Volume 20 No. 6
Nov/Dec 2007

Utah Bar JOURNAL

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Table of Contents

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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: *Sunrise over Jordanelle Reservoir* by first-time contributor Craig Hall, Chapman & Cutler, Salt Lake City.

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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 that advocates or opposes a particular candidacy for a political or judicial office or that 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 Paralegal 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 e-mail to 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:

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Submission of Articles for the Utah Bar Journal

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

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

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

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

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

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

6. Citation Format: All citations should 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.

Professionally Insured…To Be or Not to Be

by V. Lowry Snow

You will recall that the re-licensing process this year included questions regarding Bar member professional malpractice insurance coverage. We appreciate your participation. The purpose for gathering the information was to determine the extent to which professional malpractice coverage is being utilized by our members and to provide a basis for improving the Bar's effort to facilitate the availability and promote the affordability of coverage. The survey information has been gathered, analyzed, and summarized. The results contain a mix of good news along with some news that could be better. On the positive side, we found that approximately 74% of active lawyers involved in representing private clients (i.e., not government or in-house counsel), carry malpractice coverage. I believe the overall percentage of coverage is better than many had predicted. Firms of 11 lawyers or more enjoy the highest percentage of coverage at nearly 99%. Conversely, the group comprising solo practitioners had the lowest percentage, with only 38% having coverage. Approximately 82% of firms with 2–10 lawyers reported being insured. It is interesting to note the regional differentiation across the State, with the highest percentages of coverage being in the Third Judicial District at almost 80% and the more rural Sixth and Eighth Districts at 38% and 43% respectively. The most widely reported reason for not having insurance coverage was that it was "too expensive," at 51%. The full results of the survey are posted on the Bar's web page at www.utahbar.org.

Notwithstanding the familiar quote attributed to Mark Twain regarding statistics and lies, I believe the data obtained through the survey provide some valuable information about where the Bar can focus assistance for lawyers on issues by providing better insurance information and support, particularly for those in solo practice or smaller firms. While I cannot make the following statement based on any hard data I've seen, it would seem to me that the group of lawyers most at risk for a claim are those who practice alone or without the support resources of a larger firm. I would hope that the providers of malpractice insurance doing business in the State will take note of these statistics and consider additional ways to disseminate information to our members, including the establishment of payment plans that would make premiums more attainable for solo lawyers and small firms. To the solo practitioners and the small firms, I would encourage them to actively pursue obtaining competitive premium quotes from several different companies offering coverage and make specific inquires about premium payment options. I think they may find that coverage is more affordable than previously believed. The Bar is in the process of reviewing other means for making information more accessible regarding coverage and carriers so that all lawyers are afforded at least the opportunity to obtain coverage at competitive rates.

The issue of whether or not to carry malpractice insurance is one that must be assessed and determined by each individual lawyer or firm. Many of us know that, in most cases, insurance represents an investment without a return – unless, of course, the event insured against comes to pass. We pay hundreds of dollars each year for insurance protection against catastrophic events that never occur – but we recognize the inherent value of insurance when we analyze how the actual occurrences of such an event could disrupt our personal lives as well as our businesses without the economic relief afforded by coverage. For lawyers with very busy practices, the time required to defend a malpractice claim can severely hamper their practice in ways not imagined, even when represented by very able counsel paid for by the insurance carrier. This is true even when the claims have no merit. Add to this the financial burden of paying your own way for legal defense costs and any ultimate settlement or award and the total experience could be financially devastating without coverage. To those currently uninsured and weighing the decision of whether or not to obtain coverage, consider this question: If you were the lawyer advising a client who intended to actively practice in a profession that is highly susceptible to negligence claims, what advice would you give them concerning the advisability of obtaining professional liability insurance? Perhaps it is a good time to evaluate your own situation and take some good advice from the same source from which you impart good counsel to others.

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The Diversion Process in Disciplinary Cases: Utah Rule 14-533

by Lori Nelson

On November 1, 2007, Utah Rule 14-533 becomes effective, formalizing Utah's process for diversion. Although diversion from discipline has always been an option in particular disciplinary cases, the rule makes the process formal and details the specifics and qualification for diversion.

In 2005, the Utah Supreme Court asked the Utah State Bar Commission to investigate diversion and determine if a diversion rule was a direction the bar wanted to go in its discipline process. The Bar Commission appointed a sub-committee made up of Lowry Snow, current bar president, and commissioners Stephen Owens, Felshaw King, and Lori Nelson. The sub-committee, in consultation with Billy Walker of the Office of Professional Conduct (OPC), began researching diversion rules across the country as well as the effectiveness of diversion in other jurisdictions. The sub-committee also researched diversion in other disciplines and professions to analyze how diversion would impact legal professionals.

The intent behind diversion is to address misconduct that might not result in formal discipline but still has a negative impact on the lawyer, the legal profession, the administration of justice, and the public. Such misconduct could involve substance abuse issues, law practice management issues, or other types of misconduct.

In reviewing other professions, the sub-committee became aware of the Utah Recovery Assistance Program (URAP), administered through the Utah Division of Occupational and Professional Licensing (DOPL). This program assists other professionals when discipline becomes a necessary tool in dealing with issues impacting the delivery of that professional's services. The URAP is designed to help the professional in a structured, supportive, and monitored environment to work through his or her rehabilitation. It allows the professional to continue working, assists the professional in resolving problems in a way that simultaneously benefits and protects the public and creates an environment for healing and rehabilitation. DOPL reinforces the concepts that URAP is not a treatment program, a place to hide illegal activity, or a program for repeat offenders or those in denial.

These same principles appear to be consistent, not only across professions, but across the nation in looking at other lawyer discipline rules. It was these guiding principles, with the overarching concept of rehabilitation, that the Bar Commission sub-committee followed in crafting the new diversion rule.

Several other jurisdictions have internalized the concept of rehabilitation in their own diversion rules. The Oklahoma Bar Association (OBA), in an article by Gina Hendryx, OBA Ethics Counsel, stated that "[p]revention, not punishment, was the guidepost espoused by the Discipline Task Force in its recommendation of a diversion program to assist attorneys who receive complaints that stem from disorganization, procrastination and poor office management with education and remedial programs." Gina Hendryx, *Ethics Counsel Articles,* (2004).

Oklahoma's diversion rule grants OBA general counsel the sole discretion to "divert" attorneys from the disciplinary system. It provides diversion into existing bar programs such as ethics school, trust account school, and law office management school. The rule provides for on-site office visits to review office management procedures and ongoing monitoring by the Office of Ethics Counsel. Failure to comply with the terms of the diversion agreement could result in the participant becoming subject to the standard discipline process in Oklahoma. All costs associated with diversion are assessed to the participating attorney. Once an attorney completes diversion, the case is closed and all information regarding the complaint and completion of the diversion contract remains strictly confidential.

In the early 1990s, Washington State, following similar guiding principles, created its diversion program. As stated in an article by Chief Disciplinary Counsel Joy McLean and Diversion Admin-

LORI W. NELSON is a shareholder at the firm of Jones Waldo Holbrook & McDonough where her practice focuses primarily in the area of domestic and family law. She is also currently serving as a Utah State Bar Commissioner for the Third Division.

istrator Jennifer Favell, Ph.D., the Washington Bar Association was tasked with creating a two-pronged approach to dealing with attorney misconduct. The first prong was creating a timely and dependable system for sanctioning lawyers who engaged in serious misconduct. The second prong was creating an effective program for lawyer rehabilitation. As in Oklahoma, the diversion program was intended to divert lawyers accused of less serious misconduct into existing bar programs such as Law Office Management, Fee Arbitration, Lawyers' Assistance Programs, and other programs. Unlike Oklahoma, Washington's program gives lawyers eligible for diversion discretion to determine for themselves whether or not to proceed with the diversion program.

In Washington, once a lawyer opts into diversion, Dr. Favell then analyzes which of the constellation of services would best address the lawyer's particular issues, and the lawyer then signs a diversion contract consistent with Dr. Favell's recommendations. As in Oklahoma, once diversion is successfully completed, the case is closed and all information regarding the attorney is kept strictly confidential.

In developing Utah's diversion rule, the sub-committee determined that the existing programs across the nation, and Utah's own URAP, all had good provisions which could be included in the ultimate rule drafted for submission to the Utah Supreme Court. Specifically, the sub-committee wanted the rule to provide the accused lawyer with the ability to opt into or out of diversion. Also, the rule should provide for diversion into existing bar programs as well as an avenue for dealing with mental health issues, such as depression and substance or alcohol abuse. Lastly, the rule needed to ensure that the lawyer participated in the costs associated with diversion.

As such, Utah's diversion rule provides that a responding attorney may be diverted into one or more of the following programs:

- Fee Arbitration;
- Mediation;
- Law Office Management Assistance;
- Psychological and Behavioral Counseling;
- Monitoring;
- Restitution;
- Continuing Legal Education programs, including Ethics School; and
- Any other program or corrective course of action agreed to by the responding attorney necessary to address Respondent's conduct.

Utah's diversion rule sets forth those instances in which diversion is appropriate. Diversion is not appropriate when the attorney is accused of misappropriating client funds; the attorney's behavior will, or is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the attorney has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the attorney has previously been sanctioned; the misconduct involved dishonesty, deceit, fraud, or misrepresentation; the misconduct constitutes a substantial threat of irreparable harm to the public; the misconduct is a felony, or a misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer; or, the attorney has engaged in a pattern of similar misconduct.

To be eligible for diversion, the presumptive sanction must not be more severe than a public reprimand or private admonition. Further, all involved must make an assessment of whether or not participation in diversion is likely to improve the attorney's future behavior, whether aggravating or mitigating factors exist, and whether diversion already has been attempted.

Utah's diversion rule creates a new committee of the Utah Supreme Court, the Diversion Committee, which will be tasked with the following: (1) reviewing diversion referrals; (2) participating in ensuring diversion contracts are consistent with the issues presented by the attorney and Utah's Rules of Lawyer Discipline and Disability; and, (3) assigning monitoring to the OPC, Lawyers Helping Lawyers, or a mental health professional. Committee participants will have a varied background, including mental health expertise, law practice management expertise, and prior disciplinary screening panel experience, to ensure that it is made up of those individuals best suited to assist lawyers opting to participate in diversion.

The rule provides that, upon receipt of a complaint, the OPC will notify the attorney of the complaint and the option for diversion,

if applicable. The attorney then has the option to agree to diversion, and, if so, the attorney has the obligation to provide a first draft of a diversion contract. The terms of the diversion contract must be approved by the diversion committee and must be consistent with the issues presented by the complaint against the attorney. For instance, if the complainant alleges that the attorney has a substance abuse problem, the contract must provide a specific remedy for dealing with the issue, including treatment options and monitoring, as well as the necessary protections for the attorney's existing client.

Because the burden is on the responding attorney, the rule provides that the attorney may seek the assistance of counsel in drafting and negotiating the terms of the diversion contract with the diversion committee. The contract must be signed by the responding attorney, his or her counsel, if any, and OPC, if OPC concurs with the contract terms. In addition, the contract must set forth the terms and conditions of diversion, including the identification of service providers, mentors, monitors, or supervisors, and each participant's individual responsibilities. If a mental health professional is utilized, the attorney must sign a limited waiver of confidentiality to permit the professional to fulfill the disclosure requirements under the rule. Importantly, the contract must provide that the attorney will pay all costs incurred in diversion.

Upon entrance to the diversion contract, the complaint against the attorney is stayed pending completion of diversion. If diversion is successful, the complaint is dismissed, and all information regarding the attorney is kept confidential. Further, successful completion of diversion is a bar to disciplinary prosecution based on the same allegations. However, a material breach of the diversion contract is cause for terminating the agreement and subjecting the lawyer to appropriate discipline as if diversion had never been an option.

Confidentiality is one of the major principles underlying diversion. The sub-committee discussed at length whether or not diversion contracts should contain specific language requiring the attorney to admit the wrongdoing. At the conclusion of the discussions, the committee determined that a specific acknowledgement, in the contract itself, was not necessary. However, that does not eliminate the need for acknowledgement as a condition of treatment. For instance, many mental health and substance abuse conditions require an admission of the problem as a necessary provision of treatment. In those instances, the attorney must provide all specific requirements of treatment, and, if admission of a problem is a requirement, that provision must be contained in the diversion contract. Because of the possible requirement of an admission, the committee determined that confidentiality was essential to ensure that attorneys were frank and forthcoming in drafting the terms of their diversion contracts, thereby bolstering the possibility that the difficulties attorneys face resulting in possible discipline are dealt with openly and honestly.

The Bar Commission is pleased to announce that the Utah Supreme Court has approved the diversion rule and that it will soon be a formal process available to attorneys subject to discipline for less serious misconduct. The purpose and intent of the rule is to get attorneys the help they need very early in the process prior to their conduct escalating to the commission of serious misconduct. Hopefully the existence of the rule will promote rehabilitation of attorneys and provide them with the assistance they need to avoid formal prosecution for misconduct, whether that assistance is in the form of law office management assistance, drug and alcohol counseling, or something else.

With this rule in place, lawyers will be given the opportunity to resolve their problems before they become too big to handle. The underlying goal of the Bar Commission is to provide a service to its members to get the help they need before problems become insurmountable. Each member of the Bar Commission and the staff at OPC are all committed to working with the members of the Utah State Bar to ensure that avenues are available to address issues in a timely, efficient and productive manner, and to work toward a healthier and happier bar.

Questions on the rule can be referred to any member of the sub-committee of the Bar Commission, set forth above, or Billy Walker at the OPC.

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The First Decade: The Consumer Assistance Program Has Proven Itself to be a Valuable Program

by Jeannine P. Timothy

Ten years ago, the Utah State Bar initiated the Consumer Assistance Program (CAP) designed to offer assistance to consumers who have minor complaints about their attorneys. The program was spearheaded by former bar president Charlotte Miller and former Utah Supreme Court Justice Michael Zimmerman, both of whom had been introduced to the concept of an informal assistance program by the Mississippi State Bar and decided Utah needed just such an office. Not only would the program assist consumers, but it would also help attorneys resolve minor complaints with their clients. By the end of September 1997, the Utah State Bar CAP was in full swing, and newspaper articles notified the public of the new part-time office. Calls immediately started coming in, and they haven't slacked off since. Based on the number of clients and attorneys whom CAP has assisted over the years, one can easily conclude that CAP is among the most important programs the Utah State Bar developed during the past decade.

Twofold Purpose

Although its title focuses on the "consumer," CAP's purpose is twofold, as the CAP attorney also strives to offer assistance to attorneys. The CAP mission statement underscores this dual objective:

> The [CAP] is unique among the Utah State Bar programs in that it provides fairly quick and non-invasive assistance to both consumers and attorneys involved in minor conflict with each other. The CAP attorney, in a professional and courteous manner, provides the often necessary communication link between consumers and their counsel as consumers strive to understand the law, as it applies to their individual situation, and the procedural rules of the court, and as attorneys strive to educate their clients about the law and legal procedure.

CAP helps to save time and effort of attorneys responding to minor complaints, and it provides assistance to attorneys having difficulty with minor complaints. Ultimately, CAP helps to reduce the number of formal complaints filed against attorneys for those matters that do not rise to the level of an ethical violation or criminal action.

Informal Process

During the past ten years, the CAP attorney has opened more than 5,900 files and handled approximately 14,000 telephone calls. These numbers are amazing, and most of the consumers who have submitted "requests for assistance" to the CAP office have had fairly minor problems that have been completely resolved using CAP's informal process.

Due to the informal nature of CAP, the CAP attorney is able to spend time with consumers discussing their legal problems and concerns. This is very different from the process that the Office of Professional Conduct (OPC) follows. Pursuant to the Rules of Lawyer Discipline and Disability, OPC can address only those problems that rise to the level of a Rule of Professional Conduct violation as part of a written statement and often times a written complaint. There are many times, however, when consumers do not want to file written complaints against their attorneys. They simply want help addressing minor problems in a quick manner. Additionally, many consumers' problems have nothing to do with their attorneys and nothing to do with Rules of Professional Conduct violations. For example, consumers often blame their attorneys when an ex-spouse refuses to comply with the orders specified in a decree of divorce. Many consumers believe their attorneys should somehow force the opposing party to follow the court orders, and the consumers become exasperated upon learning that they must pay another retainer to have the attorney file an action against the opposing party. The CAP attorney is able to take the time necessary to explain to consumers that non-compliance with a court order is the fault of the ex-spouse, not the attorney. CAP strives to help the consumer gain perspective on his or her individual legal matter so the consumer can then make the best decision possible in dealing with the problems at hand. Through CAP, consumers gain an understanding of the legal process and what they can and cannot reasonably expect from their attorneys.

Nevertheless, if a consumer's concern about an attorney rises to the level of an ethical complaint (i.e., a possible violation of

JEANNINE P. TIMOTHY is the Utah State Bar Consumer Assistance Program attorney. Her private practice focuses on Wills and Trusts, Probate, and representing children as a Guardian ad Litem.

the Rules of Professional Conduct), or if the consumer desires to file a Bar complaint, then the matter is forwarded to OPC for review. Once OPC receives a written complaint from a consumer, then CAP is no longer involved in the matter between the consumer and the atttorney. With the consumer's consent, the CAP attorney may provide information to OPC about the interaction CAP has had with both the consumer and the attorney, but beyond that CAP has no further involvement with OPC or the attorney discipline process.

Along with educating consumers about OPC, the CAP attorney also informs consumers about other resources available to them through the Utah State Bar. On many occasions, CAP refers consumers to the Fee Dispute Resolution Committee, Legal Match, Tuesday Night Bar, Lawyers Helping Lawyers, Client Security Fund, or the Unauthorized Practice of Law.

What to do if Contacted

Attorneys are notified by letter or telephone if their clients submit a "request for assistance" and ask for help with a problem. Attorneys are urged to contact their clients and work toward resolution of the issues raised by the client. Most attorneys have responded to their clients and resolved their miscommunication or other problem. If for any reason, however, an attorney believes that he or she should not contact the client directly, then the attorney may contact the CAP attorney to discuss the pertinent issues. The CAP attorney will then prepare a letter memorializing the information gathered from both the consumer and the attorney. This affords the attorney the opportunity to express his or her point of view about the issues raised and get that information forwarded to the consumer.

Over the years there have been a few attorneys who have immediately withdrawn as counsel after they received communication from the CAP attorney about their clients' concerns. Some attorneys have become angry with their clients for contacting CAP and have scolded them or threatened to withdraw as counsel in the matter. Attorneys are advised to remember that CAP is informal, and that the CAP attorney is willing to discuss matters with the attorneys and convey information back to the consumers. Attorneys are encouraged to address the issues presented by the consumer and work to resolve them rather than withdraw from the case or reproach the client.

If the attorney and consumer successfully address and resolve the issue or problem, then CAP need not further be involved in the matter. Each consumer is advised that, unless the consumer requests additional help from CAP, the file will be closed after 30 days. When a CAP file is closed, the contents of the file are completely destroyed.

Public Response

The public response to CAP has been very positive. Consumers often express their appreciation at being able to discuss their concerns with someone who is objective about their particular legal matter, knowledgeable about legal procedure, and available to listen. Many times consumers have stated that they received the telephone number and information about CAP from their friends, family, or acquaintances. Consumers are passing around information about CAP to others they find who need help communicating with their attorneys.

Attorney Response

Most of the attorneys contacted over the past ten years have responded favorably to the idea that the CAP attorney is available to help resolve issues that have arisen with a client. Some attorneys have admitted to putting a client's case on the back burner because of other, more pressing matters. They recognize that attention to the case and communication with the client will prevent a bar complaint, and they are thankful for CAP's informal process. Almost all attorneys seem to appreciate the opportunity to explain the difficult issues that have arisen with the clients who have contacted CAP. Quite a few attorneys have called CAP before their clients have called to provide the CAP attorney with information about the situation so that the CAP attorney is prepared to address the particular concerns of the clients. Those attorneys who have responded to CAP with trepidation are usually those who know they have stepped outside the bounds of ethical or professional conduct.

Memorable Cases

The following are a few of the most memorable cases the CAP attorney has handled over the years.

The Dwindling Inheritance

Consumer Brent, age 43, had concerns about his father's divorce

attorney. Some years earlier, the attorney had represented Brent's father in his divorce from Brent's mother. Brent had sided with his mother throughout the divorce, and he continued to live with his mother and share a close relationship with her. Now the attorney was representing Brent's father in his divorce from his second wife, and Brent was distraught because the attorney was charging a great amount in fees and costs for what Brent considered a very simple divorce.

The CAP attorney explained to Brent that if there was a concern about attorney fees, then his father should contact either CAP or the Fee Dispute Resolution Committee. After all, it was Brent's father whom the attorney represented. Brent responded that it was not his father who cared about the amount of the attorney fees. On the contrary, it was Brent himself who took issue with the fees charged, because the more his father paid to the attorney, the less Brent would eventually receive as his rightful inheritance. The CAP attorney calmly pointed out to Brent that he had no standing to complain about this matter.

Rifle-toting Ginny

Consumer Ginny, about age 60, could not understand why the police were upset with her and why the prosecuting attorney was filing a legal action against her. She had been protecting her property and had not really fired at anyone. She had only fired in the air when the neighbor children encroached on her land. The CAP attorney advised Ginny to retain counsel and explained that CAP has no authority to admonish the prosecutor for filing a legal action against her.

Mistaken Identity?

Consumer Betty contacted CAP after a criminal defense attorney had mailed a letter to her husband, Bill. In the letter, the attorney offered to represent Bill in his upcoming criminal court action. Betty, however, was adamant that the attorney had the wrong person, and she argued that the attorney should be reprimanded for sending the letter and upsetting her. The CAP attorney explained that because the letter was addressed to Bill, then she must discuss with Bill what action he wanted taken concerning the attorney's letter.

Later, Bill called CAP when Betty was not around. He hesitatingly admitted that he had been charged with a DUI, but had not yet told Betty. The CAP attorney advised Bill to attend the hearing and consider being truthful with his wife.

The Next Decade

CAP is a busy program and, through its efforts to assist both consumers and attorneys, an invaluable program. All Utah attorneys are invited to contact CAP with questions or assistance with a difficult client situation, and encouraged to promptly respond when contacted about any consumer concerns.

Helping Our Clients Tell the Truth: Rule of Professional Conduct 2.1 in Criminal Cases

by Ted Weckel

Over the past 14 years, I have practiced in the area of criminal law. I have tried one federal murder case to verdict and have represented clients in scores of other serious cases. I have worked for a public defender's office in Virginia and have accepted many cases under the federal and D.C. Criminal Justice Act programs. One issue which has troubled me at times pertains to whether we as lawyers should be striving to obtain an acquittal at all costs for our client's benefit (and of course for our own recognition), before considering whether we should first advise our clients of the moral implications of going to trial, when we suspect that they are lying to us about the facts of their case. Let's put aside, for the moment, the fact that some police officers not infrequently ignore the constitutional rights of our clients, trick them into confessing, fabricate evidence and "testi-lie," and that some prosecutors charge our clients with crimes for which they are not guilty. That is why we take these kinds of cases – to protect the innocent and less valued members of society from oppression.

However, the fact remains that, on many occasions, we suspect that our clients are guilty of some crime – either after we have talked with them or after we have conducted a thorough investigation. If our clients tell us that they want to go to trial despite our conclusion that they are lying to us about their innocence, an interesting question presents itself. That question is whether Utah Rule of Professional Conduct 2.1 and American Bar Association Model Rule of Professional Conduct 2.1 (collectively, Rule 2.1) allow us to advise our clients of their moral obligations to be honest to the courts, themselves and any victims, and to consider whether they should plead guilty, if they are in fact guilty, and accept responsibility for what they have done. We would provide such advice not only because the evidence may be stacked against our clients and a plea offer would benefit them – but because doing so would develop our clients' character and weaken their ability to commit fraud upon the courts through their lawyers.

Some of you might say, No way! Lawyers are not in the business of monitoring our clients' moral IQs. Our jobs are to be zealous advocates and get our clients off – even when we suspect that they are guilty. The Sixth Amendment to the United States Constitution requires nothing less. For the following reasons, I respectfully disagree. The ABA's Model Rule 2.1 (adopted by the three state bar associations to which I belong) states in Comment 2 that "it is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice." Comment 2 also states, "Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied." And, although Comment 5 states, "In general, a lawyer is not expected to give advice until asked by the client," it goes on to say that "a lawyer may initiate advice to a client when doing so appears to be in the client's interest."

Rule 2.1 and its comments beg the question: is it not in our clients' best interests that we discuss their moral responsibilities with them when we suspect that they are not being honest with us and yet they want to go to trial? Certainly providing advice ancillary to culpability for a client addicted to drugs, such as getting into a rehab program, getting a job or an education, and/or moving out of a destructive environment, does not seem problematic. However, what if a lawyer suspects that an apparently lying drug dealer wants to get off by going to trial? Does Rule 2.1 allow the lawyer to suggest to the client that he should plead guilty, and consider an alternative line of work, by confronting the client with the facts of the case and how the drug-dealing business fries people's brains and/or grossly taxes the economy unnecessarily through theft loss, court costs, legal fees, police salaries, and prison expenses, etc.?

On other occasions, a client's story may repeatedly change as the lawyer's investigation of the client's statements and other facts reveal that the client probably has been lying to the lawyer. Does the lawyer do a disservice to the client and the court by not vigorously confronting the client with the inconsistent statements

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and requiring that the client be truthful? And wouldn't the client be better served as a human being (and society as well) if the lawyer took the time to talk to the client about taking responsibility for his or her mistakes, making amends to any victim, and leading a more productive and moral life? To both of these questions, I wholeheartedly say "yes."

If our clients have never learned the value of making beneficial moral choices for themselves and those whose lives they negatively influence, then I say it is about time that they did. We as members of the criminal law bar are in the prospectively enviable position of being able to advise persons charged with crimes of their moral options and responsibilities on a regular basis. Additionally, by the time serious criminal charges have been brought, our clients may be at a point in their lives when they are willing to listen to their lawyer's moral advice, now that they face prison, gross embarrassment, and/or substantial economic and social setbacks. Our clients may not have learned the value of making sound moral decisions from their families, at school, or from anyone else. Indeed, our clients may have even learned from their like-thinking peers in a morally bankrupt environment that to commit crimes is praiseworthy. It is specious to say that lawyers are being elitists for discussing their moral concerns about lying to the courts with their clients when the latter want to effectively commit a fraud upon the courts through their lawyers. It is also specious to say that lawyers should not advise their clients to avoid behaviors which have already been deemed improper by the people's representatives. Indeed, the Rules of Professional Conduct and criminal law already have outlined the appropriate path for both the client and his or her lawyer in such instances. Lying to the court is an ethical fraud, and getting one's lawyer to unwittingly produce false evidence equates to a variety of crimes; e.g., perjury, witness-tampering, obstruction of justice, etc.

In advocating the position to give moral advice to clients faced with criminal charges when we suspect that they are lying to us, I surely am not suggesting that we abdicate our responsibilities under the Sixth Amendment. Indeed, I firmly believe that an accused's right to effective assistance of counsel must not be compromised in any way by offering moral advice to them. Indeed, if our clients ignore our moral advice, we should not become less zealous. And, as a practical matter, we need to tread very cautiously when we broach this subject with our clients in the first place. We should also, undoubtedly, try to the best of our abilities, to get our clients off, even when we believe that our clients are guilty, or when they tell us that they are guilty but want to proceed to trial.

But such a position has its ethical limitations. At the least, Utah Rule of Professional Conduct 3.3 and ABA Model Rule of Professional Conduct 3.3 (collectively, Rule 3.3) require an attorney to advise his or her client not to commit perjury by testifying falsely about the facts of the case at trial (if that is the client's intent) and to take remedial measures if the client does so. Comment 9 of Rule 3.3 also allows the lawyer the discretion not to present untrustworthy evidence. Thus, under both of these positions, if a lawyer suspects that his client is lying about certain facts of the case, the lawyer may have good reason to suspect that the client is lying about other evidence that the client wants the lawyer to present and may decide not to present any such evidence. Indeed, under such a scenario, it would seem prudent for the lawyer to advise the client about the lawyer's ethical responsibility of candor toward the tribunal and to counsel the client against trying to present false evidence. It also seems prudent that the lawyer should talk to his client about the merits of pleading guilty – especially if he has decided not to present evidence on his client's behalf.

One concern for giving moral advice in this context might be that, in so doing, the lawyer might erode the trust between the attorney and his or her client. I acknowledge that this point is potentially valid. However, it has been my experience that when I offer moral advice to my clients, they generally realize that I care about them as human beings and am trying to help them. Giving moral advice actually has strengthened the bond between me and my clients, for the most part. Indeed, I have never experienced a protracted erosion of trust based upon my giving moral advice to a client.

Additionally, as Comments 10 and 11 to Rule 3.3 state, even though a client may feel a sense of betrayal (in the context of remedying a client's perjury or presentation of false evidence), the higher value at issue is to prevent the client from deceiving the court by using the lawyer as a stooge. Indeed, the comments require the lawyer to counsel with the client about the perjury or false evidence and persuade him or her to withdraw the evidence in confidence. It would seem that this hierarchy of values would also apply prior to a client's actual perjury or presentation of false evidence as well; i.e., when the lawyer suspects that the client is lying about the facts of the case. Nevertheless, the ethical rules provide no specific guidance on this point.

Still another argument that I have heard by some defense lawyers regarding effective preparation for trial is that, if the attorney knew that the client was actually guilty, the attorney would have a hard time persuading the trier of fact that the client is not guilty. Consequently, some attorneys do not want to know the truth about the clients' cases and either intentionally avoid carefully scrutinizing the clients' statements or ask the clients not to provide statements. But this approach seems to only give lip service to Rule 3.3. By giving frank moral advice to a lying client, the attorney would address head-on the issue of fraud upon the court. And in regard to the attorney's need to be persuasive at trial, the attorney's job is only to attack the prosecutor's burden of proof as an intellectual exercise under the Sixth Amendment, not to feel good about what he or she is doing. If an attorney cannot do so effectively because he or she suspects his client is guilty, then the lawyer should stop taking criminal cases or move to withdraw from the case.

It is interesting to note that both the National League of Cities and the D.C. Humanities Council have embraced giving moral advice to urban youth as a means to facilitate social change. Indeed, these organizations offer the Athenian Oath as something that youth should emulate. The Athenian Oath stated that the residents of Athens should "revere and obey the city's laws," and that they would "do [their] best to incite a like reverence and respect in those above them who are prone to annul [laws] or set them at nothing." Thus, providing moral guidance to members of society as a means of instilling beneficial social values is an honored and ancient tradition – not the notion of an extremist.

In conclusion, it seems not only that providing moral advice to an accused is allowed by Rule 2.1, but that doing so would serve two important policies. The first would be facilitating a more honest approach to trial preparation under the proscriptions of Rule 3.3. The second would be helping our clients appreciate the moral ramifications of going to trial when they are in fact guilty. The latter consideration would make lawyers agents for beneficial social change as comprehensive advisors of the law. Neither policy would impact our clients' rights to the effective assistance of counsel. Of course, we would also always have to balance giving moral advice with providing additional advice about the weakness of the prosecution's case; e.g., if there was a solid shot at winning a suppression motion. And, of course, giving moral advice would become irrelevant when we believe our clients are innocent of the charges. However, by providing moral advice in this limited context, we would be providing our clients with precisely the kind of information that Rule 2.1 allows. Our clients need to intelligently decide how to proceed with their lives in light of their decision to commit a crime. For these reasons, I advocate advising our clients of the moral option to plead guilty when we suspect that they are in fact guilty, and when we believe that they are lying to us about the facts of their case. For the reasons stated, doing so will be in the best interests of our clients, the courts, and society.

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SEC Receivers: What Are They and What Do They Do?

by Robert G. Wing and Katherine Norman

Federal Securities and Exchange Commission (SEC) receiverships are becoming a more common sight on the dockets of the Federal District Court for the District of Utah. In the past ten years the SEC has filed six actions in Utah that resulted in receiver appointment: *SEC v. Novus Technologies, et al.,* 2:07CV235-PGC; *SEC v. Wolfson, et al.,* 2:03CV914-DAK; *SEC v. 4NExchange, et al.,* 2:02CV431-DAK; *SEC v. Merrill Scott & Associates, Ltd., et al.,* 2:02CV39-TC; *SEC v. Miller,* 2:99CV383-DB; and *SEC v. Capital Acquisitions, et al.,* 2:97CV977-DB. This article focuses on federal equity receiverships brought at the request of the SEC. The Federal Trade Commission and the Commodity Futures Trading Commission have also brought equity receivership actions in Utah courts, either as a companion case to SEC actions or separately. *See FTC v. Peterson,* 3 Fed. Appx. 780 (10th Cir. 2001). Courts have not drawn distinctions between equity receiverships based on the agency seeking them. An understanding of the mechanics of equity receiverships is important when a client either has invested with a receivership company or has a claim against a company.

THE APPOINTMENT AND RESPONSIBILITIES OF AN SEC RECEIVER

An SEC receiver is appointed by a judge in an action that has been brought by the SEC against corporate entities, individuals, or both who have allegedly engaged in conduct prohibited by the various securities statutes. The receiver is an officer of the court, not an employee of the SEC, and ultimately answers to the judge who appoints him or her. Typically, the receiver is an attorney or accountant in private practice, who is compensated from the assets of the receivership. Court clerks, civil and military officers, and those employed by the U.S. Government or a judge are prohibited from service as a receiver. *See* 28 U.S.C. §§ 957; 958 (2000).

The SEC is a civil enforcement agency that will take action to prevent insider trading, fraud by broker dealers, prime bank schemes, and other forms of investment fraud. The U.S. Attorneys' Office will bring separate criminal actions in appropriate circumstances. Receivership actions often arise in the context of a Ponzi scheme. A Ponzi scheme is an investment scheme where the money of new investors is used to pay older investors, thus creating the illusion of a viable investment opportunity and inducing additional individuals to invest. Ponzi schemes are inherently unstable and inevitably collapse. The SEC may bring an action in federal court to enjoin sales and to freeze the assets of the Ponzi participants before the collapse happens.

Once the assets have been frozen, the SEC may also request that a receiver be appointed to prevent the dissipation of those assets. While Federal Rule of Civil Procedure 66 explicitly provides for the appointment of a federal equity receiver, the federal courts also have equity powers to order ancillary relief to effectuate the purposes of the federal securities laws, to preserve investor funds, and to ensure that wrongdoers do not profit from their unlawful conduct. The appointment of a receiver is considered an extreme remedy invoked only in cases of clear fraud.

Not every action by the SEC warrants the appointment of a receiver. For example, there may be insufficient assets to justify the appointment of a receiver; or the violations may not be sufficiently egregious to warrant interference with corporate democracy. A court has the discretion to appoint a special agent with authority to monitor the actions of a company suspected of securities fraud, but without authority to control its operations. A court may consider the following factors in determining whether appointment of a receiver is appropriate:

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1. Is the security adequate to satisfy the debt?
2. What is the financial position of the debtor?
3. Was there fraudulent conduct on defendant's part?
4. Are there adequate legal remedies?
5. Is there imminent danger of the property being lost, concealed, injured, diminished in value, or squandered?
6. Is it probable that the harm to the moving party by denial of appointment would outweigh the injury to the parties opposing appointment?
7. What is the probability of the moving party's success in the action and the possibility of irreparable injury to its interest in the property?
8. Will the interest sought to be protected in fact be well-served by receivership?

If appointed, the receiver is charged with marshaling the assets of the company and individuals in receivership for the benefit of the investors. If the scheme includes income-producing assets, then the receiver will operate them pending their sale. The receivership may own real or personal property, which the receiver will sell. Typically, a receiver will trace assets and seek to recover funds from investors who received more than they invested or from persons and entities who received money without giving commensurate compensation to the receivership entities.

It is tempting to equate an SEC receiver to a bankruptcy trustee. There are many similarities, but there are also substantial differences. Unlike a bankruptcy trustee, whose powers are governed by statute, the powers of a federal equity receiver are governed by the order of the court appointing him or her and are based on the equity powers of the court. The circumstances of receiverships are different, and the trial courts administering receiverships are granted wide discretion. If a receivership court determines that a bankruptcy analogy does not fit the circumstances of a particular receivership, it is free to disregard that analogy. The emphasis in a federal equity receivership is on the word equity. The court will typically favor pro rata distribution to investors, but it may choose a different allocation if warranted. Because of this wide discretion, it is difficult to draw conclusions about what is likely to happen in a particular receivership based on the outcome of other receiverships.

There are, however, a few statutes that govern a receiver's actions. United States Code section 959 indicates that leave of court is

not necessary to sue a receiver, but actions against a receiver are subject to the general equity powers of the court to reach the ends of justice. *See* 28 U.S.C. § 959 (2000). Section 959 also directs the receiver to manage and operate the property in his possession pursuant to the laws of the state where the property is located. *See id.* The sale of real property by a receiver is governed by section 2001. *See id.* § 2001 (2000). And section 754 governs what the receiver must do when there is property of the receivership in a state or district other than the one in which he is appointed. *See id.* § 754 (2000).

Generally, it is the receiver's job to marshal the assets of the Ponzi scheme and hold them for SEC distribution to the investors. To effectuate the receiver's duties, the court will typically grant the receiver very broad powers, including the authority to sue on behalf of the receivership and to place the receivership in bankruptcy. Essentially, the receiver takes control of all of the receivership company's assets and is granted discretion to gather, manage, and liquidate those assets.

DEALING WITH CLAIMS AGAINST A RECEIVER

There are a few things to keep in mind if you are approached by someone who is either a former investor in a Ponzi scheme or who is involved in litigation with a federal equity receiver.

Federal Jurisdiction and Nationwide Service of Process

Often receivership property will be located in several different states. By statute, process may issue and be executed in any federal court to recover receivership property. *See id.* § 1692 (2000). As a practical matter, receivers may bring suit in the receivership court relating to property found anywhere in the United States. This is often preferable because the judge who appoints the receiver will be most familiar with the Ponzi scheme and can best exercise its equity powers to reach a fair result. A receiver may also take advantage of nationwide service of process.

Stay of Litigation

In connection with appointing a receiver, the court has the power to stay and prohibit litigation against the receivership entity, which will be effective against nonparties, even in the absence of notice.

Summary Proceedings

A receivership court may use summary proceedings to determine whether an asset is part of a receivership estate or to evaluate an objection to the proposed plan of distribution. It need not hold a plenary hearing. A summary proceeding satisfies due process if it provides the claimant an opportunity to be heard and to offer evidence where facts are in dispute.

The Claims Process

Depending on the nature of the receivership records, the receiver may require that claims be submitted. A receiver will more likely request claims forms when the records of the company in receivership make it difficult to determine the amount of investments. There is no standard claim form; rather, the form is tailored to the circumstances of each case. Typically, a claim form would ask for the amount invested in the receivership company, the amount the investor has received in interest or repayment of principal, and any documentation supporting the transactions. The claim form may also ask for copies of the materials the company in receivership provided to the investor.

The Plan of Distribution

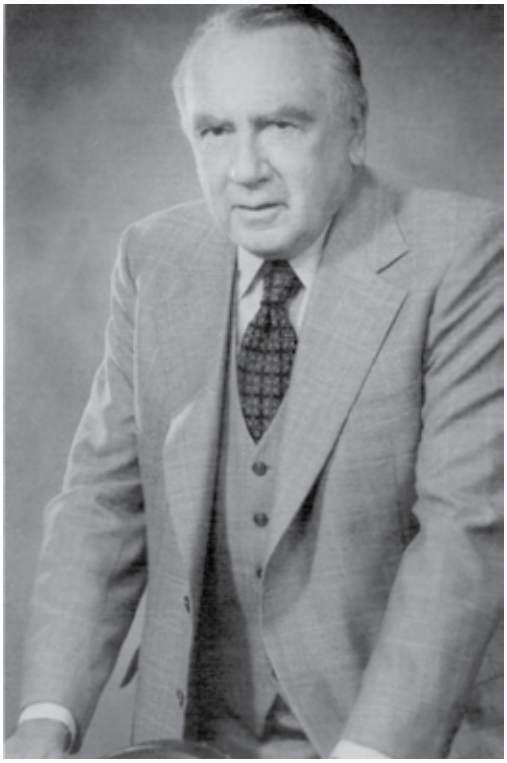
After the receiver has marshaled the company's assets, and determined the amount of the claims, a proposed plan of distribution will be filed with the receivership court. The order appointing the receiver will usually specify whether the receiver or the SEC will file the proposed plan. Generally, the proposed plan will identify the individuals who will receive money from the receivership and identify the amount they are to receive. Sometimes the plan will classify the recipients, seeking to exclude, for example, those who participated in the scheme or providing priority to one or more groups of recipients.

The proposed plan will provide a mechanism for objections. After resolving any objections, the receivership court issues a final plan of distribution. Because of the wide variety of circumstances in receivership cases, the receivership court has wide discretion in formulating a plan of distribution.

Understanding the general process of receivership proceedings is helpful in advising clients who may become part of the claims process. Unfortunately, receiverships rarely have sufficient assets to cover all of the former investor's claims, often because those assets have been wasted. The sooner the SEC can bring an enforcement action and freeze the assets of a Ponzi scheme, the less opportunity the perpetrators have to dissipate assets and to bring additional victims into the scheme. Americans lose billions of dollars each year in investment schemes. Of course, prevention is the best advice; if a client asks about an investment that seems too good to be true or is otherwise questionable, it is advisable to contact the SEC at (801) 524-5796. The SEC can tell you whether an enforcement action is ongoing and can begin an investigation if necessary.

Calvin L. Rampton

November 6, 1913 – September 16, 2007



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Utah Control Shares Acquisitions Act

by Brad R. Jacobsen

Utah's Control Shares Acquisitions Act (UTAH CODE ANN. § 61-6-1 *et seq.* "Control Shares Act") provides stringent rules governing takeovers of certain qualifying Utah corporations. The Control Shares Act is governed by numerous defined terms that must be carefully reviewed. The Control Shares Act denies voting rights to any person or entity ("acquiring person") that acquires "control shares" of a Utah "issuing public corporation" (not necessarily an SEC public company) in a "control share acquisition." The acquiring person's voting rights may only be restored if shareholders holding a majority of shares that are not "interested shares" elect to restore those voting rights.

A Utah corporation is subject to the Control Shares Act only when it is an issuing public corporation that is the target of a control share acquisition. An "issuing public corporation" is a corporation, other than a depository institution, that is organized under Utah law and that has: (a) 100 or more shareholders; (b) its principal place of business, its principal office, or substantial assets within the state; and (c) (i) more than 10% of its shareholders resident in the state; (ii) more than 10% of its shares owned by Utah residents; or (iii) 10,000 shareholders resident in the state. *See* UTAH CODE ANN. § 61-6-5(1). A "control share acquisition" is the acquisition, directly or indirectly, by any person of ownership of issued and outstanding control shares. *See id. at* § 61-6-3(1)(a)(i). Mergers and share exchanges are generally exempted. "Control shares" are those that, but for operation of the Control Shares Act, would bring the acquiring person's voting power within any of the following three ranges: (a) 20% to 33 1/3%; (b) 33 1/3% to 50%; or (c) 50% or more. *See id.* § 61-6-2(1). The corporation's directors or shareholders may elect to exempt the corporation's stock from the Control Shares Act by adopting a provision to that effect in the articles of incorporation or in the corporate bylaws. *See id. at* § 61-6-6.

In fact, when faced with a cooperative board that favors a particular control share acquisition, a board (through the exercise of the board's appropriate fiduciary duties) will often adopt appropriate bylaw revisions to exempt the corporation from the Control Share Act prior to the consummation of the applicable control share acquisition. Absent board cooperation, however, the restrictions imposed by the Control Share Act are almost insurmountable.

Voting on Control Share Rights

A corporation's shareholders must decide the status of voting rights for control shares acquired in a control share acquisition at the first shareholder's meeting following the acquisition. This meeting may be the next annual meeting or the next special meeting. The acquiring person, however, may accelerate the decision by requiring the corporation to hold a special shareholder's meeting to consider the voting rights' status. To require a special meeting, the acquiring person must: (a) file an acquiring person statement with the corporation; and (b) agree to pay the meeting expenses. *See id. at* § 61-6-8(1).

Under section 61-6-7, the acquiring person statement must include several items of information.

> The acquiring person statement shall set forth all of the following: (1) the identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares; (2) a declaration that the acquiring person statement is given pursuant to the Control Share Act; (3) the number of shares of the issuing public corporation owned (directly or indirectly) by the acquiring person and each other member of the group; (4) the range of voting power under which the control share acquisition falls or would, if consummated, fall; and (5) if the control share acquisition has not taken place: (a) a description in reasonable detail of the terms of the proposed control share acquisition; and (b) a statement by the acquiring person supported by reasonably detailed facts that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

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Id. at § 61-6-7. In addition to the acquiring person statement, the acquiring person must give an undertaking to pay the corporation's special meeting expenses within ten days after the meeting is held. *See id. at* § 61-6-8(1). If the acquiring person complies with these requirements, the corporation's directors must call a special meeting to consider the voting rights to be accorded to the acquiring person's shares. *Id.*

As previously mentioned, to be approved, shareholders holding a majority of the corporation's shares that are not "interested shares" must elect to permit the control shares to retain (or have restored) voting rights. "Interested shares" are shares held by not only the acquiring person, but also the target corporation's officers and non-independent directors, i.e., employee directors. *See id. at* § 61-6-4. Therefore only those truly independent shareholders are able to vote their shares regarding any control share matters. In a corporation held primarily by insiders, the results are that a small minority may be given the power to make the final decision.

It is also important to emphasize that the acquiring person is authorized to demand that this meeting be held prior to the consummation of the applicable control shares acquisition. *See* Utah Code Ann. §§ 61-6-7&8. In connection with a tender offer for the acquisition of control shares, the acquiring person will generally condition the close of the tender offer on the requirement that the special meeting be held and that the shareholders agree to waive the Control Shares Act's applicability.

Third Party Proxy Issues

The definition of a control share acquisition includes "the acquisition of power to direct the exercise of voting power with respect to issued and outstanding control shares, including the acquisition of voting power pursuant to a revocable proxy." *Id. at* § 61-6-3(1)(a)(ii). The only exception to the revocable proxy inclusion is for revocable proxies solicited by the target corporation or the target corporation's board of directors. *See id. at* § 61-6-3(1)(b). This restriction appears to prevent third parties from seeking hostile proxy contests without the target corporation's board of directors' cooperation in soliciting proxies.

Action by Shareholder's Written Consent Permitted After 1992

In some instances, the proxy solicitation problem may be overcome by obtaining written consent from the target corporation's shareholders rather than soliciting proxies. *See* Utah Code Ann. § 16-10a-704. Utah Code section 16-10a-704 permits corporations to take shareholder action without a meeting and without prior notice, so long as it is the type of action that could normally be taken at a meeting and the shareholders give written consent.

Shareholders must give signed consent by the minimum number of votes that would be necessary to authorize the action at a meeting. *See id.* Any action taken by written consent of less than all shareholders must, however, comply with the further notice and delayed effectiveness provisions of section 16-10a-704(2).

In seeking action by written consent, attorneys should carefully review the charter documents for corporations existing prior to 1992. Utah Code section 16-10a-704 is subject to the limitations of section 16-10a-1704. This statute, passed in 1992, specifically provides that a corporation in existence prior to July 1, 1992, may not take action by the written consent of fewer than 100% of the shareholders entitled to vote unless a resolution providing otherwise has been approved either:

> (a) by a consent in writing, setting forth the proposed resolution, signed by all of the shareholders; or (b) at a duly convened meeting of shareholders, by the vote of the same percentage of shareholders of each voting group as would be required to include the resolution in an amendment to the corporation's articles of incorporation.

Id. at § 16-10a-1704(4).

Interested parties to a control shares acquisition should review the target corporation's formation date and articles of incorporation to determine whether such resolutions exist.

Redemption Rights

If a target corporation's shareholders do not vote to restore voting rights to the control shares, the corporation may, if its articles of incorporation or bylaws so provide, redeem the control shares from the acquiring person at fair market value. *See id.* § 61-6-11(2). Further, if the acquiring person fails to file an acquiring person statement, the corporation may, if its articles of incorporation or bylaws so provide, redeem the control shares at any time within 60 days of the acquiring person's last acquisition of control shares. *See id.* § 61-6-11(1). This may be done regardless of the decision of the shareholders to restore voting rights. Control shares acquired in a control share acquisition are not subject to redemption, however, if an acquiring person statement has been filed and the shares have been accorded full voting rights. *See id.* § 61-6-11(2).

Dissenters' Rights

Unless otherwise provided in the articles of incorporation or bylaws of a corporation, shareholders are also entitled to dissenters' rights if the control shares are accorded full voting rights and the acquiring person has obtained a majority or more of control shares. *See id.* § 61-6-12(1). When shareholders have dissenters' rights, the corporation's board of directors must send notice as soon as practicable advising them of the facts and of their dissenters' rights to receive fair market value for their shares. *See id.* § 61-6-12(2). Interested parties should check a corporation's bylaws to determine whether dissenters' rights are permitted or denied.

Other States' Laws

A number of states have adopted takeover laws and regulations that purport to be applicable to attempts to acquire securities of corporations that are incorporated in those states or that have substantial assets, stockholders, principal executive offices or principal places of business in those states. To the extent that these state takeover statutes purport to apply to transactions by corporations not incorporated in such states, case law has held them to be generally unenforceable. In *TLX Acquisition Corp. v. Telex Corp.,* 679 F. Supp. 1022 (W.D. Okla. 1987), a federal district court in Oklahoma ruled that the Oklahoma statutes were unconstitutional insofar as they apply to corporations incorporated outside Oklahoma because they would subject those corporations to inconsistent regulations. Similarly, in *Tyson Foods, Inc. v. McReynolds,* 700 F. Supp. 906 (M.D. Tenn. 1988), a federal district court in Tennessee ruled that four Tennessee takeover statutes were unconstitutional as applied to corporations incorporated outside Tennessee. This decision was affirmed by the United States Court of Appeals for the Sixth Circuit. In November 1988, a federal district court in Florida held, in *Grand Metropolitan PLC v. Butterworth,* that the provisions of the Florida Affiliated Transactions Act and Florida Control Share Acquisition Act were unconstitutional as applied to corporations incorporated outside of Florida. No. Civ. A. 88-40317 WS, 1988 WL 1045191 (N.D. Fla. Nov. 28, 1988). The Utah Control Shares Act, however, appropriately applies only to a corporation organized under Utah law. *See* Utah Code Ann. § 61-6-5(1).

Conclusion

Attorneys representing corporations that would qualify as an issuing public corporation (generally a Utah corporation with more than 100 shareholders) should carefully review such a corporation's charter documents to determine if provisions relating to the Control Share Act should be incorporated therein. Failure to follow the Control Share Act may result in one's clients unwittingly acquiring shares without voting rights. Additionally, Utah corporations that have not opted out of the Control Share Act will be more difficult to acquire, the results of which may result in lower valuations by potential acquirers. Many Utah corporations, however, may wish to keep tight control on whose crosshairs they are in and remain subject to the Control Share Act to help protect them from hostile takeover efforts. Utah issuing public corporations and the attorneys that represent them should determine now how best to apply the Control Share Act. What should not happen, however, is for the analysis to come too late.

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The Ministry of Special Cases

by Nathan Englander

Reviewed by Betsy Ross

Set during Argentina's Dirty War of the 1970s and 1980s, *The Ministry of Special Cases* captures a society in which passivity is paramount and truth is what the government says it is. Thus, when the government kidnaps suspected dissidents (or unsuspected innocents, as appears to be the case with the book's character Pato), and denies it has done so, the Patos of society are spoken of as being "disappeared," and a lie becomes truth – as if the disappeared never existed at all.

What makes this scenario possible is a society suffering from a malignant complicity – "No government can do anything to a nation when the whole nation wants it otherwise," one of Englander's characters observes. But, of course, the sticking point is obtaining consensus, and consensus requires identification with others and a desire for the common good. The genius of the government is in using fear as its tool so that identity is broken down into smaller and smaller units – us becomes us against them becomes me against you – and the common good, and with it any consensus necessary for opposition, is lost entirely.

Trust does not extend beyond the iron door newly-purchased by Pato and his mother, Lillian, to keep out the government's minions, and oft-times does not exist within, as Englander raises the question, "When you close ranks, who is on the inside, and who the outside?" The answer to that question lies in the issue of identity, as it must.

When Pato is "disappeared," Lillian, and Pato's father, Kaddish, diverge in their responses to their son's kidnapping based upon how they see themselves, and with whom they identify. Already outsiders in Argentine society as Jews, Lillian and Kaddish are also outsiders within the Jewish community – Kaddish being an *hijo de puta* within an old Jewish community of moral outcasts. Having grown up as an outcast, Kaddish identifies himself as an outcast, and thus does not trust the government (the Ministry of Special Cases) or the mainstream Jews to help find his son. In fact, he is convinced that Pato has been tortured and killed – dropped alive from a plane into the river, as he believes all the "disappeared" are. Lillian, on the other hand, refuses to believe in Pato's death, and seeks help in finding him from all the places that Kaddish will not. The objective truth denied them (that Pato has been kidnapped and killed – or not), they live their different, subjective truths, and Pato's own father and mother can no longer identify with each other. Pato's father leaves, spending his nights sleeping under the bench in the old Jewish synagogue.

The height of Englander's brilliance is that even the reader is denied the objective truth – whether Pato is alive or dead – although he introduces a pivotal character, a "disappeared" girl who occupies the dungeon cot that had been Pato's and finds his wadded-up notes hidden in the bedding, and so knows at least portions of Pato's fate. Yet Englander does not share the notes, and, in fact, writes with pointed nonchalance directly to the reader:

> An obvious omission. It's fair to wonder about the contents of those notes. It's true that the girl got to read them and memorize them and swallow them down. It wouldn't be right, though, to share Pato's message when neither Kaddish nor Lillian will hear it, when neither parent will learn that those notes ever were.

The objective truth behind which to unite is wrested from the reader, as it is denied Lillian and Kaddish, even as its possibility is dangled before us.

Englander implies that we choose our truths based upon our identity which in turn is based on preexisting truths. And implicit in the statement "we choose our truths" is that the truths we choose may be lies. Both truth and identity are mutable, and it is this mutable nature of identity that the government exploits by manipulating the truths of our daily lives. That mutable nature is nowhere more poignant than in the breakdown of the identities of the "disappeared" themselves:

> The girl does not yet know where she is or where she is headed. Where she came from has broken down and simplified itself only to before and now, above and below. That is, she does not connect herself to her name and her life, to her studies and her friends, to her family and her dog and the last book she read. The girl wouldn't have guessed that in being disappeared she would find it easier, better, to disappear herself – complicit in her nonexistence. It is too much to be as was.

Back to this malignant complicity in which not just society generally, but the disappeared themselves are forced to participate. A complicity that accepts truths as lies and lies as truths – and makes enemies of husband and wife as they find themselves on different sides. It is no coincidence that Englander (himself raised an Orthodox Jew) tells a story of Jews within this story of a nation's abuses and its citizens' passivity. Echoes of the very sensitive issue of Jewish complicity in the Holocaust can be heard. And, indeed, Lillian reminds the Jewish leader to whom she has gone for help, who accepts and even touts his impotence in negotiating with the government as a kind of power, that he is engaging in the "grand tradition of Jewish diplomacy: Never acknowledge catastrophe until it's done.… Afterward you'll raise up a tall building around it. You'll enlist a great Jewish after-the-fact army to fight with all of hell's fury over how it is to be remembered." The universal truth is that lies, and acceptance of lies, engender impotence.

Universality is what makes Englander's book important. In an interview (concerning Englander's previously published short story collection *For the Relief of Unbearable Urges*) Englander said "I have no interest in a fiction that isn't universal; if it's not universal, then it's not functioning…the stories are more about the setting facilitating the subtext than vice versa."

While I agree and feel some connective assuagement in the existence of universals, this statement is also depressing. Does the fact that there will always be a setting in which truth is a victim of the human will to power, the human ability to treat others as abstractions or the justifiable means to a rationalized ends, mean that we will never get beyond the abuses and suffering of our past and present Argentinas, Germanies, Chinas, Darfurs, and, yes, even the United States? What will it take to refute the lies, to expose the Machiavellis, to find common ground and unite for the common good?

Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during their regularly scheduled September 21, 2007 Commission meeting held in Salt Lake City, Utah.

1. The Commission approved the creation of a Juvenile Law Section. The Juvenile Law Section bylaws were also approved.

2. The Commission selected Frank Carney for the Professionalism Award and Dan Becker for Community Service Award. The Tuesday Night Bar Co-chairs (Matthew Wride, Kelly Latimer, and Christina Micken) were chosen for the Pro Bono Award. These awards will be presented at the Fall Forum on November 16, 2007 in the Salt Palace Convention Center.

3. The Commission reappointed Herm Olsen to the DNA People's Legal Services Board.

4. The Commission discussed its ongoing efforts to contact legislators and the need to build upon and improve the good working relationship existing between the Legislature and the Utah State Bar.

5. The Commissioners conferred on their work to contact the chairs of the various committees and sections to which they are liaisons.

6. The Commission formulated a plan for Bar program evaluations. The Commission will begin the review with the following programs: (1) Management and Technology Security; (2) Admissions; (3) Communications; (4) Access to Justice / Pro Bono; (5) Member Benefits. The Commission considered adding appropriate person(s) to Bar Programs Evaluation Review Committees and agreed to hold the first Bar Programs Evaluation Review Committee meetings within the next 4-6 weeks.

A full text of this and other meetings of the Bar Commission are available at the office of the Executive Director.

Notice of Election of Bar President-Elect

Any active member of the Bar in good standing is eligible to submit his or her name to the Bar Commission to be nominated to run for the office of president-elect in a popular election and to succeed to the office of president. Indications of an interest to be nominated are due at the Bar offices, c/o Executive Director John Baldwin, 645 South 200 East, Salt Lake City, Utah, 84111 or via e-mail at john.baldwin@utahbar.org by 5:00 P.M. on January 2, 2008.

The Bar Commission will interview all potential candidates at its meeting in Salt Lake City on January 25, 2008 and will then select two finalists to run on a ballot submitted to the active Bar membership. Final candidates may also include sitting Bar Commissioners who have indicated an interest in running for the office.

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. on May 1st. The president-elect will be seated at the Bar's Annual Convention and will serve one year as president-elect prior to succeeding to the office of president. The president and president-elect need not be sitting Bar commissioners.

In order to reduce campaign costs, the Bar will print a statement from the final candidates in the *Utah Bar Journal* and will include a one-page statement in the ballot envelope. For further information, please contact John Baldwin at 297-7028, or at john.baldwin@utahbar.org.

Orem 4th District Court needs ProTem Judges

The Orem 4th District Court is in need of ProTem Judges. We hold small claims court Tuesdays at 3:00. To fill out an application you can go to www.utcourts.gov or you can contact either Nancy or Christy at the Orem court 764-5864.

Eighteenth 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 14, 2007 • 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 Taylor,
April Burningham or Jamie Hardrick . . . . . (801) 363-7411
Lincoln Mead . . . . . (801) 297-7050

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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

Notice of Election of Bar Commissioners

First and Third Divisions

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

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective division. Nominating petitions may be obtained from the Bar office on or after January 1, and **completed petitions must be received no later than February 10** by 5:00 p.m. Ballots will be mailed on or about April 1 with balloting to be completed and ballots received by the Bar office by 5:00 p.m. May 1. Ballots will be counted on May 2.

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

1. Space for up to a 200-word campaign message plus a photograph in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. *Campaign messages for the March/April* Bar Journal *publications are due along with completed petitions, two photographs, and a short biographical sketch* ***no later than February 1.***
2. A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their division.
3. The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates will be responsible for delivering to the Bar ***no later than March 15*** *enough copies of letters for all attorneys in their division.* (Please call Jeff Einfeldt at 297-7020 for count of the number of lawyers in your respective division.)

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

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

Did you know?

Past issues of the *Utah Bar Journal* are available on the Bar's website in both pdf format and a searchable text format. Looking for an old article? Doing research? Take a look…

www.utahbar.org/barjournal

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is pleased to announce that:

KEVIN R. PINEGAR | has been elected president and managing partner of the firm. His practice focuses on corporate and securities law.

PAUL M. DURHAM | has been elected president of the Board of Trustees of the S. J. Quinney College of Law at the University of Utah. His practice focuses on real estate development and mergers and acquisitions.

KENNETH J. SHEPPARD | formerly general counsel for Melaleuca, Inc., has joined the firm as a shareholder in its St. George office. His practice focuses on corporate, general business and real estate law.

A. HOWARD LUNDGREN | formerly of Cohne Rappaport & Segal, has joined the firm as a shareholder and will continue his practice in family law.

EMILY B. SMOAK | formerly of Cohne Rappaport & Segal, has joined the firm as a shareholder and will continue her practice in family law.

THOMAS J. BURNS | formerly of Cohne Rappaport & Segal, has joined the firm as an associate and will continue his practice in family law.

JASON R. HULL | has joined the firm as an associate and practices in the area of commercial litigation.

ERIN MIDDLETON | has joined the firm as an associate and practices in the areas of commercial litigation and employment law. She served previously as a judicial clerk to Chief Justice Christine M. Durham of the Utah Supreme Court.

IAN S. DAVIS | has joined the firm as an associate and practices in the area of real estate and banking law. He served previously as a judicial clerk to Justice Ronald E. Nehring of the Utah Supreme Court.

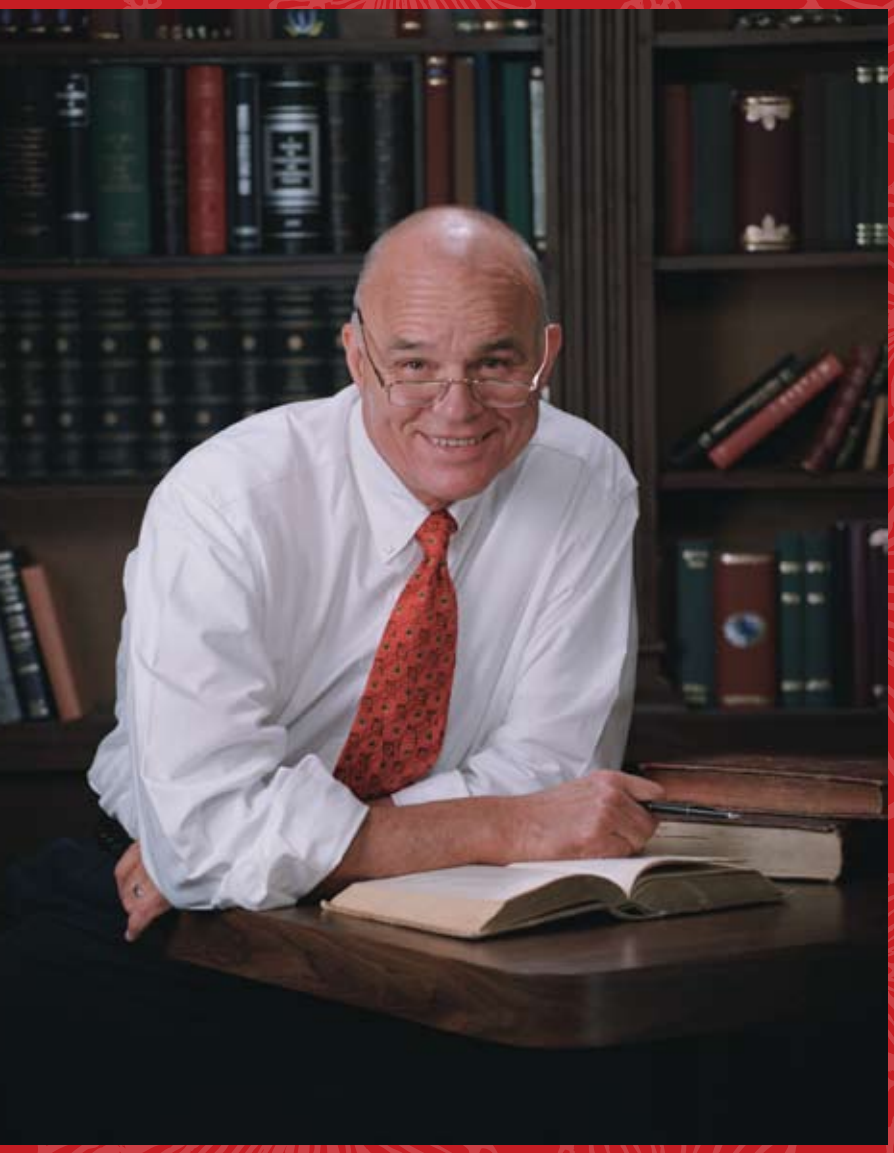
JUSTIN J. ATWATER | has joined the firm as an associate and practices in the area of corporate and securities law.

MICHAEL S. MALMBORG | has joined the firm as an associate and practices in the area of commercial litigation. He served previously as a judicial clerk to Justice Michael J. Wilkins of the Utah Supreme Court.

Z. RYAN PAHNKE | has joined the firm as an associate and practices in the area of commercial litigation. He served previously as a judicial clerk to Judge Dee Benson of the U.S. District Court and practiced with the Las Vegas firm of Jolley Urga Wirth Woodbury & Standish.

Robert J. DeBry

AND ASSOCIATES



Wishes to Thank

the many attorneys who have asked our Firm to work with them on personal injury cases

We appreciate the confidence you have shown in our firm

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(800)Try-DeBry

*all Association Agreements must meet the requirements of Rule 1.5(e) of the Utah Rules of Professional Conduct

2008 Spring Convention Awards

The Board of Bar Commissioners is seeking applications for two Bar awards to be given at the 2008 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 11, 2008. You may also fax a nomination to (801) 531-0660 or email to cabad@utahbar.org.

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

Pro Bono Honor Roll

William Adams
Heidi Alder
Erin Arnold
Brett Benson
Jonathan Benson
Scott Broadhead
Bryan Bryner
Gary Buhler
Mary Cline
Derek Coulter
David Day
Anne Deprey
Michael Eward
Shellie Flett
Frederick Green
Lou Gehrig Harris
Joseph Hatch
April Hollingsworth
John Holt
Jeffrey Howe
J. Bryan Jackson
David Jensen
Nathan Kunz
Michael Martinez
Adelaide Maudsley
John McCoy
Richard Medsker
William Morrison
Langdon Owen Jr.
Christopher Parker
Philip Patterson
Kara Pettit
Anthony Rippa
Raymond Rounds
Lauren Scholnick
Brad Smith
Kathryn Steffey
Steven Stewart
Mark Tanner
Travis Terry
Chris B. Turner
Shawn Turner
Kimberly Washburn
Orson West Jr.
Lamar Winward
Michael Zundel

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

Notice of Approved Amendments to Utah Court Rules

Under its expedited rulemaking authority, the Supreme Court has approved amendments to the following Utah court rules. The amendments are effective when indicated but subject to further change after the comment period. **The comment deadline is August 30, 2007.**

Summary of Amendments

USB 14-0414 Certificate of compliance; filing, late, and reinstatement fees; suspension; reinstatement. Amend. Increases compliance filing fees, late fees, and reinstatement fees. Approved as an expedited amendment under Rule 11-101(6)(F). Subject to further change after the comment period. Effective Date: September 1, 2007.

USB 14-0417 Miscellaneous fees and expenses. Amend. Establishes a $25.00 fee to send certificates of CLE compliance to other states, for filing reciprocal certificates, for filing house counsel certificates, and for certificates of exemption. Approved as an expedited amendment under Rule 11-101(6)(F). Subject to further change after the comment period. Effective Date: September 1, 2007.

Bar Welcomes New Admittees

Two hundred sixty nine new admittees will be welcomed into the Utah State Bar at an admission ceremony to be held at the Salt Palace on October 30, 2007. Family and friends of the new admittees will gather to listen while Michael J. Wilkins, Associate Chief Justice of the Utah Supreme Court, addresses the audience. Christine Durham, Chief Justice of the Utah Supreme Court will conduct the event.

A sincere thank you goes to all the volunteers who donate their time to assist with the admission process. Over 100 attorneys volunteer their time to assist the Bar in this endeavor. Attorney volunteers on the Character and Fitness Committee review applications to see that applicants meet character and fitness requirements and conduct character and fitness hearings. The Bar Examiner Committee drafts and reviews Bar exam questions and grade the exams. The Special Accommodations Committee reviews requests for test accommodations. The Bar greatly appreciates the contribution made by these individuals. THANK YOU!

Thank You!

The Law and Aging Committee would like to thank the following attorneys for volunteering their time to the Senior Center Legal Consultation project. Many Salt Lake City seniors have benefitted from this valuable program. If you would like to help out with this project please call Christine Critchley at (801) 297-7022 or e-mail ccritchley@utahbar.org.

Richard Aaron
Jim Baker
Sharon Bertelsen
Richard Bird
R.F. Bojanowski
Douglas Cannon
David Castleton
Steven Crawley
John Diamond
Phillip Ferguson
Marianne McGregor Guelker
Laurie Hart
Jason Hunter
Mike Jensen
Joyce Maughan
Harry McCoy
Thomas Mecham
Kara Pettit
Kathie Roberts
Jane Semmel
Jeannine Timothy

First (Annual?) Appellate Practice Section Poetry Contest Winners

WINNING LIMERICKS

First Place

A Thankless Task
When the Court an opinion doth send –
Much considered and carefully penned,
Painstakingly crafted,
Repeatedly drafted –
The attorneys skip right to the end.

Scott M. Ellsworth

Second Place

Though the issue was never preserved,
The appellate court thought it deserved
Full merits review,
But its merits were few,
So in the end justice was served.

Fred Voros

Third Place

An appellate lawyer in court
Filed briefs amazingly short
As you see from my diction
I speak legal fiction
No lawyers exist of that sort.

Hon. Samuel McVey

Honorable Mention

The Scharf *versus* BMG *Court*[1]
First created the marshalling sport,
Reared upon the sound basis
Of four separate cases[2] *–*
None of which mentions aught of the sort.

Scott M. Ellsworth

WINNING HAIKUS

First Place

the unpreserved claim
hangs tempting as a dark plum
better brief merits

Fred Voros

Second Place

black robes sullen suits
but there clasping counsel's hair
a pink butterfly

Fred Voros

Third Place

Really, I raised it.
You can find it on page two
Of footnote fifty.

Scott Crook

Honorable Mention

Briefing
Cramming Niagara
Into a soda can – with
A one-inch margin.

Scott M. Ellsworth

1. 700 P.2d 1068 (Utah 1985)
2. *Charlton v. Hackett,* 11 Utah 2d 389, 390, 360 P.2d 176 (1961); *Hutcheson v. Gleave, Utah,* 632 P.2d 815 (1981); *Kohler v. Garden City, Utah,* 639 P.2d 162, 165 (1981); and *Hal Taylor Associates v. Union Am., Inc.,* Utah, 657 P.2d 743 (1982).

Discipline Corner

PUBLIC REPRIMAND
On September 24, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Samuel H. Adams for violation of Rules 5.3(b) (Responsibilities Regarding Nonlaywer Assistants), 5.3(c)(1) (Responsibilities Regarding Nonlawyer Assistants), 5.3(c)(2) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Adams signed a client's name to a settlement agreement in a personal injury case and then had his assistant notarize the signature. Mr. Adams then forwarded the settlement funds to his client.

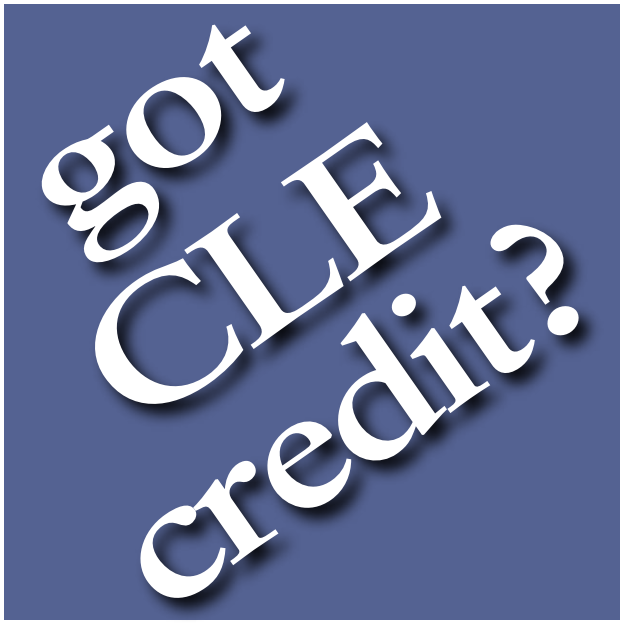
ADMONITION
On September 17, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 1.3 (Diligence), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), 5.3(c) (Responsibilities Regarding Nonlawyer Assistants), 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In a bankruptcy proceeding, in order for the attorney's client to sell the client's home, permission was needed from the bankruptcy court. The attorney failed to timely file the request with the court. The attorney's failure was based upon the attorney's failure to properly supervise, train and educate staff concerning the attorney's professional obligations, to ensure that deadlines are met. As a result of the attorney's misconduct, the client's home was foreclosed upon. The attorney's misconduct was mitigated by the fact that the attorney had no prior record of discipline; the attorney's admission of neglect/misconduct; the attorney restored the lost funds in the settlement; and the attorney's candidness with the Ethics and Discipline Committee Screening Panel.

PUBLIC REPRIMAND
On September 17, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Public Reprimand against Franklin L. Slaugh for a violation of Rule 1.15(a) (Safekeeping Property) of the Rules of Professional Conduct.

In summary:
Mr. Slaugh accepted a retainer in a chapter 11 bankruptcy case. Mr. Slaugh commingled funds by placing the retainer into his operating account instead of his attorney trust account.

PUBLIC REPRIMAND
On September 17, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Public Reprimand against David Friel for violations of Rules 5.5(a) (Unauthorized Practice of Law), and 5.5(b)(2) (Unauthorized Practice of Law) of the Rules of Professional Conduct.



Looking for a new and interesting way to rack up continuing legal education credit? Consider authoring an article for the *Utah Bar Journal*. If your article is published in the *Journal* you could earn 3 hours of CLE credit for 3,000 words.*

The *Bar Journal* editors are always interested in hearing 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

*Contact the MCLE office for CLE eligibility requirements.

In summary:
Mr. Friel was notified by the Utah State Bar that his license had been suspended for failure to pay his Bar dues. After notification, Mr. Friel appeared before a court while his license to practice law was suspended.

RESIGNATION WITH DISCIPLINE PENDING
On September 13, 2007, the Honorable Chief Justice Christine M. Durham entered an Order Accepting Resignation with Discipline Pending concerning Edmund T. Crowley.

In summary:
Mr. Crowley misappropriated funds on two separate occasions from the company he was working for.

PUBLIC REPRIMAND
On August 22, 2007, the Honorable John Paul Kennedy, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Reprimand with conditions against John McCoy for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In one matter, Mr. McCoy failed to file a witness list, failed to appear at a scheduling conference, failed to respond to two motions to dismiss and notify his client of those motions to dismiss. Mr. McCoy failed to keep his client informed regarding the case status, including failing to provide documents that were either generated or received. Mr. McCoy failed to notify his client that he was withdrawing from the case and that the client needed a new attorney.

In a second matter, Mr. McCoy failed to take any action on a motion to compel, which was mitigated by strategy considerations and therefore a negligent act. Mr. McCoy failed to respond to a motion to dismiss which resulted in a judgment of attorney fees against his client. Mr. McCoy failed to provide information to his client concerning the status of the case. After the client hired a new attorney, Mr. McCoy failed on at least one occasion to respond to that attorney, failed to timely provide the file, and failed to file a withdrawal in the case. Mr. McCoy's failure to withdraw was mitigated by the fact that he believed a new attorney had appeared in the case.

SUSPENSION
On August 6, 2007, the Honorable Glenn K. Iwasaki, Third Judicial District Court, entered an Order of Discipline: Suspension suspending Larry A. Kirkham from the practice of law for a period of six months and one day for violation of Rules 8.4(b) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Kirkham was convicted of Driving Under the Influence of Alcohol/Drugs (with priors), Utah Code Annotated § 41-6a-502 (2005), a third degree felony. Mr. Kirkham's conviction reflects adversely on his honesty, trustworthiness, and fitness as a lawyer. Mr. Kirkham's misconduct, as reflected by his conviction, was mitigated by the fact he has engaged in rehabilitation and his conduct, in part, relates to his condition.

UTAH STATE BAR

2008 Spring Convention in St. George

March 13-15

DIXIE CENTER at St. George

Full online Brochure/Registration
will be available January 15, 2008.
ACCOMMODATIONS: www.utahbar.org

Brochure/Registration materials available in the
January/February 2008 edition of the Utah Bar Journal

UTAH STATE BAR

2008 Annual Convention

July 16–19

Sun Valley, Idaho

Sun Valley

ACCOMMODATIONS: www.utahbar.org

2008 "Spring Convention in St. George" Accommodations

Room blocks at the following hotels have been reserved.
You must indicate you are with the Utah State Bar to receive the Bar rate.

Hotel	Rate (Does not include tax)	Block Size	Release Date
Best Western Abbey Inn (435) 652-1234 bwabbeyinn.com	$109	40	2/13/08
Budget Inn & Suites (435) 673-6661 budgetinnstgeorge.com	$80.71–$97.71	20	2/21/08
Comfort Suites (435) 673-7000 comfortsuites.net	$85	25	2/13/08
Crystal Inn St. George (fka Hilton) (435) 688-7477 (800) 662-2525 crystalinns.com	$99	20-Q 5-K	2/11/08
Fairfield Inn (435) 673-6066 marriott.com	$80	20	2/22/08
Green Valley Spa & Resort (435) 628-8060 gvresort.com	$124–$230/nightly	15 1-3 bdrm condos	1/31/08
Hampton Inn (435) 652-1200 hamptoninn.net	$90	30	2/28/08
Hilton Garden Inn (435) 634-4100 hiltongardeninn.com	$119	45	2/14/08
Holiday Inn (435) 628-4235 holidayinnstgeorge.com	$91	25	2/16/08
Ramada Inn (800) 713-9435 ramadainn.net	$79	20	2/13/08
Shuttle Lodge Inn (877) 688-8383 shuttlelodgeinn.com	$75	20	2/15/08

Young Lawyer's Division Update

by Stephanie Pugsley, Utah YLD President, 2007-2008

The Utah Young Lawyer's Division has rolled out a sleek new website www.utahyounglawyers.org, and is now offering several new services for its members and the public. The "On Demand Mentor" video presentations, accessed via the website, offer experienced Utah practitioners' insights on various legal and professional topics. Each ten-minute tutorial provides a concise overview of a selected topic from the presenter's area of expertise. The new website also links to a YLD Blog that posts current events, upcoming activities, job openings, service projects, and young lawyer achievements. In addition, YLD members, as well as Utah and BYU law students, will receive a concise bi-monthly YLD E-Newsletter designed to keep readers up to date on the latest happenings within the YLD and the Bar.

With the largest membership of any Bar section, the YLD is continually working to assist new lawyers as they begin the practice of law, while keeping important commitments to serve the Utah legal community and the public at large. We invite all members of the Bar to visit and use the new YLD homepage and to join us in our upcoming activities.

The "How To" Guide for Membership in the Paralegal Division: What Are the Requirements and Career Benefits of Membership?

by Peggi Lowden

Are you wondering how to apply for membership in the Paralegal Division of the Utah State Bar (the Division)? What is the Division's definition of a paralegal? What are the educational and experience requirements for membership? Where are the application forms? Are there any CLE requirements to maintain membership? To better serve future members we offer this "How To" guide to answer questions and to assist applicants for membership in the Division.

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

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

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

1. **Currently work under the ultimate supervision of a duly licensed Utah attorney whenever you perform duties that are reserved to the practice of law.**

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

2. **Meet certain educational and/or work experience requirements.**

The Division attempts to capture the great variety of career paths one may take to become a paralegal. As a result, there are many choices that are available to help you meet this requirement. Please don't let the many educational/experience options stop you from reading on. It's painless! You need to meet *only one* of the following options:

A. Successful completion of a formal ABA-Approved paralegal program.

B. Successful completion of an institutionally accredited formal paralegal education program that consists of a minimum of 60 semester hours (or equivalent quarter hours) is required for this category. However, at least 15 of the 60 hours must be substantive legal courses, such as contract law, civil litigation, constitutional law, etc.

C. Successful completion of an institutionally accredited formal course of college study that consists of 16 semester hours of substantive legal courses and 45 semester hours of general college courses, and at least one year of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney.

D. A minimum of five continuous years of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney and at least 16 hours of Continuing Legal Education (CLE) within the immediately preceding two years of your application for membership.

E. Successful completion of a baccalaureate degree in any field and two continuous years of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney.

F. Successful completion of the voluntary certification examination given by the National Association of Legal Assistants (CLA/

PEGGI LOWDEN is a paralegal at the law firm of Strong & Hanni in Salt Lake City. She recently completed six years of service as a public member (the final year as a panel vice chair) for the Utah Supreme Court's Disciplinary Committee. She is active with issues concerning the legal profession and is a director of the Paralegal Division of the Utah State Bar.

CP), or comparable examination approved by the Division, and six months of full-time experience as a paralegal under the ultimate supervision of a duly licensed attorney.

3. **No felony convictions for which you have not been pardoned or otherwise had your full rights restored.**
4. **No misdemeanor convictions involving theft, embezzlement, or fraud.**
5. **No expulsion or suspension from membership in a law related professional association without being fully reinstated.**
6. **Read and understand the Utah Supreme Court's definition of a Paralegal.**
7. **Read and agree to be bound by the Division's Code of Ethics and Guidelines for the Utilization of Paralegals.**
8. **Agree to notify the Division of any change in employment status, address, or supervising attorney.**

Third, *how* do you find the forms to apply for membership in the Division? The Division membership forms are available on the Utah State Bar's website: www.utahbar.org. To navigate to the membership forms, go to the Bar's website and find the link for *Sections & Committees.* Next, find the link to the *Paralegal Division.* At the Division's page, find the link to *Membership Forms.* The membership forms are available in PDF format and include instructions that are useful to help you submit your application. You may print and mail your completed application to the Utah State Bar, together with your annual membership dues in the amount of $75.00.

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

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

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

1. There are other entity types that utilize paralegals.
2. Available on the Division's website: utahstatebar.org
3. If you are not accepted as a member, your check will be returned to you. There is no fee to process your application.
4. Membership in the Paralegal Division does not confer membership in the Utah State Bar, nor does membership authorize a paralegal to practice law.

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
11/08/07	**Teleseminar: Blogs – The Future (and Present) of Client Development?** 12:00–1:00 pm. The ethics of promoting your career through blogging. Why you should consider starting a blog. How to easily and quickly start a blog. The mechanics and expense (almost free) of starting a blog. A Utah practitioner's experience with client development via blogging. $49 before 11/01/07, $59 after.	1 hr Ethics
11/09/07	**Utah Minority Bar CLE – Ethics and Professionalism.** $100 before 11/2/07, $125 after.	3 hrs Ethics
11/16/07	**Fall Forum.** 8:00 am – 5:15 pm. Salt Palace in Salt Lake City. A full day of CLE and networking for attorneys, paralegals and companies providing services and products to the legal community. Lunch remarks by Governor Jon Huntsman, Jr. $130 before 11/02/07, $160 after – non-lawyer assitant, $70 before 11/02/07, $95 after.	7 hrs CLE/NLCLE (up to 4 hrs Ethics)
12/06/07	**NLCLE: How to Prepare for and to Succeed in Mediations.** $60 YLD Members, $80 others. Door registrations: $75 YLD, $90 others.	3 hrs CLE/NLCLE
12/07/07	**Lawyers Helping Lawyers Ethics Program.** 9:00 am – 12:15 pm. $90 before 12/06/07, $110 after.	3 Ethics hrs
12/18/07	**NLCLE: Wills and Trusts II: Settling Estates Over $1.2 Million.** 9:00 am – 12:00 pm. Troy Wilson – presenter. Pre-registration $60 YLD members, $80 others. Door registrations: $75 YLD members, $95 others.	3 hrs CLE/NLCLE
12/20/07	**4th Annual Benson & Mangrum on Evidence.** Update to the Utah Rules of Evidence including the significant change to Rule 702. 8:15 am – 4:00 pm (lunch on your own.) $230 with book, $125 without book.	6.5 hrs CLE/NLCLE incl. 1 Ethics

To register or to access an agenda online go to: www.utahbar.org/cle.
If you have any questions call (801) 297-7036.

REGISTRATION FORM

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

Registration for (Seminar Title(s)):

(1) _____ (2) _____

(3) _____ (4) _____

Name: _____ Bar No.: _____

Phone No.: _____ Total $ _____

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

☐ AMEX Exp. Date _____

Classified Ads

RATES & DEADLINES

Bar Member Rates: 1-50 words – $35.00 / 51-100 words – $45. 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.

FOR SALE

Successful Solo SLC Trusts and Estates Law Practice for sale. Buyer must have Trusts and Estates background. Transition in 2008. Send inquiries to Christine Critchley, Confidential Box #5, Utah State Bar, 645 S 200 E, Salt Lake City, UT 84111 or via e-mail at buylawpractice@hotmail.com or ccritchley@utahbar.org.

LOOKING TO PURCHASE

New attorney looking for used office furniture. Please forward if you know any attorneys reaching retirement. Looking for any of the following: pair of dark brown leather client chairs; dark wooden desk; and/or executive chair. Hoping to find in fair to good condition. Older furniture great. Contact Josh (435) 752-3551.

OFFICE SPACE/SHARING

Office Space Available – prime downtown location. American Plaza II, 57 W. 200 S., #200. Two large offices and one secretarial station. Newly remodeled, furnished in contemporary décor, located within a firm of three established criminal defense attorneys. Opportunities for client referrals for many types of cases. Rent includes a large reception area, use of conference room, law library, break room, photocopier and fax. Secure, underground parking available. $1200 per office. Please call Kari @ (801) 746-0447.

BOUNTIFUL executive office share: right off I-15 exit and only a few minutes from downtown Salt Lake City. Newly remodeled and beautiful space includes receptionist, conference/break rooms and convenient parking. DSL available. Rent starts at $300/mo. (801)397-2223.

PROVO ATTORNEY OFFICE SPACE AVAILABLE. Local Provo law firm in existence for 25 years has a fully furnished and equiped office available. Secretarial, reception, telephone, internet and all services provided on an overhead share basis. Located 3 blocks from court house. If interested Call Jim 801-374-6272 or email jim@bradfordbrady.com.

POSITIONS AVAILABLE

The Sweetwater County Attorney's Office in Southwest, Wyoming has an immediate opening for a Deputy County and Prosecuting Attorney. This position offers a challenging legal opportunity for professional growth and development. Located in Southwest Wyoming, Sweetwater County affords an abundance of outdoor activities to choose from. For additional information on the area visit the Rock Springs Chamber of Commerce website at www.rockspringswyoming.net. To apply for the position please contact the SWC Human Resources Dept. at (307) 872-6475 or via e-mail at swchr@sweet.wy.us for application materials and additional information. EOE.

Senior Counsel at Rocky Mountain Power: Responsibilities include: Representing the company and reporting to general counsel on regulatory matters in Utah, Wyoming, and Idaho; developing legal opinions; appearing on behalf of the company in state administrative proceedings; and providing legal advice on federal, state and local laws and regulations. Requirements include: 7 years of relevant law firm or state/federal agency experience with a Juris Doctorate degree from accredited law school; successful completion of the Bar exam in either Utah, Wyoming or Idaho; and energy industry experience with general understanding of utility ratemaking principles. To apply, please visit www.pacificorp.com.

Salt Lake City law firm seeks licensed Utah attorney with at least one year family law experience. Compensation based upon experience and billable hours. Send resumes to diana@legalhelpllc.com.

Legal Assistant at Rocky Mountain Power: Assist with paralegal duties and provide administrative support for regulatory lawyers; preparing and reviewing legal pleadings; assisting counsel at various regulatory proceedings; performing legal research; managing voluminous files; and performing miscellaneous administrative tasks. Requirements include: High School Diploma or GED plus college or trade school, particularly paralegal training; four years minimum paralegal experience; knowledge of legal practices and terminology; and a high level of proficiency with Westlaw and data base applications. Paralegal certificate preferred. To apply, please visit www.pacificorp.com.

Highly regarded Salt Lake City litigation firm specializing in personal injury and commercial litigation has an immediate opening for litigation attorney. Strong research and writing background is needed for this position and the position will involve second chair work on complex litigation cases. At least 2 years previous litigation experience is required Will consider part time or flex time position for the right applicant. Salary and benefits commensurate with experience. Please submit resumes with references to David Cutt, Eisenberg & Gilchrist, 215 S. STate street, #900, SLC, UT84111.

SERVICES

Fiduciary Litigation; Will and Trust Contests; Estate Planning Malpractice and Ethics: Consultant and expert witness. Charles M. Bennett, 257 East 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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PROBATE MEDIATION AND ARBITRATION: Charles M. Bennett, 257 East 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.

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Web Site: www.utahbar.org

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Sydnie W. Kuhre
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Certificate of Compliance

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Utah State Bar
645 South 200 East
Salt Lake City, Utah, United States, 84111
Telephone (801) 531-9077 / Fax (801) 531-0660

For Years_____ through _____

Name: _____ Utah State Bar Number: _____

Address: _____ Telephone Number: _____

_____

_____

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.

A copy of the Supreme Court Board of Continuing Education Rules and Regulations may be viewed at www.utahbar.org/mcle.

Date: _____ Signature: _____

EXPLANATION OF TYPE OF ACTIVITY

A. Audio/Video, Interactive Telephonic and On-Line CLE Programs, Self-Study
No more than twelve hours of credit may be obtained through study with audio/video, interactive telephonic and on-line CLE programs. 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, Self-Study
Lecturers in an accredited continuing legal education program and part-time teaching by a practitioner in an ABA approved law school may receive three hours of credit for each hour spent lecturing or teaching. No more than twelve hours of credit may be obtained through lecturing or part time teaching. **No lecturing or teaching credit is available for participation in a panel discussion. 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 (12) hours must be obtained through attendance at live continuing legal education programs. Regulation 4(d)-101(e)

The total of all hours allowable under sub-sections (a), (b) and (c) of this Rule 14-409 may not exceed twelve (12) 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 $15.00 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 $100.00 late fee. Lawyers who fail to comply with the MCLE requirements and file within a reasonable time, as determined by the Board in its discretion, and who are subject to an administrative suspension pursuant to Rule 14-415, after the late fee has been assessed shall be assessed a $200.00 reinstatement fee, plus an additional $500.00 fee if the failure to comply is a repeat violation within the pasty 5 years.

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

Please Note: Your credit card statement will reflect a charge from "BarAlliance"

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Card Type: ☐ AMX ☐ MC ☐ VISA

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denise.forsman@marshpm.com.

V0008

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