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SPECIAL ISSUE

## *Professionalism and Civility*

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

**COVER:** For the cover of this issue we selected an image of Gregory Peck, as Atticus Finch, in a scene from the film *To Kill a Mockingbird*, based on the landmark novel by Harper Lee. Atticus Finch has become the very emblem of legal professionalism and courage, and we felt this picture might help deliver the message of this issue of the *Utah Bar Journal*, which is that the practice of law is as meaningful and inspiring as its practitioners choose to make it.

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### Letters Submission Guidelines:

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

### 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 photographs, along with a description of where the photographs were taken, to Randall L. Romrell, Esq., Regence BlueCross BlueShield of Utah, P.O. Box 30270, Salt Lake City, Utah 84130-0270, or by email to [rromrell@regence.com](mailto:rromrell@regence.com) if digital. If non digital photographs are sent, please 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.

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## Letter to the Editor

Dear Editor,

Please thank the following attorneys in the Bar Journal for pro bono work in Davis County courts. (Pro bono attorneys represent petitioners at protective order hearings, some stalking injunction hearings, and until very recently, a weekly free legal clinic.)

J. Val Roberts, deceased. He volunteered at the free legal clinic a week before he passed away in August, 2006.

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# *Civility, the Hallmark of our Profession*

by Gus Chin

At a recent Bar function I visited with several respected veteran lawyers who commented about how the practice of law has changed over the last couple of decades. While applauding the improvement in technology and other areas, they were rather critical of – among other things – the marked increase in un-professionalism, disrespect for the rules, aggressiveness, as well as incivility. Many reminisced about the days of the so-called gentleman's agreement, a warm handshake despite adversarial positions and where “an attorney's word was considered to be golden.”

As of October 12, 2006, with the admission of 273 new attorneys, we passed the 9,000 membership mark. Wonderful as this growth is, there is still concern about public expectation and the practice habits of some of our members who mirror the rude, mean-spirited advocacy often portrayed in the media. As a Bar we must be mindful of our actions which have the potential of reflecting negatively on our profession and could result in the ongoing over-generalization about attorneys.

The adoption of the Standards of Professionalism and Civility as Chapter 23 of the Supreme Court Rules of Professional Practice should serve as an indicator of their importance. This memorialization is more than an aspirational expectation by the Utah Supreme Court of the conduct expected of members of the Utah State Bar. Moreover, civility is an ongoing subject of discussion by other bars and bar associations throughout the country and for our colleagues to the north. For example, it has been recently reported that the California State Bar has launched a civility initiative and may consider adopting a civility code with hopes of convincing judges to sanction rude behavior. Additionally, in Canada there is growing concern about the rise in incivility in their courts and law offices.

I do realize that given the adversarial nature of our profession there are times when being perfectly civil can be somewhat difficult. However, uncivilized and unprofessional conduct by others should not serve as an excuse to rationalize violation of the Standards or to engage in reciprocal conduct. Despite being treated unkindly, one can prevail by maintaining a high degree of personal professional dignity and control. Furthermore, the constitutional guarantee of freedom of speech does not amount to an open license to engage in invective, rudeness, and uncooperative conduct.

This past summer, at the Bar Admission Ceremony for the State of Connecticut, Justice Peter Zarella of the Connecticut Supreme Court referenced comments by former Chief Justice Andrews who, in or about 1891, said in part:

“It is not enough for an attorney that he be honest. He must be that, and more. He must be believed to be honest. It is absolutely essential to the usefulness of an attorney that he be entitled to the confidence of the community wherein he practices...a lawyer needs, indeed, to be learned...and he must have prudence, and tact to use his learning, and foresight, and industry, and courage. But all these may exist in a moderate degree and yet he may be a creditable and useful member of the profession, so long as the practice is to him a clean and honest function. But...if once the practice becomes to him a mere ‘brawl for hire’, or a system of legalized plunder where craft and not conscience is the rule, and where falsehood and not truth is the means by which to gain his end, then he has forfeited all right to be an officer in any court of justice or to be numbered among the member of an honorable profession.”

The aforementioned words attributed to Chief Justice Andrews are still most relevant today over a century later, especially in an age when aggressiveness, dishonesty, and ill-temperament are perceived by the public to be the norm of our profession. These characteristics are absolutely contrary to the oath we take as attorneys granting us the privilege to practice law.

As a means of helping to improve the public image of our noble profession, we must refrain from rude and unprofessional conduct. I commend for your earnest consideration adherence to the Standards of Civility and Professionalism. While they are presently aspirational, our actions may dictate if they remain so. Finally, after all is said and done, I believe that while we may not be remembered for the number or type of cases won or lost, for a certainty we will be remembered for such virtues as honesty, civility, and professional integrity – the hallmarks of our noble profession.





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## *Promoting the Standards of Professionalism and Civility*

*by Chief Justice Christine M. Durham*

On October 1, 2001, the Utah Supreme Court voted to create an advisory committee on professionalism in the practice of law and appointed Justice Matthew Durrant to chair the committee. The committee held its first meeting on January 15, 2002. At that meeting, Justice Durrant spoke of the Court's increasing concern about the erosion of civility and professionalism in the practice of law, and that it wanted the committee to examine the nature and extent of the problems with civility and professionalism in Utah and to make recommendations as to how problems might be addressed.

The major task undertaken by the Professionalism Committee during its first year was the creation of a set of Standards of Professionalism and Civility. By order dated October 16, 2003, the Court approved the twenty Standards recommended by the committee. The Court and the committee hope that members of the bar have become familiar with the Standards through the committee's education efforts, including publication of the Standards in each issue of the *Bar Journal* along with an accompanying article, written by a committee member, highlighting a specific standard. While neither the Court nor the committee believes adoption of the Standards will, standing alone, increase civility in the practice, we do believe they can provide guidance to new lawyers and a reminder for experienced ones of the high standards of behavior expected of all lawyers.

The Court strongly believes that judicial support and involvement are critical to the success of the professionalism initiatives being pursued by the committee. Therefore, the Court has repeatedly requested that judicial education programs focus on how Utah's judges can promote professionalism and civility from the bench, including of course their own. At the recent Annual Judicial Conference, a two hour plenary session was devoted to providing judges with practical suggestions for implementing the Standards of Professionalism and Civility in their courtrooms. More than ten attorneys and judges participated in the presentation, which

included a panel discussion and role playing of scenarios involving unprofessional behavior. The presentation was well-received.

Some Utah lawyers undoubtedly feel that the Court has directed too much attention to professionalism in the past five years, and that the topic is "worn out." But the feedback the Court regularly receives from the legal community is that there *is* an ongoing problem with professionalism in the practice. The consequences of incivility are grave – it increases litigation costs, fails to promote clients' legitimate interests, and diminishes the public's respect for the legal profession and its ability to benefit society. Our profession has by tradition been a learned and respected one, but respect must be constantly earned and deserved. Public trust and confidence in the American system of justice depend in significant part on the integrity and high standards of professional behavior to which every lawyer (and judge) should aspire.

*JUSTICE CHRISTINE M. DURHAM is in her second term as Chief Justice of the Utah Supreme Court. She was appointed to the Supreme Court in 1982, after having served on the Third District Court bench since 1978.*





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# *Utah Standards of Professionalism and 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.

# *Honest Lawyers Make Good Lawyers*

## Thoughts on Ethics and Civility in the Legal Profession

by Justice Richard D. Fybel

**EDITOR'S NOTE:** This article is based on a speech given by Justice Fybel at the Utah State Bar's Annual Meeting in Newport Beach, California this past July.

I am pleased to offer my thoughts on the subject of civility and ethics in the practice of law. I've been a member of our profession for over 35 years, the first 29 as a lawyer practicing civil business litigation and the last six years as a trial and appellate judge.

In reading briefs and listening to oral argument, I admire the lawyers who discovered and marshalled the facts and then present them in a logical way. I recognize the analysis lawyers engage in as you evaluate your clients' claims and defenses. I recall the business, management and human resource aspects of practicing law. I appreciate the pressures of getting and keeping clients. I know you must vigorously represent your clients' interests with the other side and with the courts in our adversarial system. I know you must maintain integrity and even good temperament in the face of the many challenges you see in your practices on a regular basis. I recognize the competing demands on your precious time – from serving clients to actually going home to spend time with your family. So it is in the context of the real world of legal practice that I address the subject of ethics and courtesy in the legal profession.

The best place to start a discussion of legal ethics is with reference to Abraham Lincoln – whom I so admire as a lawyer, presidential candidate and President. Most know the lore of Lincoln riding the circuit as a lawyer and trying cases for the railroads and a mix of other clients. Lincoln was also an extraordinary appellate lawyer and, by 1850, he was the attorney of record in six cases before the United States Supreme Court. He was an expert on the Constitution. Lincoln used legal analysis of the Constitution in campaign speeches, most notably in his famous speech at Cooper Union in New York City in his effort to win his party's nomination for President. As President, Lincoln wrote the Emancipation Proclamation in what we would now call "legalese" – all to make the point that his actions were authorized by the Constitution. Of course, he also wrote eloquently in the Gettysburg Address and his Second Inaugural.

Lincoln's talents as a lawyer did not stop with his abilities to write, speak and analyze. He was called "Honest Abe" for a reason – it's how he practiced law and conducted his life. In

1850, Lincoln was asked to address a group of new law school graduates and give them advice as they were embarking on careers as lawyers. What did he advise? He said: "[R]esolve to be honest at all events." (Frank, *Lincoln as a Lawyer* (1961) p. 4.) So, as we talk about civility and ethics in the practice of law, we should recognize that Lincoln formulated the core principle of ethical conduct by lawyers over 150 years ago.

### Standards of Professionalism and Civility

In 2003, the Utah Supreme Court approved your state's Standards of Professionalism and Civility. These Standards are in addition to disciplinary codes already in place for members of the Bar. The Standards address issues of "personal courtesy and professional integrity." These kinds of standards have been traced to Chief Justice Warren Burger's 1984 speech to the ABA criticizing what he perceived 22 years ago as a general decline in professionalism among lawyers. The Standards give excellent, concrete examples of ethics and civility in the context of working within our system of justice, whether in connection with court proceedings or the negotiation of a transaction.

The Utah Standards set forth Utah Supreme Court's expectations for the commitments lawyers must make and abide by in the practice of law. The court defined "civility" as personal courtesy and "professional integrity" in terms of ethics, adherence to agreements, and honesty to each other and the courts. I'm sure each of you has read these Standards and I encourage you to do so again.

### Practical Reasons Support Adherence to Ethics

A skeptical lawyer – used to challenging pretty much everything – might say: Sure, I agree with these Standards of Professionalism and Civility and with similar standards promulgated in many other jurisdictions in the country. I even agree that in general if

*JUSTICE RICHARD D. FYBEL is an Associate Justice of the California Court of Appeal, District Four, Division Three (Santa Ana); Chair, California Supreme Court Advisory Committee on the Code of Judicial Ethics. At Morrison & Foerster, he was Managing Partner of the Los Angeles office for five years and in firmwide management for three years.*



we all followed these Standards, were nicer to each other, our public reputation as professionals would be better and other lawyers might even like me more.

But, our skeptical lawyer asks, why is it in my client's interest and in my interest to abide by these Standards of Professionalism and Civility? Of course, what's best for your client and for you is very much intertwined. Here are some practical reasons why abiding by the Standards is in the lawyer's and the client's interests:

1. Your reputation and, hence, your credibility with other lawyers, courts, administrative agencies and others you deal with will be enhanced. Your reputation affects not just the communications in one case or matter, but all those cases and transactions that follow. Reputable conduct by lawyers as a whole should lead to a better reputation of, and respect for, lawyers in the public mind. The risk of loss of respect has a sort of dead-end street quality to it: It's hard (if not impossible) to overcome a negative reputation. In my speech to Bar admittees in California, I stress the importance of adhering to ethical standards from the first moment of membership in the Bar.

2. Honoring the Standards makes you feel better about yourself and the legal profession – and costs you nothing. Having a courteous and professional relationship with your adversaries actually makes practicing law a more rewarding experience. Getting along with adversaries and establishing a basis of trust between lawyers is nothing new. Over 400 years ago, in *The Taming of the Shrew*, Shakespeare wrote: "And do as adversaries do in law, Strive mightily, but eat and drink as friends." (*The Taming of the Shrew*, act I, scene 2, as referenced in Kempf, Jr., & LaGreca, *Lawyer Civility in the Movies: The Bard of Avon Got It Right* (July/Aug. 2003) *THE BENCHER*.)

But, lawyers ask, what do clients want? In my experience, they generally want to know the following:

1. What is your expertise and experience in the subject matter of the engagement? Are you smart? Are you current on the law? How many similar transactions or cases have you handled? Can you write and speak in a persuasive, coherent way?
2. Will the officers, the members of the Board of Directors or Trustees, the general counsel or lead in-house lawyer, and the owners of the business approve of your hiring? Are you a credible hire? What can I tell them about you that will satisfy their interest in getting outstanding representation? Will they trust you? These questions – and the answers to them – are particularly important today with the welcomed attention to and emphasis on issues of ethical corporate governance.
3. Can I work with you and rely on your opinion? Are you responsive? Can I rely on what you say about the law and the status and proposed strategy for a case (e.g., are you too optimistic, too

pessimistic)? Can others work with you? In the business world, are you a deal-breaker (i.e., a lawyer who will always find a problem, but not a solution)?

4. Will you be honest with me in all respects, including in the evaluation of my predicament? Will you tell me that we have a weak argument and warn me if I start going down the wrong path? Will you propose thoughtful alternatives? Hopefully, you won't have to go to the extreme of actor José Ferrer in the movie *The Caine Mutiny*, who looked at his client and said: "I don't want to upset you too much, but at the moment you have an excellent chance of being hanged." (Kempf, Jr., & LaGreca, *Lawyer Civility in the Movies: The Bard of Avon Got It Right, supra*, *THE BENCHER*.)

5. Do you have good judgment? Do you reach decisions in a logical, reasonable way? Do you make snap judgments? Do you have a temper?

6. What is your experience with the courts? Do you know members of the judiciary? Are you a member of groups that meet with judges? Are you active in the community and the Bar associations? Whom can I call for a reference check? Especially in a close community, people do know you, or of you; they certainly can find out readily.

Some may challenge: these explanations are nice, but I want to get new business now and clients really like tough-guy and tough-gal lawyers. You know, the junkyard dog who attacks, salivates and then attacks some more. Why shouldn't I be the toughest, nastiest representative out there? Who cares about expertise and ethics anyway? I believe this kind of attitude is based on demonstrably false premises.

I do not think of myself as a Pollyanna. I look at these issues with open eyes. Here are my responses to these concerns:

1. I challenge the underlying assumptions that (a) the mean, unethical lawyer wins; and (b) they are better lawyers because of that kind of behavior. I have known lawyers who fit this description and opposed a few of them in my career. I remember them vividly. Quite simply, they don't usually win. Why? Because judges, the other side in transactions, their own colleagues, and others (sometimes their own clients after a while) don't want to work with them and simply don't rely on their judgment and representations. The unethical lawyer is not trustworthy and is not trusted. The ethical lawyer will establish a reputation among judges and his or her representations will be relied upon.

The Rambo, ethically-challenged lawyers are not better lawyers and do not achieve better results for their clients. Persuasion is the lawyer's art and skill. Lawyers need to persuade someone – the other side, a court, or an agency, or their own client. People are not persuaded by obnoxious or unethical tactics. Intimidation is overrated as a litigation tool. It does not work in the widest



range of my experience – from business cases to criminal pleas and trials. Indeed, the success of daily operation of the criminal courts is in large part based on the credibility established between the courts, the prosecutors, the public defenders and the criminal defense bar. It may make for good TV from time to time, but in real life, over time, persuasion by use of reason and appeal to self-interest works best.

2. There are real practical and economic benefits to following ethical professional standards.

- The most obvious benefits are the long-run maintenance and growth of existing clients and expansion of clients by referrals from existing and former clients.
- The junkyard-dog lawyer tends to get hired on a one-shot deal. It's generally unpleasant for a client to work with such a lawyer – even if he or she is yours.
- Important retentions can come from former opposing counsel or parties. This phenomenon surprised – and ultimately pleased – me. The best long-term client – a large regional bank – and the biggest matter – special litigation counsel in the then largest bankruptcy litigation proceeding in the U.S. – both were referred to me by lawyers who used to be on the opposing side in another matter.

3. There is a benefit to you in belonging to a profession that is respected by the public. You can be proud. You won't be the butt of lawyer jokes. Besides, it costs nothing to be nice. It surely is not a sign of weakness. On a much grander and more serious scale, we can be reminded of a quote by Sir Winston Churchill. He was "[c]riticized for using diplomatic language in a message to the Axis powers during World War II." Churchill replied: "But after all when you have to kill a man it costs nothing to be polite." (Brenneman, Jr., *Blueprint for Civility* (July/Aug. 2003) THE BENCHER, quoting Stein, *Civility as an Art Form in Diplomacy and the Law* (1999) COSMOS JOURNAL.) It's always good to have a Churchill quote to put litigation as war in perspective.

### My Legal Heroes and Heroines

In looking back over the last 35 years, I have legal heroes whom I was fortunate to practice law with. You do too, or hopefully will in the future. None of these lawyers I wish to highlight would ever be confused with a junkyard dog or a wimp. They serve as shining examples of what lawyers who practice with courtesy and professional integrity can and do accomplish. All were or are widely respected and admired. Here are my legal heroes and heroines:

**1. The late Federal District Court Judge Laughlin E. Waters.** Lach was the name, senior partner in the law firm of Nossaman, Waters, Scott, Krueger & Riordan, where I started as a summer associate and then worked as an associate and partner for 10

years before joining Morrison & Foerster. Before entering civil practice, he was the U.S. Attorney for Southern California and after he left practice, he was a federal district court judge. As a brand new lawyer, I tried a six-week jury trial case as Lach's second chair. By the time Lach left the practice to join the bench, I would have run through a wall for him. He taught great trial skills by example – jurors loved and trusted him. But more than his skills, he demonstrated human decency, fairness, tolerance, ethics and good cheer in the practice of law. Lach was so modest that it wasn't until a few years before his death, he finally told me the story of his WWII heroics – they were so impressive that there is a statue of Captain Waters in the French town he and soldiers under his command liberated, and he is mentioned by name in Stephen Ambrose's book *Citizen Soldier*. In his farewell address as U.S. Attorney, he said, "For the law, whether civil or criminal, must be administered with firmness and fairness, with compassion and conscience, and the guidelines are not always well marked."

**2. Shirley Hufstedler**, the first U.S. Secretary of Education, and before that a judge on the Ninth Circuit Court of Appeals and justice on the California Court of Appeal. I had the honor of working with Shirley and her husband Seth – also a fabulous lawyer and person – during my last five years at Morrison & Foerster. Shirley has had a long, illustrious and successful legal career. She has won every award, medal and prize the legal

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profession and the judiciary can bestow for her dedicated public service and excellence in the practice. She continues to work tirelessly in foundation work encouraging innovation in business and on a national commission constructively addressing immigration issues and recognizing the contributions by immigrants in our Nation's history. As a first-generation American, I especially admire her efforts for this cause. Shirley is, quite simply, the best legal mind I ever observed. She is a spectacular writer and she grasps, analyzes and clearly explains complicated issues. Shirley is wonderful to work with: ethical, funny, and still a real challenge to keep up with in both energy and intellect.

**3. The late Robert “Bob” Raven.** Bob was also a WWII war hero, as a tailgunner. Bob was the chairman for many years of the modern-day Morrison & Foerster. He was an exceptional leader with great vision and common sense. He was always recognized as the person any group wanted to lead it. Bob was the President of both the State Bar of California and the American Bar Association. He was a pioneer for the advancement of women and minorities in the legal profession. As ABA President, in testimony before Congress and in strenuous lobbying efforts, he literally saved the funding for legal services for the poor in this country. Throughout, Bob was ethical and, yes, a genuinely nice man with a ready smile and an unwavering sense of morality.

**4. Law Firm Leaders, Lawyers and Mentees.** I was also fortunate to practice law with many extraordinary leaders and lawyers, including my mentor Richard Mainland, Charles S. Vogel, Haley Fromholz, Dean Zipser, and former Morrison & Foerster chairmen Carl Leonard and Peter Pfister. Their success was founded on excellence and decency in law firm management and the practice of law. My fondest memories of practicing law were serving as a mentor to new attorneys. I learned many lessons from these women and men and still follow their successes.

### What Can You Do?

What can you do to help others and feel better about your profession? Here are a few modest suggestions for you to add value to the profession:

- Help newer lawyers as mentors. Advice and perspective are vitally important. Behavior to emulate is even more important.
- Join an Inn of Court or similar organization to educate newer lawyers. I am an active member of the Ferguson-American Inn of Court in Orange County. The Inn experience has been rewarding to me and the other members. I know that Utah was in the forefront of establishing Inns of Court.
- Donate time to Legal Aid or other legal services for the poor, and to charities.
- Teach a continuing legal education class on substantive issues to other lawyers.

- Become an active member of a state, local, or federal bar association.

### Principled Reasons to Adhere to Ethical Standards

I have made many practical suggestions about how lawyers, their clients and the profession benefit from civility and ethics among lawyers. I wish to conclude by making four points of principle on the subject of lawyer civility and ethics:

First, in every other profession, we ask about expertise, good service and personal ability to instill confidence and respect. Would we ever want a surgeon or internist because he or she is mean or unethical? Do we want to hire a car mechanic or insurance agent or real estate broker because he or she is tough to be around or would lie to us? The idea that a discourteous, unethical lawyer is a good thing to be or aspire to be makes no sense to me and is contrary to common sense and our own life experiences in every other area.

Second, the audience – in this instance, the Utah state judiciary – has told the players – i.e., the lawyers – what behavior they expect to see and what behavior they don't want to see. Why not follow their advice and orders? Some say, well, judges don't like these contests of “he or she said – no he or she didn't” and “who-started-this-stupid-letter/e-mail-writing campaign-of-insults anyway?” I believe that eventually the truth comes out. Lawyers need to work with the trial judges to sort out these disputes. Judges need to be sensitive and responsive to the frustrations lawyers feel about being the brunt of discourteous behavior by some lawyers.

Third, when Lincoln was faced with the most significant issue of his era – slavery – and many logical and constitutional arguments were unavailing for political reasons, his response was to argue the conduct was “wrong.” We should act ethically because it's the *right* thing to do. Indeed, even if Standards were never promulgated by your Supreme Court, I believe you would still choose to be an ethical lawyer rather than an unethical one. How do you want to live your life?

Fourth, I close with references to our country's founding: According to Pulitzer Prize winning historian and author Gordon Wood, in his new book *Revolutionary Characters: What Made The Founders Different*, the 18th century Enlightenment had a profound impact on our founders and spread light and knowledge and imposed order and reason. According to Professor Wood, the personal qualities our founders aspired to included politeness, grace, learning and character.

Our founders – who were wise, tough, persistent and courageous – believed civility was a strength – indeed a foundation – along with freedom, liberty and justice – upon which to build our Nation. The benefits of these qualities for the legal profession are as true today as they were for our country in the eighteenth century.

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# Enforcing the Standards of Professionalism and Civility

by Donald J. Winder and Dennis Flynn

A good advocate avidly pleads his or her client's case in order to achieve favorable results. At the heart of effective advocacy are good communication skills essential for conveying expectations and intentions to the court, to other attorneys, and to clients. When correspondence, phone calls and other encounters are mottled with impolite or abusive content, the message being conveyed is often obscured or even lost. At times lawyers become a reflection of an emotional client rather than an objective advocate on behalf of that client. When a lack of civility begins to permeate the lawyer's discourse, it can impede his or her success and ability to represent clients well.

Some in the legal profession may not perceive the lack of civility and professionalism as a serious concern. A decline in civility seems to pervade modern society, and some lawyers may have been raised in a culture where manners, as signs of simple respect, have ceded ground to competitiveness and the drive to succeed at any cost. Law practice has been intensified by technological innovations, competition for clients, and burgeoning discovery, perhaps fostering discovery abuse and the toleration of uncivil behavior. Whatever the causes of declining professionalism, to what extent and at what cost should a lawyer be willing to obtain the client's objectives? Does resorting to whatever means necessary to win inevitably equate to good, or even effective, advocacy if that includes disregarding principles of civility and professionalism?

Incidents of incivility arise at all levels of litigation and can creep into daily routines in any number of ways. Lawyers may send letters to each other with rude or inflammatory remarks. Lawyers now have instantaneous communication tools such as e-mail and voicemail, which permit a lawyer to express words before taking the time needed to think them through. Unfortunately, such remarks can also make their way into courtrooms and before judges. The worst incivility may well arise in discovery, such as delay tactics and refusal to grant extensions, and in the deposition room where no court representative is present.

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Justice Sandra Day O'Connor said membership in a profession "entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market." *Shapero v. Kentucky Bar Ass'n.*, 486 U.S. 466, 488-89 (1988) (O'Connor, J., dissenting). By taking an oath, attorneys become officers of the court charged with pursuing, defending and preserving justice. Accepting this responsibility means we aspire to our society's highest ideals of justice. Sadly, in recent years the legal profession has suffered in the court of public opinion due to the decline of civility and professionalism. Fortunately, some tools exist to help enforce core principles of civility within the profession.

To address the problem in Utah, a committee of lawyers and judges was commissioned to draft the Standards of Professionalism and Civility, which the Utah Supreme Court adopted in 2003. Professional and civil conduct is expected in the state's highest courts, and it should be required in the district courts as well.

Utah appellate courts have admonished lawyers for littering briefs and other court documents with expletives and other similar tirades bringing down opposing counsel and seeking advantage through such language. In one Utah Court of Appeals decision, counsel was admonished for such conduct by a judge who actually sided with him on the merits. In *B.A.M. Dev., L.L.C. v. Salt Lake County*, 87 P3d 710 (Utah Ct. App. 2004), Judge Orme stated:

While I appreciate a zealous advocate as much as anyone, such techniques, which really amount to a written form of shouting, are simply inappropriate in an appellate brief. It is counterproductive for counsel to litter his brief with burdensome material such as "WRONG! WRONG ANALYSIS! WRONG RESULT! WRONG! WRONG! WRONG!" It is also at odds with Rule 24(j) of the Utah Rules of Appellate Procedure.

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*Id.* at 734 (Orme, J., dissenting); *see in re L.M.*, 68 P.3d 276, 278 (Utah Ct. App. 2003) (Assertions that trial court's conclusions were "ridiculous" and that its chronology was "bizarre" are "entirely irrelevant and inappropriate to these proceedings."). Rule 24(j) permits the court to disregard or strike noncomplying briefs, or assess attorney fees against the offending lawyer. Utah R. App. P. 24(j).

More recently, the Utah Court of Appeals commented on "the unprofessional and inappropriate language" used in a party's brief, commenting that both Landlord and Tenant "ought to be ashamed of themselves," for repeatedly referring to opposing counsel's arguments as "revolting," "disingenuous," "nonsensical," "insulting to the intelligence of the Court," "ridiculous," and "reprehensible." *Advanced Restoration, L.L.C. v. Priskos*, 126 P.3d 786, 797 (Utah Ct. App. 2005). The Court then went on to say, "Derogatory references to others or inappropriate language of any kind has no place in an appellate brief and is of no assistance to this court in attempting to resolve any legitimate issues presented on appeal." *Id.* (quoting *State v. Cook*, 714 P.2d 296, 297 (Utah 1986) (per curiam)).

The *Advanced Restoration* opinion also cited to the Rules of Professional Conduct, which require lawyers to maintain the decorum of the tribunal, and that "[r]efraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants." Comment to Utah R. Professional Conduct 3.5. The Standards of Professionalism and Civility urges lawyers to "avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries." Utah Standards of Professionalism and Civility, Standard 3.

If such conduct is not permitted in our appellate courts, it should not be permitted in our trial courts. Trial judges have additional mechanisms to enforce civility and professionalism standards in their courtrooms. Courts may look to the inherent powers of the courts to conduct matters before them, powers of contempt, Rule 11, and even the admonition in Rule 1 to interpret the Rules of Civil Procedure to affect a "just, speedy and inexpensive resolution" of all cases. Ethical complaints may also be filed with the Bar for ethical violations.

Some of our trial judges are willing to require civility in their courtrooms. In a case with which our firm was involved, a lawyer filed a motion to recuse a district judge because the lawyer disagreed with the judge's decisions. In his affidavit to the court, the lawyer impugned the judge with allegations of false or conjured reasoning, being wrongheaded, being neither objective nor sane, having an unacceptable defect as a jurist in his ability to grasp and understand basic financial facts, and having an inability to stand the heat of litigation. It would be challenging for any judge to remain objective or avoid bias after reading such defaming remarks. The judge's colleague who was given the task to review the request ordered the recusal only after expressing incredulity at what he called the most outrageous case of judge shopping he had seen in 20 years of service as a

judge on the court. He then referred the case to the Utah Bar to determine whether the lawyer's actions violated the standards of professional responsibility and, if so, to take appropriate action against the offending attorney.

Maintaining civility and professionalism can be challenging in an adversarial system where professionals are expected to advocate zealously for their clients. However, without mutual respect and courtesy, an effective working relationship between lawyers is not likely to materialize and the client loses out in the end. It is not too lofty to expect lawyers to achieve the aspirations of a noble and honorable profession where professionals treat each other with dignity.

Without civility, no private discussion, no public debate, no legislative process, no political campaign, no trial of any case, can serve its purpose or achieve its objective. When men shout and shriek or call names, we witness the end of rational thought process if not the beginning of blows and combat.

\* \* \*

With all deference, I submit that lawyers who know how to think but have not learned how to behave are a menace and a liability, not an asset, to the administration of justice.

Warren E. Burger, *The Necessity For Civility*, 52 F.R.D. 211 (1971).

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# Civility and Chivalry

by William C. Duncan

I suspect that any author of an article on matters related to civility and professionalism has a significant hesitation since none of us is a perfect example of those values, and many more qualified and highly-respected people have written on the subject. The only excuse then, that I can offer for this particular article is that I believe it uses an historical analogy to present another approach to the concept of civility that may be illuminating in a novel way.

In the field of cause-oriented lawyering with which I am most familiar, warlike metaphors are common. It's typical to speak of "fighting" for the rights of a group, "defending" a position, the "battle" for equality or justice. These words often accurately reflect the feelings of lawyers who are deeply, passionately devoted to a cause that is the focus of their law practice. Possibly to a lesser extent, they describe some aspects of nearly all areas of legal practice in an adversarial system. When ideological commitments are added to the adversarial mix, the result can be particularly volatile. As one historian remarked: "Men make gods now, not out of wood and stone, which though a waste of time is a comparatively harmless proceeding, but out of abstract nouns, which are the most treacherous and explosive things in the world." HERBERT BUTTERFIELD, *THE ENGLISHMAN AND HIS HISTORY* 128-129 (1970) quoted in M.E. Bradford, *The Best Constitution in Existence: The Influence of the British Example in the Framers of Our Fundamental Law* 27 *BYU STUDIES* 51, 52 (Summer 1987).

Allegiance to an abstract theory is often proffered as an excuse for the inexcusable. Convinced of the righteousness of a cause an attorney may overcome qualms about timing litigation so as to harm an opponent's interests or browbeating a non-lawyer with threats of legal action. The natural competitiveness of most lawyers further exacerbates the possibility for full-scale conflict.

So, how can standards of civility apply to an area where lawyers feel they are at war for ideas or clients? Here an historical construct might prove helpful. In a larger critique of the idea of "total war" practiced throughout the Twentieth Century, Richard Weaver invoked the medieval concept of chivalry. He noted that chivalry "offered a plan whereby civilization might contain a war and go on existing as civilization." He does not suggest that "chivalry accomplished all that the ideal pointed toward," noting that "there were episodes in the age of chivalry which make unpleasant reading." The idea of chivalry, however, was a "moderating influence" that "insisted that even in war, when

maximum strain is placed upon the passions, man may not become an absolute killer." It did this by insisting that "even your foe has some rights, and those rights you must respect." Interestingly, he uses the legal system to illustrate the continued relevance of this kind of ideal, pointing to our tradition of according to each person due process. "The law is in such instances upholding an idea similar to that of chivalry, inasmuch as it takes the position that no one – not even an 'enemy of society' – can be denied rights entirely." Richard Weaver, *Up From Liberalism*, *MODERN AGE* 21, 30 (Winter 1958-1959).

In this reading, chivalry can be understood as an additional obligation (beyond their obligation to do their best to win the war) that constrains the behavior of combatants. In a similar way, standards of professionalism and civility circumscribe the actions of attorneys over and above the limits of what would be required if their only goal were winning. This ideal is in keeping with a long and honorable tradition that recognizes that "[a]n excellent person recognizes more things as morally binding than ordinary people might do, but a debased person, it appears, will acknowledge fewer." Scott FitzGibbon, *The Formless City of Plato's Republic*, *ISSUES IN LEGAL SCHOLARSHIP* (2005) at <http://bepress.com/ils/iss5/art5>.

The willingness to take on obligations higher than those required of the average person is also a hallmark of professionalism. It is the thing that makes Jane Austen's characters noble (e.g., Mr. Darcy goes to extra effort to anonymously ensure the marriage of Elizabeth Bennet's sister) and creates the humor in P.G. Wodehouse's stories (e.g., Bertie Wooster becomes entangled in an unwanted engagement because his sense of noblesse oblige does not allow him to say no). It is the motivation behind the legal profession's commitment to provide representation even to unpopular clients or causes. Like chivalry, the idea of civility helps us understand that even in a heated contest, some things are just not done, and that even opponents have a claim on our

*WILLIAM C. DUNCAN is the director of the Marriage Law Foundation in Orem, Utah.*





courtesy. This may require something as simple as a handshake after a court “battle” or a refusal to impugn the motive of an opponent. It may also prompt the kinds of heroics so powerfully illustrated in an excellent speech that urged lawyers to emulate the great fictional attorney in Harper Lee’s novel *To Kill a Mockingbird*. See Lance B. Wickman, “*In Search of Atticus Finch*” J. Reuben Clark Law Society Devotional (Feb. 10, 2006) available at <http://www.lds.org/newsroom/voice/display/0,18255,5004-1-301,00.html>.

Also like the ideal of chivalry, the ideal of civility is not enforceable in the same way that traffic regulations or other kinds of laws must be. The obligation of civility will have no effect on behavior unless it is recognized by the individual attorney as morally binding on her behavior. Thus, civility is ultimately a matter of character and the legal profession has not always seemed to understand that “no specialized success can compensate for weaknesses in character.” Bruce C. Hafen, *The Coriolanus Syndrome*, CLARK MEMORANDUM 20, 24 (Spring 1992).

This does not mean, though, that the problem of incivility is intractable. It only suggests that it may be difficult as any exercise in character building must needs be. We can begin with a recognition that character is usually a product of religious and ethical commitments that transcend rules. These commitments to such supports of civility as humility and generosity are, in turn, best inculcated by institutions like family, church, neighborhoods, etc, rather than by legal proscription. Therefore, the work of such institutions should be supported and applauded by those who would advance the ethic of civility.

We must recognize the limitations of formal statements (as important as they are) and, through example and celebration of the values of civility and professionalism, work to create a climate within the legal profession that signals to its members the importance of the ideals – the sense that this is what lawyers ought to be. It may be that even a minority of lawyers committed to civil and professional practice can kindle an infectious spirit of moral excellence that will inspire their fellows in the same way the legendary Round Table was supposed to represent the highest manifestation of the chivalric ideal.

A resurgence of the ethic of civility in the legal profession will take a series of individual commitments and a resulting collective shift in attitude and aims. The shift could re-introduce into the profession the valuable idea that, no matter the goal, some things ought not be done and that there are things we ought to do even if we can’t see that they will help us win. If, however, like the ideal of chivalry, a resurgence of the ideal of civility can moderate the warlike elements in the profession, I suspect all would feel the effort was worthwhile.

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# *Need Help on Professionalism Training in Your Office? Call Us.*

*by Alan Sullivan*

**W**ould you like to provide training to lawyers in your office or agency on the Utah Standards of Professionalism and Civility? Do you need a set of tried and true presentation materials to assist you? Then call us.

More than two years ago the Utah Supreme Court established the Utah Professionalism Liaison Committee to help lawyers, law offices, bar associations, and agencies train lawyers in professionalism. The Liaison Committee was reconstituted and reactivated in May 2006, and since then it has developed a library of materials used by law firms, agencies and local bar associations to teach the principles of professionalism to lawyers in both litigation and transactional practices. Our “library” of materials is electronic. It includes articles, cases, PowerPoint presentations and fact scenarios designed to stimulate discussion among lawyers. And it’s all free. If you would like to obtain materials to use in the training of lawyers on professionalism issues, just call or email me, and I’ll send the materials back to electronically, on one condition. The condition is that you provide me with whatever new materials you utilize as part of your own presentation, assuming that they do not involve confidential information. In this way, we hope to expand our electronic library for use by others.

Another of the Liaison Committee’s objectives involves enforcement of the standards and the remediation or counseling of offenders. We would appreciate your ideas on how violations of the Standards of Professionalism and Civility should be reported and remediated. The standards are aspirational rather than prescriptive; when a violation occurs, there is usually more than one side to the story; and the client may well need to consent when any lawyer reports any other lawyer for violation of the Standards of Professionalism and Civility. Despite these obvious problems involved in enforcement, we are searching for effective ways to get the word to lawyers who have committed clear infractions of our professionalism standards. If you have some ideas on this score, please let us know.

Also, if you’d like to be a member of the Liaison Committee, all you need to do is call or write me, and I’ll make sure you’re on our regular mailing list and are invited to our meetings, which happen every six months.

*ALAN SULLIVAN, a partner at Snell & Wilmer, chairs the Utah Professionalism Liaison Committee. You can reach him at (801) 257-1955 and [asullivan@swlaw.com](mailto:asullivan@swlaw.com).*



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# Civility in the Practice of Law: A Young Lawyer's Perspective

by Christopher M. Von Maack

This article seeks to briefly examine the challenge of civility in the practice of law from *one* young lawyer's perspective – mine. From the outset, I believe that civility assists lawyers to resolve disputes more rationally, peacefully, and efficiently. Thus, lawyers should strive to maintain civility in their dealings with others, i.e., clients, counsel, judges, juries, and the public.

As a self-regulated *profession*, I believe that lawyers have an individual and collective role to play in maintaining civility in the practice of law. Undoubtedly, the primary responsibility is on the individual lawyer to act civilly. However, when the individual lawyer falters, other lawyers, e.g., opposing counsel, judges, or the bar, must take some manner of action to maintain civility.

In the individual role, I believe that most new lawyers enter the profession recognizing the purpose and advantages of civility, and intending to be civil. However, at least two forces quickly test the young lawyer's commitment to civility – clients and counsel.

All lawyers enter the practice with the goal of obtaining a successful result for their client. The rub is that, often, a lawyer's uncivil conduct can seemingly advance the client's goal. Moreover, clients sometimes champion uncivil conduct because they feel wronged, and want the party that wronged them to suffer. For example, my client may want me to bury opposing counsel with paper, respond cryptically to discovery requests, or refuse to grant a reasonable extension. Civility advocates pejoratively label such conduct the “scorched-earth” approach.

Despite the ostensible advantages of uncivil lawyering, in my experience, any gains ultimately prove spurious. Indeed, the scorched-earth approach rarely benefits the client's cause and usually drives up costs, ferments ill will between parties and counsel, and inevitably irritates judges. Conversely, when a lawyer behaves civilly, the client is more likely to attain a favorable result more quickly and with less expense.

Furthermore, when a lawyer merely acts as a straw for the client, the lawyer eviscerates the purpose of the advocacy system – to arrive at justice through rational intermediaries. Indeed, “technical and legal tactical issues” are the lawyer's, not the client's, responsibility. Utah R. Prof. Conduct 1.2, cmt. *Scope of Representation*. Thus, a lawyer should determine whether to employ a certain strategy, and not automatically defer to the client. To aid the client's edification, a young lawyer would be well served to follow Standards 2 and 14 of the Utah Standards of Professionalism and Civility, and familiarize the client with the lawyer's and the client's respective roles, at the beginning of the

representation.<sup>1</sup> See Utah Standards of Professionalism & Civility 2 (“Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected.”); Utah Standards of Professionalism & Civility 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 fact.”).

The second force that can test a young lawyer's commitment to civility is the behavior of opposing counsel. A lawyer's relationship with opposing counsel can set the tone for the case. For instance, when my first interaction with opposing counsel is civil, the case tends to go more smoothly for everyone, e.g., extensions are not unreasonably withheld, scheduling orders are stipulated, telephone calls and correspondence are promptly returned. As a result, civil counsel save their clients time and money, and earn appreciation and respect from opposing counsel.

On the other hand, acrimonious counsel waste everyone's time and resources. While some of these lawyers are just cantankerous, others view civility as a sign of weakness. I, however, believe civility is a sign of strength and *confidence*, and incivility an expression of fear and an attempt to distract the other side from the infirmities of their case. Moreover, in the relatively small Utah legal community, lawyers are likely to deal with each other more than once. Thus, civility promotes comity in the bar.

In addition to the pressures of opposing counsel, sometimes young lawyers face pressure to act uncivilly from lawyers on the same side. No doubt, the pressure to behave uncivilly is magnified when the influence comes from a colleague or superior. However, a young lawyer should remember that his or her professional reputation is far more valuable than whatever political capital is gained by conforming to uncivil conduct.

At some point, uncivil conduct necessitates other lawyers to step in

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to maintain rationality, peace, and efficiency in resolving disputes. Because many acts of incivility occur outside the courtroom, when serious uncivil conduct takes place beyond the observation of the court, opposing counsel has the unenviable task of bringing the objectionable conduct to the court's attention. As a young lawyer, alerting the court of a more experienced attorney's uncivil conduct can be an intimidating venture, but failure to do so may only embolden the uncivil lawyer and invite prejudice to the client.

Once properly before a court, judges can be the most potent enforcers of civility. Indeed, to have traction, the standards of civility must have the support of judges. Quoting a commentator, one court observed:

Every time that you make uncivil lawyers lose, you score a big victory for civility. Every time an abrasive, abusive, hostile, harassing, combative, discourteous, hardball, win-at-all costs, take no prisoners, scorched earth, Rambo lawyer loses, it's a great day for civility.

*Revson v. Cinque & Cinque, P.C.*, 49 F. Supp. 2d 686, 687 n.2 (S.D.N.Y. 1999) (quoting Robert C. Josefsberg, *The Topic Is Civility; You Got a Problem With That?*, 59 Or. St. B. Bull. 19, 23 (Jan. 1999)).

Understandably, many courts are reluctant to deal with "misbehaving" lawyers. However, if more judges required lawyers to adhere to standards of civility, judges would likely encounter fewer situations that required their intervention. I wholeheartedly agree with the observations of one court, which wrote:

The organized bar and the judiciary, in *partnership* with each other, have a responsibility to promote civility in the practice of law and the administration of justice. Uncivil conduct of lawyers or judges impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct may delay or deny justice and diminish the respect for law, which is a cornerstone of our society and our profession.

*Alexander v. F.B.I.*, No. 96-2123, 1999 WL 314170, \*2 (D.D.C. May 17, 1999) (emphasis added). Moreover, the Utah Standards of Professionalism and Civility have been adopted by the Utah Supreme Court, and accordingly, warrant some manner of "enforcement."<sup>2</sup>

Moreover, enforcing civility offers judges an opportunity to mold a lawyer's behavior through wit and wisdom. An experience often recounted by Judge Gregory K. Orme provides one such example: A young lawyer at the time, Mr. Orme asked opposing counsel for a two-day extension to answer a complaint. Mr. Orme explained that he needed the extension because the complaint had just been brought to him, and he needed the extra time to confer with his client so he could respond accurately. Opposing counsel refused. Mr. Orme then prepared and presented an *ex parte* motion for a two-day extension to recently-appointed Judge J. Thomas Greene. Judge Greene explained that it was customary to simply call

opposing counsel and request such an extension. When Mr. Orme explained that he had done just that and been refused, Judge Greene agreed to sign the tendered order granting the two-day extension. But Judge Greene interlineated and initialed a change *sua sponte*, changing 2 days to 30 days. Judge Orme recalls that Judge Greene explained he did not want him to be "unduly rushed" in filing a quality answer. I would be surprised if opposing counsel in that case ever refused a reasonable extension again. Such a discreet and judicious approach to enforcing civility is effective, endearing, and memorable.

Organizations of lawyers also play a role in promoting civility in the practice of law. For its part, the Young Lawyers Division ("YLD") of the Utah State Bar has created a new venue where a young lawyer can access the wisdom of more experienced colleagues – "Mentor On Demand." Launched in 2006, and accessible at no cost 24/7 through the [utahbar.org](http://utahbar.org) website, Mentor On Demand is an online resource specifically tailored to provide young lawyers with guidance on discrete issues that they may encounter in their practice, including those in the realm of professionalism and civility. Although the YLD plans to continually expand and update the resource, presently, Mentor On Demand consists of approximately twenty-five videotaped presentations from some of Utah's most prominent lawyers, including judges, in-house counsel, solo practitioners, law professors, and firm lawyers.

Promoting, achieving, and maintaining civility in the practice of law requires every lawyer to do his or her part. As a young lawyer, I have an opportunity to take a leading role through approaching the practice of law as a profession, and resisting the temptations to act uncivilly.

1. Notably, the Utah Rules of Professional Conduct and the Standards of Professionalism and Civility are the *minimum* standards of conduct.
2. I place "enforcement" in quotation marks because the Utah Standards of Professionalism and Civility lack an explicit means of enforcement.

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# A Professionalism Quiz: How Does Your Conduct Measure Up?

by Wayne Klein

## Introduction

As sworn defenders of the Constitution and officers of the court, attorneys always have been under legal and moral obligations to demonstrate high standards of conduct. Accordingly, attorneys must meet ethical standards higher than that required for most professionals. However, concern over the misconduct of some attorneys and a dissatisfaction with the public's perception of the reputation of attorneys now are leading to adoption of "professionalism standards" by the Utah Supreme Court and many bar associations.<sup>1</sup>

These professionalism standards seek to increase civility in the legal profession. They represent a move to a "higher standard" than is reflected in the ethical standards. These standards focus on an attorney's relationship to opposing counsel, courts, and the legal system.

How well does your conduct meet these standards? Listed below are twenty hypothetical situations that might be encountered by a litigator. These scenarios focus on the practice of securities law but would be applicable to most areas of practice. Each hypothetical is identified as representing either a plaintiff's or defense counsel's perspective. Once you have completed the quiz, turn to page 34 for the answers.

## Professionalism Scenarios

**1. Defendant:** You represent a broker-dealer and one of its agents, a high volume producer being accused of not giving his clients the advantages of volume discounts available on mutual fund purchases. Plaintiff's counsel brought a similar claim against your client earlier this year and is expected to file more cases in the near future. The securities agent wants to send a message that you will embarrass any clients of this attorney so she will stop bringing these cases against the agent. The agent offers you a \$25,000 bonus in your fee, out of his own pocket, if you embarrass the client. A private investigator tells you that if you can get the client's tax returns in discovery, he will find proof of tax fraud or refund his \$10,000 fee. Can you request a copy of the client's tax returns? Can you use evidence of tax fraud at the trial to impugn the client's integrity and honesty?

**2. Plaintiff:** You have read studies in legal journals recounting the attributes clients most desire in their attorneys. Chief among these is that the attorney be like a pit bull" – aggressive and relentless in pushing client cases. You know that a potential client who contacted you also is interviewing other attorneys to decide who

to select. In your interview with the prospective client, you become convinced that the client has been wrongly defrauded. The client's funds were misappropriated by a stockbroker at a brokerage firm known for a scorched-earth litigation strategy. The potential client wants your assurances that, if selected, you will prosecute his claim in a manner that will gain every advantage possible. The client says that acceding to any requests for additional time or appearing friendly with opposing counsel will be interpreted as signs of weakness. What do you tell this prospective client?

**3. Defendant:** The preparation for your arbitration case defending a brokerage firm has been very contentious, due to conduct of plaintiff's counsel. It is now a month before the scheduled start of your week-long arbitration hearing. Plaintiff's counsel tells you the customer has rejected your settlement offer. You inform your client, who asks your advice. You tell the firm your supposition that plaintiff's counsel is trying to show his client that he is aggressive and may be hoping for punitive damages. You say that you doubt the attorney has accurately informed his client about the strength of your case. You explain that this attorney has a reputation for being unethical and interested only in money – all as a means of masking his lack of intelligence. Should you ask for a settlement meeting – insisting that the client be present – and deliver a letter in the presence of the client outlining your suspicions and pushing for a better settlement offer?<sup>2</sup>

**4. Plaintiff:** In a case alleging that a broker made unsuitable recommendations, your client tells you that when she expressed concern about a stock being purchased for her account, the broker acknowledged that the stock did not meet the profile for stocks the customer wanted. Nevertheless, the broker said it was a sure thing and pressured the client to acquiesce. The broker's answer denied this. Early in the case, you sent a settlement demand to the firm, outlining the misconduct by the firm and the broker, including this claim. The settlement response rejected many of the assertions in your settlement offer, but not

*WAYNE KLEIN is the Director of the Utah Division of Securities and a member of the Executive Committee of the Utah Bar Litigation Section.*



this one. Are you now free to argue that the firm has admitted that this trade was unsuitable?

**5. Defendant:** Opposing counsel is two weeks late in providing discovery responses. Previously, counsel filed his response to a motion ten days late and rescheduled a deposition twice. You don't believe the justifications he has given. Is it appropriate to seek sanctions against the attorney?

**6. Plaintiff:** Three weeks after filing your lawsuit against a brokerage firm, in-house counsel for the firm calls expressing a genuine desire to settle, but wanting to see copies of letters from the broker to your client which are not in the firm's files. You agree to send this information and a settlement offer, but explain that you will not be able to send it for another two weeks. Nothing is said about filing an answer in the meanwhile. When the deadline passes for filing an answer (and no answer is filed), should you just move for default rather than sending a settlement offer? What duty do you owe your client?


**7. Defendant:** Both sides are working to develop a stipulation of undisputed facts. After you send a revised draft to opposing counsel, she calls to discuss wording changes she wants. You agree to make those changes. In drafting the new version, you suddenly remember one other fact that, if admitted, will save you the trouble of bringing in a witness. You include it and send

the new draft to opposing counsel. Counsel signs the stipulation. Can you now tell your witness he is no longer needed?

**8. Plaintiff:** In a civil case, opposing counsel has moved to dismiss your case on statute of limitations grounds. At a hearing, the judge dismisses your case and asks opposing counsel to draft an order. You find a case showing the judge relied on an improper basis for her ruling and send it to opposing counsel before he submits his draft order to the court. He ignores your objection and hand-delivers his proposed order to the court, mailing you a copy the next day. Has opposing counsel acted unprofessionally?

**9. Defendant:** A deadline is looming to produce discovery to the other side. You are overwhelmed with deadlines in other cases and will not be able to meet the deadline. Earlier, you opposed a request for extension by opposing counsel so are reluctant to ask him for more time. Is it acceptable to ask for a settlement offer, to delay your discovery response deadline?

**10. Plaintiff:** In a case alleging sales of unsuitable securities to your client, opposing counsel asks you to stipulate that your client had purchased speculative stocks on previous occasions. Twelve years previously, your client had purchased one such stock, but you worry that this will receive too much emphasis at the arbitration hearing. Can you refuse to stipulate to this fact,



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reserving for the hearing your ability to put this isolated purchase in context?

**11. Defendant:** On the second day of an arbitration hearing, you find yourself eating lunch at the same restaurant as one of the arbitrators. You exchange pleasantries, then comment that it should be an interesting afternoon based on the expected testimony of your expert. Is there a problem?

**12. Plaintiff:** A forensic accountant working for the defendant contacts your client to ask for some of last year's tax forms. You write an angry letter to opposing counsel saying this was outside the scope of discovery permitted in this case and the contact should have been through you. Can you send a copy of this letter to the judge?

**13. Defendant:** At a local bar function, you are discussing case strategy with a trusted colleague. In your conversation, you discover that an attorney who is opposing counsel in cases you both have will be out of the country for two weeks on a family vacation. You already had granted opposing counsel an extension of time in responding to a previous motion and he promised not to request any further extensions. You still have one final discovery request to make before the hearing. What is the best strategy to use in timing your discovery request in light of what you learned about his vacation plans?

**14. Plaintiff:** A prospective client comes to you with a very strong

case, where the broker just pleaded guilty for the conduct involving your client. The client is angry at the brokerage firm, but also distrusts lawyers, having heard that cases take too long and the attorneys appear too friendly to each other. He will hire you only on the condition that you get his permission before granting any extensions of time or stipulating to any facts. Do you agree to his request?

**15. Defendant:** Opposing counsel had set a deposition of your client at a time inconvenient for you and insisted it could not be changed because of other deadlines in the case. Later, when the other side identified a new hearing witness late in the process, you objected but were overruled. You do have the ability to depose the newly-identified witness. Are you obligated to contact opposing counsel before setting a date for the deposition?

**16. Plaintiff:** The attorney for the other side contacted you two weeks ago to say he will be representing the defendant. However, he has not filed an answer. It is now a week after his deadline for filing an answer and you qualify to seek default. Have you failed in a duty to your client by not seeking default immediately?

**17. Defendant:** You are counsel to a brokerage firm. The attorney representing a plaintiff has made a discovery request that your client provide copies of any e-mails from the firm to one of its stockbrokers (the plaintiff's broker) describing a sales contest that the plaintiff suspects existed at the firm. In response, you produce copies of every e-mail to or from this broker over a four-year period. Have you acted unprofessionally?

**18. Plaintiff and Defendant:** During a deposition of your client, is it acceptable to interject, after a question is asked, "if you know"? Is it permissible to require opposing counsel to frame her questions precisely, objecting to the form of the question?

**19. Plaintiff:** The opposing party propounds discovery requests asking for documents relating to your client's prior securities transactions in his personal investment account or a retirement account. Most of your client's prior transactions were in a trust account. Do you need to produce documents relating to transactions in the trust account?

**20. Defendant:** Your brokerage firm client wants you to contact the plaintiff's wife to ask what her husband said and thought at the time of the transactions in question. When you refuse, the brokerage firm's manager says he plans to call the wife himself. How should you respond?

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1. Examples include: the Seventh Circuit, Florida Bar Trial Lawyers Section, Texas Lawyer's Creed, Central District of California, ABA Guidelines for Conduct and Lawyer's Duties to Other Counsel, San Diego County Bar Association's Civil Litigation Code of Conduct, Federal Bar Association Professional Ethics Committee's Standards for Civility in Professional Conduct, and the American Inns of Court Professional Creed.

2. Note: This is a trick question. The professionalism conduct at issue here relates to the client discussion described in this hypothetical, not to the possible meeting with the opposing party.

# *What I Know Now that I Wish I Had Known When I Was Practicing*

by Judge Royal I. Hansen

In the company of Judges Terry Christiansen, Stephen Roth, Robert Adkins, Elizabeth Lindsley, Dane Nolan and Christine Decker and Commissioner Michelle Tack, I sit in the state's newest courthouse, located in West Jordan. It is the second largest state judicial complex and represents a consolidation of the Salt Lake County suburban courts. The second floor is dedicated to the Juvenile Court and the third floor houses the District Court. Courts in Sandy, Murray and West Valley have been closed. The West Jordan Division is a full service court. It has county-wide civil and geographical criminal jurisdiction, including the South Valley Felony Drug Court.

It is a privilege to be the fourth sitting Judge Hanson/Hansen on the state trial court bench. I am honored to be mistaken for Judge Darwin Hansen of the 2d District, Judge Tim Hanson of the 3rd District and Judge Steven Hansen of the 4th District. The disappointment of litigants is almost palpable when they believe they have drawn Judge Tim Hanson and end up with an assignment to my court. We will miss the experience and service of Judges Dennis Fuchs, Dennis Frederick and Tim Hanson when they retire at the close of the calendar year. They have been great mentors and friends to the judiciary and bar.

Judge John Paul Kennedy and I were invited to speak at a recent Salt Lake County Bar luncheon. Bar President Todd Shaughnessy invited us to address the topic "What I Know Now that I Wish I had Known When I was Practicing." This recounts some of the highlights, through four rules and three suggestions.

I started practicing at the 4th South Metropolitan Hall of Justice (replaced by the new Salt Lake City Library) in an era and location where lawyers and judges met regularly and informally to discuss cases and resolve issues. With the new courthouses and the current concerns for security, there is little interaction between bench and bar outside the formal courtroom setting. The West

Jordan Division has attempted to modify this problem by holding periodic civil and criminal attorney meetings where interested lawyers are invited to meet and discuss issues informally and share their concerns about the practice. From this history, I draw the first of four Rules, "Know the Practices and Procedures of Your Assigned Judge." When in doubt, contact opposing counsel and clarify through the judge's clerk or arrange for an informal conference with the judge. Attend bar functions and CLE programs when judges are invited to address their practices. Collect *Law Review* and *Bar Journal* articles by or about judges before whom you appear. The Utah State Bar Litigation Section sponsors a website for the Judges' Benchbook Project. Judges and courts recognize the importance of this interaction and are attempting to be accessible to the legal community.

Rule #2, "Know Your Audience and Thoroughly Prepare Before Filing Pleadings or Presenting Argument." Whom are you attempting to persuade? What relief are you seeking? How can you be an effective advocate? Put yourself in the position of your opponent or the judge to anticipate arguments which require rebuttal or response. Don't substitute increased decibels for oral argument that lacks merit. Come prepared to answer the questions that are most troublesome. A direct response to the court's questions is appreciated. Tell the court exactly what you are seeking and why the relief should be granted. Narrow your focus to include your best issues and how you can be most persuasive. When interrogating a witness or presenting oral

*JUDGE ROYAL I. HANSEN was appointed to the Third District Court in July 2003 by Gov. Michael O. Leavitt. He serves Salt Lake, Summit, and Tooele counties.*





argument, refrain from repetition. Consider that state courts are busy with heavy case loads. Cases are diverse and far-reaching, including most aspects of the criminal and civil law. District Judges share law clerks with several other judges and not every issue or case will be reviewed by a law clerk before it is decided. Rule 7(c)(2) of the Utah Rules of Civil Procedure provides for a memorandum page limit. It was adopted to encourage counsel to focus, narrow and distill the issues. Longer isn't better. Make sure you need an over-length brief before you request it.

I have adopted Judge Roth's "hearing notice" for complex motions. The moving party is instructed to submit a binder of courtesy copies for the pleadings of all parties 14 days prior to the hearing. At the same time, parties are invited to submit courtesy copies of cited cases and authorities which are important for the court's consideration. All copies and binders should be marked with the name of the assigned judge and the date and time of hearing. Utah law is controlling and an exhaustive search and report of the applicable statutory and case law is encouraged. When you cite a case, include a short quote of the relevant language. String cites are not favored. Focus on the elements of the cause of action or crime. Think of what the jury instructions or trial brief would state with regard to the law. Test your technology before making your presentation in the court room. (If it can go wrong, it will.) Always have a backup. Provide courtesy copies of exhibits for the judge and jury to allow the fact finder to follow your case as it is presented. After the court rules on an objection, motion, or case, refrain from reacting by facial or verbal expressions.

Rule #3, "Treat Court Personnel with Courtesy and Respect." I highly value my clerks and the support they render to the judicial process. They perform a remarkable service. In addition to keeping track of every case assigned to the judge, they field telephone calls and emails, schedule cases for trial and motions for hearing, prepare and file orders for each matter as it is decided, act as a liaison with the jury, and respond to the public and pro se litigants. When they are helpful, please compliment them and express appreciation for their service. Any statement made to my clerks should be appropriate for court room consumption.

Rule #4, "Your Reputation as an Attorney is Your Most Important Asset and That Reputation is on the Line Every Time You Interact with the Court." I have the daunting responsibility of occupying the seat formerly held by Justice Ronald Nehring while serving on the Third District Court. When I spoke with Justice Nehring about his counsel regarding service as a judge, this was the Rule he highlighted. Judges expect attorneys to be absolutely

honest and candid regarding all factual and legal representations made to the court. Being candid about weaknesses can enhance your strength as an advocate. Any ill-gotten, momentary success is not worth jeopardizing your professional reputation. Every time you appear in court or file pleadings, you are either adding to or subtracting from that reputation. Your reputation is more important than your scholarship, forensic skills, management qualities or negotiation abilities. Seek out a mentor in your firm, office or through the Bar that will consult regarding important decisions. Take seriously your responsibilities as an officer of the court.

Familiarity and utilization of the Supreme Court's Standards of Professionalism and Civility will bolster your legal reputation. Some important examples of civility and professionalism include the following:

- Each Rule 26 Scheduling Order should affirm that all parties will abide by the Standards while litigating the case.
- You should extend common professional courtesies to your adversary. What goes around, comes around.
- Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Standard #3. Judge Pullen of the 4th District recently issued a Ruling addressing the inappropriate conduct of an attorney. The Court published an order requiring remedial action by the offending attorney together with a letter of apology. (See the Ruling by Judge Derek P. Pullan dated March 15, 2006, which follows this article.)
- When drafting orders at the direction of the court, lawyers shall draft orders that accurately and completely reflect the court's ruling. Standard #8.
- Lawyers shall advise their clients that they reserve the right to grant extensions of time and continuances. Standard #14.
- Lawyers should not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information. Standard #17.
- During depositions lawyers should not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege. "Speaking objections" designed to coach a witness are impermissible.



Conduct inappropriate for the court room is inappropriate for depositions. Standard #18.

- Comment 14 of Rule 1.2, Rules of Professional Conduct, encourages lawyers to advise clients their representation will be consistent with the Standards. The “mad dog” lawyer who disregards civility and professionalism is not an effective advocate.

Finally, three suggestions for becoming a better lawyer. First, be involved with the bar through a committee or project. Don't leave professional service to others by default. Plan out each calendar year with a schedule for service to your profession. If you don't know how to get involved, call the president of the state bar association, Gus Chin, or president-elect Lowry Snow, or someone in bar leadership or administration, like John Baldwin. Tell them you would like to assist. County bars and specialty bar associations also provide ways to be involved and make a contribution. Second, attend bar meetings and conferences. Take the opportunity to make the acquaintance of your fellow lawyers. These associations will be a valuable network to facilitate the framework for litigation

or negotiations with a formerly faceless attorney that you now know and respect through bar service. Third, as a part of your regular case load, volunteer as pro bono counsel for someone who can not afford the services of an attorney. “And Justice For All” and Utah Legal Services have numerous opportunities to assist. You should be an advocate for the legal profession. Make yourself available to speak or lecture to schools or civic groups to underscore the importance of a democratic system based upon the rule of law.

When appointed to the bench, I received a plaque from Judge Frank Q. Nebeker of the District of Columbia Court of Appeals. It was my privilege to clerk for him after law school. The plaque reads: “Promptness, Impartiality, Patience, Ethical.” It is affixed to my bench and daily reminds me of a public stewardship. That trust can only be accomplished with the assistance of the Bar. It is a privilege to be associated with the dispute resolution process and work with talented and capable attorneys. The quality of judging is enhanced by the assistance of good lawyering.

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The following is the text of the order referred to in the preceding essay. It was recently issued by Judge Derek P. Pullan of the Fourth District Court. The names of counsel have been changed.

### **THE UNCIVIL CONDUCT OF MR. JOHN DOE**

Having ruled on the merits of the motion, the Court turns to the issue of Mr. Doe's uncivil and unprofessional conduct during oral argument. During the argument, Mr. Doe stated: (1) opposing counsel had made "misrepresentations" to the Court; (2) opposing counsel had made "false" statements to the Court; (3) referring to certain facts stated by opposing counsel, "that is a lie"; and (4) the arguments of opposing counsel were "absurd," "spurious," "outrageous" and "nonsense." As to the last of these characterizations, Mr. Doe stated "there are stronger words than nonsense" that would be appropriate. Finally, Mr. Doe insinuated that opposing counsel must not be able to read, and asked rhetorically, "Does she think that I have not read [the depositions?]" Mr. Doe himself described his method of argument as "arm-waving."

To her credit, Ms. Smith exercised restraint and did not respond in kind. She simply stated for the record that she had never been called a liar in open court, had not made misrepresentations, and was offended by Mr. Doe's uncivil conduct.

A verbal reprimand of Mr. Doe at the close of the hearing was clearly justified. However, the Court determined to issue a written order instead, thereby foreclosing further uncivil conduct by Mr. Doe in subsequent hearings and before the jury.

In the courtroom, the lives, fortunes, and reputations of the litigants are at stake. Lawyers have a sworn duty to represent their clients with courage and zeal. However, the representation must be provided in a respectful and dignified manner. Indeed, civility and professionalism are "hallmarks of a learned profession dedicated to public service." Stand. Of Prof. And Civility, Preamble.

In Mr. Doe's 30-minute presentation, he repeatedly violated the Standards of Professionalism and Civility. He failed to treat opposing counsel in "a courteous and dignified manner." Stand. Of Prof. And Civility, 1. Without adequate factual basis, he attributed to her improper motives. Stand. Of Prof. And Civility, 2. He used hostile, demeaning, and humiliating rhetoric, and disparaged the integrity, intelligence, morals, and ethics of opposing counsel. *Id.* Such conduct undermines the "fundamental goal of resolving disputes rationally, peacefully, and efficiently." Stand. Of Prof. And Civility, Preamble.

Mr. Doe is a seasoned member of the bar who should need no reminder of these obligations. The rhetoric and tone of argument exhibited today will not be tolerated. The Standards of Professionalism and Civility shall govern the conduct of counsel in this case. The jury will be instructed as to counsels' duty to treat each other, the court, and witnesses with dignity and respect.

The Court orders that within 10 days of this order, Mr. Doe shall: (1) certify in writing to the Court that he has read the Standards of Professionalism and Civility, and has explained them in detail to the defendant who (based on Mr. Doe's conduct) may have uninformed expectations about how a lawyer should conduct himself in court; and (2) issue a written apology to opposing counsel.

The Court directs the clerk to send this order via facsimile to the parties, as well as by mail.

Signed this 15 day of March, 2006.

/s/ Judge Derek P. Pullan

## Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during their regularly scheduled August 25, 2006 Commission meeting held at the University of Utah, S. J. Quinney Law School.

1. Gus reported that at the recent National Conference of Bar Presidents (“NCBP”) meeting the primary issues discussed were: (1) diversity (fewer minorities are enrolling in law school and females and minorities are leaving law firms earlier in their careers); (2) judicial independence; and (3) an increase of stress in the profession. He further reported on the continuing issue related malpractice insurance disclosure.

Gus observed that Massachusetts and Virginia have recently imposed some form of malpractice insurance disclosure. Currently 11 jurisdictions require malpractice insurance disclosure to the Bar and five jurisdictions are considering adopting the same requirement. John Baldwin advised that the Bar is currently collecting voluntary insurance disclosure information on the Bar licensing form but the data are not yet available. Gus ended the discussion by saying that the Bar needs to be prepared in case the Supreme Court orders mandatory disclosure.

2. Gus observed that Senator Chris Buttars had a proposed bill relating to legislative reconsideration of judges. He asked that Commissioners express their views on this proposal to their legislators.
3. Gus announced that he has formed an *Ad Hoc Pro Bono* Review Committee with Herm Olsen as chair. Herm will be joined by Curtis Jensen as a designated committee member. Dean Chodosh volunteered and David Hall said that he would designate one of the three co-chairs of Tuesday Night Bar. Kathryn Shelton also offered to recruit a paralegal member.

Gus said the Pro Bono Review Committee will review data and hopefully ascertain how we can increase *pro bono* placements. It will also make recommendations for the Bar’s Pro Bono Coordinator. He opined that the Bar may not be providing sufficient legal assistance, particularly in the criminal law area. He further stated that the ABA suggests lawyers provide 50 hours of *pro bono* work per year.

4. John said the Bar’s Pro Bono Lawyer of the Year Award and

the Community Service Award will be presented during the upcoming Fall Forum. The Bar is in need of nominees from Commissioners (and other Bar members) and there will be a notice in the upcoming *Bar Journal* soliciting nominees. Margaret Plane suggested placing a list of past recipients on the website and John agreed to do so.

5. Gus noted that lawyer member terms from Second District Nominating Commission are due to expire and we have received seven applications from lawyers who have expressed their desire to serve on this Commission. We are charged with providing six names to the Governor’s Office and no more than four of the seven nominees can be from the same political party. The nominees were discussed and voted upon. The Commission selected Brent V. Manning, Troy S. Rawlings, Randolph G. Shaner, Jr., Brad C. Smith, Robert L. Stott, and Clark K. Taylor.
6. John reported on the Annual Convention held in Newport. He said that from the surveys received, 32% of the attendees felt it was an “excellent experience” and 50% felt it was a “good experience.” He said that the Bar is tentatively committed to Sun Valley in 2008. Nate opined that more judges attend when the convention is held in Sun Valley, which is an important factor. A vote was taken. Sun Valley as the site for the 2008 Annual Convention was approved with none opposed.
7. The following individuals were reappointed to the Legal Services Board: Lisa Hurtado-Armstrong, Jody K. Burnett, Catherine F. Labatte, A. Howard Lundgren, Thom R. Roberts, Lauren I. Scholnick, Erik Strindberg, Roland F. Uresk, Francis M. Wikstrom and Michael D. Zimmerman. The following individuals were appointed to the Board: John L. Black, Jr., Sarah Lynn Mathews, D. Michael Nielsen, Kenneth R. Wallentine and Tracey M. Watson.
8. Scott Sabey reported on the most recent Judicial Council meeting. He said the AOC is reviewing finances for possible priority funding of the following positions: (1) seven new law clerks for trial court judges; (2) a new Third District Juvenile Court Judge; and (3) a new Third District Court Commissioner.

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.

## ***Applicants Sought for the Third District Trial Court Nominating Commission***

The Bar is seeking applications from lawyers to serve on the Third District Trial Court Nominating Commission. The Commission nominates judges to fill vacancies on the district court and the juvenile court within the Third Judicial District. Two lawyers are appointed by the Governor from a list of six nominees provided by the Bar.

Commissioners must be citizens of the United States and residents of the Third District (Salt Lake, Summit, and Tooele Counties). Commissioners are appointed for one term of four years and may not serve successive terms. No more than four of the seven members of the nominating commission may be of the same political party.

**Please identify your political party or if you are politically independent.**

Submit resumes to John C. Baldwin, Executive Director, by email at [john.baldwin@utahbar.org](mailto:john.baldwin@utahbar.org), or by mail at 645 South 200 East, Salt Lake City, UT 84111

**Resumes must be received by Tuesday, January 16, 2007.**

## ***Applicants Sought for the Fourth District Trial Court Nominating Commission***

The Bar is seeking applications from lawyers to serve on the Fourth District Trial Court Nominating Commission. The Commission nominates judges to fill vacancies on the district court and the juvenile court within the Fourth Judicial District. Two lawyers are appointed by the Governor from a list of six nominees provided by the Bar.

Commissioners must be citizens of the United States and residents of the Fourth District (Wasatch, Utah, Juab and Millard Counties). Commissioners are appointed for one term of four years and may not serve successive terms. No more than four of the seven members of the nominating commission may be of the same political party.

**Please identify your political party or if you are politically independent.**

Submit resumes to John C. Baldwin, Executive Director, by email at [john.baldwin@utahbar.org](mailto:john.baldwin@utahbar.org), or by mail at 645 South 200 East, Salt Lake City, UT 84111

**Resumes must be received by Tuesday, January 16, 2007.**

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## Notice of Direct Election of Bar President

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

Letters indicating an interest in being nominated to run are due at the Bar offices, 645 South 200 East, Salt Lake City, Utah, 84111 by 5:00 P.M. on January 2, 2007. Potential candidates will be invited to meet with the Bar Commission in the morning of January 26, 2007 at the commission

meeting in Salt Lake. At that time the Commission will select the finalist candidates for the election.

Ballots will be mailed on or about April 1st with balloting to be completed and ballots received by the Bar office by 5:00 p.m. May 1. The President-Elect will be seated at the Bar's Annual Convention and will serve one year as president-elect prior to succeeding to president. The president and president-elect need not be sitting Bar commissioners.

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

## Announcing The New Aon Attorneys' Advantage Professional Liability Program

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

7A1AC005

## ***Answers to Professionalism Quiz on page 24, by Wayne Klein***

Each scenario corresponds to the same-numbered professionalism standard, and the answer is clear – or at least pretty clear – from the text of the standard. A copy of the Utah Standards of Professionalism and Civility can be found on page 10 of this issue.

I expect that most seasoned litigators have seen many of the tactics described in the article. While it is easy for most of us to identify the professionalism failures of opposing counsel, we should focus our attention on improving our own professional conduct. If you recognize that you have ever engaged in any of these improper tactics, resolve now that you never will repeat them – regardless of the conduct of opposing counsel.

The moral of a review of these hypothetical scenarios is this: *What you want to do and what you should do often will conflict. Professionals will choose to do the latter.*

## ***United States Bankruptcy Court for the District of Utah Standing Order Number 3***

This Standing Order Number 3 is issued by the United States Bankruptcy Court for the District of Utah pursuant to Local Rule 1001-2. It is effective for all cases or adversary proceedings filed on or after October 16, 2006, and for any claims transferred on or after October 16, 2006.

Dated this 10th day of October, 2006.

Glen E. Clark  
Chief Judge, United States Bankruptcy Court for the District of Utah

Judith A. Boulden  
United States Bankruptcy Judge

William T. Thurman  
United States Bankruptcy Judge

Approved

Dee Benson  
Chief Judge, United States District Court for the District of Utah

Whereas, on April 20, 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the BAPCPA) was enacted into law; and

Whereas, the Interim Rules, including Interim Rule 1007, promulgated by the Advisory Committee on Bankruptcy Rules designed to implement the substantive and procedural changes mandated by the BAPCPA were adopted by this Court on September 20, 2005 by Standing Order Number 2, and

Whereas, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has proposed an amendment to Interim Rule 1007, and

Whereas, the Judicial Conference of the United States has approved that the amendment to Interim Bankruptcy Rule 1007 be distributed immediately to the courts with a recommendation that it be adopted by standing order; and

Whereas, the Director's Procedural Form 104 Adversary Proceeding Cover Sheet, and 210 Transfer of Claim other than Security, have been amended and should be adopted; and

Whereas, the Local Form for Payment Advices Certification should be added to the Local Rules as Appendix F;

**NOW THEREFORE**, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the amendment to Interim Rule 1007 attached hereto is adopted effective for cases filed on or after October 16, 2006, the Director's Procedural Forms 104 and 210 attached hereto are adopted for adversary proceedings filed or claims transferred after October 16, 2006, and the Local Form for Payment Advices Certification is adopted as Appendix F to the Local Rules.

# *Seventeenth Annual* **Lawyers & Court Personnel Food & Winter Clothing Drive** *for the Less Fortunate*

**The holidays are a special time for giving and giving thanks.  
Please share your good fortune with those who are less fortunate.**

Cash donations should be made payable to the shelter of your choice, or to the Utah State Bar; even a \$5 donation can purchase a crate of oranges or apples.

## **Selected Shelters**

The Rescue Mission

Women & Children in Jeopardy Program

Jennie Dudley's Eagle Ranch Ministry

(She serves the homeless under the freeway on Sundays and Holidays and has for many years)

## **Drop Date**

December 15, 2006 • 7:30 a.m. to 6:00 p.m.

Utah Law and Justice Center – rear dock  
645 South 200 East • Salt Lake City, Utah 84111

Volunteers will meet you as you drive up.

**If you are unable to drop your donations prior to 6:00 p.m.,  
please leave them on the dock, near the building, as we will be  
checking again later in the evening and early Saturday morning.**

## **Volunteers Needed**

Volunteers are needed at each firm to coordinate the distribution of e-mails and flyers to the firm members as a reminder of the drop date and to coordinate the collection for the drop; names and telephone numbers of persons you may call if you are interested in helping are as follows:

Leonard W. Burningham, Branden T. Burningham,  
Bradley C. Burningham, Sheryl Ross, Marjorie Green  
or Brittany Kovatch .....(801) 363-7411  
Toby Brown .....(801) 297-7027

## **Sponsors**

Utah State Bar  
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Salt Lake County Bar Association  
Securities Section

# **Thank You!**

## **What is Needed?**

### **All Types of Food**

- oranges, apples & grapefruit
- baby food & formula
- canned juices, meats & vegetables
- crackers
- dry rice, beans & pasta
- peanut butter
- powdered milk
- tuna

Please note that all donated food must be commercially packaged and should be non-perishable.

### **New & Used Winter & Other Clothing**

- boots
- gloves
- coats
- sweaters
- trousers
- hats
- scarves
- suits
- shirts

### **New or Used Misc. for Children**

- bunkbeds & mattresses
- cribs, blankets & sheets
- children's videos
- books
- stuffed animals

### **Personal Care Kits**

- toothpaste
- toothbrush
- combs
- soap
- shampoo
- conditioner
- lotion
- tissue
- barrettes
- ponytail holders
- towels
- washcloths

## Pro Bono Honor Roll

Lauren Barros	Stephen Knowlton
Merlin Calver	Vinh Ly
Mary Pat Cashman	Holly Mahoney
Lori Cave	Ramona Mann
Elaine Cochran	Sally McMinimee
Shelly Coudreaut	Michael Mohrman
Sharon Donovan	Richard Mrazik
Lorie Fowlke	Bruce Nelson
Randall Gaither	Raymond Rounds
Ronald Goodman	Travis Terry
Kyle Hoskins	Carrie Turner
R Clayton Huntsman	Olivia Uitto
Brent Johns	Frank Warner
Bill Kadarusman	Tracey Watson
Louise Knauer	

Utah Legal Services and the Utah State Bar wish to thank these attorneys for their donation of time and skills during the months of August and September. Call Brenda Teig at (801) 924-3376 to volunteer.

## Spanish Translators Needed

The Unauthorized Practice of Law Committee (UPL) is in dire need of Spanish speakers to help translate UPL complaints into English and/or to speak with complainants over the telephone to gather additional information once a UPL complaint has been received. There would be no further involvement in the matter. Also, the UPL Committee is seeking Spanish speaking committee members. If you are interested, please contact Victoria Kidman at 257-7200 or Katherine Fox at 297-7047.

## 2007 Spring Convention Awards

The Board of Bar Commissioners is seeking applications for two Bar awards to be given at the 2007 Spring Convention. These awards honor publicly those whose professionalism, public service, and public dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession. Award applications must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Friday, January 12, 2007.

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

James C. Lewis, Scott W. Hansen,  
Peter H. Waldo & Dorothy C. Pleshe  
*are pleased to announce the formation of:*



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A general service law firm concentrating in transactional and securities law; business development and planning; non-profit qualification, reporting and management; elder law including guardianships and conservatorships; tax, estate planning, immigration, bankruptcy, criminal and family law.

Our new office will be open for a reception Thursday, November 30, 2006, from 5:00 to 7:00 p.m. Refreshments and hors d'oeuvres will be served.

3 R D A N N U A L

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Collin Mangrum, Professor,  
Creighton University Law School

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Register today at: [www.utahbar.org/cle](http://www.utahbar.org/cle)



UTAH STATE BAR  
2007 Spring Convention  
in St. George



March 8~10

DIXIE CENTER at St. George

Full online Brochure/Registration  
will be available January 15, 2007.  
ACCOMMODATIONS: [www.utahbar.org](http://www.utahbar.org)

Brochure/Registration materials available in the  
January/February 2007 edition of the Utah Bar Journal

UTAH STATE BAR  
2007 Annual Convention

July 18–21

Sun Valley, Idaho



ACCOMMODATIONS: [www.utahbar.org](http://www.utahbar.org)

## Discipline Corner

### ADMONITION

On September 12, 2006, 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), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

#### *In summary:*

The attorney failed to abide by the client's instruction concerning the timeframe of the case, and failed to diligently pursue the client's case. The attorney failed to communicate with the client, and failed to respond to the client's requests for information. The attorney did not communicate the basis of the fee to the client. The attorney charged an excessive fee in light of the minimal work performed. The attorney failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

### RECIPROCAL DISCIPLINE

On July 23, 2006 the Honorable Dennis Fuchs, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbaring Daniel R. Boone from the practice of law for violation of Rules 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), 8.4(c) (Misconduct), and Rule 8.4(a) (Misconduct) of the Rules of Professional Conduct.

#### *In summary:*

Mr. Boone was disbarred from the practice of law by the United States District Court. Mr. Boone's misconduct included repeatedly filing false statements and absent action taken by United States Trustee's Office prohibiting him from filing applications for installment payment of filing fees, there is no indication this practice would not have continued. Mr. Boone also engaged in the practice of law before the United States District Court while under a suspension order from another disciplinary authority. Boone's continued practice of law is detrimental to the public interest and the administration of justice.

The foregoing misconduct meets the standard for the presumptive sanction of disbarment in Utah, and the Court accordingly entered reciprocal discipline on that basis.

### DISBARMENT

On August 18, 2006, the Honorable Fred D. Howard, Fourth Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbaring Trevor L. Zabriskie from the practice of law for violation of Rules 8.4(b) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

#### *In summary:*

Mr. Zabriskie was convicted of endangerment of a child, a third degree felony in violation of Utah Code Annotated section 76-5-112.5, and sexual battery, a class A misdemeanor, in violation of Utah Code Annotated section 76-9-702(3). The charges were later reduced to a class A misdemeanor and a class B misdemeanor, pursuant to a 402(b) reduction. The Court in the disciplinary matter found that Mr. Zabriskie's criminal act reflects adversely on his fitness as a lawyer.

### PUBLIC REPRIMAND

On August 17, 2006, the Honorable Eric A. Ludlow, Fifth Judicial District Court, entered an Order of Discipline: Public Reprimand against Ricky D. Bonewell for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

#### *In summary:*

In one matter, Mr. Bonewell prepared a stipulated agreement for child support on behalf of his client. The client's ex-spouse was not represented by counsel. Both the client and ex-spouse signed the agreement, and the document was filed with the court. Thereafter, the ex-spouse provided additional income verification from the spouse's employer to Mr. Bonewell indicating that the spouse's wages were less than the amount stated in the signed agreement. Based on the income verification and the statutory guidelines, the ex-spouse's child support payment would be reduced. Mr. Bonewell felt obligated to amend the Decree of Divorce. Mr. Bonewell drafted and filed an amended Decree of Divorce without informing or consulting with his client concerning the changes nor did the client approve the amended Decree of Divorce. The client requested that Mr. Bonewell file the necessary paperwork to increase the child support which was due to the client. Mr. Bonewell did not respond to the client's request for three months. Thereafter, Mr. Bonewell indicated to the client that he would need an additional retainer to amend the Decree of Divorce.

In the second matter, Mr. Bonewell was retained to pursue a medical malpractice claim against a chiropractor. During the representation, Mr. Bonewell failed to timely return the client's phone calls. Mr. Bonewell contacted a medical expert who stated that the chiropractor had not breached the standard of care. Sometime after, Mr. Bonewell relayed this information on to his client, indicating that he would not take her case and giving the client referrals to other attorneys. This was approximately a year after the client retained Mr. Bonewell. After the representation terminated, Mr. Bonewell failed to inform the client of the two-year statute of limitation on the claim, or that it would run in seven months.

**ADMONITION**

On August 17, 2006, 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), 1.2(a) (Scope of Representation), 1.4(a) (Communication), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney represented the client in a litigation matter. The attorney filed a motion to recuse the judge, but proceeded with a hearing in the absence of the opposing party and verbally withdrew the motion. The attorney negligently submitted an incorrect order and failed to take action to rectify the error. The attorney also attempted to settle the case without consulting with the client.

**ADMONITION**

On August 15, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rule 1.4(a) (Communication), 1.4(b) (Communication), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney was hired to represent a client in an immigration matter. The attorney failed to inform the client of the Court's decision concerning the client's case. The attorney failed to communicate with the client to allow the client to make informed decisions. There was no written agreement between the client

and attorney for the attorney to speak with the client's spouse concerning the matter in place of the client. The attorney failed to have a written fee agreement to evidence that the attorney communicated the basis and rate of the fee for fees charged over \$750.00.

**PUBLIC REPRIMAND, PROBATION**

On April 27, 2006, the Honorable Ernie W. Jones, Second Judicial District Court, entered an Order of Discipline: Public Reprimand and Probation against Thomas A. Blakely for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Blakely was hired to represent a client in a bankruptcy, and to draft a will. The client paid for the representation. Mr. Blakely failed to keep the funds separate from his own. Mr. Blakely filed the bankruptcy petition five months after representation commenced. Mr. Blakely failed to appear for the creditor's meeting, and the matter was dismissed. The dismissal order was vacated, but Mr. Blakely failed to appear for the second creditor's meeting. Based on the failure to appear the action was dismissed again. The will was never drafted. Mr. Blakely failed to keep the client reasonably informed about the bankruptcy matter. Mr. Blakely moved, and failed to inform the client. No meaningful work was performed on behalf of the client to justify the amount Mr. Blakely collected from the client. Mr. Blakely abandoned the representation and failed to return the file and unearned fee.

Strong & Hanni is pleased to announce

**H. Burt Ringwood**

has joined the firm as a shareholder

and

Michael L. Ford  
Heather E. Waite-Grover

Lori A. Jackson  
Jeffery J. Owens

Bryant J. McConkie  
Andrew B. McDaniel

have joined the firm as associates.

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# Civility for Paralegals

by Greg Wayment

The purposes of this article are to examine some of the civility issues affecting the legal community, re-affirm the Paralegal Division's support of the Utah Standards of Professionalism and Civility ("The Standards"), and provide some helpful tips on what paralegals can do to be a positive force for improvement.

The lack of civility in the legal profession is not just the current hot topic. Rather, incivility has long plagued the profession. For example, the following excerpts are from actual correspondence between attorneys:

As usual, I disagree with virtually every aspect of your letter. Your efforts to 'spin' the results of that hearing in your favor are pure fantasy. That may work with your client, but you're wasting your time with me.

Your letter games are nothing more than a waste of time and an effort to create a false trail by one whom I consider to have no integrity at this point. You and your client are certainly a good match for one another.

In short, I disagree with every one of your lame excuses for not exchanging all of your initial disclosures when they were due.

Of course, these memorable quotes are printed here for anecdotal purposes, but statements similar to these ranging from cranky to downright malicious can probably be found in correspondence files in every firm. This is the very reason that this issue of *The Utah Bar Journal* has been dedicated to the seemingly worn-out and yet ever-present issue of civility in the profession of law.

In October of 2003, the Utah Supreme Court approved The Standards. Clearly, the above statements ignore many of the admonitions set forth in The Standards, especially the following:

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 communication with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary.<sup>1</sup>

In response to the adoption of The Standards, in the May 2004 *Utah Bar Journal*, then-chair of the Paralegal Division Sanda R.

Kirkham affirmed the Paralegal Division's position on The Standards in an article entitled "Paralegal Division: We Have Signed On." Ms. Kirkham wrote:

The Paralegal Division of the Utah State Bar agrees with these standards and hereby adopts and promotes them. We believe that these new standards are applicable to paralegals, in that we are held to the same standards of professional conduct as the attorneys in the State of Utah. We feel that we have a professional duty to uphold these standards. We support and encourage our supervising attorneys to do the same. We embrace this opportunity to show our professionalism to all attorneys, judges, and fellow paralegals throughout the state.

At this time, we make a firm commitment to [the Utah Supreme Court] and to the Utah State Bar to pursue, both individually and as a Division, to adhere to each of the twenty Utah Standards of Professionalism and Civility. We will strive to conduct ourselves with personal courtesy and professional integrity to reinforce our ethical obligation to maintain and foster these standards. We are committed to fulfill this duty to all attorneys, to all clients, and to the Court acting with utmost respect, courtesy and cooperation.<sup>2</sup>

In my career as a paralegal, I have yet to experience behavior from a paralegal on the other side of a lawsuit that stands out as being particularly rude or difficult. I think paralegals are less likely to be adversarial with each other because the very nature of our job is cooperative. We are given specific tasks that need to be done and we can work together to that end. I have not seen paralegals become embroiled in the competitiveness that comes with many lawsuits. Actually, it has been my experience that working with co-counsel's staff at times requires more delicacy than working with the staff of an adversarial law firm,

*GREG WAYMENT is a paralegal at the law firm of Magleby & Greenwood, P.C. in Salt Lake City. He is a member of the board of directors of the Paralegal Division of the Utah State Bar and is also currently serving as the paralegal representative to the Utah Bar Journal committee.*





as jealousies, concern over “territory”, and misunderstandings seem to occur more frequently in that context. I also believe paralegals are likely to have conflicts with personalities within their own firms and must work to keep that atmosphere supportive and civil.

Before moving back home to Salt Lake City, I was an intern at a large insurance defense firm in Denver. The pervasive attitude of the firm, both internally and in interactions with other firms and parties, was one of thinly-veiled hostility and disrespect. Attorneys and staff generally did not respect any of the opposing parties and many of their counsel. The lawyers did not respect the paralegals and support staff, and the paralegals and support staff did not respect the lawyers. Paralegals could often be found huddled in corners criticizing or gossiping about the attorneys. The effects of this hostile atmosphere were apparent and immediate. In the short period of time I was at the firm, I witnessed heated firings (including one nurse paralegal who threw her office furniture across the room), low productivity, and other serious ethical issues. The morale stunk.

The effects of incivility in the workplace are significant. According to Christine Porath, an assistant professor of management and organizational behavior at the University of Southern California’s Marshall School of Business who has researched the subject for nearly a decade, “Rudeness does more than rankle. There are high costs associated with workplace incivility.”

Among her findings, one in eight workers who feel disrespected will ultimately leave an unpleasant workplace; half of the employees who experience incivility will lose time fretting about future interactions, one-fourth will deliberately reduce their work efforts, and a few will retaliate by stealing or sabotaging equipment.<sup>3</sup>

So what can we do? Here are a few ideas:

- Learn The Standards. Insure that other paralegals and staff members at your firm are aware of The Standards.
- Reinforce The Standards. Just as the bar requires CLE credits in ethics, the bar could require CLE credits in civility, or it could include a required civility component within the ethics requirement.

- Work together. If you’re not a member of the Paralegal Division of the Utah State Bar, join. If you are a member, support the Division. The Division brings paralegals together to serve the community and promote the profession. The Paralegal Division can continue to have an influence by stressing the importance of civility in the profession. This year, at the Annual Paralegal Division Seminar, there were great seminars on this topic from Marco Kunz, with the Salt Lake City Attorney’s Office, and Billy Walker, with the Bar’s Office of Professional Conduct.
- Encourage others to join the effort. Encourage local paralegal programs to include courses stressing the importance of professionalism and civility. All paralegal courses in Utah should present The Standards to their students.
- Take the high road when writing letters and e-mail. E-mail in particular has the potential to create misunderstandings and conflict, because it is often treated informally, written in haste, and without proofreading by the author or review by any others in the office. Not only should e-mails transmitted to colleagues and adversaries display the same respect and formality as letters, but it is a reality that anything written in an e-mail may end up as an exhibit to a motion or other paper filed in court, potentially harming both the client’s case and the reputation of the author.
- Finally, disregard uncivil acts or attitudes, and do not take them personally. Retaliating with an uncivil attitude will simply create more incivility.

A final argument for civility is that you never know when you will be working with, for, or against another firm or attorney. Utah has a relatively small legal community filled with many great and interesting people. I am proud to be a part of this profession. As a paralegal, you will never be disadvantaged by being civil.

1. Utah Standards of Prof. & Civility 3

2. Sanda R. Kirkham, *We Have Signed On*, 17 UTAH BAR J. 4 (May 2004), [www.utahbar.org/barjournal/archives/000020.html](http://www.utahbar.org/barjournal/archives/000020.html).

3. Kathryn Harris, *Rude Awakening: Companies Discover The Hidden Costs Of Incivility*, [http://www.marshall.usc.edu/media/mag\\_f\\_05/rudeAwakening.pdf](http://www.marshall.usc.edu/media/mag_f_05/rudeAwakening.pdf).

## Announcement:

The Board of Directors of the Paralegal Division of The Utah State Bar extends an invitation to all paralegals and legal assistants in the State of Utah (members of the Paralegal Division or not) to write and submit articles regarding paralegal utilization, issues facing paralegals in the profession, acts of service or going above and beyond the call of duty for a client, or any other topics that are relevant to the paralegal profession. Please submit proposed articles to any member of the Board of Directors, or contact Greg Wayment to submit ideas for articles. Articles may be submitted to [wayment@mgpcclaw.com](mailto:wayment@mgpcclaw.com). For any other questions, call (801) 359-9000. Final publication is subject to the discretion of the Board of Directors of the Paralegal Division of the *Utah Bar Journal*’s board of editors.

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
11/09/06	<b>Utah State Bar Presents in its 75th Anniversary year... Clarence Darrow: Crimes, Causes and the Courtroom.</b> Masonic Temple, 650 E. South Temple, SLC. 5:00 – 6:30 pm Masonic Temple Tours; 6:30 – 9:45 pm Presentation. Tickets: \$45 each; 3-10 Tickets: \$40 each; 11 or more tickets \$25 each. Litigation Section, Family Law Section and Solo Small Firm members can purchase all tickets at \$25 each.	3 Ethics
11/09/06	<b>Satellite Broadcast: Annual Fall Employee Benefits Law and Practice Update.</b> 10:00 am – 2:00 pm. \$229, includes study materials and complimentary access to the archived online program. Full-time government lawyers, newly admitted lawyers (within the past two years), and retired senior lawyers (65 and over) are eligible for a reduced registration fee of \$119. To register please call (800) CLE-NEWS (800-253-6397) or go to <a href="http://www.ali-aba.org">www.ali-aba.org</a> .	3.5
11/10/06	<b>New Lawyer Mandatory.</b> 8:30 am – 12:30 pm. \$55. Satisfies NLCLE ethics requirement.	3 CLE/NLCLE
11/16/06	<b>NLCLE: Personal Injury.</b> 4:30 – 7:45 pm. \$55 YLD Members; \$75 Others.	3 CLE/NLCLE
12/14/06	<b>3rd Annual Benson &amp; Mangrum on Evidence.</b> 8:30 am – 4:30 pm. Without the book \$145; with the Book \$220. Speakers: Hon. Dee V. Benson, U.S. Federal District Court and Collin Mangrum, Professor, Creighton University Law School.	6 CLE/NLCLE incl. 1 hr. Ethics
12/15/06	<b>Annual Lawyers Helping Lawyers Ethics Seminar.</b> 9:00 am – 12:15 pm. \$90 pre-registration; \$105 at the door.	3 Ethics
12/19/06	<b>NLCLE: Wills &amp; Trusts/Probate.</b> 1:30 pm. – 4:45 pm. Pre-registration: \$55 YLD; \$75 others. Extra \$10 at the door.	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](mailto:cle@utahbar.org), OR on-line at [www.utahbar.org/cle](http://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) \_\_\_\_\_

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Phone No.: \_\_\_\_\_ Total \$ \_\_\_\_\_

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# Classified Ads

## RATES & DEADLINES

**Bar Member Rates:** 1-50 words – \$35.00 / 51-100 words – \$45.00. Confidential box is \$10 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: April 1 deadline for May/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

**ASSISTANT COUNSEL UTAH STATE BAR** – Full-time attorney position available in Utah State Bar, Office of Professional Conduct. Five years of litigation experience required. Ideal candidate must have strong writing and research skills. A background in the area of attorney ethics is a plus. Salary commensurate with experience. Excellent benefits. Submit or fax resume and cover letter of introduction by Friday, November 24, 2006 at 5:00 p.m. to: Billy L. Walker, Senior Counsel, Office of Professional Conduct, 645 South 200 East, Salt Lake City, Utah 84111. Fax: (801) 531-9912.

**LITIGATION ATTORNEY** – Busy, small and congenial Salt Lake City law firm with cutting-edge national e-commerce business clients seeks a talented, highly competent, organized, and polished attorney to handle wide variety of general litigation and other legal matters. Prefer 5-7 years experience in a law firm or law department. See full position description in classified ads section of Utah Bar web site, then email application materials. All inquiries and applications held in strict confidence. Send resume to Christine Critchley, Confidential box #4, c/o Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111, or e-mail to [ccritchley@utahbar.org](mailto:ccritchley@utahbar.org).

**Rapidly growing law firm**, with offices in St. George, Utah and Mesquite, Nevada, is seeking an experienced Transaction Attorney (4+ years) and a Civil Litigation Attorney (2+ years) licensed in Utah and/or Nevada for our St. George and Mesquite Offices. Strong academic credentials and excellent research, writing and advocacy skills required. Business Transactions, Real Estate Law, Construction Law, State & Municipal Law, Probate and Estate Planning, Civil Litigation. Competitive salary and benefits. Send resume to Barney McKenna & Olmstead, P.C., Attn: R. Daren Barney, 63 South 300 East, Suite 202, St. George, Utah, 84770. Email: [dbarney@barney-mckenna.com](mailto:dbarney@barney-mckenna.com); 435-628-1711.

**Rinehart & Fetzer, PC seeks an associate attorney** to work in real estate and general business transactions. Candidate qualifications: 1 to 2 years out of law school with prior transactions/real estate experience; academic credentials and good references. Compensation based on experience. Send resume with cover letter to Shellee Timmreck, 1200 Chase Tower, 50 West Broadway, Salt Lake City, Utah 84101, fax (801) 328-0269, telephone (801) 328-0266.

## APPLICANT FOR CRIMINAL CONFLICT OF INTEREST

**CONTRACT** – The Salt Lake Legal Defender Association is currently accepting applications for several trial and appellate conflict of interest contracts to be awarded for the fiscal year 2007. To qualify for the trial conflict of interest contract, each application must consist of two or more attorneys. Significant experience in criminal law required. Please contact F. JOHN HILL, Director, of Salt Lake Legal Defender Association, 532-5444.

**Manufacturing company in Clearfield, Utah, seeks in-house counsel.** JD from accredited law school. Min. 2-3 years experience in negotiating, drafting, and reviewing contracts; business organization; and intellectual property issues. Hands-on position that requires daily interaction with senior management and providing legal advice, documentation preparation, and related tasks. Will also coordinate legal work with outside counsel. Product liability and/or human resources mgmt. background helpful. Competitive salary and benefits. Start on or before 1/1/07. Closing date: 11/15/07. Submit cover letter and resume to [hecl@pwlaw.com](mailto:hecl@pwlaw.com).

**Utton Transboundary Resources Center at University of New Mexico School of Law** invites applications for the Director position. See position description at: <http://www.unm.edu/~oeounm/facpost.html>. Submit signed letter of interest, curriculum vita, and five references by December 18, 2006 to: Carol Parker, UNM Law School, MSC11 6080, 1 University of New Mexico, Albuquerque, NM 87131. The University of New Mexico is an Equal Opportunity/Affirmative Action Employer and Educator.

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**Prime Office-Sharing Space in Sandy.** Solo practitioner with 10 years experience in real estate, construction and employment litigation has prime office space with conference and reception area in Sandy available to share with another attorney. Rent: \$500/month. Potential for cross referral of cases. Dan at (801) 262-7477.

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## SERVICES

**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.

**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 29 years experience.

**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, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

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**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](mailto:nayerhonarvar@hotmail.com)

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Date of Activity	Program Sponsor	Program Title	Activity Type	Regular Hours	Ethics Hours	NLCLE Hours	Total Hours
Total Hours							

I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the State of Utah including Rule 14-414.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

## EXPLANATION OF TYPE OF ACTIVITY

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

No more than twelve hours of credit may be obtained through study with audio/video, computer interactive telephonic programs and on-line CLE programs. Rule 14-409 (c)

### B. Writing and Publishing an Article - Self-Study

Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. No more than twelve hours of credit may be obtained through writing and publishing an article or articles. Rule 14-409 (c)

### C. Lecturing and Teaching - Self-Study

Lawyers who lecture in an accredited CLE program and part-time teaching by a lawyer in an approved law school shall receive credit for three hours for each hour spent lecturing. No lecturing or teaching credit is available for participation in a panel discussion. No more than twelve hours of credit may be obtained through lecturing or part-time teaching. Rule 14-409 (a) (c)

### D. Live CLE Program

There is no restriction on the percentage of the credit hour requirement, which may be obtained through attendance at an accredited legal education program. However, a minimum of Twelve hours must be obtained through attendance at live continuing legal education programs.

**The total of all hours allowable under sub-sections (a), (b) and (c) of this Rule 14-409 may not exceed twelve hours during a reporting period**

**THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION, SEE RULE 14-409 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.**

**Rule 14-414 (a)** – Each lawyer subject to MCLE requirements shall file with the Board, by January 31 following the year for which the report is due, a certificate of compliance evidencing the lawyer's completion of accredited CLE courses or activities which the lawyer has completed during the applicable reporting period.

**Rule 14-414 (b)** – Each lawyer shall pay a filing fee in the amount of \$5.00 at the time of filing the certificate of compliance. Any lawyer who fails to complete the MCLE requirement by the December 31 deadline shall be assessed a \$50.00 late fee. Lawyers who fail to comply with the requirements and file within a reasonable time, as determined by the Board in its discretion, after the late fee has been assessed may be subject to suspension and a \$100.00 reinstatement fee in accordance with Rule 14-415.

**Rule 14-414 (c)** – Each lawyer shall maintain proof to substantiate the information provided on the certificate of compliance filed with the Board. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders, or materials related to credit. The lawyer shall retain this proof for a period of four years from the end of the period for which the Certificate of Compliance is filed. Proof shall be submitted to the Board upon written request.

Make check payable to the Utah State Board of Continuing Legal Education or complete credit card information below. There will be a \$20 charge for returned checks.

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