn't the size of the dog in the fight.
It's the size of the fight in the dog.

But it's sure nice to have a few more
big dogs on your team.



Parker & McConkie *Now a practice group of Prince, Yeates & Geldzahler*
Attorneys at Law • 175 E. 400 S., Suite 900 Salt Lake City, UT 84111 • (801) 264-1950

Utah's largest medical malpractice verdict
Utah's largest wrongful death verdict

Table of Contents

Letters to the Editor	6
President-Elect & Bar Commission Candidates	8
Commissioner's Report: Free, Statewide, Confidential, 24 Hour Mental Health Help Added to Bar's Lawyers Assistance Program by Stephen W. Owens	16
Utah State Bar Unveils the Lawyers Assistance Program (LAP) by Brent Hale	19
The First 50: "Celebrating Diversity in the Law" by Professor Robert L. Flores & Karthik Nadesan	22
The Utah Office of Guardian ad Litem: How You Can Help A Child In Need by Craig M. Bunnell and Sammi V. Anderson	26
Phishing and Pharming and Trojans – Oh My! by Polly Samuels McLean and Michelle M. Young	28
SPYWARE: Living in a Cyber-Fishbowl by Polly Samuels McLean and Michelle M. Young	34
Finding a Solution to the Problem With Finders in Utah by Brad R. Jacobsen and Olympia Z. Fay	38
A Guide to the Administrative Safeguards of HIPAA's Security Rule by Michael P. Barry	43
Utah Law Developments: There's a new Lien Law in Town: Are Your Lien Rights Protected? by Jim Barber	46
Standards of Professionalism & Civility: Standard 12 by Fran Wikstrom	48
State Bar News	50
Young Lawyer Division: 2005 Year in Review – Looking Ahead to 2006	60
Paralegal Division: The "How To Guide" for Membership in the Paralegal Division by Peggi Lowden	62
CLE Calendar	64
Classified Ads	65

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

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

COVER: Sunset Cruise on the Great Salt Lake, taken by Tally Burke, West Jordan, Utah.

The *Utah Bar Journal* is published bi-monthly by the Utah State Bar. One copy of each issue is furnished to members as part of their Bar dues. Subscription price to others, \$30; single copies, \$5. For information on advertising rates and space reservations visit www.utahbarjournal.com or call Laniece Roberts at (801) 538-0526. For classified advertising rates and information please call Christine Critchley at (801) 297-7022.

Statements or opinions expressed by contributors are not necessarily those of the Utah State Bar, and publication of advertisements is not to be considered an endorsement of the product or service advertised.

Copyright © 2006 by the Utah State Bar. All rights reserved.

Letters Submission Guidelines:

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

Cover Art

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

Interested in writing an article for the Bar Journal?

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

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

Submission of Articles for the Utah Bar Journal

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

1. Length: The editorial staff prefers articles having no more than 3,000 words. If you cannot reduce your article to that length, consider dividing it into a "Part 1" and "Part 2" for publication in successive issues.
2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.
3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.
4. Content: Articles should address the *Bar Journal* audience, which is composed primarily of licensed Bar members. The broader the appeal of your article, the better. Nevertheless, the editorial staff sometimes considers articles on narrower topics. If you are in doubt about the suitability of your article for publication, the editorial staff invites you to submit it for evaluation.
5. Editing: Any article submitted to the *Bar Journal* may be edited for citation style, length, grammar, and punctuation. Content is the author's responsibility—the editorial staff merely determines whether the article should be published.
6. Citation Format: All citations should follow *The Bluebook* format.
7. Authors: Submit a sentence identifying your place of employment. Photographs are encouraged and will be used depending on available space. You may submit your photo electronically on CD or by e-mail, minimum 300 dpi in jpg, eps, or tiff format.

The Utah Bar Journal

Published by The Utah State Bar

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

Bar Journal Editorial Board

Editor
William D. Holyoak

Managing Editor
Todd Zagorec

Art/Design Editor
Randall L. Romrell

Articles Editor
Robert Palmer Rees
Gretchen Lee

Departments Editor
Catherine E. Roberts

**Utah Law Developments
Editor**
J. Craig Smith

Judicial Advisor
Judge Gregory K. Orme

Online Editor
David B. Hartvigsen

Copy Editor
John P. Ball

Bar Journal Committee Members

Young Lawyer Representatives
Peter H. Donaldson
Nathan C. Croxford

Paralegal Representative
Denise Mendelkow

Bar Staff Liaison
Christine Critchley

Advertising/Design Coordinator
Laniece Roberts



Powerful Client Development resources ...

Such as *Martindale-Hubbell®*, the #1 service for identifying expert counsel

exclusive Research Solutions ...

Including *Shepard's®* and The Wall Street Journal Online in association with *LexisNexis®*

customizable Practice Management tools ...

Fully integrated services to drive productivity and profitability

the only NITA® endorsed Litigation Services ...

Covering the litigation process in the way that litigators work

Where do you find them?



Introducing ... LexisNexis® Total Practice Solutions

lexisnexis.com/tps

TOTAL PRACTICE SOLUTIONS
Client Development Research Solutions Practice Management Litigation Services



LexisNexis, the Knowledge Burst logo, Martindale-Hubbell and *Shepard's* are registered trademarks of Reed Elsevier Properties Inc., used under license. Other products or services may be trademarks or registered trademarks of their respective companies. © 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

AL8759

Dear Editor:

Maureen Henry (“Update on End-of-Life Issues in Utah”, *Utah Bar Journal* January/February, 2006) discusses the expression “unnaturally prolong the dying process” as used in the Utah Personal Choice and Living Will Act (Utah Code §§75-2-1101 *et seq.*), in the wake of the Terry Schiavo matter.

The phrase has relevance *only* in triggering the provisions of a Living Will signed by a patient (“declarant:”) or by another at the patient’s “expressed direction” (2-1104(2)(a)) – unarguably unobtainable from Terry. If Terry were a Utahn and nominated her husband, under the provisions for a “Special Power of Attorney” (2-1106), any litigation would be easier for him.

Michael Schiavo, as agent, could direct treatment using a Medical Treatment Plan (“MTP”), whose effectiveness rests on simpler criteria than “unnaturally prolong”: “after incurring an injury, disease, or illness” (2-1105(1)(a) and 2-1106(1)); and when the patient no longer “has the ability to give current directions concerning his (or her) care and treatment” (2-1105(2)(b)). (Were there any doubts about either criterion for Terry?)

Or Michael could execute an MTP as her spouse (2-1105(2)(b)(iii)).

Without a Special Power of Attorney or guardianship, Michael has authority under 2-1107 to order the withdrawal of life support, if two physicians agree that Terry is in a persistent vegetative state; there is no need to examine the “dying process” question.

No statute could (or *should*) bar Terry’s parents from suing to override Michael’s decision, as court decisions did not deter them from seeking Congress’s assistance. If they doubted that Terry was in a persistent vegetative state (apparently the basis for the Florida case(s)), Michael’s spousal authority would be the more solid foundation for him.

Anyone can sue for anything. Parties endure heartache until a case is finally resolved.

But Utah need not and should not revise its statute to try to avoid a replay of that extraordinary case.

W. Paul Wharton

Dear Editor:

From Professor Dyer’s and Thomas Murphy’s responses to my article “The Tyranny of the Courts,” (Nov/Dec 2005 *Utah Bar Journal*) it appears that there is some confusion. Nowhere did I suggest that rights not mentioned in the Constitution do not exist. But it is one thing to say that a legal right exists, and quite another to say that it is in the Constitution.

The right of privacy is a good example. While parts of the Constitution cover aspects of privacy (e.g. search and seizure), the Constitution does not create a general right of privacy. That is a creature primarily of the common law. The problem with reading extra-constitutional rights into the Constitution is that it takes all related issues out of the democratic political arena and places them under the control of the courts. While Mr. Murphy objects to my characterization of this as tyranny, I believe the term fits, and that was the point of my article.

Mr. Murphy’s criticism of my plain meaning proposal is likewise mistaken. A plain meaning interpretation of the First Amendment, for example, would not produce the horrors he suggests. First, speech is words – verbal expression, both written and oral. Pornographic images are not speech. Second, the word “abridge” is a relative term, and always has reference to an antecedent thing or condition (e.g. the original form of a dictionary). Incitement to riot or panic were never considered part of freedom of speech, and their prohibition therefore does not abridge that freedom.

The Constitution does not command all good things, and does not forbid all bad. That is why we have a democratic process for making and revising laws, and why we should not allow the courts to usurp that process.

David R. McKinney

We're Raising the Bar.



If you're not getting the personalized services you deserve, contact Southwest Trust Company, where you come first. Our seasoned professionals work as a team to provide unparalleled service and support. With offices located nearby, we're easily accessible, making your financial life more convenient. For the personalized service you deserve, call us today.



Richard Budge
Vice President
& Senior Portfolio Manager



Roshelle Lucky
Assistant Vice President
& Trust Officer



Jeffrey Kahn
Vice President
& Sales Manager



Dalene Peterson
Assistant Vice President
& Trust Officer



SOUTHWEST TRUST COMPANY

Salt Lake City | 458 East 200 South, Suite 110 | (801) 297-7762 | Toll Free (866) 857-0930

Orem | 359 East 1200 South | (801) 221-0962 | Toll Free (866) 459-0512

President-Elect & Bar Commission Candidates

President-Elect Candidates



FELSHAW KING

It has been my privilege to serve as a Bar commissioner since 2001. During the past five years I have become familiar with the opportunities, problems and challenges and which we lawyers face as we move further into the 21st century.

The mission of the Utah State Bar is:

"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."

Many praiseworthy goals are included in this mission statement and progress has been made in each area. As president I would place greater emphasis on the goal "To represent lawyers in the State." We have a responsibility to ourselves and the public, and that responsibility can best be met by maintaining a strong and viable legal profession uniquely suited to avoid and solve legal issues. The public is not well-served by a proliferation of non-lawyer providers and legal "do-it-yourself" programs.

Ours is a noble and honorable profession, the strength of which is a vital element for a successful society. Strengthening our profession depends on the effort of each of us as we interact with the Judiciary, the Legislature and the public. The Bar plays an important role in this process.

My experience gives me tools to serve as president to lead the process of strengthening our profession.

- Practicing lawyer since 1962
- Former majority whip and chairman of Judiciary Committee, Utah House of Representatives
- Appointed by Governor to serve as Chairman of Utah Committee of Consumer Services (1977-1989)
- President, National Association of State Utility Consumer Advocates (1985-1987)
- President, American Inns of Court VII, 1997
- Admitted United States Supreme Court, Tenth Circuit and Fifth Circuit

- Commander, U.S. Navy Reserve (JAGC-Ret.)
- University of Utah, Certificate in Conflict Resolution (2001)

I would appreciate the challenge and the opportunity to serve as president of the Bar and I ask for your support and confidence.



V. LOWRY SNOW

V. Lowry Snow is the founding partner of the law firm of Snow Jensen & Reece, in St. George. Mr. Snow received his B.S. degree from Brigham Young University in 1975 and his J.D. from Gonzaga University School of Law in 1979. He has concentrated his practice in the areas of real property,

corporate law and commercial litigation. He is also a trained mediator.

Mr. Snow has been involved in Bar service and governance for a number of years. He has served as President of the Southern Utah Bar Association and was a member of the Supreme Court Task Force on Bar Governance prior to becoming a Bar Commissioner in 1999. He will complete three years of service as a member of the Executive Committee of the Bar Commission in July.

Mr. Snow has long viewed the practice of law as a form of public service. He pioneered the introduction of his firm's volunteer pro-bono service program in Southern Utah known as Talk to a Lawyer which has operated continuously since 1996. The implementation of this program led to his firm receiving the Bar's Pro Bono Firm of the Year Award for 1998. He currently serves as a member of both the Utah Supreme Court Standing Committee on Resources for Self-Represented Parties and the Advisory Committee on Professionalism.

Lowry is married to Sheryl L. Snow and they are the parents of six children.

STATEMENT OF CANDIDACY:

Dear Friends and Colleagues:

It has been an honor and privilege to have served as Bar Commissioner for close to six years now. As a result, I believe I have some understanding of the significant issues and challenges facing the Bar. As your president, these are the

areas to which I would provide emphasis and leadership:

Vision Leadership. Good leadership requires more than simply managing crises or immediate issues of concern. Good Bar leadership will require that we anticipate and address the future roles and needs of lawyers. We will need to spend time getting ahead of the curve and then staying positioned. The Bar should make every effort to facilitate and enhance the ability of lawyers to do what they do best. We need to protect, for the present and future, our role as officers and representatives of the judicial branch of government.

Younger and Diverse Leadership. The future of the Bar and its relevance rests with the younger members of our profession. Good leadership for the future will require that we provide greater emphasis to mentoring and training younger lawyers for Bar service and should include added emphasis to women and minorities making up this sector. Our Young Lawyers have an enormous capacity to make meaningful contributions. They should be invited and encouraged to participate in section and committee work. These will be the leaders of our profession

and members of the judiciary in the future. The investment should start early and include greater involvement with the students and faculty at both of Utah's fine law schools.

Preserving our Progress. We are fortunate to have had very competent and capable leadership serving on the Commission and in many important section and committee assignments. As a result, we have made significant progress in a number of critical areas – too many to mention here. In addition, many lawyers have donated their time and money to a multitude of projects and causes that have benefited the Bar and the public – this spirit of volunteerism should be acknowledged, encouraged and preserved. We should continue with the good work of the Bar that has been accomplished by many able and devoted lawyers.

I understand something of the time and effort that would be required of me if I am elected to this office. I would welcome the opportunity to serve you and I am prepared to meet that commitment. I would appreciate your vote and your support.

Helping Injured Patients

MEDICAL MALPRACTICE

- Wrongful Death
- Brain & Spinal Cord Injuries
- Birth Injuries
- Doctor Negligence
- Nurse Negligence
- Hospital Negligence

www.patientinjury.com

Established 1919

Norman J. Younker
John D. Ray
David N. Kelley
Christian D. Austin



Fabian & Clendenin

Working With Over 500
Medical Experts Nationwide

Consultations
and Referrals

323.2200

(888) 249.4711

215 South State, Salt Lake City

Third Division Candidates



NATE ALDER

Utah State Bar member since 1995

Education

Indiana University, School of Law, JD

Indiana University, School of Public and Environmental Affairs, MPA

Utah State University, BA, history, University Honors

Employment

Shareholder, Christensen & Jensen, P.C.

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

Bar Service (present)

Bar Commissioner (July 2003-July 2006)

Bar Commission Executive Committee (2004-2006)

Admissions Committee

Bar Examiner

Co-Chair, Bar Exam's Performance Test Committee

Litigation Section's Board, Bar Commission Liaison

Bar Commission's Liaison to newly formed Antitrust Section

Board, Dispute Resolution Section

Board, Utah Minority Bar Association

Utah Supreme Court Advisory Committee on Professionalism

Bar Operations Review Committee

Western States Bar Leadership Conference

Bar Service (past)

Chair, Dispute Resolution Section (2003-2004)

President, Young Lawyers Division (2001-2002)

Ex-Officio Bar Commissioner (2001-2002)

Special Task Force for judicial salary increase (2005)

Fundraising and Planning Committees, Utah Minority Bar's "First 50" celebration

Special Bar Projects Review Committee

Governmental Relations Committee

Other Service (present)

Pro Tem Judge, Salt Lake City Justice Court

Board, Utah Council on Conflict Resolution, Inc.

Board, Thayne Center for Service and Learning (Salt Lake Community College)

Board, Friends of Utah's Children's Justice Centers

STATEMENT OF CANDIDACY:

To the Members of the Bar's Third Division:

It has been an honor to serve you as a Bar Commissioner. I promise to diligently serve you during another three-year term. I respectfully ask for your vote.

I will continue to thoughtfully approach the Commission's many decisions. I have contributed much to the Commission and yet I recognize that we can accomplish more.

We have made tremendous progress in our relationship with the Legislature. We successfully responded to the call for greater access to the courts and legal services. We provided leadership to the successful effort to increase compensation for state judges. The Bar's balance sheet is good; no dues increase on my watch. We are modernizing admissions policies. Casemaker (free on-line research for members) is now available.

I keenly sense a new area of concern – the Bar's relationship with some of its own members and soon-to-be members (law students). I am committed to this new focus. We can and must make progress through stronger sections, committees, county and affiliate bars; improved communication with members, more outreach; better technology use, enhanced member benefits; more opportunities for members to serve and participate; helping new lawyers via networks and mentoring.

The Bar can make a difference for members. Let's improve the value and service it provides to you. I will promote sound fiscal policy while investing in technology, communications and programs that bring value. Feel free to call or write: (801)323-5000; nathan.alder@chrisjen.com.

I greatly enjoy this opportunity to serve. I appreciate the support of many bar members and leaders from a wide variety of backgrounds and practice areas. I also appreciate the support of my fellow shareholders at Christensen & Jensen. I would greatly appreciate your vote.



CHRISTIAN W. CLINGER

Christian is an active leader in the Utah State Bar and in the community. During the past five years, Christian has helped raise over \$30,000.00 for And Justice for All, overseen clothing drives to clothe over 100 disadvantaged people with professional clothing for job interviews, coordinated

landscaping for several Children's Justice Centers throughout the Salt Lake Valley, taught K-12 students about Dialogue on Freedom, *Brown vs. Board of Education*, and We the Jury, mentored law students, served on continuing legal education committees, was a committee member of the *Brown vs. Board of Education* 50th Anniversary Committee, was the 2004 committee chair of the *Brown vs. Board of Education* Film Festival, and the 2004 committee chair of Jackie Robinson Appreciation Weekend with the then Salt Lake Stingers baseball team. He serves as a volunteer community mediator for Utah Dispute Resolution. He is currently a member of the Utah State Bar's Governmental Relations Committee, and he is the co-chair of the Bar's 2006 Annual Convention. The Utah State Bar named Christian its 2005 Young Lawyer of the Year.

Christian has proven leadership and organizational skills having served as a member of the Young Lawyers Division Executive Committee, a committee member of the *Utah State Bar Journal*, the 2001-2002 Treasurer for the Young Lawyers Division, and the 2002 Treasurer for the American Bar Association's Rocky

Mountain Regional Conference. From 2003-2004, Christian was an Ex Officio Member of the Utah State Bar Commission and President of the Utah State Bar Young Lawyers Division.

Christian and his wife, Suzanne Lee Clinger, are the founding members of the law firm Clinger Lee Clinger, LLC where their practice includes civil litigation, business law, estate planning, governmental relations/political consulting, and mediation. Christian and Suzanne reside in Salt Lake City.

STATEMENT OF CANDIDACY

Dear Colleagues and Friends:

Thank you for your encouragement and nomination as a Third District Bar Commission candidate. As I have met with many of you, I have come to appreciate the strength, integrity, and commitment to public service that members of the Utah State Bar share. I hope to continue in these traditions and increase communication and activity within the Bar.

Through my service as a former Ex Officio member of the Bar Commission and participating on several Bar committees, I have learned of the many important responsibilities that the Bar Commission controls and directs such as budgetary issues, community outreach, and member services. I am prepared to represent you and lend your voice to the deliberations and policy decisions before the Bar Commission. I appreciate your support, and I ask for your vote this coming April.

ADVANCING YOUR ROLE IN REAL ESTATE TRANSACTIONS

Attorneys Title Guaranty Fund, Inc. (ATGF) is a unique title insurance organization dedicated to advancing the attorney's role in real estate transactions through professional training, personal support, and a Utah focus. Whether you are an attorney looking to offer your clients title insurance as part of your law practice or open your own title company, we offer the full range of skills you need to tap into the lucrative title-writing market and make your real estate practice thrive.

Are you interested in advancing and promoting your law practice to generate more income and offer your clients an additional service?

For more information call (801) 328-8229



Attorneys Title Guaranty Fund, Inc.
Utah Law & Justice Center
645 South 200 East, Suite 203
Salt Lake City, Utah 84111

**YVETTE DONOSSO DIAZ**

Born in Los Angeles, California to Colombian immigrants.

Married to Marco Diaz and mother of three children.

Graduated from J. Reuben Clark Law School in 1999.

Clerked for Judges Bohling, Dever, Medley and Thorne in Utah's Third Judicial District Court, as well as for Justice Christine M. Durham in Utah's Supreme Court.

Worked as an associate at the firm of Manning Curtis Bradshaw & Bednar LLC, in the area of employment defense litigation.

As former President of the Utah Minority Bar Association, helped launch a Diversity Pledge to highlight the need for Utah's legal employers to recruit, hire and promote attorneys of color; and lobbied to ensure that all judicial nominating commissions for the Wasatch Front have at least one ethnic minority representative.

Presently serving as the Executive Director of the Department of Community & Culture. Prior to her appointment to the Governor's cabinet, she was the lead attorney for the Hispanic Department of Christensen and Jensen, PC.

Uncontested Election in Third Division

Yvette Diaz has withdrawn her nominating petition to run as a candidate for commissioner in the Third Division. According to the Utah State Bar Bylaws, in the event an insufficient number of nominating petitions are filed to require balloting in a division, the person or persons nominated shall be declared elected.

There are accordingly an insufficient number of nominating petitions filed to require balloting. Nathan D. Alder and Christian W. Clinger have been nominated and are therefore running uncontested and will be declared elected.

Third Division Commissioner and President-elect Gus Chin has announced that he will vacate the third year of his term as commissioner in the Third Division when he becomes the Bar President at the Bar's Annual Meeting in July, 2006. Yvette has agreed to fill that unexpired one-year commissioner term.



“...Now I’m finding the
Right Clients
in less time.”

John N.K., Esq.
Family Law
LegalMatch Member since 2005

LEGALMATCH
The Nation's #1 Online
Client Acquisition Tool

Save Time <
Increase Revenue <
Focus Your Practice <
Full Financial Services <

Call now to set up a LegalMatch
membership consultation
1-866-689-5342
or visit www.utahbar.LegalMatch.com/utahbar

smart Client Acquisition

In today's legal marketplace, solo practitioners and small firms need effective, flexible resources for success. LegalMatch is the industry leader in attorney/client services, and now provides a full range of innovative services to help attorneys grow their practices.

 **LegalMatch™**
The Smart Way to Market Your Practice™

Fourth Division Candidate

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

Robert L. Jeffs is running uncontested in the Fourth Division and will therefore be declared elected.



ROBERT L. JEFFS

Employment:

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

Primary emphasis in litigation – Personal Injury and Commercial Litigation

Mediator/Arbitrator in Commercial and

Personal Injury Litigation

General Practice of Law, 1984 – Present

Education:

Juris Doctor, 1984 – J. Reuben Clark Law School

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

Member, J. Reuben Clark Board of Advocates

Bar Association, Admissions & Professional Organizations:

Utah State Bar – 1984

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

Tenth Circuit Court of Appeals – 1984

Utah Defense Association Member, Board of Directors – 1997–98

Utah State Bar Litigation Section Member

Utah State Bar, Legal Economics Committee – 1985–87

American Inn of Court I, Barrister – 1998-91, Master of the Bench – 2002–Present

Other:

Riverside Country Club, President – 1996

Riverside Country Club, Board of Directors – 1994–96

East River Bottom Water Company Director/Secretary – 1994–96, 2002, President – 2004–Present

Ducks Unlimited, Provo Chapter, Chairman – 1996–98

Announcing The New Aon Attorneys' Advantage Professional Liability Program

Aon Attorneys' Advantage has been able to establish an exclusive relationship with Monitor Liability Managers and Carolina Casualty Insurance Company. We offer:

- Coverage rated "A" (Excellent) by A. M. Best Company. Carolina Casualty Insurance Company is part of the W.R. Berkley Company, a Fortune 500 company with assets in excess of \$9 billion.
- Career Coverage or Full Prior Acts available to qualifying firms.
- Extended reporting period options of 12, 24, 36, 60 months with an unlimited option available by endorsement to qualifying firms.
- Also available to qualifying firms:
 - ✓ Loss Only Deductible
 - ✓ Title Agents and Title Agency Coverage
 - ✓ Aggregate Deductible



For more information contact:
Cass Baron • Aon Affinity Insurance Services, Inc.
Call: 801-264-6703 or 866-291-5897



Instant E-information at:

www.attorneys-advantage.com/mon2

This announcement is for illustrative purposes only. Specific coverage, limits and provisions are subject to the terms of the insurance policies as issued.

7A1AC005

STATEMENT OF CANDIDACY:

It has been my honor to serve you the past three years on the Bar Commission. During that time the Bar has made substantial progress in improving the practice of law in Utah. With increased participation of Sections and the hard work of the Governmental Affairs Committee we have a better relationship with the Legislature than we have enjoyed for many years. The launch of Casemaker has made on-line research affordable and accessible for all practitioners. The addition of the new Employee Assistance Program (EAP) will provide Bar Members and their employees professional counseling services at minimal cost to help cope with the personal crises that sometimes accompanies our stressful occupation.

I was asked this year to Chair a new sub-committee, the Operations Review Committee. The Committee is overseeing an independent review of the policies, structure, and perfor-

mance of the Bar in fulfilling its responsibilities and mission to its members and the public. The Review is another example of the commitment of the Commission to provide efficient, responsible service to the members.

I was also asked to serve on the Malpractice Insurance Disclosure Committee to consider a proposal brought before the Commission to require attorneys to disclose to their prospective clients whether they carried malpractice insurance. The input I received from the members of our Division was invaluable as we considered the balance of interests, particularly the perspective of the solo practitioners and small firms that predominate in the Fourth Division. I ask for your vote for Commissioner for the Fourth Division and I will continue to invite any member to discuss with me any concern or suggestions they may have.

Fifth Division Candidate

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

Curtis M. Jensen is running uncontested in the Fifth Division and will therefore be declared elected.

**CURTIS M. JENSEN**

I was born in Gunnison, Utah and I currently reside in Santa Clara, Utah. My wife and I are the proud parents of four daughters and one son. I attended Snow College (A.S. Degree), Brigham Young University (B.S. Economics) and Tulsa University (J.D. Degree). I began my career as a Deputy Attorney with the Sanpete County Attor-

ney's Office. I then moved to St. George, Utah where I have continued my practicing for the past nineteen years. I am a shareholder of the firm Snow Jensen & Reece and my primary areas of practice are in business, commercial and construction. I am also certified mediator and a strong proponent of ADR.

When I am not practicing law I enjoy working with the youth. I regularly volunteer my time and assistance with local youth programs within my community. I enjoy traveling with my family and taking motorcycle rides with my wife through the many scenic back roads and byways of Utah and surrounding areas.

During my career as a lawyer, I have had the great pleasure of associating with many good friends and colleagues. I have also had the privilege of serving on the Fifth Judicial District Bar Association Judicial Nomination Committee, (2000-2003) and

as Utah State Bar Chairman, Midyear Conference, 1987. I am member of the Utah State Bar Construction Law and Litigation Sections, the Justice For All Leadership Committee, Southern Utah Bar Association (Pres. 1992), and the Federal Bar Association. I have also served as an Adjunct Professor at S.U.U. (1999-2000) and D.S.C. (1999-2003).

STATEMENT OF CANDIDACY

I consider it a privilege to belong to the legal profession and to associate with so many respected and esteemed colleagues over the years. I feel greatly honored to be nominated as a Commissioner for the Fifth Division of the Utah State Bar. I am aware of the significant role the Utah State Bar plays in the state, and the leadership and direction it provides to its members on critical issues affecting lawyers and their practices.

As a Commissioner I will do my best to provide an active voice in representing the concerns and needs of lawyers living in the rural areas throughout the state. I will endeavor to promote the fiscal well being and sound operation of the Bar for all of its members. As a practicing attorney in a small firm in Southern Utah, I understand the needs, concerns and challenges faced by lawyers each day. I will work hard to provide more convenient and affordable access to the many bar benefits and programs for practitioners in outlying areas.

I sincerely believe that lawyers have the opportunity to provide meaningful service in their communities, and will promote such opportunities wherever possible. As a Commissioner, I will dedicate myself to represent my colleagues and the Utah State Bar with respect, diligence and integrity in all my assignments and tasks.

Securities Arbitration

We have our presence
across the nation...

alabamainvestorlaw.com
alaskainvestorlaw.com
arizonainvestorlaw.com
arkansasinvestorlaw.com
californiainvestorlaw.com
coloradoinvestorlaw.com
connecticutinvestorlaw.com
delawareinvestorlaw.com
floridainvestorlaw.com
georgiainvestorlaw.com
hawaiiinvestorlaw.com
idahoinvestorlaw.com
illinoisinvestorlaw.com
indianainvestorlaw.com
iowainvestorlaw.com
kansasinvestorlaw.com
kentuckyinvestorlaw.com

louisianainvestorlaw.com
maineinvestorlaw.com
marylandinvestorlaw.com
massachusettsinvestorlaw.com
michiganinvestorlaw.com
minnesotainvestorlaw.com
mississippiinvestorlaw.com
missouriinvestorlaw.com
montanainvestorlaw.com
nebraskainvestorlaw.com
nevadainvestorlaw.com
newhampshireinvestorlaw.com
newjerseyinvestorlaw.com
newmexicoinvestorlaw.com
newyorkinvestorlaw.com
northcarolinainvestorlaw.com
northdakotainvestorlaw.com

ohioinvestorlaw.com
oklahomainvestorlaw.com
oregoninvestorlaw.com
pennsylvaniainvestorlaw.com
rhodeislandinvestorlaw.com
southcarolinainvestorlaw.com
southdakotainvestorlaw.com
tennesseainvestorlaw.com
texasinvestorlaw.com
utahinvestorlaw.com
vermontinvestorlaw.com
virginiainvestorlaw.com
washingtoninvestorlaw.com
westvirginiainvestorlaw.com
wisconsininvestorlaw.com
wyominginvestorlaw.com

We have our footprint **squarely** in Utah.

utahinvestorlaw.com

If your client lost money in a securities brokerage account and needs to file a claim to recover, we can help. We can work with you and share in proportion to services performed, we can carry the load and allow you to participate through joint responsibility, or we will gladly accept your referral of a prospective client.



Randall R. Heiner
Salt Lake City, Utah ■ 801-366-5200

For nearly 10 years, Heiner Law Offices has focused its practice by exclusively representing investors. Randall Heiner has 12 years of securities experience in the retail, ownership, supervision, and management of securities broker dealers. We know securities arbitration. Feel free to contact us.

Free, Statewide, Confidential, 24 Hour Mental Health Help Added to Bar's Lawyers Assistance Program

by Stephen W. Owens

Recently, I chaired a subcommittee looking at ways to improve our Lawyers Assistance Program. Lest you believe this to be an unimportant issue in our profession, I point to the recent suicide of one of my law school classmates, a talented lawyer who fought against and eventually succumbed to his mental illness. In addition, lawyers in crisis often show up in disciplinary actions, legal malpractice actions, criminal proceedings, and claims against our Client Security Fund.

I succeeded this committee's prior chair, Rusty Vetter. Our committee was comprised as follows:

- Stephen Owens, Epperson & Rencher, Commission Member, Chair
- Gus Chin, Summit County Attorney, President-Elect of Bar – Liaison to Lawyers Helping Lawyers
- George Daines, Cache County Attorney, Past President of Bar
- Julie Wray, Questar Corporation, Women Lawyers of Utah
- Leslie Francis, U of U College of Law
- Felshaw King, King & King, Commission Member
- Rob Parkes, Administrative Office of the Courts, Human Resources
- John Baldwin, Executive Director of the Bar, Non-Voting Staff Member

The Committee met many times and studied hundreds of documents consisting primarily of submissions from the Utah Lawyers Helping Lawyers (LHL) Program and proposals from various Employee Assistance Programs (EAPs) that had been requested from the Bar.

The Committee invited current LHL Committee Chair Roger Cutler to attend one of its meetings and to make a presentation and answer questions. The committee unanimously praised Roger and his committee and director Rich Uday for all of the meaningful work they have done over the years.

At the risk of oversimplifying, a little background is in order. Approximately three years ago, the Bar Commission approved \$120,000 each year as a separate line item of the Bar budget to

finance Lawyers Helping Lawyers (LHL), with approximately \$20,000 of that effectively paid back to the Bar by its endorsed legal malpractice insurance broker, Marsh. The plan was for there to be an evaluation of LHL at the end of three years to determine whether the Bar should continue the present model or move in a different direction to help lawyers in crisis.

Nothing in this review should be viewed as criticism of LHL or an effort to devalue the significant work by the LHL Director and its Committee over the last three years, and for many years before that. The desire of this Committee has been to evaluate LHL and to consider other proposals and models to try to reach more lawyers in a more effective and efficient way.

By most estimates reported to the Committee, 10 – 15% of lawyers are in crisis, yet only a small number are being helped by the Bar. The LHL 2004 statistical breakdown showed 10 contacts receiving a small amount of help, 27 receiving a moderate amount of help, and 17 receiving more significant help. Assuming 6,500 active lawyers in Utah, these 54 contacts represent .83% of Utah lawyers when, applying the 10 – 15% figure, between 650 – 975 lawyers need assistance.

ISSUES ADDRESSED

During the Committee's meetings, the following issues were discussed:

- Attorneys can be proud, arrogant, and skeptical of seeking help.
- Would an attorney in crisis more likely call a peer-based program or a mental health professional-based program?
- Is state-wide assistance provided?

STEPHEN W. OWENS is currently serving as a Bar Commissioner for the 3rd District.



- Is complete confidentiality guaranteed? The current LHL situation offers limited confidentiality for disciplinary cases only. It is our understanding that LHL records and staff could be subpoenaed in other civil or criminal cases, including a legal malpractice case.
- Would an EAP constitute something like a union benefit when most attorneys can pay or are insured for their own mental health care?
- The LHL Committee does not want to provide practice management or direct case assistance to lawyers in crisis.
- If an EAP model is adopted, should LHL serve “under” the EAP or as a separate entity to provide peer-based support?
- Although LHL is quite separated from the Bar, are lawyers still hesitant to approach LHL because of a perceived connection to the Bar?
- All agreed that LHL had done a good job of reaching out to troubled lawyers, but questioned whether we are getting the most efficient return on our investment of resources or if our model is broken.
- If we were to stop the Bar’s financial support of LHL, would we be losing expertise and the progress that has been made in the last three years and potentially offend and demoralize those who have worked so hard in the past on these issues?
- The Administrative Office of the Court contracts with a company on a “pay for as you go” contract. The multi-disciplinary team that includes a physician, clinical social worker, psychologist, and nurse practitioner. The company provides initial phone screening for inquiries and matches client needs to the appropriate clinician. Appointments are scheduled within five days (excluding emergency care).
- Does LHL have the professional expertise to provide the needed service?
- The State Bar of California offers both a short-term counseling and peer-based recovery program, which the committee generally liked.
- Most lawyers are probably covered by health insurance that may cover mental health visits at least in part. (Most plans have a 50% payment level for contracted professionals.) Lawyers may be hesitant to use their health insurance for mental health care for fear that their employers may learn about it.
- One question that was asked of each committee member was, “Assuming that you are in crisis, would you be more likely to contact a mental health professional or an attorney peer for help?” Each of the committee members stated that he or she would be more inclined to call a mental health professional.
- Regardless of the Bar’s decision, committee members wanted

the LHL or similar committee to continue to function, to meet together, to sponsor CLE, and to provide support to lawyers seeking help. There remains an important role for peer support.

- It is clear that we are not reaching all of the troubled lawyers that the Bar should be reaching.
- If LHL’s funding is taken away, will LHL be able to function or do we risk losing a group of lawyers who need help because there is not a paid director for the program?
- Should LHL be judged only on member usage? It may be that LHL’s outreach efforts are helping lawyers who do not personally contact LHL.

COMMISSION VOTE

After great study and deliberation, six of the seven voting members of the subcommittee felt that changes need to be made in the Bar’s Lawyer Assistance Program to try to reach more individuals. These recommendations were adopted by a 10-2 vote of the Bar Commission. The following changes are now being implemented:

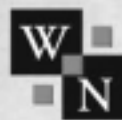
1. The Bar will contract with an employee assistance program guaranteeing complete confidentiality and free, statewide, one-on-one in person counseling with at least a Master’s Degree level professional.
2. We will have a telephone help line that is covered 24 hours a day by a mental health professional.
3. Under the auspices of the EAP, a peer counseling, outreach, and education program should continue through Lawyers Helping Lawyers.
4. The Bar will set up a formal diversion or alternative discipline program for some disciplinary issues, which will require new rules and a petition to the Utah Supreme Court. This will apply for certain lawyers in crisis in lieu of disciplinary actions. The State of Utah currently has a program for healthcare providers that may provide some guidance. California’s State Bar also runs such a program.
5. The Bar will not run the EAP and will only receive completely anonymous reports from the EAP.

We appreciate your support of this experiment of sorts. Our only goal is to help as many lawyers as possible with the available resources. A majority of the Commission felt that these changes would provide a more effective approach. The subcommittee did not recommend that the amount of money being spent on our Lawyers Assistance Program be reduced or increased.

You will be hearing more about this as these recommendations are implemented. I hope this is a helpful overview of these developments. Please contact me at sowens@erlawoffice.com or (801) 983-9800 if you have any thoughts on these issues.

RICK D. NYDEGGER
 BRENT P. LORIMER
 THOMAS R. VUKSINICK
 LARRY R. LAYCOCK
 JONATHAN W. RICHARDS
 DAVID R. WRIGHT
 JOHN C. STRINGHAM
 JOHN M. GYNN
 CHARLES L. ROBERTS
 DANA L. TANGREN
 ERIC L. MASCHOFF
 CHARLES J. VEVERKA
 ROBYN L. PHILLIPS
 RICHARD C. GILMORE *
 STERLING A. BRENNAN
 R. BURNS ISRAELSEN
 DAVID R. TODD
 DAVID B. DELLENBACH
 L. DAVID GRIFFIN
 ADRIAN J. LEE
 FRASER D. ROY
 CARL T. REED
 R. PARRISH FREEMAN, JR.
 PETER F. MALEN, JR.
 L. REX SEARS, PH.D.
 WILLIAM R. RICHTER
 ROBERT E. AYCOCK
 JENS C. JENKINS
 MICHAEL B. DODD
 BRETT A. HANSEN
 BRETT I. JOHNSON
 KEVIN W. STINGER
 RYAN D. BENSON
 SARA D. JONES
 TIGE KELLER
 JANNA L. JENSEN
 MATTHEW D. TODD
 J. LAVAR OLDHAM
 MICHAEL J. FRODSHAM
 MATTHEW A. BARLOW
 WESLEY C. ROSANDER
 ANDREW S. HANSEN
 CHAD E. NYDEGGER
 JOSEPH G. PIA
 CLINTON E. DUKE
 RYAN N. FARR
 JAMES B. BELSHE
 KIRK R. HARRIS
 MICHAEL M. BALLARD
 DAVID A. JONES
 SHANE K. JENSEN
 JONATHAN M. BENNS, PH.D.
 SCOTT A. WOODBURY
 JOHN T. GADD
 MARK W. FORD
 AARON M. SMITH

 VERNON R. RICES
 OF COUNSEL



WORKMAN | NYDEGGER
 INTELLECTUAL PROPERTY ATTORNEYS

The Law Firm of
WORKMAN | NYDEGGER
Attorneys At Law

Is pleased to announce that

Fraser D. Roy
Carl T. Reed

Have become Equity Shareholders of the Firm and

Brett A. Hansen
Brett I. Johnson

Have Become Non-Equity Shareholders of the Firm

Scott A. Woodbury
John T. Gadd
Mark W. Ford
Aaron M. Smith

Have Become Associates of the Firm

The Firm's Practice Continues to Emphasize Patent, Trademark,
 Copyright, Trade Secret, Licensing and Intellectual Property
 and Complex Litigation Matters.

1000 EAGLE GATE TOWER | 60 EAST SOUTH TEMPLE | SALT LAKE CITY, UTAH 84111
 TELEPHONE: (801) 533-9800 | FAX: (801) 328-1707

MAILING ADDRESS | P.O. Box 45862 | SALT LAKE CITY, UTAH 84145
 HOME PAGE: [HTTP://WWW.WNLAW.COM](http://www.wnlaw.com) | GENERAL EMAIL: INFO@WNLAW.COM

* Admitted only in California
 § Admitted only in Virginia

Utah State Bar Unveils the Lawyers Assistance Program (LAP)

by Brent Hale

“One of every four lawyers suffers from stress, and out of 105 occupations, lawyers rank first in depression. In addition, a disproportionate number of lawyers commit suicide.”

ABA Journal, June 2005

The Utah State Bar, at the urging of the ABA Commission on Lawyer Assistance Programs, has taken the lead in an extensive effort to reach out to lawyers and judges who are struggling with personal difficulties. A new Lawyers Assistance Program (LAP) is now available to assist lawyers and their immediate family. The new LAP will not be limited to alcohol/drug abuse and offers help for a full spectrum of personal and professional dilemmas. Comfortable in the role of trained helper and problem solver, lawyers too often tend to ignore their own personal and family distress until small problems become major threats to their careers and well-being. These problems can affect their work, leading to professional difficulties and, sometimes, to ethical lapses.

Effective March 1, 2006, the Utah State Bar has contracted with Blomquist Hale Consulting to provide members with face-to-face counseling services. These counseling services are provided free of charge to members of the Bar and their families.

What is the Lawyers' Assistance Program (LAP)?

The Lawyers Assistance Program is a counseling resource funded by the Utah State Bar to assist lawyers and their dependents address a broad range of personal difficulties that may be causing them distress. It provides face-to-face counseling to help resolve such concerns as: marital difficulties, family problems, stress, depression, anxiety, personal cash flow management difficulties, elder care challenges, and assessment for drug/alcohol dependence.

Why is the Utah State Bar offering this program to all its lawyers?

Encouraging lawyers to address personal problems effectively is one of the best ways to prevent ethical violations, to reduce disciplinary actions among lawyers and to protect the public. Although some lawyers have access to an employee assistance program (EAP) through their employer, the vast majority do not.

Even those currently covered by traditional EAP's have limited resources that frequently fall short of the intensive, solution-focused problem-solving services offered through Blomquist Hale Consulting by the Utah State Bar's Lawyers Assistance Program.

Can staff members other than attorneys use this program?

Only members of the Utah State Bar and their household dependents are eligible for these services. However, the Bar has negotiated a special arrangement with Blomquist Hale Consulting to allow lawyers to purchase, as a group, a staff assistance program for their non-attorney staff members at a discounted rate. To obtain more information about offering a staff assistance program to your staff members, contact Blomquist Hale Consulting at 1-800-926-9619.

Can family members of attorneys access this assistance free of charge?

Yes. Dependents living in the same household and children living away to attend school are covered by the LAP. Be sure to inform them of this new resource.

What does it cost members to use this program?

All LAP services are free of charge to members of the Utah State Bar and their eligible dependants. There are no co-pays or deductibles for LAP services. The Utah State Bar pays a set, capitated fee each month to cover the cost of all LAP services. However, the LAP is not an insurance program. It may refer clients to outside resources, but does not cover the cost of any referred services.

What services are provided?

The LAP offers face-to-face, short-term, counseling to address a broad range of difficulties. The LAP counselors use an approach called solution-focused therapy. Unlike more traditional therapy approaches which seek primarily to help clients achieve insight, solution-focused therapy assists the client to develop the strategies and skills to successfully address the problem themselves. Using this supportive approach, clients are encouraged to take the steps necessary to effectively resolve their difficulty.

BRENT HALE is the co-founder of Blomquist Hale Consulting.

There is no set limit on the number of sessions provided through the LAP. Most problems are addressed in just a few sessions over a couple of months. However, some types of problems are not appropriately treated by short-term therapy and are referred to appropriate community providers. Over 80% of all cases are handled within the LAP with no referrals made to outside providers.

The LAP is available 24/7 to help with crisis and emergency situations. They will also conduct critical incident stress debriefings where appropriate. In some of their offices, Blomquist Hale Consulting also offers free multi-week groups that focus on relationship skills, parenting, and personal growth.

Are LAP services confidential?

Yes. Blomquist Hale Consulting strictly adheres to all professional, state and federal confidentiality guidelines. The HIPAA confidentiality rules govern the practice of the LAP. Disclosure of information is governed by Notice of Privacy Practices for Blomquist Hale Consulting. Unless a client requests that information be disclosed by executing an authorization to release information, the LAP will not disclose any personally identifiable information to the Utah State Bar. Utah's Rules of Professional Conduct expressly provide confidentiality during participation in an approved lawyers assistance program (Rule 8.3).

How is the LAP different from the Lawyers Helping Lawyers Program?

The primary focus of Utah Lawyers Helping Lawyers has been to provide lawyer to lawyer assistance through peer counseling. The LAP is designed to offer a much broader range of resources to lawyers. As in the past, Lawyers Helping Lawyers is still available to members of the Utah State Bar. Where appropriate, the LAP will refer lawyers to the help provided by Lawyers Helping Lawyers.

What are the credentials of the LAP counselors?

Each of the counselors providing services for the LAP has at least a masters degree and is licensed by the state as a Clinical Social Worker, Marriage and Family Therapist, Licensed Professional Counselor or Psychologist. You can access pictures and credentials for the Blomquist Hale Clinical Staff at www.blomquisthale.com in the "bios of clinicians" section.

How do I access the LAP?

Access is as simple as calling the LAP and scheduling an appointment. No paperwork or approval is needed. If you live along the Wasatch Front, call directly to the Blomquist Hale office listed below that is nearest you. If you live outside the Wasatch Front, you access the LAP by calling 1-800-926-9619.

Salt Lake City(801) 262-9619
Ogden(801) 392-6833
Orem(801) 225-9222
Logan(435) 752-3241
Brigham City(435) 752-3241

What service is available to those outside the Wasatch Front?

When you call the toll-free number (1-800-926-9619), you will speak to the LAP staff in Salt Lake City who will connect you with a contracted affiliate therapist in your area. You will be invited to schedule face-to-face counseling with an affiliate therapist within a reasonable distance from you. If you prefer, the LAP can also schedule telephone consults to help you address your difficulty.

Where can I get more information about the LAP provided by Blomquist Hale Consulting?

There is a link on the Utah State Bar website that takes you to the information provided by Blomquist Hale at www.blomquisthale.com. This resource contains more detailed descriptions of services as well as useful articles and links to a vast array of helpful information and services.

Look for the representative from Blomquist Hale Consulting at the Utah State Bar's spring convention in St George and the annual convention in Newport Beach.



HOLLAND & HART
THE LAW OUT WEST



Lois Baar
[801] 799-5929
labaar@hollandhart.com

We are pleased to announce that

LOIS A. BAAR

and

STEVEN E. TYLER

have joined Holland & Hart as Partners.

Ms. Baar will practice in the Litigation Department with an emphasis on Labor & Employment.

Mr. Tyler will practice in the Business Department with an emphasis on Real Estate and Tax.

Holland & Hart LLP
Attorneys at Law
60 E. South Temple, Suite 2000
Salt Lake City, UT 84111

February 2005



Steven Tyler
[801] 799-5925
setyler@hollandhart.com

Aspen Billings Boise Boulder Cheyenne Colorado Springs
Denver Denver Tech Center Jackson Hole Salt Lake City
Santa Fe Washington, D.C.

www.hollandhart.com

Mediation is the Key to Resolution

There is some skepticism about whether mediation works within the legal profession. However, when parties are willing to mediate, whether it is a divorce mediation, victim-offender, landlord-tenant or other, the parties have a greater opportunity to make an agreement of their own choosing, rather than the choosing of the judge. Mediation allows individuals the opportunity to speak to one another face-to-face when they may not have done so otherwise. If heading towards litigation, mediation is the key.

Divorce mediation is essential because the parties will likely have a continued relationship in the future due to the fact that children are involved. Divorce is very difficult for the children when the parents are unwilling to work with each other or solve their disputes. Divorce mediation sets the tone for the interaction of the parties in later times. If a mediator can help the parties to resolve issues of parenting, custody, alimony, child support, visitation and other essential components, the parties are more likely to uphold the agreement because it is an agreement that they themselves made. Many times, a divorcing couple is not especially devoted to the judgment found by the court because it was a judgment made without the party's input. Thus, there is something significant about holding a mediation in which the parties make their own decision. The mere fact that they have made the decision helps them to be more loyal to the agreement and follow through as planned.

Victim-offender mediation is used when an offender has committed a crime against the victim and the court has either ordered mediation, or the parties choose to meet in order to find some reconciliation. Victim-offender mediation is powerful in many instances where the victim feels betrayed, hurt and offended. Mediation gives the offender the opportunity to apologize for the offense. Although this does not excuse or take away the offense, many victims are prone to follow the path of healing when an apology has occurred. A victim needs the chance to ask for the appropriate restitution. Offenders are more likely to make restitution to the victim in full when the parties have met and made such an agreement face-to-face. There is also healing that takes place for the offender in that the offender is able to begin to forgive themselves for the mistake made. I work with the juvenile court system where young offenders have committed crimes. There is nothing more satisfying than to see a young child take responsibility for the crime that he or she committed and vow to not make that same mistake again. There is a strong power in witnessing a offender apologize sincerely for the offense committed. Overall, victim-offender and divorce mediation can provide healing to both parties.

Carolyn Howard-Morris
UVSC Law Professor
Trained Mediator

Phone: (801) 420-2072
Email: howardca@uvsc.edu

The First 50: “Celebrating Diversity in the Law”

by Professor Robert L. Flores & Karthik Nadesan

On October 15, 2005, the Utah Minority Bar Association hosted a gala celebration honoring the First 50 minority lawyers admitted to the Utah State Bar. Reaching 50 minority lawyers in the state was an important milestone in the Bar’s history. Following are two perspectives on reaching that milestone – one from a lawyer who arrived on the legal scene shortly after the final members of the First 50 entered practice in 1980, and one from a lawyer who entered practice not long ago.

The recognition of the First 50 minority lawyers admitted to practice in Utah is at once a celebration of the accomplishments of each of the 50 individuals and an honoring of the contributions made by institutions central to the success of minority lawyers within the state. As one who arrived on the legal scene shortly after the final few members of the First 50 entered practice in 1980, I have been privileged to know and work with many of them, to learn from their examples, and to understand both the enormity of the challenges they have faced and the immense importance of their accomplishments in the face of those challenges. It is not appropriate here to elaborate upon the stories of each of those individuals – that was already done at the First 50 banquet, there are too many to include in this limited space, and selecting a small number to focus on would be something of an affront to many deserving others. Instead, I choose one man to serve as a sort of representative of all. That choice is easy because his individual history is highly representative of the challenges and accomplishments of the group, and is closely intertwined with the particular institution I wish to focus on.

BOB FLORES is a founding member of the Utah Minority Bar Association. He has been a Professor of Law at the U of U since 1991, where he currently also serves as President of the Academic Senate, and faculty advisor to the student Minority Law Caucus.



It is also a safe choice, because no one who has ever worked alongside him, or has even a minimal familiarity with his work, can disagree about his importance. He has personally borne an inordinate share of the burden of bringing us to our present state of progress and can aptly be described as a hero among us. From his overcoming the humblest of beginnings – including the World War II years spent in the Heart Mountain Wyoming relocation center, and his fatherless family living in poverty on the rough streets of post-war Ogden – through his pursuit of education including professional degrees in social work and law, his years of law practice, his groundbreaking election to become the first minority in the state judiciary and the subsequent long service on the bench, and always through his community activism – including energetic voluntary service in such organizations as the local and national Japanese American Citizens League and more recently the Utah Minority Bar Association – he has modeled every important facet of what our First 50 mean to us. It is appropriate that our state Bar has already recognized the stature of Number 8 on our list of 50 by establishing the Raymond S. Uno Award for those who contribute to the advancement of minorities in the legal profession.

To Number 8 – and the other 49 you serve here to represent – we now recognize you as our “greatest generation.” Those of us who followed closely behind you extend to you our greatest measure of respect and gratitude. The only appropriate means by which we, and the next generations, can repay the debt we owe to you is to continue in the traditions you have established – to build upon your progress, and in particular to ensure that the doors you held open for us will not close when you have left

KARTHIK NADESAN is President-Elect of the Utah Minority Bar Association and an associate with the law firm of Snell & Wilmer L.L.P. in Salt Lake City.



the scene, and that other entryways, closed to most of you, will be opened by our own hard work.

The most effective way we can do that is by involvement with crucial institutions. As a scholar and community activist, I have both studied and experienced some of the ways in which a few institutions have played critical roles in developing the 50 individuals we now recognize and in enabling their hard work to be channeled to the benefit of our communities. Those institutions have included the long established law school of the University of Utah where the largest number of the First 50 were educated, the much younger law school of Brigham Young University whose contributions have come later, the state bar and state and federal courts, and for the past 15 years, the Utah Minority Bar Association. As with the individuals, I choose one institution to focus upon, as an example of the past and future contributions of all.

With apologies to any whose memories might differ, I trace the beginnings of the Utah Minority Bar Association ("UMBA") first to discussions I recall from 1988, when a few of us involved with the then Utah Hispanic Bar Association considered whether it was feasible to create an organization bringing together all of the significant minority groups (following the model set a few years earlier by our law student groups – the U of U Minority Law Caucus and the BYU Minority Law Students Association). At that time, we decided it was not feasible, primarily because there were still so few lawyers from other minority groups. Two of the First 50, Robert Archuleta, and Solomon Chacon, along with U of U Professor John Martinez, led those discussions.

We reconvened the discussions in 1991, involved others, and by the end of that year had concluded that the time was right. Perhaps most critical to the change of circumstances was that we were joined by Number 8. Ray Uno co chaired our formation meetings and then served as the first President of the UMBA. I was not at all sure that our fledgling organization would succeed if he had not agreed to do so, at great personal sacrifice, considering that he was trying to learn how to cut back on community involvement and enjoy a more leisurely life. He failed to learn that lesson, and we are all the better for his lack of success in that endeavor (and fortunate that he was absent on the day we nominated and elected him to the Presidency!). With the credibility he brought, we were able to draw in most of the more civic minded minority lawyers, including many of the still active First 50 (such as pioneers Number 6 & 11, Jimi Mitsunaga and Ken Hisatake).

A small number of the most dedicated members led by Ray nursed the organization through its early years. And, from the beginning, there has been a joining of generations within the



TRUST SERVICES *from Central Bank*

SPECIALIZING IN LOCAL
ADMINISTRATION OF
TWO-HUNDRED THOUSAND TO
TWO MILLION DOLLAR TRUSTS



DAVE MACBETH
Manager of Trust Services
801-655-2124



JOYCE PRATHER
Trust Administration
801-655-2182

CENTRAL BANK
CAN SERVE
YOU AS:

TRUSTEE

CONSERVATOR

INVESTMENT
MANAGER

BILL PAYMENT
MANAGER

CUSTODIAN

ESCROW AGENT



EST. 1891

UMBA. Those earliest meetings had members of our revered First 50 at the core, surrounded by very recent graduates and current law students. And as the years have passed, those younger participants have moved in and shouldered the burden. Some who were students at the time of the initial meetings have gone on to hold various UMBA offices or otherwise contribute to the work in recent years.

In the 15 years of the UMBA's existence there has been remarkable progress on a variety of fronts. The UMBA has been both a contributor to and a beneficiary of that progress. Its growing resiliency and capability is due in large part to the growth in numbers of minority lawyers (for which we owe much to the local law schools and the close ties we have maintained between UMBA and the law students) and to the extent to which those minority lawyers have moved into influential positions in other important institutions, including most recently some major law firms, and the leadership of the Utah State Bar.

There were certain doors that the First 50 were never able to enter, but which have begun opening for those of us have followed. As one who has observed and participated in a bit of the history of minority lawyers in Utah, I know well that such recent gains must be attributed in significant part to the work done by our First 50 – such as our hero Ray Uno, and to the core institutions, including our increasingly effective Utah Minority Bar Association.

– *Professor Robert L. Flores*

Less than a century ago, not one single minority had become a lawyer in Utah. In 1980, less than three decades ago, only fifty minority attorneys had been admitted to practice law in Utah. However, in the past twenty-five years, minority participation in the Bar has improved dramatically. In fact, there are several hundred minority attorneys practicing law in Utah today. Minority attorneys are currently involved in every aspect of the legal profession – from government agencies and public interest organizations to corporate counsel and private practice. Just as importantly, they have reached positions of prominence. Minority attorneys are law professors, shareholders in some of Utah's largest law firms, and members of the Utah judiciary. And, in a course of events that no one could have imagined twenty-five years ago, a minority attorney, Gus Chin, will be the next President of the Utah State Bar. Today, there exist more opportunities for young minority attorneys than ever before.

However, the opportunities of today would never have existed

without the hard work and perseverance of the First 50. When they graduated from law school, the First 50 faced a bleak and uncertain future – job opportunities were scarce and mentors were almost non-existent. Nonetheless, the First 50 not only persisted in the face of these adversities, they flourished. Members of the First 50 are prominent members of Utah's legal community and have reached levels of success that once seemed unattainable. They have provided invaluable guidance and leadership to those following in their footsteps. And they have created opportunities for diversity that would otherwise never have existed. But, most importantly, the First 50 have provided the inspiration and hope for diversity to succeed in Utah. They have shown us that hard work, perseverance, and time are sufficient to overcome all obstacles.

While the legal profession in Utah is more diverse than ever before, the statistics show that there is still much progress to be made. Minorities are still under-represented among new admittees to the Utah State Bar. Many talented young minority attorneys still leave Utah in search of better job opportunities and more diverse legal communities. There are still prominent positions within the legal community that minority attorneys have not attained. However, the goal of a truly diverse legal profession in Utah becomes more attainable with every passing year. On a national level, influential groups such as the Minority Corporate Counsel Association and the American Bar Association Commission on Racial and Ethnic Diversity are pushing for diversity. On a state level, the Utah State Bar and the Utah Minority Bar Association are committed to achieving diversity and a framework for focusing efforts towards this goal. But, in the end, it is the efforts of interested individuals, whether they belong to a minority group or not, that have and continue to determine the course of diversity in Utah.

The significance of the First 50 is lost if they only inspire the minority attorneys of Utah. Instead, the First 50 should inspire each and every member of the Utah State Bar who has an interest in having a diverse legal community. Every effort to encourage diversity, no matter how small, makes a difference. And the First 50 inspire all of us to make that effort – to increase enrollment diversity in law schools, to retain a diversity of attorneys in our state, and to promote diversity in our work environments. Diversity in the legal profession may seem a difficult and challenging goal but, as the First 50 have shown us, it is a goal that can not only be attained, but attained in the near future. I hope you will join the Utah Minority Bar Association's efforts in achieving this goal.

– *Karthik Nadesan*

Thank You!

The Utah Minority Bar Association (UMBA) wishes to express its sincere gratitude to the many generous sponsors and all others who supported the First 50: Celebrating Diversity in the Law event. Without each of you, we would not have been able to pay the First 50 the tribute they deserve. Lawyers of minority background, in addition to all others in society who benefit from the richness of diversity in the legal profession, owe much to the First 50. These courageous men and women helped break down barriers and create opportunities for those following in their footsteps.

The opportunities created by the First 50 laid the foundation for the creation and growing expansion of UMBA. UMBA strives to promote diversity in the legal profession and provide opportunities for minority law students and minority lawyers, and advocates for legal services and education within minority communities in Utah.

Underwriter Sponsors (\$10,000+)

Ballard Spahr Andrews & Ingersoll, LLP
Parsons Behle & Latimer

VIP Sponsors (\$2,500)

American Express
Holland & Hart, LLP
Holme Roberts & Owen, LLP
Smiles for Diversity Foundation (Dr. Dan Fischer of Ultradent)
Snow, Christensen & Martineau
Utah State Bar
Van Cott, Bagley, Cornwall & McCarthy
Wells Fargo Bank

VIP Sponsors In-Kind (\$2,500+)

ABA Commission on Racial & Ethnic Diversity in the Profession
Digital Bytes Production and Design
Reagan National Advertising
Utah Law & Justice Center
Vanguard Media Group

UMBA Angel (\$1,500)

Chapman & Cutler, LLP
Christensen & Jensen
Dewsnup, King & Olsen
Jones Waldo Holbrook & McDonough
Kipp & Christian, P.C.
Litigation Section of the Utah State Bar

Manning Curtis Bradshaw & Bednar, LLC
OC Tanner
Ray Quinney & Nebeker P.C.
Richards, Brandt, Miller & Nelson
Snell & Wilmer LLP
Stoel Rives, LLP
Utah Hispanic Chamber of Commerce
Young Lawyers Division of the Utah State Bar

UMBA Friend (\$1,000)

ATK
Bendering, Crockett, Peterson, Greenwood & Casey, PC / Howrey, LLC
Callister Nebeker & McCullough
Durham Jones & Pinegar
Fabian & Clendenin
Honorable Raymond S. Uno (Ret.)
Iron Mountain Information Management
J. Reuben Clark School of Law (BYU)
Japanese American Citizens League
Kennecott Utah Copper Corporation
LDS Foundation
Law Offices of Blake Nakamura
National Asian Pacific American Bar Association
Parr Waddoups Brown Gee & Loveless
Robert J. DeBry and Associates
Salt Lake County Bar Association
Siegfriend & Jensen

S.J. Quinney School of Law (University of Utah)

Strong & Hanni, PC
Unishippers Association, Inc.
Utah State Bar
Utah Trial Lawyers Association
Women Lawyers of Utah
Workman Nydegger, PC
Zions First National Bank
Anonymous

UMBA Patron (up to \$999)

Clayton A. Simms, LLC
Community Mediation Center, George A. Lopez & May R. Romo
DPR Communications LLC
Modern Display
NAACP
National JACL Credit Union
Pure Shadow Innovations
Rite Way Alarms, Inc.
Salt Lake Community College
Snow, Jensen & Reece
Strindberg Scholnick & Chamness, LLC
Greg Sueoka
Utah Asian Chamber of Commerce
Utah Attorney General's Office
Utah Paralegal Division
Working Rx

“Celebrating Diversity in the Law” Souvenir Program Brochures still available

The Utah Minority Bar Association has a limited number of programs available from the First 50 event. The 52-page program includes biographical information on each of the First 50 with photographs, comments from many of the First 50 about their mentors in the legal profession and careers and quotes regarding their experiences in the practice of law. Please send \$5 to cover shipping and handling to Utah Minority Bar Association, c/o Utah State Bar, Law & Justice Center, 645 South 200 East, Salt Lake City, UT 84111-3834



The Utah Office of Guardian ad Litem: How You Can Help A Child In Need

by Craig M. Bunnell and Sammi V. Anderson

In cooperation with the Young Lawyers Division's Committee on the Needs of Children, Craig M. Bunnell of the Utah Office of Guardian ad Litem provides answers to some frequently asked questions, along with basic information on how members of the Utah State Bar can become involved in helping at-risk children in Utah.

Q: When and why was the Office of Guardian ad Litem established?

A: The Office was established in 1994 and is governed by Utah Code Annotated section 78-3a-912 and Rule 4-906 of the Judicial Code. The Office is supervised by a seven-member Oversight Committee appointed by the Utah Judicial Council. The Office exists to ensure that children – one of our State's most vulnerable populations – have objective, independent legal counsel (a) to present evidence and make recommendations to the courts as to the best interests of a child in a given set of circumstances; and (b) to assist the child in voicing his or her own wishes in a meaningful fashion in any proceeding involving the child.

Q: How many attorneys are employed by the Office?

A: There are currently thirty attorneys working for the Office, either as full-time or part-time employees, with caseloads in jurisdictions all around the State. Satellite offices exist in each judicial district throughout the State. Three other attorneys, including the Director, Kristin Brewer, primarily handle administrative matters, appeals, training, and collaborative programs and projects.

Q: What is the specific role of the Office of Guardian ad Litem?

A: Attorneys employed at the Office are charged with representing the best interests of any child who is or may become the subject of a petition or court proceeding in which abuse, neglect, or dependency of the child is alleged. Before it can appear on behalf of a child, the Office must be judicially appointed to represent the child. Thereafter, the Office must continue to represent the

best interests of the child until released by the Court. The Office represents a child in all proceedings in which he or she is involved or implicated.

The Office also trains and assigns volunteer Court Appointed Special Advocates (CASAs) to assist in juvenile court cases, and trains and assigns private attorneys to represent children as Private Attorney Guardians ad Litem in high-conflict divorce cases involving issues of custody or visitation pursuant to Utah Code Annotated section 78-7-45.

Q: Why should attorneys be interested in working for the Office?

A: I have no doubt that all attorneys and staff working for the Office choose to do so for one primary reason: they want to improve the lives of abused and neglected children. I believe most of our attorneys have, for that very reason, taken substantial pay cuts to work for the Office. In exchange for lower salaries, attorneys working for the Office experience a kind of job satisfaction that cannot be measured or adequately explained. The role of the guardian ad litem in our judicial system is truly vital to protecting and supporting the needs of children at risk.

Q: What are some of the biggest challenges facing the Office at this time?

A: The biggest challenge is providing adequate representation for the number of children coming into the judicial system each day. The American Bar Association recommends that child welfare attorneys not carry more than sixty cases at a time to ensure quality representation. Statewide, caseloads at the Office have increased some fifty-eight percent since 2000. **The average caseload at the Office is about 174 cases, or approximately 319 children per attorney.** This makes representing and protecting children increasingly difficult, particularly where more than one child is involved in a single case. High caseloads limit the attorneys' ability to meet their statutory duties, meet the childrens' needs, and may ultimately lead to burnout.

CRAIG M. BUNNELL is an Attorney Guardian ad Litem with the Utah Office of Guardian ad Litem. He is also the training coordinator for the Office, and the manager of the Private Attorney Guardian ad Litem Program. Craig can be reached at (801)238-7861, or by email at craigb@email.utcourts.gov.

SAMMI V. ANDERSON is co-chair for the Needs of Children Committee of the Young Lawyers Division of the Utah State Bar. She is an associate at Manning Curtis Bradshaw & Bednar. She may be contacted at (801)363-5678, or by email at sanderson@mc2b.com.

A performance audit of the Office was recently completed by the Office of Legislative Auditor General. While the Audit identified the need for approximately twenty-two additional attorneys for the Office, a funding request is going to the Legislature for just nine more attorneys.

Another challenge is educating the public and law-makers of the reality and seriousness of child abuse and neglect in our State. The Utah Child Abuse Prevention Task Force recently identified child abuse and neglect as a significant problem in Utah, and determined that education and prevention efforts are key to curbing worsening trends. If prevention is not a priority, we will all end up paying more and more, as time goes by, for the long-term results and consequences of abuse and neglect.

Q: How can members of the Utah State Bar better support the needs of at-risk children in Utah?

A: Members should first educate themselves regarding the issues surrounding at-risk children, try to better understand the nature of children, and learn how various forms of abuse, neglect, and trauma impact a child's emotional, physical, and mental well-being. Then, members can put this new understanding to good use by actually helping at-risk children and youth. There are so many ways to help: become involved in child-abuse prevention programs, and education programs; be a foster parent or adopt a foster

child; get involved in the Private Attorney Guardian ad Litem Program; or become a CASA volunteer. There are so many child and youth support programs in Utah that need both mentors and monetary assistance. Finally, members of the Bar can assist the cause by letting their legislators know how they feel about legislation implicating at-risk children, and the critical need to increase funding for child protection and assistance programs. If not our Bar members, then who?

Q: How can a Utah attorney become a Private Attorney Guardian ad Litem?

A: A Utah attorney must meet the eligibility requirements found in Utah Rules of Judicial Administration section 4-906. In a nutshell, the candidate must be a member in good standing with the Utah State Bar. The candidate must register for and attend six training courses offered by the Office within a two-year period, or submit a written request for a waiver, at the discretion of the Office, of the training requirements based on prior training and experience. Finally, each candidate must submit to and pass the background check screening process described in the statute. Please reference the rule directly for more details. For information on scheduled class-times and locations, contact Private Attorney Guardian ad Litem training coordinator, Craig Bunnell, at (801)238-7861.

Join us in this worthy and engaging cause!

REAL Solutions for Your Office

HotDocs® Template Sets:

- REAL Probate Management System
- Utah LLC Formation
- Medicaid Planning System

HotDocs® and Amicus Attorney®
Training and Consulting

Visit www.reallawforms.com
(801) 766-8178



Phishing and Pharming and Trojans – Oh My!

by Polly Samuels McLean and Michelle M. Young

“DEAR SIR/MADAM: I REPRESENT THE RECENTLY DEPOSED MINISTER OF AGRICULTURE FOR NODAMBIZIA, WHO HAS EMBEZZLED 30 MILLION DOLLARS FROM HIS STARVING COUNTRYMEN AND NOW NEEDS TO GET IT OUT OF THE COUNTRY. . .”

“Dear Client of US Bank: As the Technical service of bank have been currently updating the software, we kindly ask you to follow the reference given below to confirm your data, otherwise your access to the system may be blocked.”

More likely than not, the above blurbs are familiar. Each is an element of an online scam capable of stealing confidential information, identities, bank account funds and more.

Cybercrime has exploded in the last five years – according to the *IC3 2004 Internet Fraud Crime Report* (“IC3 Report”) produced by the FBI and the National White Collar Crime Center, complaints about online fraud more than doubled between 2003 and 2004. According to the IC3 Report, more than 200,000 complaints were logged with the FBI in 2004, costing consumers more than \$265 million.

And the news gets worse. In the past, cybercriminals have produced worms and viruses (malignant software programs that invade personal computers, deleting programs and generating mass e-mails) that, although pervasive, obnoxious and malicious were not designed to procure financial gain. Now professional Internet crime rings, organized to exploit computer weaknesses and the online economy are reaping illicit gains. Christopher Bolin, Chief Technical Officer at security software producer McAfee, has characterized the new threat to consumers in these terms: “This is not a pimple-faced kid who, when he gets a girlfriend, stops writing viruses. This is a guy with a business

plan.”¹ Like other types of fraud, cybercrime can be defeated through knowledge, common sense, and a few well-placed security measures. Below is an overview of some of the most common scams running right now, as well as some tips for avoiding victimization.

Online Auction Fraud

By far the most common type of Internet crime in the United States, online auction fraud is reminiscent of traditional methods of fraud. But unlike traditional telephone or in-person fraud schemes, the anonymity and worldwide nature of the Internet makes identifying and prosecuting the perpetrators more difficult. Online auction fraud is increasing exponentially as the popularity of online auction sites grows. According to the IC3 Report, online auction fraud accounted for nearly 75% of all complaints registered with the FBI’s Internet Crime Complaint Center in 2004.

Occurring most frequently on popular online auction Web sites (such as eBay or UBid), online auction fraud takes a myriad of forms. Most commonly, scam artists are either selling products they don’t actually possess or intend to deliver, or products that don’t match the description given in the auction (*e.g.*, “genuine” Gucci handbags that aren’t quite genuine).

For example, in 2004 Mark Beaver of Salt Lake City was sentenced to prison time and restitution when he was convicted of bilking hundreds of eBay buyers out of more than \$180,000. Beaver sold his victims Fiesta Bowl tickets he had never possessed, often concocting glowing stories regarding the quality of the seats and reassuring his victims that he had an excellent reputation as a ticket seller on eBay. Many of Beaver’s victims, most of whom had flown to Tempe, AZ in anticipation of receiving the tickets from Beaver shortly before the game, were unable to afford scalped tickets and were forced to watch the game on television. *State v. Beaver*, Case No. 031900185 (3rd Dist. 2004).

POLLY SAMUELS MCLEAN, formerly a white collar crime specialist in the Utah Attorney General’s office, is currently an assistant city attorney for Park City.



MICHELLE YOUNG is an Assistant Attorney General with the Criminal Justice Division of the Utah Attorney General’s Office.



The IC3 Report details a similar case. A West Virginia man sold his airplane on eBay for \$16,200. The buyer sent him a \$2,000 deposit but heard nothing from the seller. Frustrated, the buyer continued to e-mail the seller until the seller accused the man of harassment and said he was going to keep both the plane and the deposit. The seller then relisted the airplane on eBay and sold it again. When police attempted to arrest him, the seller fled on his motorcycle, leading police on a high-speed chase. The chase ended when police caught up with the suspect at a roadblock. The seller was charged with computer fraud and various other crimes related to the chase. He pled guilty to a lesser charge of obtaining money under false pretenses and was sentenced to six months in jail, fined \$250 plus court costs, and ordered to pay restitution.

There are other types of online auction fraud as well. For example, a recurring fact pattern involves a foreign buyer who agrees to buy a big-ticket item (typically a car, boat, etc.) being sold by an American seller over the Internet. The buyer sends a cashier's check for several thousand dollars more than the agreed upon purchase price, requesting that the seller deposit the check, ship the item, and then wire any remaining money back to the buyer overseas. After the seller wires the amount of the balance in legitimate funds "back" to the buyer, the seller discovers the check is counterfeit and the bank will not honor it. The seller is

then faced with the impossible task of trying to recover both the merchandise and the cash. Richard White of Sandy got lucky when he was targeted by scammers in 2003. White had listed his motorcycle for sale on the Internet for just over \$5,000. The buyer, though, forwarded White a check for \$10,000 requesting that White wire the difference to an overseas account. White thought the request sounded suspicious and, instead of complying with the buyer's instructions, contacted Sandy police who later determined that the check was counterfeit.

Another type of online auction fraud is the "second chance" scam. In this type of scam, the seller takes advantage of people who bid on but did not win the auction. The seller contacts the next highest bidder, indicating that the highest bidder backed out and offering the buyer a "second chance" to buy the item at less than the highest bid price. The buyer accepts and sends payment to the seller. The seller may tell several buyers this same story. The buyers all tender payment, but no one receives the item. The seller pockets the money and disappears.

Online auctions are also popular places for thieves to sell stolen goods. For example, in a recent Utah case, a West Jordan man was arrested after police found hundreds of stolen items in his home. Local law enforcement was tipped off when a Midvale man

Let us Help With Your Vioxx or Mass Tort Cases



Fee splitting arrangements for serious injury cases.

Please consider using our firm as your no overhead litigation department when it comes to Vioxx or other pharmaceutical litigation cases.

Although our primary office is in Phoenix, Arizona, we associate with attorneys throughout the country on serious injury, medical malpractice and mass tort claims.

CONTACT: JOHN A. SCHILL, Attorney*
1-877-847-3000 #164
www.PhillipsLaw.com

*Mr. Schill is licensed to practice law in Arizona, Nebraska, Utah & South Carolina.

discovered his recently stolen paintball gun listed for sale on eBay. Officers set up a “sale,” then, after obtaining the seller’s payment information, raided the seller’s West Jordan home. In the home, officers discovered hundreds of stolen items as well as information indicating that the suspect had listed more than 500 stolen items for sale on eBay in the months preceding the raid.

Reviewing a seller’s online feedback from previous buyers is not always a reliable safeguard. Feedback results when participants in an online auction transaction each “rate” the quality of the transaction. That rating is then available for other prospective buyers and sellers to view. Unfortunately, the system has weaknesses that online criminals routinely exploit. For example, in June of 2003, Russell Dana Smith was arrested in Salt Lake City and charged with 54 counts of fraud when it was discovered that the laptops he was selling on eBay didn’t really exist. Smith, who had assumed the identity of John Leary in order to perpetrate his auction fraud, had offered “rebates” for customers who left positive feedback for him. At the time of Smith’s arrest, more than 1,000 victims had come forward with claims exceeding \$1 million, making Smith’s one of the largest domestic eBay auction fraud cases yet.

Finally, online auctions enable activities designed to artificially inflate the bid price, known as “shill” bidding. In 2004, three eBay sellers in New York pled guilty to charges of shill bidding. The sellers cast bids in over 1,100 of each other’s online auctions for the sole purpose of driving up the bid price on the merchandise offered for sale. Such shill bidding affected more than a hundred eBay buyers and, while the actual costs are unknown, the potential cost to consumers is substantial.

Nigerian 419 Letters

Purportedly named for the section of the Nigerian penal code they violate, Nigerian 419 letter scams prey on the fundamentally greedy nature of people. The letters, sent via e-mail, claim, for example, that “the recently deposed minister of agriculture for Nodambizia, who has embezzled 30 million dollars” needs to flee and now requires your assistance to get the money out of his country. The scammers offer, as payment for helping this corrupt bureaucrat, a cut of the funds (usually about one-third). Victims are sometimes asked to travel overseas to meet with the scammers to complete the transaction; and in all cases the victim is asked to front thousands of dollars to pay for “taxes,” “attorneys costs,” “bribes,” “advance fees,” etc.

Although the scheme seems farfetched, the FBI’s IC3 Report indicates that the average financial loss of victims of a Nigerian 419 letter is \$3,000, an amount higher than any other reported

type of online fraud except check fraud.

There are many variations on the Nigerian 419 scam. Some letters claim to be from African government committees, some claim to be from dignitaries, some claim to be from Nigerian royalty. One scam with a local spin targets Utah residents. The letter claims to be from a Mormon living in Africa who desires only to support Mormonism and to share his wealth with others. He requests only that you send your bank account information to him so he can wire the money to you.

Work at Home/Reshipping Schemes

One new facet on the often perpetrated “work at home” scheme is the postal forwarding/reshipping scam. Scammers place online ads or create employment Web sites looking for a “correspondence manager” for an offshore corporation. The “position” requires “employees” to accept goods sent to his or her personal address and then reship the goods overseas. Victims are also sometimes asked to accept wire transfers into his or her bank account, and then transfer the money to the “corporation’s” account. In return, victims are paid with a percentage of the goods or money.

In reality, the goods have been purchased with stolen credit card numbers and reshipped by “correspondence managers” to scam participants who fence them overseas. Moreover, the money transferred into victims’ accounts is stolen money being transferred from one account to another to launder the money. The thieves also use the employee’s employment information (such as social security number, birth date and bank account information) to steal the employee’s identity and money. This scam is popular with con artists because it allows them to fence stolen goods, launder money, and obtain access to confidential information. The FBI recently reported that they had identified more than 5,000 U.S. addresses that had been utilized in furtherance of a reshipping scheme.²

Spyware

Spyware is software used to covertly monitor actual computer activity – including Web sites visited, passwords, and other confidential information. In addition to monitoring users’ online activities, spyware can also monitor *offline* computer activity. The program gathers confidential information (such as bank account information, credit card numbers, social security numbers, etc.) and then transmits the information to criminals who either use the information to steal funds and identities, or who sell the information to other criminals who do likewise.

Despite its name, the Utah Spyware Control Act (Utah Code §13-40-101 et seq.) (the “Act”) mainly addresses adware. Although the

terms are frequently confused by both legislators and consumers alike, adware refers to relatively benign software programs that track consumers' Internet surfing and spending habits, and cause "pop-up" advertisements to appear on the user's computer screen. The Act is based largely on copyright/trademark infringement policies and requires express user consent before the software downloads on a computer.

Phishing

Phishing (sometimes called "brand spoofing") is one of the most well known and fastest growing scams on the Internet today. The typical phishing scam involves an e-mail that appears as though it came from Paypal, eBay, a bank or some other reputable financial institution. The e-mail appears to be legitimate, and includes appropriate logos and working or "live" links to authentic areas of the institution. The message generally indicates that, due to problems with a database, a reset server or, ironically, identity theft concerns, the recipient is required to update personal data such as passwords, bank account information, driver's license numbers, social security numbers, PIN numbers, and so forth. Consumers are warned that failure to immediately provide the updated information will result in suspension or termination of the account.

Once consumers click on the link enclosed in the e-mail, they are taken to a legitimate looking (but fraudulent) Web site. Consumers are then asked to log in to complete a form "updating" their account information. Once thieves have a victim's personal information, they drain the victim's bank account, ruin his or her credit, and/or steal his or her identity.

Despite growing consumer awareness of phishing scams, people continue to fall victim to them in increasing numbers. One survey found that 28% of Internet users in the United States could not tell the difference between a legitimate e-mail and a fraudulent phishing e-mail.³ The click-through rate on phishing e-mails remains high at about three percent, compared with a typical response rate of about 0.5 percent for other types of spam.⁴ Losses to consumers due to phishing schemes have been estimated to be as high as \$500 million nationwide.

To exacerbate the situation, phishing scams are getting more sophisticated as hackers employ other means to more accurately target customers of specific banks. Phishers are now using spyware and/or programs designed to log users' keystrokes (keylogging programs) to track those users' online activity and to gain access to consumer information. The criminals then tailor phishing e-mails to look like they came from the victim's actual bank – improving the odds that the victim will "take the bait."

Spyware is also used to gain control over personal computers. Once thieves have control of a number of computers (sometimes called a "zombie network" or a "botnet"), the network can be used to generate "phishing" attacks. Although spyware isn't the only way a phishing scam can be perpetrated, the use of zombie networks disrupts the computer "trail," making it more difficult for law enforcement to track fraudulent activity. Given the ease with which spyware programs may be created or acquired (many free spyware programs are available on the Internet), using spyware programs to establish a zombie network of compromised computers is an attractive proposition to many computer criminals.

Trojan Horse Programs

Trojan horse programs hide malevolent programming within a shield of benign computer code to circumvent security software and firewalls. These programs are often transmitted via e-mail and Internet worms – malicious software programs that trigger massive e-mail by the infected computer in order to perpetuate the spread of the program. Like spyware, once installed on a host computer, the Trojan horse program collects system information, downloads and executes files, and even remotely controls a connected Web cam. Frequently, Trojan horse programs wait until users visit online banking sites and then log and transmit user names, passwords, and other account information to thieves.

Arbitration and Mediation

Judge Stuart T. Waldrip (ret.)

- 38 years experience as judge, litigator, mediator, arbitrator
- Retired California Superior Court Judge
- Experience in business, contract, construction, employment, tort, insurance, malpractice, and other complex civil matters.



IDR

INTERMOUNTAIN DISPUTE
RESOLUTION

Case Manager Miriam Strassberg 801-943-3730

References and further information: Miriam or
utahmediation.com or stuwaldrip@hotmail.com

Recent Trojan horse attacks are more sophisticated. These new attacks consist of multi-pronged attacks of coordinated software that communicate with each other and work together to bypass firewall programs and establish control over infected computers. And because the programs allow thieves to remotely access the computer, the program code can be changed quickly and often to avoid anti-virus programs and other security software.

Trojan horse programs also provide a means by which phishing scams can be accomplished without requiring users to click any links. This method of phishing, currently spreading throughout Brazil and other South American countries, works like a virus. If the user opens the e-mail, a Trojan horse program installs itself on the user's computer. The program waits for a user to visit his or her legitimate banking site, and then a keylogger program contained within the Trojan horse program steals the consumer's usernames and passwords. Although this type of attack has not yet spread to the United States, experts predict it will arrive here soon.

Pharming

Pharming (sometimes called "domain spoofing") is another way online criminals use Trojan horse programs to gain access to confidential consumer information. Pharming uses Trojan horse programs to redirect people to counterfeit banking or e-commerce sites (sometimes called "page hijacking"). The compromised computer or server redirects consumers to fraudulent Web sites even if a user manually types an address into the browser address window. The fraudulent sites are formulated to look like authentic, legitimate sites (and may even include a bogus "secure site" logo indicating that the site is genuine). The site may install spyware or prompt the consumer to enter personal information, including user name and password.

Another form of pharming "poisons," or gives false information to, domain name servers. Those servers then redirect Internet users to Web sites maintained by the attackers. A recent attack resulted in an estimated 1,300 Web site addresses being redirected to malicious sites.

Pharming is particularly dangerous because it gives the user no warning that the computer is infected. The Trojan horse operates quietly in the background, redirecting the user to fraudulent Web sites.

Conclusion

The growth of cybercrime is alarming. During the 2006 legislative session, Utah lawmakers are considering a bill making the procurement of sensitive financial information (such as driver's

license, social security, or bank account numbers) by false pretenses a felony – regardless of the amount of damages incurred. *See* Utah SB52. At present, the communications fraud statute (Utah Code §76-10-1801), one of the means by which Internet fraud can be prosecuted in Utah, specifies that the amount of damages determines the severity of the punishment (e.g., misdemeanors for losses under \$1,000, felonies for losses over \$1,000). The proposed statute would mean possible prison time for merely obtaining the information under false pretenses even if there is no financial loss.

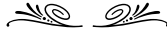
Opponents to recently considered anti-cybercrime legislation argue that it is not new legislation that is needed, but new means of enforcement. They claim that fraud, whether perpetrated online or off, is still fraud and is, therefore, covered by state and federal consumer protection statutes. Yet enforcement of anti-fraud statutes with respect to Internet crime is more difficult because of the ease with which scammers can create and dismantle Web sites, hide their identities, and so forth. Such groups believe that legislation expanding enforcement powers and providing for information sharing between law enforcement agencies would be more effective in the fight against cybercrime.

In order to protect themselves, it is vital for consumers to maintain a healthy skepticism and to use common sense. Do not give out confidential information unless you know to whom you are giving it, and why. Personal computer users should run up-to-date antivirus and antispyware software and should update it regularly. Any computers running Microsoft products should download program updates regularly as those programs are often the target of malicious programmers.

The Internet is global, anonymous, and fluid. Although the Internet offers a vast legitimate economic opportunity, it also offers an attractive new forum for those who perpetrate fraud. Given the increased degree of difficulty in fighting cybercrime due to the very nature of the Internet, consumers, law enforcement, and legislators must work together to create a safer and more productive e-commerce environment.

1. Grant Gross, *Tech Execs Call for Cybercrime Commission*, PC WORLD, at <http://www.pcworld.com/news/article/0,aid,119648,00.asp>, (Feb. 10, 2005).
2. *Operation Cyber Sweep*, United States Dept. of Justice, at <http://www.fbi.gov/cyber/cysweep/cysweep1.htm>.
3. *US Consumers Still Can't Spot Phishing Scams*, FINEXTRA, at <http://www.finextra.com/fullstory.asp?id=12250> (July 28, 2004).
4. Tony Lima, *Does Online Banking Put Your Money at Risk?*, PC WORLD, at <http://www.pcworld.com/news/article/0,aid,117757,00.asp> (Sept. 13, 2004).

FEELING THE WEIGHT OF THE DEFENSE?



Eisenberg, Gilchrist & Morton can help reduce the stress associated with handling large contingency fee cases. Our team approach gets cases closed faster than the traditional method of "one case, one lawyer," and we fund all of the costs associated with most cases. We also frequently achieve settlements or verdicts which substantially exceed the amounts originally demanded by referring lawyers.

Our team of ten attorneys collected more than sixteen million dollars for our clients during the first half of 2005.

Some selected results:

\$3.9 million	Multi-vehicle accident
\$2.5 million	Medical malpractice
\$1.5 million	Medical malpractice
\$800,000	Workplace accident
\$737,500	Premises Liability
\$315,000	Fiduciary Malpractice

Please contact us if you would like to discuss a case.



We Get Results.

EISENBERG, GILCHRIST & MORTON

900 PARKSIDE TOWER • 215 SOUTH STATE STREET • SALT LAKE CITY, UTAH 84111
TEL: 801-366-9100 TOLL-FREE: 877-850-3030 WWW.EISENBERGANDGILCHRIST.COM

SPYWARE: Living in a Cyber-Fishbowl

by Polly Samuels McLean and Michelle M. Young

One of the most potent and pervasive types of cybercrime is commonly known as spyware. Spyware, a general term used for software that performs certain behaviors such as advertising, collecting and transmitting personal information, or changing a computer's configuration without the owner's knowledge or permission, invades consumers' privacy, inundates users with pop-up windows, slows computers down, and causes computers to crash.

The term "spyware" is often used as an umbrella term encompassing a number of annoying and malignant programs. There are actually several discreet types of spyware, including adware (programs that install and initiate "pop-up" advertising), malware (programs such as viruses or worms that are specifically designed to disrupt computer operation), keylogging programs (programs that track computer users' key strokes, sometimes known as "snoopware") and page hijackers (programs that take over a computer's internet browser, rerouting users to different home pages or Internet sites).

Adware

Adware, also known as "pestware" or "adbots," is usually more annoying than malicious. Composed of relatively benign programs that track consumers' Internet surfing and spending habits, adware causes advertisements to appear (or "pop-up") when a user visits specific Web sites or when he or she searches for a specific site or product. Although adware programs are frequently referred to as "spyware" and many people use the terms interchangeably, spyware and adware are quite different in both purpose and use. Adware is intended to be benign and it is primarily used to market online goods and services. Spyware, on the other hand, is frequently malicious and may be used to fraudulently obtain users' bank account information, passwords, and other confidential information. This confusion regarding spyware and adware may lead some consumers and legislators to underestimate the threat presented by actual spyware, believing that the worst of it is simply annoying.

Despite its relatively benign function and purpose, adware is widely disliked. Online merchants don't like it because it attempts to redirect users to a competitor's Web site or product; consumers

find pop-up advertisements annoying because they block the user's computer screen and disrupt online work – users must stop working and close the ad before they can continue. Adware is also disruptive because it causes computers and Internet connections to slow down, and, if a user inadvertently clicks on a pop-up advertisement, may expose users to computer viruses and other forms of malware. Thus, although the intent of the adware programmer is not malicious, the adware itself causes problems and exposes consumers to other more malicious forms of programming.

Adware usually installs itself through the use of misleading dialogue boxes or other methods of stealth installation and is frequently bundled with free product downloads, such as peer-to-peer movie/music swapping programs or free screen saver programs. Adware manufacturers insist that they disclose the existence of the adware in the end user licensing agreements ("EULAs") and that consumers agree to the adware download when they click the "I accept" button required by the EULA before the download begins. But despite such "disclosure," most users are unaware that they have installed an adware application on their computers. And once downloaded, adware programs are difficult (if not impossible) to uninstall and removal of the adware may render the rest of the bundled software inoperable.

Because adware is so pervasive, obvious and disruptive, it has spurred the biggest consumer backlash against computer programming to date – generating multiple versions of anti-spyware¹ legislation on both state and federal levels. Federal legislation intended to regulate adware passed the House in October of 2004, H.R. 4661, but stalled in the Senate, due to concerns over the impact the legislation might have on legitimate businesses. Opponents of the legislation believe that the legislation would restrict the legitimate uses of responsive pop-up and information gathering technology. For example, the use of "cookies," programs that gather data allowing a user to return to a Web site and have the site "recognize" him or her (sometimes including forms pre-filled with that specific user's information), by legitimate business could be impeded by anti-spyware legislation. Anti-Spyware legislation originating in the Senate also remains pending.

POLLY SAMUELS MCLEAN, formerly a white collar crime specialist in the Utah Attorney General's office, is currently an assistant city attorney for Park City.

MICHELLE YOUNG is an Assistant Attorney General with the Criminal Justice Division of the Utah Attorney General's Office.

On the state level, Utah passed the nation's first anti-spyware/adware legislation in 2004 under Utah Code §13-40-101 *et seq.* Utah's 2004 Spyware Control Act (the "Act") initially required software to obtain a user's express consent (separate from any disclosure contained within the EULA) before any computer program was installed on a machine. The 2004 Act also required software manufacturers to provide a means for disabling and removing the software. However, opponents of the legislation argued that the law regulated interstate commerce – an area constitutionally reserved for federal action alone. As a result, the Utah Act was stayed in June of 2004 pending judicial review.

In an attempt to remedy the constitutional issues, the Utah legislature amended the Anti-Spyware Control Act in 2005. The 2005 Act, which now focuses more on trademark/copyright infringement issues, applies only to adware downloads to computers physically present in the state and owned by Utah residents. Utah legislators hope that this restricted application of the law will circumvent any potential Commerce Clause issues. Since Utah first initiated such protective legislation, nine states have enacted some type of spyware legislation and another 28 states are currently considering it.

Moreover, some Web site owners have pursued civil suits claiming that pop-up advertisements block the content of the Web site and, in effect, violate the copyright or trademark rights of the owner. Although courts have generally been sympathetic, they have routinely ruled against site owners, finding that, because computer users have, ostensibly, voluntarily downloaded the adware programs, there was no violation of trademark law. For example, in *U-Haul Int'l v. WhenU.Com, Inc.*, 279 F.Supp. 2d 723, 723 (E.D. Va. 2003), the United States District Court for the Eastern District of Virginia held that WhenU, an Internet advertising company, had not violated trademarks by having its software display pop-up advertisements in front of U-Haul's Web site, even though the pop-ups blocked the view of visitors to the U-Haul site. The court plaintively opined:

Computer users, like this trial judge, may wonder what we have done to warrant the punishment of seizure of our computer screens by pop-up advertisements for secret web cameras, insurance, travel values, and fad diets. Did we unwittingly sign up for incessant advertisements that require us to click, click, and click again in order to return to our Internet work? The Court, in this opinion, attempts to answer this question; we have invited these pop-up advertisements by downloading free screen savers and other free software from the Internet.

Id. Ultimately, the court found the supposed voluntary nature of the download (*i.e.*, computer users voluntarily and affirmatively

downloaded the adware) to be dispositive.

In cases where the adware program downloads without any type of notice to the user – often as a result of the user visiting an infected site or opening an infected email, the newly established trespass against chattels standard set forth by the California Supreme Court in *Intel Corp. v. Hamidi*, 30 Cal. 4th 1342; 71 P.3d 296 (Cal. 2003), may provide grounds for a tort action against pop-up advertisers. In *Intel Corp.*, the California Supreme Court applied California's "trespass to chattels" doctrine to unsolicited email advertisements (commonly known as "spam"). Although the court concluded that the spam complained of by Intel does not constitute trespass to chattels because it did not interfere with Intel's use or possession of its computer system, the court also indicated that *interference with the functioning* of the computer system would constitute trespass to chattels. Given this broadened application of the trespass to chattels doctrine, a plausible trespass to chattels claim may be made against producers of both adware and spyware as the programs cause "momentary dispossession" by interfering with the computer user's work and by slowing the computer down. Thus, trespass to chattels may provide a means for a viable civil cause of action against adware vendors who distribute programs that automatically or covertly install on a user's computer.

However, the trespass to chattels doctrine would be inapposite to affirmative downloads agreed to by computer users. And as long as adware vendors continue to bury disclosure in EULAs and as long as consumers agree to EULAs (either with or without reading them thoroughly), it is unlikely that courts will rule against adware in and of itself. It is more likely that legislation – like that recently passed in Utah – will be necessary to require more overt disclosure by vendors and more affirmative acceptance of the agreement by users.

Spyware

Actual spyware, as opposed to the relatively benign adware, is software used to covertly monitor actual computer activity – including Web sites visited, passwords, and other confidential information. In addition to monitoring users' online activities, spyware can also monitor *offline* computer activity. A spyware program gathers confidential information (such as bank account information, credit card numbers, social security numbers, etc.) and then transmits the information to criminals who either use the information to steal funds and identities or who sell the information to other criminals.

Spyware/adware programs have spread rapidly. One recent study found that more than 85% of all computers (both personal and corporate) scanned for spyware/adware were infected, *see Webroot Report: Spyware Industry Worth Billions*, COOLAWYER,

Inc., at <http://www.coollawyer.com/webfront/lawnews.php> (June 2005), yet the vast majority of consumers were unaware that their computers had been compromised. Although users may have noticed the appreciable slowing of the computer, the increase in pop-up advertisements, and/or the increased incidents of computer freezes (or crashes), many simply blamed the Internet service provider, the legitimate software installed on the computer, or the computer hardware manufacturer itself.

The costs of spyware, coupled with the misplaced consumer blame, extend into the general economy as well. For example, service calls to Internet service providers as a result of spyware/adware-based pop-up advertisements reduce an ISP's corporate profit margins, and computer software and hardware companies fear that decreased performance as a result of spyware/adware negatively impacts their brands. The companies have found that consumers often mistakenly blame the computer hardware itself for spyware created problems. Additionally, corporations worldwide are impacted by reduced productivity caused by sluggish computers and by the time required to repeatedly purge company computers of unwanted programs. Finally, companies marketing spyware programs have been known to sue anti-spyware programmers to force them to exclude their products from anti-spyware programs. See, e.g., *New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1071 (C.D. Ca. 2003). Although the spyware companies have yet to win a suit, the litigation costs the anti-spyware vendors both time and money and may further discourage companies from developing and producing anti-spyware programs.

Many consumers, legislators, and government agencies believe that spyware legislation is not the answer. Agencies like the Federal Trade Commission (FTC) believe that the real problem is with finding and catching the scammers, not with prosecuting them once caught. As support for its position, the FTC points to the recent CAN-SPAM Act of 2003, which has been largely ineffective² because officials cannot locate the spammers before the spammers change locations or products. This is due in large part to the fact that spammers often hide their identities and investigations may take months. The President's Working Group on Unlawful Conduct on the Internet agrees. The group issued a report in March of 2000 in which it indicated that legislation is needed to enable law enforcement agencies to more effectively police Internet crimes in "real time." See *The Electronic Frontier: The Challenge of Unlawful Conduct Involving the Use of the Internet*, United States Dept. of Justice, at <http://www.usdoj.gov/criminal/cybercrime/unlawful.htm> (Mar. 2000) (hereafter "The Electronic Frontier"). Other opponents include the IT industry (which favors a more forgiving "opt out" law rather than the proposed "opt in" or express consent bills), and, not surprisingly, adware manufacturers such as 180Solutions, WhenU, and Claria

(each of whom has contributed more than \$100,000 to anti-regulation lobbying efforts). The Internet Alliance, a trade organization made up of merchants such as eBay, America Online, and Microsoft, has also opposed anti-spyware legislation, concerned that any enacted legislation would infringe upon legitimate activities by bona fide Internet e-commerce sites.

These concerns are not without merit. One of the biggest challenges with anti-spyware legislation is its broad scope. Although it would be most effective to define a species of computer program as malignant spyware and nothing else, in reality the only difference between the technically similar spyware and "supportware" (programs which provide beneficial programs such as pop-up reminders, program update utilities, and Internet browser security features) is the intent of the programmer. Given the broad application of most anti-spyware legislation it is virtually inevitable that some of the "good guys" will get swept up with the "bad." Because of the inevitability of such over-inclusiveness (or, in the alternative, under-inclusiveness), some lawmakers are considering "bad acts" legislation that focuses on specific prohibited behavior.

"Bad acts" legislation, though, may be substantially – and unnecessarily – duplicative. As the FTC noted, most criminal statutes do not distinguish between crimes committed over the Internet and those committed through other media.

For example, laws governing fraud – such as credit card fraud, identity theft, securities fraud, gambling, and unfair and deceptive trade acts or practices – apply with equal force to both online as well as offline conduct. To the extent these existing laws adequately address unlawful conduct in the offline world, they should, for the most part, adequately cover unlawful conduct on the Internet.

The Electronic Frontier. However, some legislation has been determined to be inapplicable because it applies only to "unauthorized" software downloads and spyware/adware vendors have continued to circumvent these laws by burying "authorization" language in long-winded EULAs.

Despite the flurry of legislative, judicial, and political activity, no solution to the spyware/adware problem is likely any time soon.

1. Despite being motivated by and specifically addressed to eliminating adware, most anti-adware legislation is known by the broader term "anti-spyware" legislation. There are some exceptions, however. See, e.g., legislation recently passed in Arizona, Virginia, and Washington directed specifically at actual spyware. *2005 State Legislation* <http://www.ncsl.org/programs/lis/spyware05.htm> (last updated Aug. 9, 2005).
2. In January of 2005, one year after the CAN-SPAM Act of 2003 took effect, industry experts indicated that a mere 7% of all e-mails surveyed complied with the law – spam levels continue to rise despite the legislation. Gregg Keizer, *CAN-SPAM Can't Slam Spam*, INFORMATION WEEK, at <http://www.informationweek.com/shared/printableArticleSrc/jhtml?articleID=56900503>, (Jan. 4, 2005).

The Law Firm of
SCALLEY READING BATES
HANSEN & RASMUSSEN

A PROFESSIONAL CORPORATION

(Formerly Scalley & Reading)

*is pleased to announce its name change, and the
relocation of its offices, effective March 6, 2006, to*

Gateway Tower West
15 West South Temple, Suite 600
Salt Lake City, Utah 84101
Tel. (801) 531-7870
Fax (801) 531-7968

www.scalleyreading.com

We invite all members of the bar to an open house at our new offices.

Friday, March 31, 2006, from 3:00 pm to 6:00 pm

Ford G. Scalley ■ J. Bruce Reading ■ Marlon L. Bates ■ John Edward Hansen

Scott N. Rasmussen ■ Wesley D. Hutchins ■ Darwin H. Bingham

William G. Wilson ■ David S. Bridge ■ Lisa A. Reading, Of Counsel

Finding a Solution to the Problem With Finders in Utah

by Brad R. Jacobsen and Olympia Z. Fay

A significant issue facing attorneys and their clients in Utah is the use of unregistered securities brokers by small businesses and start-up companies to raise investment capital. The unregistered securities brokers are commonly referred to as “finders,” however, other titles exist to describe these individuals, including, unlicensed broker-dealers, intermediaries, private placement brokers, merchant bankers, investment bankers, financial public relations advisors and business consultants.¹ Black’s Law Dictionary, Sixth Edition, defines a finder as “an intermediary who contracts to find, introduce and bring together parties to a business opportunity, leaving ultimate negotiations and consummation of business transactions to the principals.” For convenience of reference throughout this Article, these unregistered securities brokers will be referred to as “finders.” Finders usually charge a transaction fee based on the amount of capital which the finders are responsible for bringing to the company. This type of compensation is commonly referred to as a “finders fee” and is usually paid in either securities or in cash (or a combination of both) as a percentage of the money raised (generally around 5-10%).

However defined, or by whatever name used, the use of a finder and the payment of a finders fee in Utah (subject to very narrow exceptions) is illegal and will likely cause a company, its officers, directors and agents to be subject to criminal sanctions and civil liability (on a personal and company level). Despite the illegal nature of using a finder in capital raising transactions, the American Bar Association (the “ABA”) has recognized that in numerous instances, finders can provide beneficial services in raising capital for small businesses and start-up companies that is often not available from traditional lending sources or licensed broker dealers.² On June 30, 2005, the ABA released a report titled “Reports and Recommendations of the Task Force on Private Placement Broker-Dealers” (the “ABA Report”), in which the ABA

task force made a series of recommendations that seek to provide a uniform means by which individuals could more easily be licensed to act as finders. Such recommendations, however, will likely take years to implement due to the reviews and compromises required among many parties, including the National Association of Securities Dealers (“NASD”), the U. S. Securities and Exchange Commission (“SEC”), the North American Securities Administrators Association (“NASAA”), state regulators and others. This article discusses the current law and regulations facing finders as well as the ABA Report and recommendations for providing a reasonable solution to the current capital raising regulatory quandary facing small businesses and start-up companies.

I. SECURITIES BROKER-DEALERS vs. FINDERS

There is an important legal distinction between securities broker-dealers and finders. “Securities brokers are required to register with the SEC pursuant to Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78(a)(4)), which broadly defines any person engaged in the business of effecting transactions in securities for the account of others to be within the scope of the registration mandate.”³ The SEC enacted the statute to combat abusive sales tactics and to protect investors by imposing standards of professional conduct on the securities brokers which are enforced through disciplinary actions.⁴ The activity of a securities broker-dealer is monitored by registered national securities associations and exchanges, in which membership is compulsory for all registered brokers. Most broker-dealers belong to, and are monitored by, the NASD. Additionally, registered brokers are governed by the SEC through its enforcement of federal securities laws, educational requirements and financial responsibility rules. These registration, compliance and educational requirements are not cheap, and such costs must be passed through to the consumer of a broker-dealer’s services. Therefore, many small

BRAD R. JACOBSEN is a partner in the Salt Lake City office of Holme Roberts & Owen LLP, where he practices in the areas of Corporate, Securities and M&A. Mr. Jacobsen is the Vice-President of the Securities Section of the Utah Bar.



OLYMPIA Z. FAY is a third-year law student at the University of Denver College of Law. She is the Managing Editor for the Denver University Transactional Law Journal and a part-time law clerk at Holme Roberts & Owen LLP.



businesses and start-ups are often priced out of using valid capital raising services or otherwise not targeted by registered broker-dealers as clients.

Unlike a registered broker-dealer, a finder is an unregistered intermediary that assists companies in raising capital. Within certain limits, a finder may operate within applicable legal requirements. The SEC has recognized that a person who only occasionally makes mere introductions of potential investors to issuers, either for free or under a non-contingent fee arrangement, and not more, is a finder who does not need to register as a broker. Through the use of No-Action letters, the SEC has attempted to promote additional standards by which finders may legally operate and, in certain circumstances, receive a transaction based fee.

In a well-known No-Action letter, the Ottawa Senators Hockey Club retained entertainer Paul Anka ("Anka") to act as a finder for purchasers of limited partnership units issued by the Senators.⁵ While initially proposing a much broader role, Anka eventually agreed to only furnish the Senators with the names and telephone numbers of persons in the United States and Canada who he believed might be interested in purchasing the limited partnership units. Anka additionally agreed that he would neither personally contact these persons nor make any recommendations to them regarding investments in the Senators. Anka's proposal letter to the SEC stated that he would be paid a finders fee equal to 10% of any sales traceable to his efforts. The SEC indicated that it would not recommend enforcement action if Anka engaged in the proposed activities without registering as a securities broker-dealer. The following summarizes the important factors considered by the SEC when issuing the Anka No-Action letter:

- Anka only provided names and contact information for prospective purchasers;
- The sales of the securities were to be made in compliance with the Securities Act of 1933;
- There was a bona fide, pre-existing relationship between Anka and his referrals;
- Anka would not advertise, endorse or solicit investors;
- Anka would not have personal contact with prospective investors regarding the investment;
- Only officers and directors of the Senators would contact the potential investors;
- Compensation paid to the Senators' officers and directors would comply with SEC Rule 3a-1, which governs compensating issuer agents;
- Anka would not provide financing for an investor;
- Anka would not perform due diligence on the Senator's

offering; and

- Anka had never been a broker-dealer or registered representative of a broker-dealer.⁶

While the Utah Division of Securities has stated that it will respect the Anka No-Action letter, it must be emphasized that the exception to using finders in capital raising transactions offered by such Letter is extremely narrow. It amounts to basically paying a well-connected person for a list of names and phone numbers. Rarely do finders act in such a limited capacity or are companies willing to pay such a high fee for such limited information.

II. CONSEQUENCES OF FINDERS' UNLAWFUL ACTIVITY

Federal and state securities administrators have enacted statutes detailing the consequences of finders' unlawful activities. Failure to comply with such statutes can result, in among other things: (1) a company losing its exemption for its securities offering; (2) a company, its officers, directors and agents being subject to criminal sanctions resulting from violations of applicable securities laws; and (3) company investors having the right to seek rescission of the applicable offering.⁷ In order to avoid the pitfalls of using a finder, it is important to understand the case law, applicable statutes and consequences of using one.

Federal Statute for Finders and Case Decisions

Section 15(a) of the 1934 Securities Act provides that "it shall be unlawful for any broker or dealer . . . to make use of mail or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security . . . *unless such broker or dealer is registered.*" As previously discussed, a finder is an unregistered party attempting to induce others to purchase or sell securities.

Miller Engineering Associates, Inc.

Michigan
Ann Arbor
734-662-6822

Idaho
Boise-Twin Falls
208-326-4729

www.millerengineering.com
e-mail: mail@millerengineering.com

Mechanical Design Safety

Power Tools and Machine Guarding; Guarding & Entanglement Accidents; Compliance with OSHA/ANSI/ASTM/UL/NFPA; Metalworking, Woodworking, Plastic Molding

Warnings, Labels, Instructions and User Manuals

Warnings & Instructions Books by Miller & Lehto (4); Design of User Manuals & Warnings (ANSI Z535); International (ISO) Symbol/Warning Requirements; Health & Chemical Hazard Warnings

Consumer Product Safety

Human Factors and Ergonomics; Slips, Falls: Premise Vehicle - Ladder; Child, Home Appliances, Power Tools & Electrical

Vehicles: Auto, Truck, Trailer, Boat, Recreational

Auto Crash Data Retrieval System (Vetronix CDR); Roadway/Traffic Accident Reconstruction; ATV, Jet Ski, Snowmobile, Personal Watercraft; Seat Belts, Air Bags, Restraint Usage and Warnings

Chemical, Fire, Environmental and Waste Disposal

Fires & Explosions: Vapors/Electrical/Chemical; OSHA Material Safety Data Sheets (MSDS); Chemical Labeling Requirements (ANSI Z129.1); Chemical & Solid Waste Disposal Warnings; Groundwater & Environmental Contamination

Agricultural and Construction Safety

Construction Trades & Equipment Accidents; Tractor, Implement, Harvester & Grain Storage; Chemicals: Pesticides, Herbicides, Fungicides

James M. Miller, PE, PhD Mark R. Lehto, PhD
Bradley T. Cook, PE, BSME

Our 12 other staff represent professional degrees in mechanical, agricultural, chemical, human factors, ergonomics, packaging, law and psychology.

In *SEC v. Walsh*, the SEC sued former Tyco director and the chairman of its compensation committee for signing a Tyco registration statement that he knew contained a material misrepresentation regarding the payment of a finders fee. In late 2000, Frank E. Walsh (“Walsh”) recommended that Tyco consider acquiring CIT Group Inc. (“CIT”).⁸ Subsequently, L. Dennis Kozlowski (“Kozlowski”), Tyco’s former Chief Executive Officer, asked Walsh to set up a meeting between Kozlowski and CIT’s Chief Executive Officer. After that meeting, Kozlowski proposed to pay Walsh a finders fee for his services if the transaction was completed. When the transaction was submitted to Tyco’s Board (“Tyco Board”), Walsh voted in favor of the transaction but intentionally did not disclose to the Tyco Board that he would receive a finders fee in connection with the transaction.

The terms and conditions of the Tyco/CIT merger were set forth in the Agreement and Plan of Merger dated March 12, 2001 (the “Agreement and Plan of Merger”). The Agreement and Plan of Merger contained a representation by Tyco that, other than Tyco’s investment bankers for the transaction, no other investment banking or finders fees were to be paid in connection with the transaction. The Agreement and Plan of Merger was incorporated by reference in, and attached to, a registration statement (the “Tyco Registration Statement”) filed by Tyco with the SEC for the securities that were issued in connection with the contemplated merger. As a director, Walsh signed the Tyco Registration Statement even though he allegedly knew that the Tyco Registration Statement contained a material misrepresentation regarding the payment of a finders fee and was aware that he would obtain a substantial fee if the transaction was completed.

After completion of the transaction Walsh received a finders fee of \$20 million. The fee was paid by Tyco pursuant to the Walsh/Kozlowski agreement. Additionally, the fee was disbursed without the knowledge of CIT’s or Tyco’s shareholders. Under the Agreement and Plan of Merger, the payment to Walsh was not permissible.

After investigation by the SEC, Walsh, without admitting or denying the allegations, consented to the entry of a final judgment permanently enjoining him from violations of the federal securities laws (Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Exchange Act Rule 10b-5). Consequently, Walsh was permanently barred from acting as an officer or director of a publicly held company, and ordered to pay restitution of \$20 million.

Utah Rules and Penalties Concerning Finders

Issuers, due to a failure to plan in advance, often find themselves in a position of attempting to fit their offerings into the Anka No-Action letter exception after the fact. The Utah Division of Securities (the “Division”) actively reviews Form Ds filed, and

aggressively pursues instances where the issuer has indicated that it paid a sales commission or finders fee.⁹ Unless any such issuer used a licensed broker-dealer, it will need to demonstrate that it adhered to the procedures permitted by Anka (or used a licensed Issuer-Agent (discussed below)), otherwise such issuer, its officers, directors and agents will likely face significant consequences.

Described below are a number of the applicable sections of the Utah Code (the “Utah Act”) that set forth certain of the consequences for using a finder in Utah.

Section 61-1-3(1) of the Utah Act provides that “[i]t is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under the Utah Act.” Section 61-1-3(2) then goes on to provide that “[i]t is unlawful for any broker-dealer or issuer to employ or engage an agent unless the agent is licensed.” The term “agent” is broadly defined as “any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.”¹⁰

Section 61-1-11(11) of the Utah Act requires that if an issuer wishes to use an agent, employee or other person to effect or attempt to effect a securities transaction, such person must either (i) be licensed and associated with a licensed broker-dealers or (ii) be an officer or director of the issuer; provided, that, with respect to clause (ii), such person also (A) does not receive any commission or other remuneration; *and* (B) is licensed (generally as an issuer agent). While Section 61-1-11 generally applies only to registrations by qualification, coordination or notification, an aggressive view of Section 61-1-11(11), in and of itself, could be read to include any securities issuances.

Section 61-1-22(1)(a) of the Utah Act provides that “[a] person who offers or sells a security in violation of Subsection 61-1-3¹¹ . . . is liable to the person selling the security to or buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 12% per year from the date of payments, costs, and reasonable attorney’s fees.”

Section 61-1-22(4)(a) of the Utah Act adds that “[e]very person who directly or indirectly controls a seller or buyer liable under Subsection [61-1-22(a)], every partner, officer, or director of such a seller or buyer, every person occupying a similar status or performing similar function, every employer of such a seller or buyer who materially aids in the sale or purchase, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller or purchaser, unless the nonseller or nonpurchaser who is liable sustains the burden of proof that he did not know, and in exercise

of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.”

Violations of the securities laws in Utah will not only subject the issuer, its officers, directors and agents to rescission claims (*e.g.*, return of investment, plus 12% annual return from time of investment, plus attorneys fees) described above, but also criminal sanctions, including: (1) cease and desist proceedings; (2) fines; (3) disgorgement of any fees or other profits; (4) injunction orders; and (5) the potential conviction of a third degree felony (punishable by up to two years in jail).¹² The investigative proceedings and orders by any federal or state regulatory authority will also be a reportable event for any person who is a broker-dealer, investment advisor or other NASD registered individual.

Limited Exceptions Under Utah Law

Certain limited finding activities may be conducted under applicable law. The limited involvement described in the Anka No-Action letter is followed in Utah. As previously mentioned, however, few individuals can qualify for such an exemption and still effectively assist a company in obtaining financing. Additionally, Utah permits a licensed “Issuer-Agent” to represent a company in the issuance of securities. Such an Issuer-Agent, however, must first be registered and licensed with the State of Utah. The applicant must (1) file a NASD Form U-4; (2) provide proof that such applicant has passed the Series 63 or Series 66 examination; (3) pay a fee of \$50; and (4) in certain circumstances post a surety bond.¹³ A registered Issuer-Agent, however, may not be involved in more than one offering in any twelve-month period.¹⁴ An individual who wishes to represent more than one company in any given twelve-month period must register as a licensed broker-dealer to do so. The ABA Report described below, argues that between an Issuer-Agent only being permitted to represent one company in a twelve-month period and the formal procedures of registering as a broker-dealer, there should be a middle ground (*e.g.*, private placement broker-dealers subject to limited registration requirements that are permitted to engage in certain finding activities for a greater number of companies). The ABA Report refers to these licensed finders as “Private Placement Broker-Dealers.”

III. ABA Recommendations

Registration Requirements for Finders

On June 30, 2005, the Task Force on Private Placement Broker-Dealers (the “Task Force”) released the previously described ABA Report.¹⁵ The ABA Report discusses the problems that are associated with using a finder at both the state and federal level and makes recommendations for permitting expanded finders activities. The objectives of the ABA Report were:

- To present a comprehensive survey of the relevant issues relating to this vast gray market of securities brokerage; and
- To propose a solution that the Task Force believes will provide a reduced, but appropriate, level of regulation in the M&A and private placement arenas.

The ABA Report additionally set forth four critical goals for the proposed solution:

- To modify the amount and scope of the regulations that will apply such that they would be in proper balance with the scope of activities to those being regulated;
- To make possible and encourage the effective licensing of those finders who do adhere to honest and ethical business practices;
- To diminish the number of unlawful securities brokers to a level that will make effective enforcement actions more feasible; and
- To provide issuers and finders a means of distinguishing the good from the bad.

The ABA through the Task Force recommends that the SEC, NASD and state administrators work toward creating a simplified system for finders to be licensed. The system the ABA Report is proposing will permit finders to engage in activities similar to those of securities broker-dealers with a few limitations. The Task Force’s new recommended limitations for finders include:¹⁶

- No participation in public offerings registered pursuant to the Securities Act of 1933, but with the ability to receive referral fees for introducing such offerings to full service broker-dealers.
- No statutory disqualification of the firms or its principals.
- Offerings by finders could be made only to accredited investors and other “qualified purchasers” when the SEC defines such term. Issuers, however, could separately offer to any investors qualified by the type of exemption.
- The finders may not handle or take possession of funds or securities.
- All offerings would be done on a best effort basis.
- All funds from offerings will be placed in escrow in an unaffiliated financial institution and in accordance with escrow requirements in SEC Rule 15c2-4.
- The finders may not engage in secondary market or trade activity, including assisting with maintenance of “desk drawer” markets at the issuer or the broker-dealer.
- Finders shall have successfully completed simplified NASD examinations appropriate to the scope of activities of the finders.

Statement of Activity and Examination Requirements

The Task Force recommends that a finder be required to file an annual statement of activity with the NASD and applicable states. The annual statements will summarize the transactions the finder has participated during the past calendar year and provide sufficient statistical information for regulators to analyze the effects of the finders program or conduct appropriate inspection.

The Task Force is proposing an examination requirement similar to that of the securities broker-dealers. Currently, examinations are not required for finders since the scope of their coverage does not exceed the knowledge required to perform obligations that the ABA anticipated for securities brokers. The Task Force recommends the securities regulators "develop new targeted examination for registered representatives and principals, such as finders, testing only relevant topics of their duties."¹⁷

Create an Environment Where Applicants Want to Register

An obvious concern for those finders who have engaged in transactions without registration in the past is that regulators, particularly state administrators, will require disclosure of past activities in their states. The Task Force recommends that states establish a period procedure under which prior activities would not require disclosure. If an applicant faces virtual certainty of a state regulatory proceeding and a demand for rescission, there is little incentive for compliance. The Task Force is urging the NASAA to promote among its members a system of encouraging, rather than discouraging, appropriate registration. Many states require letters from an applicant for securities registration stating that the entity has not engaged in securities transactions in the state in the past (often without a time limit). These letters have the effect of terrorizing the applicant who wants to come forward and become compliant. The Task Force is recommending a one-year hiatus in the use of such letters to permit individuals or firms to come to compliance.

CONCLUSION

Small businesses and start-up companies in need of investment capital are often in a "catch 22"¹⁸ when it comes to raising funds. Without additional capital, such companies may not survive, but if they raise capital through the use of a finder, they will likely be violating the law which, in turn, may lead to their demise. Such companies, additionally, are often not large enough to draw from traditional sources of capital or do not otherwise have contacts with available investment capital. Often, through no knowing violation of the law, these companies end up using finders to obtain desperately needed capital. The ABA acknowledges the difficult position small businesses and start-ups are in when it comes to raising capital. The ABA, through the Task Force, has recommended that by permitting individuals to be licensed simply as finders, smaller businesses and start-up companies

would likely have additional access to legitimate investment capital not currently available. The licensing requirements, while less stringent than that of a broker-dealer, would provide protections and regulatory oversight not currently imposed on finders operating on and beyond the grey line of legality.

Until the SEC, state administrators and NASD resolve their concerns and issues regarding the licensing on finders recommended by the Task Force, Utah companies and attorneys would do well to steer clear of their unauthorized use. While some states, such as Michigan, have chosen to license finders ahead of final federal rules, little can effectively be done at the state level until federal securities laws and regulations expand activities permitted by finders. Practitioners who believe a limited exemption and registration for finders would be a beneficial addition to the current securities regulatory environment are encouraged to work with their legislators and regulators to push such recommendations through to adoption.

The authors would like to thank Benjamin N. Johnson, Director of Corporate Finance, and George A. Robinson, Director of Licensing & Compliance, with the Utah Division of Securities for their review and comments on this article.

1. See Mary M. Siodquist, *ABA Reports and Recommendations of the Task Force on Private Placement Broker-Dealers*, June 20, 2005 at 2.
2. See *id.*
3. See Steven M. Hecht, *Securities Law: Are finders also broker-dealers?* THE NATIONAL LAW JOURNAL, March 8, 2004.
4. See *id.*
5. See Paul Anka, SEC No-Action letter (July 24, 1991)
6. See *id.*
7. See Utah Code Ann. § 61-1-22 (2005).
8. See United States Securities and Exchange Commission Litigation Release No. 17896 (Dec. 17, 2002), at <http://www.sec.gov/litigation/litreleases/lr17896.htm>
9. See Form D, Section C, Question 4a.
10. See Utah Code Ann. § 61-1-13(2) (2005).
11. Utah Code Ann. § 61-1-22(1)(a) (2005) provides that a violation of "Subsection 61-1-3(1), Section 61-1-7, Subsection 61-1-17(2), any rule or order under Section 61-1-15, ... Subsection 61-1-10(4) or 61-1-11(7), or offers, sells, or purchases a security in violation of Subsection 61-1-1(2) ..." subjects the issuer and certain affiliated parties to rescission liability. Note, however, that a violation of Utah Code Ann. § 61-1-11 (11) referenced in the prior paragraph is not included in the litany of violations that provides grounds for a rescission offer.
12. See Utah Code Ann. § 61-2-17 (2005).
13. See Utah Regulations R164-4-1(E)(4).
14. See Utah Regulations R164-4-1(E)(4)(A).
15. See *ABA Report and Recommendations*.
16. *Id.*
17. See *id.* at 4.
18. The phrase "Catch 22" comes from Joseph Heller's novel of the same name. The paradox that trapped members of the US military: Anyone who applied to get out of military service on the grounds of insanity was behaving rationally and thus couldn't be insane.

A Guide to the Administrative Safeguards of HIPAA's Security Rule

by Michael P. Barry

The Health Insurance Portability and Accountability Act ("HIPAA") was originally signed into law in 1996. To implement HIPAA, the U.S. Department of Health and Human Services ("HHS") published the "Standards for Privacy of Individually Identifiable Health Information" (the "Privacy Rule") and the "Security Standards for the Protection of Electronic Protected Health Information" (the "Security Rule"). See 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. Both the Privacy Rule and the Security Rule include important compliance deadlines for entities subject to HIPAA.

April 20, 2005 marked the Security Rule compliance date for most health care organization. Despite this deadline, the Bureau of National Affairs recently reported that only 43% of health care providers have achieved Security Rule compliance.¹ The Security Rule includes administrative safeguards, which are policies, procedures and actions that protect the security of electronic protected health information ("EPHI"). This article will discuss the steps necessary to comply with the administrative safeguards of the HIPAA Security Rule.

Who is subject to HIPAA?

HIPAA standards and requirements apply to "covered entities." These entities are:

1. Health plans (i.e., any individual or group plan that provides or pays the cost of health care),
2. Health care providers who transmit any health information in electronic format, and
3. Health care clearinghouses.

With the passage of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("MMA"), Congress added a fourth entity to the list – Medicare prescription drug card sponsors. 42 U.S.C.A. § 1395W-141(h)(6) (West 2004). This fourth category of covered entity will remain in effect until the MMA drug card program ends in January 2006.

Compliance dates

Compliance with HIPAA regulations is both challenging and complex. For this reason, HHS established a series of compliance

deadlines that allow a covered entity to gradually implement HIPAA. The following are some of the HIPAA major compliance deadlines:

- **Standards for Electronic Transactions and Code Sets:** October 16, 2002.
- **Privacy Rule:** April 14, 2003 (the Privacy Rule established standards that govern the use and disclosure of protected health information).
- **Standard Unique Identifier for Employers:** July 30, 2004. The compliance date for small health plans (defined as health plans with \$5 million or less in annual receipts) was August 1, 2005.
- **Security Rule:** April 20, 2005. The compliance date for small health plans is April 20, 2006.
- **Standard Unique Health Care Provider Identifier:** May 23, 2007. The compliance date for small health plans is May 23, 2008.

What is the Security Rule?

The Security Rule is probably best understood by its four general obligations. First, a covered entity must ensure the confidentiality, integrity, and availability of all EPHI that it creates or receives. Second, it must protect against any reasonably anticipated threats or hazards to the security of EPHI. Third, it must protect against any reasonably anticipated uses or disclosures of EPHI in violation of HIPAA. And fourth, a covered entity must ensure compliance with the Security Rule by its workforce.

The Security Rule is divided into the categories of administrative, physical, and technical safeguards. Each safeguard includes general standards with which a covered entity must comply. The standards are comprised of "implementation specifications" that are either "required" or "addressable." If an implementation specification is required, then the covered entity must implement those policies and/or procedures. If it is addressable, then the

MICHAEL P. BARRY works as Legal Counsel and Compliance Officer for Deseret Mutual Benefit Administrators

covered entity must assess whether it is a reasonable and appropriate safeguard in the entity's environment. Should a covered entity decide not to implement an addressable specification after this assessment, it must document the reason and, if reasonable, document an equivalent alternative measure.

A covered entity has some discretion when implementing the Security Rule. It may consider any security measures that allow it to reasonably and appropriately implement the standards and implementation specifications of the Security Rule. When making this determination, the covered entity can consider its own size and complexity, its technical infrastructure, its software and hardware capabilities, the cost of implementing the security measures, and the probability and criticality of potential risks to its EPHI.

Administrative Safeguards

1. Security Management Process

Every covered entity must implement a Security Management Process ("SMP") to "prevent, detect, contain, and correct" security violations. 45 C.F.R. § 164.308(a). The SMP consists of four required implementation specifications: (a) risk analysis, (b) risk management, (c) sanction policy, and (d) information system activity review. Each of these four requirements will be discussed in greater detail below.

First, a covered entity must conduct a *risk analysis*. Specifically, this requires an accurate and thorough assessment of the potential risks to and vulnerabilities of the covered entity's EPHI. The risk analysis should probably be conducted before any of the other required implementation specifications so the covered entity can make an initial evaluation of all the risks and vulnerabilities to its EPHI.

Second, the *risk management* requirement requires a covered entity to implement security measures that are sufficient to reduce risks and vulnerabilities to a reasonable level. These security measures must remain current and should be periodically updated as needed. Third, a *sanction policy* is necessary to appropriately sanction workforce members who fail to comply with the security policies and procedures of the covered entity. Finally, a covered entity must have an *information system activity review*. To achieve this, a covered entity must implement procedures to regularly review records of information system activity, such as audit logs, access reports, and security incident tracking reports.

2. Appoint a Security Officer

A covered entity must designate a member of its workforce as the HIPAA security officer. This individual is responsible for the covered entity's implementation of the Security Rule's policies and procedures. A corresponding position – a privacy officer – is required by HIPAA's Privacy Rule (*see* 45 C.F.R. § 164.530(a)(1)). The security officer can be the same person as the privacy officer.

3. Company Training

The Security Rule requires that a covered entity train its workforce to implement security awareness. All members of an organization's workforce, including management and executive-level employees, should participate in this training. A record should be maintained to verify which employees have received the training.

4. Amend Business Associate Agreements

HIPAA's Privacy Rule requires each covered entity to have contracts with business associates who have access to the covered entity's PHI. These contracts are called "Business Associate Agreements" ("BAAs"). If the business associate receives or maintains EPHI on the covered entity's behalf, then the BAA must be amended to include the standards of the Security Rule. These amendments must provide that the business associate will:

- a. Implement administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity, and availability of the EPHI that it maintains on behalf of the covered entity;
- b. Ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect the EPHI;
- c. Report to the covered entity any security incident² of which it becomes aware; and
- d. Permit the covered entity to terminate the BAA if the covered entity determines that the business associate has violated a material term of the contract.

5. Contingency Plan

Each covered entity must establish policies and procedures for responding to an emergency or other similar occurrence (i.e., fire, vandalism, system failure, natural disaster, etc.) that damages the systems that maintain EPHI. This contingency plan includes three mandatory implementation specifications:

- a. Data backup plan. A covered entity must develop procedures

to maintain retrievable, exact copies of its EPHI.

- b. Disaster recovery plan. Procedures must be established to restore any loss of data.
- c. Emergency mode operation plan. A covered entity must establish procedures to protect the security of EPHI while operating in an emergency mode.

6. Physical and Technical Safeguards

As noted earlier, the Security Rule is divided into two additional categories of safeguards: Physical and Technical. A detailed discussion of these safeguards is beyond the scope of this article, but a brief description here will suffice. In general, Physical safeguards are the mechanisms required to protect electronic systems, equipment, and their data from threats, environmental hazards and unauthorized intrusion. They include restricting access to EPHI, retaining off-site computer backups, workstation security, and data backup and storage. *See* 45 C.F.R. § 164.310(a)-(d).

Technical safeguards are primarily the automated processes used to protect and control access to EPHI. They include using

authentication controls to verify that a person signing onto a computer is authorized to access EPHI, encryption and decryption of EPHI as it is stored and transmitted, and mechanisms to protect data from being altered or destroyed in an unauthorized manner. *See* 45 C.F.R. § 164.312(a)-(c).

Conclusion

Although the April 20, 2005, deadline for the Security Rule has passed for most covered entities, compliance is a continuing obligation. As the Centers for Medicare and Medicaid Services ("CMS") explained on their website: "Security is not a one-time project, but rather an on-going, dynamic process that will create new challenges as covered entities' organizations and technologies change." A covered entity must therefore regularly review its Administrative Safeguards and modify them as needed to ensure continued compliance with HIPAA.

1. *Many Organizations Not in Compliance with HIPAA Rules, According to a Survey*, Pension & Benefits Reporter (BNA) 1718-19 (August 9, 2005).
2. A "security incident" is defined as "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system." 45 C.F.R. § 164.304.

WE BRING ORDER

Contact:
Mari Gaines
800.299.4331

Professional Liability Division

LEGAL PROFESSIONAL LIABILITY COVERAGE FOR AMERICA'S GREATEST LAW FIRMS

WHAT IF THE DEFENDANT IS YOU?

Protecting America's law firms is the special expertise of Great American's Professional Liability Division. Insurance for attorneys by attorneys: we bring a thorough understanding of the law to all our business relationships. Our service is prompt, accurate, proficient.*

*Are you invincible?
Are you insured?*

APPLY ON-LINE!

app snap

GreatAmericanLawyer.com



GREATAMERICAN
INSURANCE GROUP

*Rated "A" Excellent by A.M. Best, as of January 23, 2006

© 2006 Great American Insurance Company. All rights reserved.

There's a new Lien Law in Town: Are Your Lien Rights Protected?

by Jim Barber

On March 22, 2004, House Bill 136 was signed into law. More commonly known as the "Electronic Filing of Preliminary Lien Documents" bill, H.B. 136 took effect on May 1, 2005, and made significant modifications to the laws governing Mechanics' Liens (Utah Code Ann. ("UCA") §§ 38-1-1 et seq.) and Contractors' Bonds (UCA §§ 14-1-20 and 14-2-5), as well as amending UCA §63-56-38.1 of the Utah Procurement Code and UCA §38-11-204 of the Residence Lien Restriction and Lien Recovery Act. This article provides an overview of both H.B. 136 (2004) and the further amendments made by H.B. 105 (2005), commonly referred to as the "Construction Filing Amendments."

The New Law – H.B. 136

H.B. 136 is intended to protect all parties involved in a construction project: owners, contractors, subcontractors, suppliers, lenders, sureties, and the general public. The bill requires that certain information be provided by those entities that may file liens. The availability of such project knowledge among the interested parties affords protection to all involved. Until now these protections have been unavailable to construction-project participants.

Significantly, H.B. 136 imposes new requirements on those entitled to lien property by requiring them to file a preliminary lien notice. This new step will profoundly affect the administration of lien rights. Under this new law, all preliminary lien notices must be filed through the newly developed online system called the "State Construction Registry."

The State Construction Registry (UCA § 38-1-27)

H.B. 136 mandates the development of the *State Construction Registry*, a standardized, online system for filing and managing notices of commencement, preliminary notices, and notices of completion, thus facilitating compliance with the new law. Non-compliance, of course, is fatal to the assertion of lien rights. Key features of the *State Construction Registry* are its Internet access, ease of use, password protection, standardized process, and automatic-notification system, which generates and sends e-mail notices to all interested parties. The Diagram below illustrates how the *State Construction Registry* works.

Detailed information concerning the *State Construction Registry*, including information regarding registration, may be found at <http://www.ConstructionRegistry.utah.gov>

Local Government Entities Must Transmit Building-Permit Information

One of the key requirements of the new law involves the tracking and reporting of building permits issued by counties, cities, and towns within fifteen days after the issuance of such permits. When building-permit information is transmitted by the local government entity to the *State Construction Registry*, the new law mandates that such information *shall* form the basis of a notice of commencement of the Construction Project.

Commencement-Notice Requirement for Projects Commenced without a Building Permit (UCA § 38-1-31)

For projects which do not require a building permit, the contractor, under UCA § 38-1-31(1)(b), must file a notice of commencement with the *State Construction Registry* within fifteen days after commencement of physical construction work. A notice of commencement is effective as to all labor, service, equipment and material furnished to the construction project after the filing of the notice of commencement (UCA §38-1-31(1)(e)).

Preliminary-Notice Requirement (UCA § 38-1-32)

The new provisions also require subcontractors and suppliers to file a preliminary lien notice with the *State Construction Registry* within twenty days after either (a) commencement of their work or the commencement of furnishing labor, service, equipment, and material to a construction project of (b) the filing of a notice of

JIM BARBER is a Certified Paralegal (CP) in the Dallas/Fort Worth area where he practices in the areas of real estate, civil litigation, insurance defense, labor & employment and corporate law.



commencement. However, when subcontractors or suppliers fail to file a preliminary-lien notice within the twenty-day period, they are precluded from seeking any claim for compensation of labor or service or supply of materials or equipment furnished to the construction project prior to the expiration of five days after their late filing of a preliminary notice – a prerequisite now to the filing of a notice of lien. However, such a late subcontractor or supplier may still pursue the person with whom they contracted.

Completion-Notice Requirement (UCA § 38-1-33)

Upon final completion of a construction project, the owner, an original contractor, a lender that has provided financing, or a surety that has provided bonding for the construction project, may file a notice of project completion with the *State Construction Registry*.

Filing a notice of completion modifies the time periods in §38-1-27, so that all preliminary notices shall be filed subsequent to the notice of completion and shall be filed within ten days from the date the notice of completion is filed.

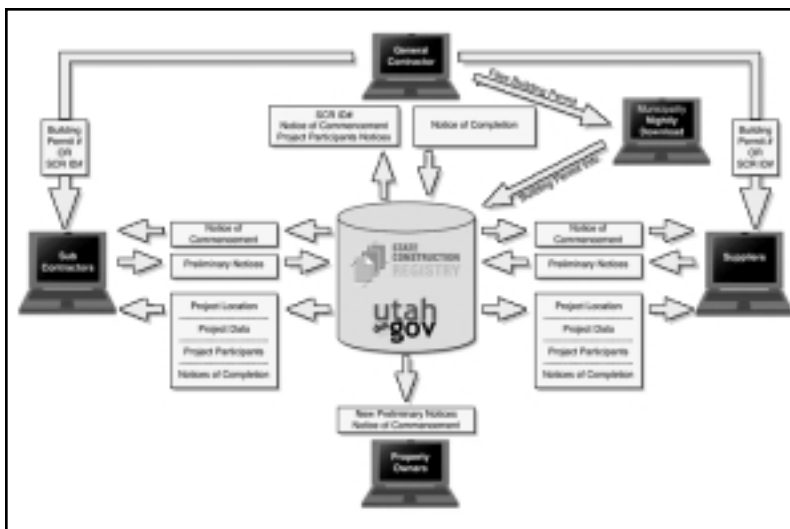
Filing a Lien with the County Recorder is Prohibited Prior to Preliminary-Lien Notice (UCA § 38-1-32(d))

The new law specifically prohibits the filing of a lien with the *County Recorder* prior to a preliminary notice being filed pursuant to §38-1-7. Failure to comply with the preliminary-notice requirements of §38-1-7 may defeat the assertion of lien rights.

Lien Recovery Fund (§38-11-204(4)(b))

At times, parties involved with a project feel compelled to file a claim under the Residence Lien Restriction and Lien Recovery Fund Act. One of the conditions precedent to filing a claim is assurance that the owner possesses a written contract with the original contractor, real estate developer, or factory built housing retailer and has paid in full the original contractor, real estate developer, or factory built housing retailer with which the owner contracted.

It is hoped that reliance on the Residence Lien Restriction and Lien Recovery Fund Act will diminish as the new law is implemented and that the need for the Act will ultimately disappear.



Conclusion

One of the many benefits of this new law should be revealed in the near future when contractors, subcontractors, and suppliers see an increase in timely payments, while lenders, sureties, and the general public enjoy protection from and a reduction of unjustifiable liens and fraud. However, benefits of this new law do not

stop here. Future benefits may include enhancements to the *State Construction Registry* such that it will become a useful tool in preventing “*unlicensed or uninsured*” contractors from obtaining building permits, thus, reducing “*poor construction practices and construction fraud*.” This new law is only the first step of better things to come.

The author wishes to thank Utah Interactive for their support and for providing the diagram used in this article.

“2005 Employment Lawyer of the Year”



Bullard Smith Jernstedt Wilson remains committed to serving Utah needs with “2005 Employment Lawyer of the Year,” Jathan Janove.

The attorneys at Bullard Smith Jernstedt Wilson provide representation and counsel to employers in the areas of traditional labor, benefits and employment law.

BULLARD
SMITH
JERNSTEDT
WILSON

Management's Choice for Labor and Employment Law
1-866-551-6938 www.bullardlaw.com

Utah's and Oregon's Worklaw Network Affiliates

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 12

by Fran Wikstrom

Previous articles have discussed Standards that encourage lawyers to maintain civility in their written communications. When committing oral understandings to writing, lawyers should do so accurately and completely. (*Std. 7*) Letters should not attribute “improper motives” to an opponent. (*Std. 3*) They should not contain “hostile, demeaning, or humiliating” language, nor should they “disparage the integrity, intelligence, morals, ethics or personal behavior of an adversary.” (*Id.*) Lawyers should not use written communications to “attribute to other counsel a position or claim that counsel has not taken,” or to “create an unjustified inference,” or to “create a ‘record’ that has not occurred. (*Std. 4*)

If a lawyer should be the author or recipient of improper, hostile, or disparaging correspondence, Standard 12 counsels her not to make a bad situation worse by bringing it to the attention of the court. Standard 12 provides:

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.

The appropriate way to communicate with the court is by motion, not by letter. In rare instances, correspondence from opposing counsel may be attached as an exhibit to a motion. For example, counsel may have admitted certain facts in a letter that are relevant to a motion for summary judgment. Here, the letter has independent evidentiary significance because it is an admission by a party opponent. Alternatively, correspondence evidencing an offer and acceptance of a settlement agreement between counsel may be relevant to a motion to enforce the settlement.

If the purpose of attaching a chain of correspondence is only to demonstrate that opposing counsel is unreasonable or behaving

badly – it shouldn’t be done. Even if a lawyer feels himself the victim of hostile correspondence, the court likely will not react with the same level of umbrage. More importantly, filing this type of correspondence does not generally advance a client’s cause. Judges don’t like to get involved in these kinds of issues and both sides usually suffer when the court is forced to do so.

A good rule of thumb is for the lawyer to imagine herself at a hearing before the court and to ask herself if the letter would be admissible as an exhibit relevant to the purpose of the hearing. If the answer is yes, there should be no problem attaching it as an exhibit to the motion or memorandum. If no, do not attach it. If in doubt, she should seek permission from the court.

FRAN WIKSTROM is a shareholder at Parsons Behle & Latimer where his practice consists of complex civil litigation and white collar criminal law.



Commission Highlights

During its regularly scheduled meeting of December 2, 2005, which was held in Salt Lake City, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. David Bird reported on the Professional Services Tax status meeting with the UACPA.
2. David Bird appointed Rod Snow to serve on the Judicial Performance Evaluation Committee. David noted that the JPEC is made up of twelve judges including two appellate judges along with a few lay members. It was stated that only judges who are up for retention are evaluated.
3. David Bird noted that the deadline for President-elect notices are due no later than January 2nd. John Baldwin stated that a letter of intent mailed to the Bar will suffice as “notice”.
4. Discussion was held on holding a Commission meeting outside of the Salt Lake County area. David Bird stated that we usually meet with the 5th District members during the Spring Convention and Commissioners will check with the local bars and see what dates and places might be available.
5. David Bird reported that the Judicial Council met recently and members for the Judicial Compensation Committee were appointed. The Council has asked for a 19% increase. The Executive and Judicial Compensation Committees will recommend to the Legislative Appropriations Committee a 21% increase.
6. David Bird reported there is a vacancy in the 3rd Judicial District with Pat Brian retiring.
7. Governor Jon Huntsman met with Dan Becker (State Court Administrator) and Chief Justice Christine Durham on the judicial budget requests which included five new district law clerks, a new judge in the Fourth District and new juvenile judges in three different districts.
8. David Bird reported on the recent quarterly meeting with Chief Justice Christine Durham, John Baldwin, Gus Chin and himself. They discussed: (1) the Bar’s performance review status; (2) the status of LAP; (3) the status of recently filed petitions (House Counsel rule, faculty pro bono rule, inactive full service increase); and (4) the recent admission ceremony. David also noted that Chief Justice Durham will write an article relating to the Bar’s 75th anniversary for the *Bar Journal*.
9. John Baldwin said when lawyers fail to pay the annual renewal fee, their status becomes “suspended for non-payment”. A number of lawyers have complained that the term “suspended for non-payment” is too harsh and John recommended changing the language to “failure to renew”. John concluded his report by stating that where we can replace the term “suspension” we will and noted that changes will need to be made in various rules and policies.
10. John Baldwin reported that petitions for Law School Faculty Providing Pro Bono Services and the new House Counsel admission rule are currently before the Court. If approved, the Bar’s membership database will reflect a different status for these limited types of practice categories which staff will need to develop.
11. John Baldwin stated that some time ago the Commission recommended that we establish a procedure for lawyers who have missed the licensing deadline to sign an affidavit so that they are not subject to a late fee. The affidavit would be a notarized form with the attorney attesting that they either did not receive the annual licensing form or that the payment was mailed before the deadline and that the Bar did not receive it.
12. John Baldwin reported that the Bar will no longer send notices of suspensions to the AOC for lawyers on inactive status who have been administratively suspended for non payment. The rationale behind this change is that those on inactive status are not eligible to appear in court and practice law regardless of whether they are suspended for nonpayment.
13. John Baldwin reported on the Law and Justice Center Corporation Trustees meeting. John said that when the Law and Justice Center building was built, it was co-owned by the Bar and Law and Justice Center. The promissory note will be paid off in a few years. The LJC corporation currently exists with John Baldwin and Arnold Birrell as officers and Jim Davis, Kate Lahey, Din Whitney and others serving as trustees. Once the Bar buys the building when the note is

paid off, the Bar has the ongoing commitment to subsidize renting of the building etc., when the non-profit LJC corporation dissolves.

John noted that space in the northeast corner of the building's basement area will be available in July when the Judicial Conduct Commission offices moves to the Ogden area. A suitable tenant has not been designated yet.

14. John Baldwin reviewed the current status with LegalMatch. John reviewed the Bar's impetus to adopt LegalMatch as follows: (1) the Bar's former lawyer referral service was losing money; (2) a majority of potential clients wanted pro bono legal service; and (3) the number of lawyers electing to participate in the lawyer referral program was decreasing annually. John further stated that a recent issue with LegalMatch assigning social security disability cases to an out-of-state organization of non-lawyers created problems with lawyers who practice in this area of law. John said the Bar is trying to resolve concerns where we can. John said we will keep this item on the agenda and continue to monitor the situation.

15. John Baldwin reported that the Fall Forum held on November 11th was a huge success. There were 507 registrations and it is a good event for the group of lawyers who typically do not attend Annual or Spring Conventions.

John Baldwin also reported on the North Western Conference in Portland, Oregon he recently attended with Joni Seko (Deputy General Counsel for Admissions). This meeting typically concentrates on admission and multijurisdictional practice of law issues.

John Baldwin announced that letters were recently sent to chairs of Bar sections containing ideas of how to spend section funds. He said the Bar is continuing to encourage expenditures commensurate with section goals.

16. Yvette Diaz reported on mandatory disclosure of insurance. She reviewed the Bar's recent e-mail poll. The responses reflect that a significant majority of the membership is opposed to the proposed mandatory disclosure rule. A lengthy discussion ensued. The motion to table the proposed mandatory disclosure via amending the applicable rule passed unopposed. The motion to continue asking questions on the licensing form and facilitate providing educational materials/information and disseminate information to members passed with one commissioner opposed. The

motion for the Committee to re-examine the issue of the Bar self-funding malpractice insurance passed unopposed.

17. David Hamilton reported on the Client Security Fund and outlined the CSF claims. He noted that if all the claims were approved, \$152,000 would remain in the fund. The motion to approve the CSF claims passed unopposed.
18. Rob Jeffs reported on the Bar Operations Review Committee. He related that the Court may feel a "disconnect" with what the Bar does and how it is accomplished and that the proposed review will better educate the Court about the Bar's policies and procedures. He continued that the review will be somewhat broader in scope than originally anticipated and that the Court believes that it is essential that the process be an independent process. We need to draft a RFP as soon as possible and David Bird suggested having the Commission's Executive Committee assist with the RFP to help speed up the process.
19. George Daines reported on the Lawyers Assistance Program and stated that he had met with the two finalist EAP providers, both of which could interact with LHL. George suggested a start date of March 1st in order to publicize the change and availability of service early. George suggested sitting down with LHL staff to discuss the peer component aspect of the new program, meeting with OPC to discuss the disciplinary diversion aspects of the program and hold discussions with the AOC for attorney referral purposes from judges. This proposal passed unopposed.
20. John Baldwin reported on the October financials.
21. The Jacket Rabbit Bar is scheduled for June 1-3, 2006 in Jackson Hole, Wyoming with Justice Scalia as the speaker. Due to this event, the Bar Commission retreat will be held on June 9-10, 2006.
22. Gus Chin reported on the Bar's 75th Anniversary Recognition plans, which will take place on September 21, 2006 at Rice Eccles stadium. The Commission will hold its regularly scheduled meeting on Friday, September 22, 2006. The August Commission meeting will be held at one of the law schools.
23. Scott Sabey noted that there was great response and participation at the Bar Leadership Conference.

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

2006 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/Committee of the year

Notice of Ethics & Discipline Committee Vacancies

The Ethics & Discipline Committee of the Utah Supreme Court is seeking volunteers to fill vacancies on the Committee. The Ethics & Discipline Committee is divided into four panels which hear informal complaints charging unethical or unprofessional conduct against members of the Bar and determine whether or not informal disciplinary action should result from the complaint or whether a formal complaint shall be filed in district court against the respondent attorney. Appointments to the Ethics & Discipline Committee are made by the Utah Supreme Court upon recommendations of the Chair of the Ethics and Discipline Committee. Please send your resume to Lawrence E. Stevens, Chair of the Ethics and Discipline Committee, Parsons, Behle & Latimer, 201 South Main Street, #1800, P. O. Box 45898, Salt Lake City, UT 84145-0898 no later than May 2, 2006.

Notice of Legislative Rebate

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

Pro Bono Honor Roll

Selina Andrews	Daniel Irvin
Joseph Bean	Troy Jensen
Alan Boyack	Matthew T. Johnson
Maria Booth	Louise Knauer
Howard Chuntz	Steven Kuhnhausen
David Connors	Dan Larsen
Roberto Culas	Suzanne Marelus
Michael Deamer	Alejandro Maynez
Reha Deal	Daniel McKay
Frank Falk	Sam Meziani
Richard Gallegos	Robert Neeley
Samuel Gardiner	William Ormond
Chad Gladstone	James Peters
Anthony Grover	Bret Randall
Richard Henriksen	Scott Thorpe
Joseph Henriod	David Turner
Neil Harris	Todd Turnblom

Utah Legal Services and the Utah State Bar wish to thank these attorneys for either accepting a pro bono case or volunteering at clinic during the months of December and January. Call Brenda Teig at (801) 924-3376 to volunteer.

Call for Historical Bar Photos

In celebration of the 75th Anniversary of the Utah State Bar, the *Bar Journal* board is considering placing a montage of historical Utah Bar photos on the *Bar Journal* cover for a special issue scheduled for publication in the fall. Examples of old photos we have in mind would be early group photos of bar members, judges, and photos of bar offices, court houses, and the like.

Please send a copy of the photo only (no originals) that you would not expect to be returned to you, to Randall L. Romrell, Regence BlueCross BlueShield of Utah, 2890 East Cottonwood Parkway, Mail Stop 70, 84121. The board will consider all photos that are submitted, but we cannot guarantee we will use them. Be sure that you identify what the photo is, the names of people in the groups or at least a description of what the group is, the names of the buildings, etc. Thank you in advance for your extra work in searching out old photos and making copies to submit.



“and Justice for all” Law Day 5K Run & Walk

May 6, 2006 • 8:00 a.m.
S. J. Quinney College of Law at the University of Utah

“Liberty Under Law – Pavement Underfoot”



REGISTRATION INFO: Mail or hand deliver completed registration to address listed on form or register online at www.andjusticeforall.org. **Registration Fee:** before April 25 -- \$22 (\$10 for Baby Stroller Division), after April 25 -- \$25 (\$12 for the Baby Stroller Division). Day of race registration from 7:00 a.m. to 7:45 a.m. Questions? Call 924-3182.

HELP PROVIDE LEGAL AID TO THE DISADVANTAGED: All event proceeds benefit “and Justice for all”, a collaboration of Utah’s primary providers of free civil legal aid programs for individuals and families struggling with poverty, discrimination, disability and violence in the home.

DATE: Saturday, May 6, 2006 at 8:00 a.m. Check-in and day-of race registration in front of the Law School from 7:00 - 7:45 a.m.

LOCATION: Race begins and ends in front of the S. J. Quinney College of Law at the University of Utah just north of South Campus Drive (400 South) on University Street (about 1350 East).

PARKING: Parking available in the lot next to the Law Library at the University of Utah Law School (about 1400 East), accessible on the north side of South Campus Drive, just east of University Street (a little west of the stadium). Or take TRAX!

USATF CERTIFIED COURSE: The course is a scenic route through the University of Utah campus. A copy of the course map is available on the website at www.andjusticeforall.org.

CHIP TIMING: Timing will be provided by Milliseconds electronic race monitoring. Each runner will be given an electronic chip to measure their exact start and finish time. Results will be posted on www.andjusticeforall.org immediately following race.

RACE AWARDS: Prizes will be awarded to the top male and female winners of the race, the top three winning speed teams, and the top three winning baby stroller participants. Medals will be awarded to the top three winners in every division, and the runner with the winning time in each division will receive two tickets to the **Utah Arts Festival**.

RECRUITER COMPETITION: It’s simple: the organization or individual who recruits the most participants for the Run will be awarded a trophy and air transportation for two on **Southwest Airlines** to any location they fly to within the U.S. To become the 2006 “Team Recruiter Champion,” recruit the most registrants under your organization’s name. Be sure the Recruiting Organization is filled in on the registration form to get competition credit.

SPEED TEAM COMPETITION: Compete as a **Speed Team** by signing up five runners (with a minimum of two female racers) to compete together. All five finishing times will be totaled and a special trophy awarded to the team with the fastest average time. There is no limit to how many teams an organization can have, but a runner can participate on only one team. To register as a team, have all five runners fill in a team name on the registration form.

BABY STROLLER DIVISION: To register you and your baby as a team, choose the **Baby Stroller Division**. **IMPORTANT:** Baby Stroller entrants register **only** in the baby stroller division. Registration for the stroller pusher is the general race registration amount (\$22 pre-registration, \$25 day of). Simply add on \$10 for each baby you want to get a t-shirt for (\$12 day of). Don’t forget to fill in a t-shirt size for both adult and baby.

WHEELCHAIR DIVISION: Wheelchair participants register and compete in the **Wheel Chair Division**. Registration is the general race registration amount (\$22 pre-registration, \$25 day of). An award will be given to the top finisher.

“IN ABSENTIA” RUNNER DIVISION: If you can’t attend the day of the race, you can still register in the **“In Absentia” Division** and your t-shirt and racer goodie bag will be mailed to you after the race.

CHAISE LOUNGE DIVISION: Register in the **Chaise Lounge Division** and you can don your t-shirt and enjoy your racer bag of goodies while cheering on the runners and walkers as they cross the finish line!

REGISTRATION — "and Justice for all" Law Day 5K Run & Walk

May 6, 2006 • 8:00 a.m. • S.J. Quinney College of Law at the University of Utah

To register by mail, please send this completed form and registration fee to Law Day Run & Walk, c/o Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111. If you are making a charitable contribution, you will receive a donation receipt directly from "and Justice for all".

First Name: _____ Last Name: _____
 Address: _____
 City, State, Zip: _____
 Phone: _____ E-mail Address: _____
 Birth Date: _____

Recruiting Organization: _____ (must be filled in for team recruiters' competition credit)	Speed Competition Team: (must be received by April 25, 2006) _____ (team name)
---	---

Shirt Size (please check one)

- ☐ Child XS ☐ Child S ☐ Child M ☐ Child L
☐ Adult S ☐ Adult M ☐ Adult L ☐ Adult XL ☐ Adult XXL
☐ Long-sleeved T-Shirt (add \$6) ☐ Tank Top (add \$6)

Baby Shirt Size (baby stroller participants only)

- ☐ 12m ☐ 18m ☐ 24m ☐ Child XS

Division Selection (circle only one division per registrant)

DIVISION	MALE	FEMALE	DIVISION	MALE	FEMALE	DIVISION	MALE	FEMALE
14 & Under	A	B	45-49	O	P	Wheelchair	CC	DD
15-17	C	D	50-54	Q	R	Baby Stroller	EE	FF
18-24	E	F	55-59	S	T	Chaise Lounge	GG	
25-29	G	H	60-64	U	V	In Absentia	HH	
30-34	I	J	65-69	W	X			
35-39	K	L	70-74	Y	Z			
40-44	M	N	75 & Over	AA	BB			

Payment

Pre-registration (before 4/25/06) \$22.00
 Baby Stroller (add to regular registration fee) \$10.00
 Long sleeved t shirt \$ 6.00
 Tank top \$ 6.00
 Charitable Donation to "and Justice for all" \$ _____
TOTAL PAYMENT \$ _____

Payment Method

☐ Check payable to "Law Day Run & Walk"
☐ Visa ☐ Mastercard
 Name on Card _____
 Address _____
 No. _____ exp. _____

RACE WAIVER AND RELEASE: I waive and release from all liability the sponsors and organizers of the Run and all volunteers and support people associated with the Run for any injury, accident, illness, or mishap that may result from participation in the Run. I attest that I am sufficiently trained for my level of participation. I also give my permission for the free use of my name and pictures in broadcasts, video, web, newspapers, and event publications. I consent to the charging of my credit card submitted with this entry for the charges selected. I understand that entry fees are non refundable. I agree to return the timing transponder and its attachment device to an appropriate race official after the race. If I fail to do so, I agree to pay \$75.00 to replace the timing transponder and attachment device.

Signature (or Guardian Signature for minor) _____ Date _____ If Guardian Signature, Print Guardian Name _____

THANK YOU TO OUR MAJOR SPONSORS



Utah State Bar Request for 2006-07 Committee Assignment

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

Name _____ Bar No. _____

Office Address _____ Telephone _____

Committee Request:

1st Choice _____ 2nd Choice _____

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

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

Committees

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

Detach & Mail by June 30, 2006 to:

Gus Chin, President-Elect • 645 South 200 East • Salt Lake City, UT 84111-3834

Utah Bar Foundation



Notice of Annual Meeting & Open Board Position

The Utah Bar Foundation is currently soliciting nominations for an open position on the Board of Directors. All attorneys licensed in Utah and currently in good standing are welcome to apply. A nomination form must be completed and submitted to the Foundation offices by Friday, April 28, 2006. Nomination forms can be obtained from the Foundation offices at (801)

297-7046 or on the website at www.utahbarfoundation.org.

The Utah Bar Foundation will hold its Annual Meeting on Friday, July 14th between 8-9am at the Marriott Hotel in Newport Beach, CA. For additional information, please contact the Foundation offices.

Paralegal Division Celebrates 10th Anniversary

The Paralegal Division is celebrating its 10th Anniversary. The Division was created by the Utah Supreme Court on April 6, 1996, pursuant to petition by the Utah State Bar and the Board of Bar Commissioners. The Paralegal Division is planning a celebration event on the evening of April 6, 2006 at Rice Eccles Stadium in the Scholarship Reception Room. Please watch for your invitation and plan to join them at this milestone event.

Seeking Nominations

The Paralegal Division of the Utah State Bar and Legal Assistants Association of Utah are seeking nominations for 'Distinguished Paralegal of the Year'. Nomination forms and additional information are available online at <http://www.utahbar.org/sections/paralegals> or you may contact Suzanne Potts at (435) 634-1940 or spotts@clarksondraper.com. The deadline for nominations is April 15, 2006. The award will be presented at the Paralegal Day luncheon on May 18, 2006.



Utah Law & Justice Center

Quality Meeting Space

Available for Professional, Civic & Community Organizations

This modern facility provides any style of seating arrangement and features:

- ▲ Reasonable Rates
- ▲ Personal Attention
- ▲ Central Downtown Location
- ▲ Free Adjacent Parking
- ▲ Audio-Visual Equipment
- ▲ Complete Catering

For information & reservations, contact the Utah Law & Justice Center coordinator:

(801) 531-9077

American College of Trial Lawyers Announces Induction

The Utah Fellows of the American College of Trial Lawyers are proud to announce that Walter F. Bugden has been inducted into the College.

The American College of Trial Lawyers strives to improve the standards of trial practice, the administration of justice and the ethics, civility, and collegiality of the trial profession. Invitation to Fellowship is extended only after careful investigation to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility, and collegiality.

Lawyers must have a minimum of fifteen years' trial experience before they can be considered for Fellowship and membership in the College cannot exceed 1% of the total lawyer population of any state.

The Utah Fellows of the College congratulates Wally Bugden, and welcomes him to the Fellowship.

Discipline Corner

DISBARMENT

On November 15, 2005, the Honorable William W. Barrett, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment, disbaring Gregory P. Cohen from the practice of law for violations of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

The Third Judicial District Court entered a Judgment in a criminal case against Mr. Cohen for the crime of enticing a minor over the Internet, a third degree felony, pursuant to Utah Code section 76-4-401. The Court in the disciplinary matter found that Mr. Cohen's criminal act reflects adversely on his fitness as a lawyer. The Court also found that Mr. Cohen engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by misrepresenting his age to the agent for the Utah Internet Crimes Against Children Task Force, who posed as a 13-year-old.

INTERIM SUSPENSION

On December 1, 2005, the Honorable Anthony B. Quinn, Third Judicial District Court, entered an Order of Interim Suspension, suspending Wesley Sine from the practice of law pending final disposition of the Complaint filed against him.

In summary:

On February 4, 2005, Mr. Sine was found guilty of four counts of mail fraud in violation of United States Code, Title 18, section 1341. The interim suspension is based upon this conviction pursuant to Rule 19 of the Rules of Lawyer Discipline and Disability.

RECIPROCAL DISCIPLINE

On December 21, 2005, the Honorable Robert K. Hilder, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Reciprocal Discipline: Disbarment against Robert F. Dodenbier for violations of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5(c) (Fees), 1.7(b) (Conflict of Interest: General Rule), 1.16(a) (d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Dodenbier was disbarred from the practice of law by the Supreme Court of the State of California. The disbarment was based on two underlying matters.

In the first matter, Mr. Dodenbier was hired to represent two clients

in a personal injury matter. One client signed a contingency fee agreement, while the other did not. There was no documentation that excluded one client from representation, or a written waiver of any potential conflict of interest. Mr. Dodenbier failed to serve notice on the entities being sued. He filed suit on behalf of one client after which he did nothing further to pursue the case. The clients began contacting Mr. Dodenbier. Mr. Dodenbier informed them that the matter was being settled. During his representation of the clients, he moved offices and did not provide them with new contact information.

In the second matter, Mr. Dodenbier was hired to represent a client in a child support and custody matter. Mr. Dodenbier failed to file the necessary documents on behalf of his client. Mr. Dodenbier stipulated, without his client's consent, to a reduction in support payments and joint legal custody. Mr. Dodenbier also failed to inform his client of hearings, failed to consult his client concerning continuations in the case, and failed to appear for a hearing. After the client retained new counsel, Mr. Dodenbier failed to return the client's file.

The California Order of Disbarment set forth the following aggravating factors:

1. Mr. Dodenbier had two prior instances of discipline.
2. Mr. Dodenbier engaged in multiple acts of misconduct.
3. Mr. Dodenbier's misconduct significantly harmed his clients.
4. Mr. Dodenbier demonstrated indifference toward rectification of the consequences of his misconduct.

There were no mitigating factors.

ADMONITION

On December 21, 2005, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Admonition against an attorney for violation of 1.5(b) (Fees), 1.15(b) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary:

The attorney was hired for a criminal matter and the retainer was paid by a third party. The attorney did not have a written fee agreement or written explanation of how the fee was to be paid beyond the retainer. The client requested that the attorney file income taxes on behalf of the client. The client signed a power of attorney permitting the attorney to take over the tax refund. The attorney did not render an accounting of the tax refund. The attorney failed to provide attorney trust account records to the OPC.

PUBLIC REPRIMAND

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against David VanCampen for violation of Rules 1.4(c) (Communication), and 3.2 (Expediting Litigation) of the Rules of Professional Conduct.

In summary:

Mr. VanCampen was hired for a criminal matter. Mr. VanCampen did not adequately advise his client. Mr. VanCampen communicated to his client in a minimal way even though his client required more information to help the client understand the risks the client faced concerning the criminal conviction. Mr. VanCampen, on at least one occasion, failed to appear and the court appointed other counsel to finish the case.

PUBLIC REPRIMAND

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Richard Hackwell for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Hackwell was hired to pursue an action against a public entity as well as pursuing a reduction of the client's conviction. Mr. Hackwell failed to appear at a conviction reduction hearing. Mr. Hackwell failed to notify his client of a court date in the public entity action. Mr. Hackwell failed to respond to his client's attempts to contact him. Mr. Hackwell failed to appear for a hearing in the public entity action and the case was dismissed for failure to prosecute. Mr. Hackwell took no action on behalf of his client, took no steps to withdraw from the action and failed to give any notice to his client.

PUBLIC REPRIMAND

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Brent E. Johns for violation of Rules 1.2 (a) (Scope of Representation), 1.8(f) (Conflict of Interest: Prohibited Transactions), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Johns was hired to represent a mother and the mother's new husband where the child's father would relinquish parental rights in exchange for the mother's waiver of past due child

support. The birth father was not the client, but paid Mr. Johns's fees. Mr. Johns filed an adoption decree which did not include the stipulation of waiving past due child support. The birth father insisted that Mr. Johns file another decree with the court that included the waiver. Mr. Johns knew his client's then-decision that she was not willing to waive the past due child support but he filed an amended decree that contained the waiver.

ADMONITION

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

The OPC received an overdraft notice on the attorney's trust account. The OPC sent requests for information concerning the overdraft to the attorney. The attorney took more than four months to supply the OPC with the requested financial information.

PUBLIC REPRIMAND

On December 15, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Curt W. Morris for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Morris was hired to file a chapter 13 bankruptcy on behalf of a client to stop the foreclosure on the client's home. Mr. Morris failed to file the chapter 13 bankruptcy before the deadline. Mr. Morris did not keep his client informed about the progress of the matter. Mr. Morris failed to timely remind his client that the client needed to meet with him prior to the bankruptcy filing. Mr. Morris's staff informed the client that they would call her for an appointment and either failed to do so or failed to make a new appointment with the client, or warn the client when the client allegedly cancelled the first appointment.

RECIPROCAL DISCIPLINE

On January 6, 2006, the Honorable Sandra N. Peuler, Third Judicial District Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 5.5(a) (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

The attorney was placed on an administrative suspension for non-payment of membership fees. During the suspension, the attorney practiced law.

ADMONITION

On December 21, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.15(b) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary:

The attorney was hired for a personal injury matter, a debt collection matter, and a bankruptcy. During the course of the bankruptcy the attorney did not discover and discharge the lien associated with the debt collection matter. The attorney did not notify the previous attorney that handled the personal injury matter of the settlement and failed to protect the previous attorney's

lien. The attorney also failed to secure and provide trust account documents to the OPC.

ADMONITION

On September 15, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

The attorney was retained for a personal injury matter. The attorney did not return the client's calls or reply to the client's letter requesting a status update. The client made several requests that the attorney pursue the case, but the attorney did not progress the matter. After the client terminated the relationship with the attorney, the client learned that the matter should have been filed in another jurisdiction and that the statute of limitations had already passed in that jurisdiction.

UTAH STATE BAR 2006 Annual Convention

July 12–15

Newport Beach
Marriott
Hotel & Spa

Newport Beach,
California



ACCOMMODATIONS: www.utahbar.org

2005 Year in Review – Looking Ahead to 2006

2005 was an outstanding year for the Young Lawyers Division of the Utah State Bar (“YLD”). 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 2005 highlights from the YLD committees as well as a look at what is coming up in 2006.

YLD’s Leadership/Executive: More than 2,000 YLD members had the opportunity to elect new officers this past summer. Debra Griffiths Handley of Dart Adamson & Donovan was elected as the 2005-2006 YLD president. Sean Reyes of Parsons Behle & Latimer, is Treasurer, and Ruth Hawe of Van Cott, Bagley, Cornwall & McCarthy is Secretary. David Hall of Parsons Behle & Latimer, is the President-Elect for 2006-2007, and Candice Anderson Vogel of Manning Curtis Bradshaw & Bednar, is the Past-President of YLD.

AND JUSTICE FOR ALL: (Karthik Nadesan and Jonathan Benms, 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. YLD is seeking volunteers and organizational committee members for the next “AND JUSTICE FOR ALL” fundraising phone-a-thon coming up. The committee also plans to co-sponsor the Law Day Run this spring. Please contact Karthik Nadesan if you would like to help.

Tuesday Night Bar: (Amy Poulson and Jonathan Pappasideris – co-chairs) At “Tuesday Night Bar,” volunteer attorneys provide free legal assistance to the general public, including helping unrepresented individuals obtain counsel. As its name suggests, Tuesday Night Bar is held on Tuesday evenings between 5:30 and 7:00 PM at the Utah Law & Justice Center (645 South 200 East). In addition, the Young Lawyers Division and the Tuesday Night Bar program sponsor four CLE luncheons per year on areas of law that frequently come up at Tuesday Night Bar. If you would like more information about the program or would like to volunteer, please contact Amy Poulson at 595-7800.

Continuing Legal Education: (Michael Young and Matt Tarkington – co-chairs) The CLE committee is planning a series of CLE luncheons for 2006. In 2005, YLD members taught and attended seminars on family law, landlord-tenant law, and other basics of law in conjunction with “Tuesday Night Bar.” In 2006, the CLE Committee will work directly with the NLCLE Committee to host useful and affordable education seminars. Watch for more information about the seminars planned for this year.

Needs of Children: (Lance Rich and Sammi Anderson, co-chairs) The Needs of the Children Committee has been working with the Utah Heart Gallery. This is a charitable organization that helps raise awareness of foster children waiting for adoption, with the goal of matching prospective adoptive families with children. The Committee is also working to assist the office of the Guardian Ad Litem with ongoing projects.

Public Education: (Stephanie Pugsely and Marianne MacGregor Guelker, co-chairs) The Public Education Committee is working with the ABA to bring the “We the Jury” project into Utah classrooms. The project aims to teach young people about the value and importance of jury service. This year the committee hopes to bring the program to more than three times the number of students as in 2004. In addition, lawyers and their coworkers are encouraged to volunteer as a judge or coach with the Utah Law Related Education Project. Every year hundreds of Utah teens participate in these mock trials. Watch for more information coming soon.

Community Service: (Kelly Latimer and Christina Micken, co-chairs) The Community Service Committee worked hard this past June landscaping the front yard of the Avenues Children’s Justice Center. Upcoming projects include a game drive and game night at the YWCA, sorting food for the Utah Food Bank, and hosting the annual “Law Suit” Day during which professional clothing is gathered and donated to the Road Home and Assistance League of Salt Lake City. Please contact Kelly Latimer at (801) 368-7782 to volunteer for upcoming projects.

Law Day: (Kim Neville and Angela Stander, co-chairs) This year's Law Day activities will focus on "Separate Branches – Balanced Power." Plans are in the works for a Law Day luncheon to be held May 1. Watch for more information coming soon. The Law Day Committee is responsible for hosting the annual Law Day Reception and related Law Week activities. The event honors those individuals and groups who have committed their time and resources towards serving our legal community and its members. The event also honors members of our local youth who participate in the Mock Trial, Art-and-the-Law, and Law-Related Education Essay contests. This year's Law Day Reception will be held at the Little America Hotel on Monday, May 1, 2006. Individuals interested in assisting with the event may contact Kim Neville or Angela Stander at 257-1900 for more information.

Utah State Bar Conferences: (Sonia Sweeney 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.

Professionalism and The Practice of Law: (Christopher M. Von Maack and Paul Farr, co-chairs) The Professionalism and The Practice of Law Committee is new to the Young Lawyers Division and replaces the Professionalism Committee, which was formed to assist the Utah Supreme Court's Advisory Committee on Professionalism. Broadly, the Professionalism and The Practice of Law Committee stands ready to assist the Bar in any meaningful way to foster and improve professionalism and civility, such as CLEs, workshops, and Utah Bar Journal articles. More specifically, the Committee is currently developing a free, on-line mentoring resource, designed for new lawyers, but also available to the public. This resource will enlist accomplished and respected attorneys, judges, and lawyers who work outside the traditional practice of law. The purpose of this resource is to hopes to consolidate and disseminate these lawyers' cumulative years of experience and advice into accessible packages of information available any time through the Utah Bar website.

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.

Utah Bar Journal: (Nathan Croxford and Peter Donaldson, co-chairs) The YLD Bar Journal Committee and the *Utah Bar Journal* are actively seeking article submissions from young lawyers for publication in the Utah Bar Journal. Please send submissions or questions to Nathan Croxford (ncroxford@berrettandassoc.com) or Peter Donaldson (pdonaldson@swlaw.com).

Paralegal Division: (Robyn Dotterer, YLD Liason and past utilization chair; Danielle Price, chair). The Paralegal Division is pleased to join in supporting the Young Lawyers Division with its activities. The Division sponsors several activities and fundraisers. The Division sponsors fundraisers for the legal profession, with proceeds going to "And Justice For All."

High School Debate Tournament: (Chad Derum, YLD Liason): The High School Debate Tournament Liason organizes and coordinates the YLD's sponsorship of the Young Lawyers Invitational Debate Tournament. Specific responsibilities include fundraising for the event, advertising and promotion, ensuring that judging commitments are met, and conducting public relations on behalf of the YLD in the high school debate community. The tournament took place in October 2005. The YLD co-sponsored the event with the Litigation Section.

Governmental Relations Committee Liaison – David Bernstein, liason. The liason represents the YLD at the weekly committee meetings while the Utah Legislature is in session. The committee's purpose is to review and analyze proposed legislation.

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 2005. We look forward to an exciting year in 2006!

The “How To Guide” for Membership in the Paralegal Division:

What are the Requirements and Career Benefits of Membership?

by Peggi Lowden

Are you wondering how to apply for membership in the Paralegal Division of the Utah State Bar (the “Division”)? Am I a paralegal by the Division’s definition? What are the educational and experience requirements for membership? How can I get the application forms? Once I’m a member, are there any CLE requirements to maintain my membership? We are frequently asked these questions. We are glad that you asked. To better serve you – a future member – we offer this “How To Guide” to answer your questions and to assist you in your application for membership in the Division.

First, *what* is a paralegal? The Division follows the Utah Supreme Court’s definition of a paralegal:

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

Second, let’s look at *who* is eligible for membership in the Paralegal Division. You are eligible for membership if you meet the following qualifications:

1. Currently work under the ultimate supervision of a duly licensed Utah attorney whenever you perform duties that are reserved to the practice of law. To meet this requirement, you must currently work under the ultimate supervision of a member of the Utah State Bar and perform the duties of a paralegal on a full-time or part-time basis. For example, you might be employed by (or volunteer with) a law firm, governmental agency, corporation, or nonprofit association.¹ Or, you might be a freelance contract paralegal working for a variety of entities.

- 2. Meet certain educational and/or work experience requirements.** The Division attempts to capture the great variety of career paths one may take to become a paralegal. As a result, there are many choices that are available to help you meet this requirement. Please don’t let the many educational/experience options stop you from reading on. It’s painless! You need to meet *only one* of the following options:
- A. Successful completion of a formal ABA-Approved program of paralegalism.
 - B. Successful completion of an institutionally accredited formal education program of paralegalism that consists of a minimum of 60 semester hours (or equivalent quarter hours) is required for this category. However, at least 15 of the 60 hours must be substantive legal courses, such as, contract law, civil litigation, constitutional law, etc.
 - C. Successful completion of an institutionally accredited formal course of college study that consists of 16 semester hours of substantive legal courses and 45 semester hours of general college courses, and at least one year of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney.
 - D. A minimum of five continuous years of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney and at least 16 hours of Continuing Legal Education (CLE) within the immediately preceding two years of your application for membership.

PEGGI LOWDEN is a Certified Paralegal/Civil Litigation Specialist with the Law Firm of Strong & Hanni. Ms. Lowden currently serves as a Director-At-Large/Membership Chair for the Paralegal Division and as a public member/panel vice-chair on the Utah Supreme Court’s Disciplinary Committee.



- E. Successful completion of a baccalaureate degree in any field and two continuous years of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney.
- F. Successful completion of the voluntary certification examination given by the National Association of Legal Assistants (CLA/E/CPÆ), or comparable examination approved by the Division, and six months of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney.
- 3. **No felony convictions for which you have not been pardoned or otherwise had your full rights restored.**
- 4. **No misdemeanor convictions involving theft, embezzlement, or fraud.**
- 5. **No expulsion or suspension from membership in a law related professional association without being fully reinstated.**
- 6. **Read and understand the Utah Supreme Court's definition of a Paralegal.**
- 7. **Read and agree to be bound by the Division's Code of Ethics and Guidelines for the Utilization of Paralegals.²**
- 8. **Agree to notify the Division of any change in employment status, address, or supervising attorney.**

Third, *how* do you find the forms to apply for membership in the Division? The Division membership forms are available on the Utah State Bar's web site: <http://www.utahbar.org>. To navigate to the membership forms, go to the Bar's web site and find the link for *Sections & Committees*. Next, find the link to the *Paralegal Division*. At the Division's page, find the link to *Membership Forms*. The membership forms are available in PDF format and include instructions that are useful to help you submit your application. You may print and mail your completed application to the Utah State Bar, together with your annual membership dues in the amount of \$50.00.³

Fourth, the Division *requires* the completion of yearly CLE credit hours. The requirement consists of a minimum of ten CLE hours, including one hour of Ethics to be completed within each membership year after your initial application for membership. Proof of completion of the CLE hours is required upon renewal of your membership. The membership year runs from July 1 to June 30.

Now that you've learned about how you can become a member of the Division, explore a bit while you're visiting the Bar and Division's web sites. Check out the benefits available to you as a Division member. Briefly, membership benefits offer you a variety of options to help you meet your professional responsibilities and enhance your career options. The Division offers continuing education, networking with a variety of professionals, discounts on products and services offered to Bar members,⁴ the *Utah Bar Journal*, CLE opportunities sponsored by the Bar (including special discount rates *exclusively* for members of the Division to Bar conventions throughout each year), along with affiliate membership offered to Division members in specific practice areas. Currently, affiliate practice area membership status is available to Division members as follows: Alternative Dispute Resolution, Appellate Practice, Collection Law, Corporate Counsel, Family Law, Franchise Law, Intellectual Property, International Law, Real Property, Securities, and Young Lawyers.

Finally, you know more about the benefits, professional opportunities, and professional responsibilities of membership in the Division. Now is the time to consider making your application for Division membership a priority. Complete and submit your application, today. We welcome your questions and concerns as you work on your application for membership in the Division. Inquiries that you make to the Bar are forwarded to a member of the Division who is qualified and available to respond to you. Of course, if you can track one of us down directly, it will be our pleasure to assist you as you complete your application for membership. We look forward to receiving your application for membership. We also look forward to welcoming you as a member of the Division. Make a positive move in your career and network circle by submitting your application for membership in the Paralegal Division. Then, consider becoming a volunteer leader in the Division. Membership and leadership are rewarding and may "super charge" your career!

1. There are other entity types that utilize paralegals.

2. Available on the Division's web site: <http://www.utahstatebar.org>

3. If you are not accepted as a member, your check will be returned to you. There is no fee to process your application.

4. Membership in the Paralegal Division does not confer membership in the Utah State Bar, nor does membership authorize a paralegal to practice law.

Contact Peggi Lowden at (801) 532-7080 to join the Paralegal Division team for the Law Day Run this May. Runners, walkers, and cheering section are welcome.

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
03/16/06	Satellite Broadcast: Limited Liability Entities -- 2006. ALI-ABA Video Law Review. 10:00 am–2:00 pm. \$199. Newly admitted lawyers (within the past two years), full time government lawyers, and retired senior attorneys (65 and over) are eligible for a discounted fee of \$99.	3.5
03/23/06	Crash ED – What I Need to Know About Technology. 9:00 am–12:00 pm. \$50 preregistered/prepaid by March 22nd	3
04/05/06	Annual Banking & Finance Section Seminar. 9:00 am–1:00 pm.	TBA
04/06/06	Satellite Broadcast: Annual Spring Employee Benefits Law & Practice Update. ALI-ABA Video Law Review. 10:00 am– 2:00 pm. \$199. Newly admitted lawyers (within the past two years), full time government lawyers, and retired senior attorneys (65 and over) are eligible for a discounted fee of \$99.	3.5
04/20/06	NLCLE: Water Law. 5:00–9:00 pm. \$70 YLD; \$95 Others	4 CLE/NLCLE
04/27/06	Satellite Broadcast: Health Plans, HIPAA, and COBRA Update: Current ERISA, Tax and Other Issues for Attorneys, Administrators, Insurers and Consultants. ALI-ABA Video Law Review. 10:00 am–2:00 pm. \$199. Newly admitted lawyers (within the past two years), full time government lawyers, and retired senior attorneys (65 and over) are eligible for a discounted fee of \$99.	3.5
05/04/06	Annual Real Property Seminar: 8:00 am–1:00 pm	
05/11/06	Annual Corporate Counsel: 8:00 am–1:00 pm	
05/11/06	Annual Business Law Section Seminar: 9:00 am–12:00 pm	
05/12/06	2006 Annual Family Law Seminar. 8:00 am–4:45 pm. \$125 for Family Law Section Members; \$155.00 for Others	
05/17/06	Annual Labor and Employment Law Section Seminar: 9:00 am–12:00 pm	6.5
05/18/06	Criminal Law NLCLE. 5:30–8:30 pm. Learn the Step-by-Step Court Process on a Criminal Case.	3 CLE/NLCLE
05/19/06	Elder Law Seminar.	TBA
06/15/06	Law Practice Management. 5:30–8:30 pm. Opening a Law Office.	3 CLE/NLCLE

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.

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

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

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

POSITIONS AVAILABLE

Downtown, small litigation firm seeks associate with litigation experience. Reply/submit resume to Brooke Bruno, Confidential Box #1, c/o Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111 or e-mail to: brooke.bruno@utahbar.org.

Salt Lake Legal Defender Association is conducting interviews for trial and appellate attorney positions. Eligible applicants will be placed on a hiring roster for future openings. Salary commensurate with criminal experience. Spanish speaking applicants are encouraged. Please contact F. John Hill, Director, for an appointment at (801) 532-5444.

S. J. Quinney Law Library at University of Utah has entry level position for Reference/Instruction Librarian. Requires Juris Doctor's degree from ABA accredited law school. Master's in Library Science from ALA accredited school is preferred. Full time tenure track position with excellent benefits. To apply, contact Linda Stephenson, S. J. Quinney Law Library, 332 S 1400 E, Salt Lake City, UT 84112. Phone: 801-581-5800. The University is an Equal Opportunity/Affirmative Action employer, encourages applications from women and minorities, and provides reasonable accommodation to the known disabilities of applicants and employees.

Small Salt Lake area AV firm has a position available for an attorney with 10+ years experience in transactional work and estate planning. Some experience in contracts, real estate and litigation would be helpful. Please send resume to: Brooke Bruno, Confidential box #5, c/o Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111-3834 or e-mail brooke.bruno@utahbar.org.

Small Utah based nutritional company is seeking a CLO.

Responsibilities include contract review & negotiation, review and recommend on legal issues, FDA issues (on job training available), and trademark /patent issues. Candidate should have 3-5 years business law experience. This position will earn \$35-40k /yr working on the average of 30 hours weekly. Hours would be from 9am-2pm M-F, with up to 5 hours of work at home. Send resume with a cover letter, bar association, law school grades, writing sample, and references to Bruce Jolly. E-mail brucej@mineralresourcesint.com, fax 801-731-7985 or mail to 1990 W. 3300 S. Ogden, Utah 84401.

LAW PARTNER. Insurance defense solo practitioner seeks Partner with existing practice to cover and assist with overload work 10-20 hours/wk. Send resume to: Brooke Bruno, Confidential Box #2, c/o Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111 or email brooke.bruno@utahbar.org.

TITLE ATTORNEY. Natural resources law firm for the Rocky Mountain region, has an immediate opening for title attorney with minimum of 2-3 years of applicable experience. Position will involve the preparation of drilling and division order title opinions, due diligence projects and related matters. Transactional experience helpful. Candidate must have strong academic background and commitment to professional excellence. Licensure in Colorado is preferred, but not immediately required. Excellent salary and benefits package. Send your resume and letter of interest to Confidential Box #4, c/o Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111-3834 or e-mail to brooke.bruno@utahbar.org.

OFFICE SPACE/SHARING

Deluxe office sharing space: Downtown Salt Lake law firm has space to rent on a month to month basis. Close to courts, single or multiple office suites, with or without secretary space. Complete facilities available including: receptionist, conference rooms, library, Westlaw, FAX, telephone, copier and parking. Please call Ronald Mangone at (801) 524-1000.

Two offices now available at \$1,250 each per month located in the Ken Garff Building, at 405 South Main, #1050 SLC. Amenities include: receptionist, conference rooms, fax, copier, kitchenette, secretarial space, price negotiable. Contact Nedra at 531-7733.

Two CPA's desire to share pleasant and functional office space, and services of an extremely, highly qualified secretary/receptionist with extraordinary computer skills. Works well with clients. A fantastic opportunity. Great central location at 3200 Highland Drive, SLC. Convenient parking. Near restaurants. Contact Darrel Roberts at 486-4148, e-mail: DLRoffice@aol.com.

SLC Office Share Available. Downtown premium office suite. Walk to State and Federal Courts (311 South State). Office includes receptionist, conference room, fax, library (Westlaw and paper), kitchenette. For more information call Julian 531-6600.

Sandy Law Office For Rent: Standalone Building with plenty of parking; 2000 square feet; full kitchen; law library; phone system; can be rented furnished; \$2000 per month plus utilities; convenient 7th East location. Contact Leitha at 733-0118.

SERVICES

Pace, Hughes, & Schmidt has a court-approved mediator on staff available to conduct mediations in all areas at our offices (Key Bank Tower in downtown SLC). \$120 per hour. Call Jennie at 801-809-3062 for information and scheduling.

MEDIATION, William B. Bohling, senior judge (commercial, construction, divorce, personal injury, probate, public interest, real property & work place disputes). Please call Miriam at (801) 943-3730 for information and scheduling.

UDY'S PROCESS SERVICE: Over 10 years experience. A proven solution for your service needs. Specializing in Pre-Judgment process of service. Save time and money. \$15 service fee, \$1 per mile (additional discounts based on volume). Available 24/7. Call JOHN UDY 706-9695 Cell or 280-2271 Hm. References upon request.

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.

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.

CALIFORNIA PROBATE? Has someone asked you to do a probate in California? Keep your case and let me help you. Walter C Bornemeier, North Salt Lake. 801-292-6400 (or: 888-348-3232). Licensed in Utah and California – over 39 years experience.

Locate People & Assets Online

www.datatraceonline.com

- SSN Search & Military Verification for Collections
- Real Property • UCC • Motor Vehicle
- People Locator • Telephone # Searches
- Reasonable Pricing • Available 24/7
- Immediate Results • Local Customer Support
- Employment/Tenant Background Screening
- **FREE TRIAL** at www.datatraceonline.com

Utah State P.I. License #100008

Scott L. Heinecke
Private Investigator

SLC: (801) 253-2400
Toll Free: 800-748-5335
Fax: (801) 253-2478

e-mail: scott@datatraceonline.com
www.datatraceonline.com

WE HAVE THOUSANDS OF MEDICAL MALPRACTICE

EXPERT WITNESSES. Fast, easy, affordable, flat-rate referrals to board certified, practicing doctors in all specialties. Your satisfaction GUARANTEED. Just need an analysis? Our veteran MD specialists can do that for you, quickly and easily, for a low flat fee. Med-mal EXPERTS, Inc. www.medmalEXPERTS.com
888-521-3601

CHILD SEXUAL ABUSE – SPECIALIZED SERVICES.

Court Testimony: interviewer bias, ineffective questioning procedures, leading or missing statement evidence, effects of poor standards. Consulting: assess for false, fabricated, misleading information/allegations; assist in relevant motions; determine reliability/validity, relevance of charges; evaluate state's expert for admissibility. Meets all Rimmasch/Daubert standards. B.M. Giffen, Psy.D. Evidence Specialist (801) 485-4011.

NEED SOMEONE FOUND? A witness, someone to sign off on a deed, missing heirs or who ever. Call Artyn, Inc. with 18 years specializing and successfully finding people and that problem is solved. 800-522-7276.

LUMP SUMS CASH PAID For Seller-Financed Real Estate Notes & Contracts, Divorce Notes, Business Notes, Structured Settlements, Lottery Winnings. Since 1992. www.cascadefunding.com. Cascade Funding, Inc. 1 (800) 476-9644.

ATTORNEY/MEDIATOR Nayer H. Honarvar is a solo practitioner lawyer and mediator with more than 15 years of experience in the practice of law. Over the years, she has represented clients in personal injury, legal malpractice, medical malpractice, contract, domestic, juvenile, and attorney discipline matters. She has a J. D. degree from Brigham Young University. She is fluent in Farsi and Azari languages and has a working knowledge of Spanish language. She is a member of the Utah State Bar, the Utah Council on Conflict Resolution and the Family Mediation Section. She practices in Judicial Districts 1 through 8. Fees: Mediation, \$120.00/hr; Travel, \$75.00/hr. Call (801)680-9943 or write: nayerhonarvar@hotmail.com

Endorsed by:



YOUR UTAH SOURCE

FOR LAWYERS' PROFESSIONAL LIABILITY INSURANCE

It makes sense to compare companies, costs, and coverage when reviewing your Professional Liability Insurance needs.

To learn more about how the Utah Bar endorsed program can help with managing your firm's malpractice insurance risk, call or email your local representative, Denise Forsman, at:

801-533-3675 or
denise.forsman@marshpm.com.

PROGRAM HIGHLIGHTS:

- ◆ Carrier that insures law firms nationwide and with financial rating of "Excellent" by A.M. Best.
- ◆ Marsh's 30 years of experience serving law firms nationwide.
- ◆ A strong financial base, with more than \$87 million dollars of written premium in Lawyers' Professional Liability.

POLICY FEATURES:

- ◆ Broad definition of persons insured.
- ◆ Tail provisions for individuals and law firms, i.e. unlimited period option, FREE retirement tail.
- ◆ Up to \$20,000,000 limits available for qualifying firms.
- ◆ Built in excess not-for-profit D&O coverage.
- ◆ No lateral hire limitation endorsement.
- ◆ Reimbursement to insureds for disciplinary proceedings up to \$25,000 per claim.

MARSH AFFINITY OFFERS YOUR BUSINESS:

- ◆ Tailored, comprehensive service – Attention to your business' unique needs, including preparation for the underwriting process that helps present your organization
- ◆ Claims Advocacy – Claims management from qualified attorneys with specific expertise in claims handling

Underwritten by:



Liberty
Insurance
Underwriters Inc.
(The Liberty Mutual Group)

Administered by Marsh Affinity Group Services

Visit us on the web at:
www.proliability.com/lawyers/UT230

V0008



The right connections
make all the difference.

West's Utah Integrated Practice System connects relevant law for you.

Connections within West's Utah Integrated Practice System make it easy for you to track relevant law across a complete Utah library – from print to CD-ROM to online – from Utah cases, annotated statutes, and court rules to the *Trial Handbook for Utah Lawyers* and more.

The result? Maximum information in minimum time.

West's powerful Utah Integrated Practice System includes:

- *West's® Utah Code Annotated*
- *Utah Reporter*
- *Trial Handbook for Utah Lawyers*
- *Benson and Mangrum on Utah Evidence*
- *Utah Litigator on Westlaw®*
- *Westlaw StatutesPlus™*
- *Westlaw Practitioner*
- *Am Jur® (American Jurisprudence, 2d)*
- *ALR® (American Law Reports)*

For details about West's Utah Integrated Practice System, call 1-800-762-5272.

Key connections to the most powerful resources