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Volume 21 No. 1 Jan/Feb 2008

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, *Utab 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,

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 <u>rromrell@regence.com</u> 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. 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.

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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. Footnotes: Articles may not have footnotes. 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.

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

by V. Lowry Snow

In 2002, Utah Lawyers Helping Lawyers (Utah LHL) invited the ABA Commission on Lawyers Assistance Programs to conduct an on-site evaluation of the availability of programs in place to assist Utah lawyers with a range of issues including chemical dependency, stress, depression, and other psychological conditions. The final report the review team issued first addressed the question of whether Utah needed a fully funded assistance program to address these issues. In response, the report offered statistics generated from lawyer assistance programs in other states and frankly, the data are disconcerting. For example, the report highlights the results of a Johns Hopkins study from 1990 that attorneys lead the nation in the incidence of depression. One study indicated that between 15% and 18% of lawyers and judges will suffer from chemical dependency or psychological impairment at some point during their career. Another study estimates that between 50% and 70% of all disciplinary matters are related to substance abuse or other psychological problems. It can be argued that because of Utah's unique culture, healthy lifestyle, and strong emphasis on family life and support, that these numbers are simply not representative of its lawyers. However, after reviewing additional ABA literature on this matter and after spending considerable time with the leaders from both of our lawyer assistance providers: Utah LHL and Blomquist Hale, I am convinced that these same issues, to some extent, affect our membership.

We are fortunate in Utah to have two very fine organizations to help address these issues, not only for the lawyers themselves, but also for family members of active lawyers.

Utah LHL was established in 1988. Initially it was created as a committee of the Bar, but it now enjoys its own non-profit independent status, although its focus remains the same. It exists to provide *confidential* assistance to any member of the Bar whose professional performance is impaired because of emotional distress, mental illness, substance abuse, or any other disabling condition. There are some important features about this mostly volunteer organization that are worth noting:

• For good reasons, Utah LHL is not connected with the Office

of Professional Conduct and while the Bar Commission is very supportive of Utah LHL, including financially, they remain independent.

- Volunteer lawyers handle the counseling and support work of Utah LHL. Lawyers needing assistance from Utah LHL get help from other caring and supportive lawyers.
- Utah LHL acts on referrals from lawyers, judges, or family members who observe a lawyer struggling with any disabling issue. They will follow up by making discreet contact with that lawyer and offering assistance.
- Utah LHL has helped, and probably saved, scores of Utah lawyers. They stand ready to assist and can be contacted at <u>www.lawyershelpinglawyers.org</u>.

The other support the Bar provides is through an independent counseling organization known as Blomquist-Hale. As one of your Bar benefits, this organization offers direct counseling for any active lawyer or a member of the lawyer's family with a trained, skilled, professional counselor, at no cost. The range of counseling services offered by Blomquist-Hale is surprisingly broad. You may contact them directly by going to <u>www.blomquisthale.com</u>.

Lawyers are trained to be problem solvers, not problem makers. We take great pride in our ability to assist others with their problems; we are perceived by ourselves and others as strong and able and always in control. We find it difficult to ask for help and consequently, our own problems are often times put off until they become serious. Eventually, our issues get addressed, but

not always in the best manner. Getting help early is one way we exercise control over the process and although it can be difficult to ask for help, the Bar has made available two excellent support organizations to simplify the process and offer assistance to you and your family. It starts by making that first phone call.





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Articles

A Friend in Need

by David Bernstein

Some years ago a close colleague confided in me that he felt he couldn't take practicing law much longer. He was at the end of his rope. He felt paralyzed and overwhelmed. Phone calls from counsel and even clients went unanswered or unreturned for weeks; unopened mail filled his desk. Deadlines loomed and the pressure mounted as his cases stagnated. He lived in fear of missing deadlines or receiving a malpractice complaint. He resented his work and his whole life felt out of sync. The good news is that he managed to make it through those dark days unscathed. Not everyone is so lucky.

Maybe there have been times in your life or practice when you felt near the proverbial "end of your rope." If so, you are not alone. We all know that the legal profession can be difficult and demanding. The stresses of practicing law: the ever-present press of deadlines, the high stakes involved, our own competitive and perfectionist natures, the pressure from clients to "win," and the machinations of opposing counsel (to name a few) can all take their toll on the best of us. Add to this the difficulties created by alcohol and drug abuse/addiction, psychological impairment, or any of the myriad afflictions that can plague attorneys, and the results can be disastrous.

Functionally-impaired attorneys (whatever the reason) can, and do, cause great harm to their clients, the legal profession, and ultimately themselves. If you doubt this, real world examples of the fallout can be found in the Discipline Corner of this and previous *Utab Bar Journals*. Yet, even when things go very wrong, asking for help seems particularly difficult for lawyers. Faced with personal and professional crises, many would, and do, prefer to soldier on without help. It doesn't need to be this way.

I. LIES, DAMNED LIES, AND STATISTICS

One out of every four lawyers suffers from stress, and out of 104 occupations studied, lawyers rank first in depression.¹ A study by the Johns Hopkins Medical School conducted in 1990 found that practicing lawyers had the highest rate of major depressive disorder among all the occupations surveyed – more than three and a half times than that of other professions.² This statistic probably hasn't improved in the interim.

Depression

Depression involves a well-defined set of symptoms, which include a diminished sense of pleasure or loss of enjoyment, called "anhedonia," a significant increase or decrease in appetite, insomnia or hypersomnia, loss of energy, feeling worthless or guilty, difficulty concentrating, depressed mood, and thoughts of suicide or death.³ More than one lawyer has felt at least some of these symptoms; many lawyers (especially litigators) have felt overwhelmed, guilty, and paralyzed by the stresses of the legal profession.⁴ Indeed, lawyers consistently exhibit a 17% rate of depression – roughly double that of the general population.⁵ Applying those statistics to our own bar of approximately 10,000, we can realistically expect that at least 1,700 Utah lawyers will experience depression during their careers. We can also expect that many of these attorneys are not getting the help they need, whatever the reason.

Substance Abuse

The American Bar Association (ABA) estimates that 15 to 18% of lawyers suffer from alcohol and drug abuse.⁶ By way of contrast, 8 to 10% of the general population is estimated to suffer from these afflictions.⁷ We have approximately 10,000 members of the Utah Bar today. Applying the ABA statistics, between 1,500 and 1,800 Utah attorneys will experience this problem sometime during their legal careers. An ABA survey of practicing attorneys in California and New York determined that 50–70% of all disciplinary cases involved alcoholism. Similarly, the Oregon Lawyers Assistance Program (LAP) conducted a study which calculated the costs for malpractice and disciplinary cases.⁸ The Oregon Bar, through the intervention of their LAP program in documented substance abuse cases alone, demonstrated a savings of over one million dollars in the five year focus period.⁹

Suicide

Suicide currently ranks as one of the leading causes of premature death among lawyers.¹⁰ Male lawyers are twice as likely as the general population to take their own life.¹¹ Practicing lawyers reportedly think about committing suicide far more often than do non-lawyers. In one study of male suicide cases researchers found that male lawyers were twice as likely to commit suicide

DAVID BERNSTEIN has been a member of the Utah Bar since 1998. During that time he has practiced in the fields of civil litigation, criminal defense, and personal injury law. He is currently serving as Chair of the Board of Directors of Utah Lawyers Helping Lawyers. as the general population. This is not just a distant statistic; as many reading this article know, we have lost some members of our own Bar to suicide in recent years.

Loss of General Life Satisfaction and Decreased Professionalism

A study of California Lawyers by the RAND Institute for Civil Justice found that only half say, if they had to do it over again, they would become lawyers.¹² About 40% of young lawyers responding to a career satisfaction survey said that they weren't getting personal satisfaction from their jobs. In this poll, only a little more than half of the lawyers in private practice were satisfied with their career. This is consistent with the ABA's 1984 and 1990 findings.

Dr. Isaiah Zimmerman, a psychologist who specializes in counseling lawyers and judges states, "the causal link between high levels of stress and lowered performance is well documented."¹³ The stresses of the legal profession, the crush of deadlines, machinations of opposing counsel, the financial pressure, and the desire to "win" in an adversarial system of dispute resolution can make an attorney act in an unprofessional manner. At times when practicing law is stressful and overwhelming it is difficult to maintain the ideals of integrity, responsibility, cooperation, community-mindedness, and altruism our profession should uphold, for our own sakes and that of society.

And let us not forget that judges are susceptible as well. Yes, judges. Remember, judges come from the ranks of lawyers, and judicial robes are not proof against the ravages of depression, alcohol or substance abuse. Judges are subject to the normal spectrum of psychological issues that affect human beings in general and lawyers in particular, including depression, anxiety, and mid-life crises.14

II. BUT WHY LAWYERS?

Perfectionism, Pessimism, and Pressure

Several who have studied the issue of lawyers' proclivity, as a group, to experience substance abuse and depression cite a number of causes. Dr. Lynn Johnson, a local Ph.D. and a valued LHL consultant, published an article about this issue in the January/February 2003 issue of the Utah Bar Journal. Dr. Johnson noted that both lawyers and judges are characterized by tendencies towards perfectionism and pessimism.¹⁵ These characteristics, coupled with constant pressure and a significant lack of balance between their personal and professional lives drive many lawyers to become part of the statistics mentioned thus far.

Perfectionism

Law as a profession rewards perfectionism. Perfectionism often guides lawyers to pursue a legal career and certainly assists us to excel in law school and pass the bar. Lawyers are, by necessity, detail oriented - even obsessively so. Yet dotting the i's and crossing the t's is part of our stock in trade. Such is required for our best work and serves our clients well.

But there is a negative side to this tendency. Dr. Johnson described the darker side of "perfectionism" as follows:

Perfectionism creates a chronic feeling that nothing is good enough. Perfectionism raises cortisol levels in the body, the stress hormone that is helpful in the short run and very damaging in the long run. High cortisol levels lead to burnout, vulnerability to infections, increased healing time, and mental and emotional depression. Perfectionists are more vulnerable to depression and anxiety, harder to treat with either therapy or drugs, and much more likely to commit suicide when things go very wrong.¹⁶

If this description sounds familiar to you, you are not alone. Many attorneys and judges feel this way at times. The stress caused by this tendency towards perfection when the stakes are high, as they often are in the legal profession, only serves to compound the problem. But, wait, there's more....

Pessimism

Dr. Johnson identified pessimism as the second characteristic of lawyers and judges. Many attorneys view this simply as a healthy skepticism. After all, attorneys are "cursed with the knowledge of what can (and does) go wrong" in life, love, business, etc., so it is not surprising that we don't always take things at face value. Whatever name you wish to ascribe to it, pessimism pervades our profession. Indeed it arguably starts even before a lawyer passes the bar exam. For example: in 1990 the Johns Hopkins Medical School published findings from a study examining graduate school programs. One significant finding was that in every graduate school program evaluated, save one, the optimists outperformed the pessimists. And yes, the pessimists outperformed the optimists in law school.17

Pressure

Lawyers are intimately familiar with pressure, as well as the stress and anxiety that accompany it. Remember getting up at 4:30 a.m. to throw-up before your first trial? I do. Whether it is the press of deadlines, personal difficulties, difficulties with a practice, or just the stress and grind of advocacy in our adversarial system of justice, we all face pressure. It is an integral part of our role as advocates; the practice of law requires it.

This pressure, combined with our pessimism, or skepticism if you like, can have its own consequences, especially upon our health. High stress, chronic depression, and growing disillusionment with the practice of law can often flow from living lives full of such pessimism and skepticism. Litigators are especially susceptible, given the high level of intellectual engagement and emotional involvement lawyers experience in many cases. Coupled with the burden of inherently distressing content, the stress of conflict can impair a lawyer's functioning in both obvious and subtle ways.¹⁸

Lawyers and judges are often thrust into the middle of conflict to resolve disputes surrounding the negatives of life, often fighting to minimize their effects on others.¹⁹ As lawyers, we carry the burdens of our clients as we represent them to assume and resolve their problems. Indeed, they often assign us the responsibility to satisfactorily resolve their problems, and their fates, in very negative sets of circumstances. Our client's lives, freedom, and fortunes are at stake, and the chips are down. The stress of our role as an advocate is compounded by the number of cases we have, long hours, and the other difficulties of business and life. Add to this an outlook of trained pessimism, a competitive need to win, the perfectionism that accompanies it, and often very high stakes for our clients (and even ourselves) and, well...you get the point.

LHL Can Help

All contacts with LHL are completely confidential.

The primary role of Utah Lawyers Helping Lawyers (LHL) is to assist attorneys and judges whose lives and/or practices are impaired, whatever the reason. Historically and fundamentally, we assist members of the legal community in recovery. Our secondary mission is to help lawyers and judges with the qualityof-life issues they encounter through the stress and pressures of life and the practice of law.

LHL operates as a clearinghouse to help the lawyer or judge find the professional assistance necessary and best suited to the issue presented. In this regard LHL maintains a network of treatment providers and professional services available throughout the state. LHL also provides volunteer peer-to-peer assistance and support. After all, no one knows what it is like to practice law better than another lawyer, right?

As mentioned previously, LHL's services are completely confidential. Utah's Rules of Professional Conduct recognize LHL as an approved provider of lawyer assistance services. This means that LHL members are relieved of the duty to report ethical violations discovered as a result of their LHL work. This is an exception to Rule 8.3 of the Utah Rules of Professional Conduct (which requires lawyers to report misconduct). In short, any misconduct or ethical violation discovered or revealed to a member of LHL will NOT be reported to the Office of Professional Conduct, an employer, or anyone else.

When crisis strikes, LHL is there. However, as the old saying goes, "an ounce of prevention is worth a pound of cure." LHL would love to help before things go from bad to worse. Prevention is critical to our own health and to our effectiveness as attorneys and judges. LHL assists our Bar by sponsoring CLE events that focus on the quality-of-life issues lawyers face and providing coping strategies to ease the burden. LHL also maintains a network of professional contacts who provide specialized services in this regard.

Get Involved With LHL

LHL provides an excellent mechanism for concerned attorneys

and judges to serve the Bench and the Bar. Our volunteer Board of Directors and attorney volunteers are the heart of LHL. However, LHL's ultimate success depends upon participation and support from all of you. We welcome your involvement and support. If you cannot volunteer your time but would like to contribute financially, LHL is a 501(c)(3) non-profit corporation and all donations are tax-deductible. Please consider whether you can spare any of your time or other resources to help us with our mission to serve lawyers in need of assistance.

Helping a friend or colleague through a tough time is an incredibly rewarding experience. I hope you will join us in serving the members of our Bench and the Bar.

Please feel free to contact us with any suggestions, questions regarding our services, or if we can assist you or someone you know.

Utah Lawyers Helping Lawyers Telephone: (801) 579-0404 In-state toll free at (800) 530-3743 or www.LawyersHelpingLawyers.org

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- 7. *Id*.
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- 9. Id.
- 10. Id. at 8; See also, Meyer J. Cohen, Bumps in the Road, GPSOLO, July August 2001, at 20.
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- 19. Uday, supra at 9.

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V K

What to Expect When You Call Lawyers Helping Lawyers

by Shannon Johnson

"Lawyers Helping Lawyers, this is Shannon." If you call (801) 579-0404 or 1 (800) 530-3743, this is most likely what you will first hear on the other end of the phone. My name is Shannon Johnson and I am the administrative assistant for Lawyers Helping Lawyers (LHL). As such, I have the opportunity of answering the phone and therefore being your first contact with LHL. I count this as a privilege and hope that I can always help you feel by the time you hang up the phone that your needs were or will be met. In order to make sure this happens, let me take a moment to guide you through what to expect if you call LHL.

First and foremost, please know that any information you share with me or anyone associated with LHL is always kept completely confidential. We keep private records of the number of calls we receive and what they are regarding so we can track our services, but that information never leaves the LHL office unless it has been stripped of any identifying features (even gender), and then only if necessary for reporting purposes. I will probably ask for your name, but if you don't feel comfortable telling me, that is perfectly fine. If you do, however, know that I will never share your name or contact information with anyone without your express permission to do so. Along the same lines, if I ever need to contact you for information or to follow-up, I will not identify myself as calling from LHL unless you have agreed to that as well. Hopefully, understanding these facts will remove some of the questions or anxiety you may have about calling.

Next, there are two types of phone calls we receive at LHL that I would like to address, since someday you might find yourselves in one of these two situations. The first is the self-referral, when you call regarding a problem or issue that you are dealing with and request help. The majority of LHL's calls are self-referrals. The second is the referral, when you call regarding someone you are acquainted with who seems to be struggling.

First, if you are calling for yourself, I will begin by asking you about the situation. Maybe it's a drinking problem, a battle with depression, or overwhelming work-related stress. Whatever it is, I'll ask for as many details as I think may be useful to help find the best services for you. We may discuss how long the problem has persisted, and what you think triggered it, down to how long and in what area of law you practice. Then we will discuss your options. Perhaps this is a good time to explain that I am not an attorney, psychologist, counselor, or any other type of professional treatment provider. I am an administrative assistant. But before you wonder what qualifies me to answer your phone call, understand that while I may not have the experience myself, I have access to the very best of resources. At LHL, we have a unique combination of connections with mental health, substance abuse, and other associated treatment providers, as well as a network of nearly fifty lawyers who volunteer their time, talents, and experience to helping other attorneys in need. So, whether you need to speak with a counselor regarding your drinking problem, or just need to talk with another lawyer who practices criminal defense to see how they keep it all together without letting it drag them down, we can help.

Now, back to your phone call. After we have discussed what the issue is, I will probably ask you what you would like to see happen. What do you need, exactly, and how can LHL help you meet that need? If you don't know the answer to that up front, that is ok. Many of us don't. But as we talk it through together and discuss options and resources, it will become clearer. Depending on what your needs are, I will give you the information, resources, or connections that will help you meet your goals, such as AA schedules, a referral to a counselor to contact for an appointment, or the name of another lawyer who may have similar personal experience and could provide support - just to name a few. Sometimes getting you this information may mean that I need to take your number and call you back so I can let others who may become involved know to expect your call, and so I can verify that they are the right ones to help you. If this is the case, I promise not to keep you waiting long. I know that calling LHL takes courage and that you are ready for help.

Second, if you find yourself in the position of seeing a lawyer display behavior that is out of character or worrisome, you can fulfill

SHANNON JOHNSON is an Administrative Assistant for Lawyers Helping Lawyers.



your duty to report such behavior by calling LHL. *See* Utah Rule of Professional Conduct 8.3. Again, your referral is confidential, so the person about whom you are calling will never know you contacted us unless you personally tell that person or allow us to disclose that information.

When you call to report concerns about another attorney, I will most likely first ask you some of the same questions. What have you seen in his or her behavior that has given you reason to worry? Do you know what may have led to the behavior? What do you think needs to happen to help him or her? As we talk, I will probably ask what type of relationship you have with the attorney and if you have approached the attorney about the issue.

If you have, chances are the problem is still evident. Otherwise, you wouldn't be calling LHL. It may take another, more direct approach from you, or even from someone else in the attorney's life (spouse, family member, close friend, etc.) in order to help him or her recognize the problem. If you haven't approached the attorney directly, we will discuss who should speak with the attorney. If you want to speak with the attorney I can provide you with resources to give to him or her that will hopefully point them in the right direction. It is ideal if someone who is personally or professionally close to the attorney contact him or her before LHL makes contact, because one is much more likely to take seriously the concerns of someone they know cares about them. In fact, a stranger calling from LHL may put the person on the defensive and could exacerbate the problem. If this is the only option, however, either I or an LHL board member will privately make contact with the attorney and let him or her know that we have received a call from a concerned acquaintance who believes he or she may be struggling. This approach will be as caring and nonthreatening as possible. Hopefully, we will be able to encourage the attorney to take advantage of LHL's services. Ultimately, the choice will be up to them, but you have done your part to help.

I hope that this may have shed some light on what to expect when you call LHL, and thereby remove at least some of the anxiety you may feel about calling. We are here to help you and meet your needs. LHL's purpose and goals are all about YOU! If you have any questions or concerns that haven't been answered in this issue of the *Bar Journal*, please don't hesitate to call me. You know the number.

One of the most important services which Lawyers Helping Lawyers offers is a confidential Support Group for Lawyers. The support group meets informally on the third Wednesday of every month from 6:00 until 7:00 p.m. (or whenever we finish) at the Clift Building, 10 W. Broadway, Salt Lake City, Utah, in the third floor conference room.

As a group, lawyers face tremendous pressure to solve the problems of others. Often, in their zeal to help their clients and to serve their employers, lawyers overlook their own personal needs. The Support Group for Lawyers can help lawyers address their emotional needs.

It can be very reassuring for a lawyer to know that he or she is not alone in whatever problems he or she might be facing – and to know that others have been there before him or her, and were able to address the problem and move on. It can also relieve stress to vent frustrations in a safe environment.

Participation in the Support Group for Lawyers is an opportunity for lawyers to discuss personal issues they are encountering, including but not limited to issues that are caused by work or that may impact their work. Issues which are discussed at a typical Support Group for Lawyers meeting may include stress, burnout, anxiety, depression, family issues, substance abuse,

and other health issues. Lawyers may discuss these issues with others who have personally experienced the pressures and rewards of a legal career.

Lawyers from all walks of life and forms of practice have benefited from the Support Group for Lawyers. Participants may contribute to the discussion as much or as little as they desire.

Please feel welcome to attend the next Support Group for Lawyers. If you have any questions about the Support Group for Lawyers or about LHL, please contact administrative assistant Ms. Shannon Johnson at (801) 579-0404.



LHL: Reflecting the Principles of the ABA Model

by Michael E. Bulson

One of the strengths of Utah's Lawyers Helping Lawyers program (LHL) is that it is based on the American Bar Association's (ABA) model for lawyer assistance programs (LAP). Since 1987 when its efforts to assist lawyers facing impairment problems first began, the ABA has aided and supported the establishment of LAPs in every state. The ABA's support for this important initiative grew out of its awareness that the number of lawyers suffering the effects of drug and alcohol addiction, as well as mental health issues, was disproportionate to that of society as a whole. Studies put the percentage of lawyers in crisis at 15 to 18%, compared with 10% for the rest of society. In response, the ABA House of Delegates adopted a model program in February 2004, for providing help to lawyers, judges, and law students impaired by any physical or mental health condition affecting the competent practice of their profession, quality of life, or study of law.1

The ABA model sets out the following four primary purposes for any LAP:

- 1. to assist lawyers, judges, and law students, or the legal community as defined by the LAP, in pursuing their recovery from chemical dependency or abuse, mental health, or physical issues;
- 2. to protect the interests of clients from harm that might result from lawyers impaired by substance abuse or dependency, physical or mental health conditions;
- 3. to educate the bench, bar, and law school community about the issues and concerns that negatively affect the legal profession; and
- 4. to develop programs that emphasize prevention of conditions that might negatively affect legal professionals or law students.

The ABA model envisions a program organized, in many cases, within the framework of the bar association or, in some cases, operating as an independent corporation with or without tax exempt status. The governing body is to be drawn from lawyer volunteers as well as from nonlawyers who may be experienced in the fields of substance abuse or mental health disorders. The governing body is to establish policies and procedures, provide advice, assist the program in achieving its goals, hire a director, and approve a budget.

A successful model LAP is remedial in nature, with a key feature being peer assistance involving lawyers and other professionals who are willing to serve as mentors and monitors for lawyers in crisis. In many cases, this will be all the assistance needed. In other cases, referral for professional help may be necessary. In all cases, the lawyer, judge, or law student is assured of complete confidentiality and a prompt response to any inquiry. Recognizing that denial plays a big part in many problems, the ABA model emphasizes the importance of education and outreach to help members of the professional community identify signs of impending crisis, e.g., decreasing effectiveness in practice, and to make the appropriate referral for assistance.

A strong volunteer network is a central feature of the ABA model. It encourages the development of a broad network of volunteers recruited from both recovering and nonrecovering members of the legal community as well as health care professionals knowledgeable in substance abuse and mental health issues. In order for that volunteer network to function effectively, the LAP must provide periodic training and education regarding LAP guidelines, policies, and procedures adopted by the program, bar rules, and written guidelines established by the director.

A highly qualified director to oversee the operation of the LAP is of paramount importance under the ABA model. Although personal experience with recovery is helpful, it is not mandatory. Among other things, the director must be skilled at maintaining current and varied information regarding community resources, including: self-help support groups, individual therapists and counselors, physicians, hospitals, and free-standing treatment programs. The commentaries to the ABA model emphasize the importance of allocating sufficient resources to the director's salary and

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The ABA model recognizes that the effectiveness of any LAP depends to a large extent on close cooperation with state and local bar organizations, courts, as well as the disciplinary office of the bar association. In most cases, participation in the LAP would be voluntary, with contact initiated most often by the affected individual or by referral from a colleague, judge, family member, or friend. But the model also contemplates cases in which evaluation, treatment, or monitoring may be required by court order. One of the guiding principles reflected in the ABA model is that the disciplinary agency should create a system for referral to the LAP of those lawyers who may be assisted before disciplinary proceedings become necessary. Moreover, referral to the LAP to assess whether substance abuse or a mental health disorder is a mitigating factor in a complaint of misconduct may be appropriate. The ABA model suggests that the referred individual may accept participation in the LAP as a substitute for formal discipline or as a condition for reinstatement or admission to the bar.

Recognizing that fear of disclosure and discipline keeps many lawyers from contacting the LAP, the ABA model sets forth a number of practical approaches. The guarantee of confidentiality is of primary importance. This aspect of the program must be widely publicized. All potential contacts with the LAP should be assured that their communication with the program will not be forwarded to the disciplinary office. Another practical step is to locate LAP offices outside the state bar offices. If this is not possible, the ABA model recommends that the office not be in a main area of the building and that the director meet with contacts outside the building.

The Utah LHL program has adhered closely to the guiding principles set out in the ABA model. The success LHL has had can be largely attributed to this approach. From the outset its operations have been governed by a committed group of volunteer attorneys who have willingly offered their time and talent to assure that the highest quality service is available to lawyers in need of help. Those who have contacted LHL have received prompt, professional care with the assurance of complete confidentiality. Although currently without a director, the functions of the program continue under the able assistance of a part time administrator and a dedicated board. LHL looks forward to continuing its service to the legal community as a program that reflects the principles of a model ABA program.

1. The ABA model can be found at <u>www.abanet.org/legalservices/colap</u>

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Why Are So Many Lawyers Depressed?

by Brent Hale

Do lawyers suffer more depression than other professionals? Do the demands and pressures of a legal career make lawyers particularly prone to burnout and other stress-related illnesses? Consider the following comments taken from ABA publications and websites:

- Researchers at Johns Hopkins University in Baltimore interviewed 12,000 workers about depression. Lawyers ranked number 1 on the list of occupations that were most depressed. Of the 28 occupations studied, lawyers were more than 3.6 times more likely to be depressed than average.¹
- While 3 to 9% of the general population at any given time may experience depression, a quality-of-life survey conducted by the North Carolina Bar Association in 1991 reported that almost 26% of that bar's members exhibited symptoms of clinical depression. Almost 12% of them said they contemplated suicide at least once each month.²
- Suicide currently ranks as one of the leading causes of premature death in the legal profession.³
- One research study surveyed 801 lawyers in the State of Washington and found that 19% of the respondents suffered from depression and 18% were problem drinkers.⁴

Why the high risk?

It is suggested that although lawyers didn't invent stress, they improved upon it. One does not need to look very hard to see why so many lawyers are suffering from stress-related illnesses. As Yogi Berra once said, "You can observe a lot by watching." Even a cursory glance at the real world problems of lawyering highlights just how stressful the fast-paced, demanding life of a lawyer can be. The legal profession is often characterized as aggressive, adversarial, and competitive. Lawyers and judges are notorious for working excessive hours throughout their professional lives. The sheer number of hours many lawyers are forced to work makes it extremely difficult for them to find balance in their personal and professional lives. The ABA has reported that the desire for more time to meet personal and family needs is one of the major reasons lawyers experience burnout and consider leaving the legal profession.⁵

Burnout, the "romantic disorder"

Burnout has been called a "romantic disorder" in that it frequently occurs as a consequence of the heroic work ethic so admired

in the legal community. Lawyers entering burnout find that the treadmill seems to have lost its meaning. Rather than feeling invigorated by the challenges of the profession, they experience a loss of control and personal power over workloads and deadlines. Burnout is sometimes defined as a mild form of depression characterized by fatigue, apathy, declining productivity and effectiveness, and negative feelings about work, career, and life. Irritability, sleep problems, lack of joy, and changes in eating habits often accompany burnout.⁶

Lawyers suffering from burnout report a significant drop in their ability to function. They find themselves procrastinating and struggling to meet their professional commitments. They have a difficult time concentrating and engage in all sorts of creative, yet counterproductive avoidance behaviors. Many increase their consumption of alcohol, sugar-laden snack foods, or stimulants to try to make it through the day. Others find themselves engaging in mood altering behaviors such as pornography, gambling, or unreasonable risk taking activities. Some approach the problem merely by driving themselves harder, becoming more and more rigid in their lives and less flexible, reasonable, or spontaneous.

Burnout makes it much more difficult to connect meaningfully with spouses and family members. Instead of spontaneously responding to family members in a safe and caring manner, many find themselves overreacting to difficulties, withdrawing from closeness, and straining the very relationships that are the most important to them. Their immune system becomes suppressed resulting in an increased incidence of illness, sometimes even serious medical concerns. Lawyers with burnout fight against a dark, persistent mood and are already experiencing many of the symptoms used to describe clinical depression. Unless the lawyer takes realistic steps to address burnout, it often will progress into a full-blown episode of major depressive disorder.

What's the big deal with depression?

Depression is a serious medical illness that is much more than just struggling with a low mood. The impact of depression on a

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lawyer's life can be devastating. It can have negative effects on their relationships, finances, fundamental capacity to function as a lawyer, and future prospects. Depressed attorneys often develop thought disorders and begin to believe the delusion that suicide really does make sense. Depression is significantly detrimental to a lawyer's health and well being. According to a World Health Organization study reported in September 2007, depression has a greater impact on overall health than arthritis, diabetes, angina, and asthma.⁷

A person meets the diagnostic criteria for major depressive episode when at least five or more of the following symptoms have been present nearly every day during the same 2-week period and represent a change from previous functioning:

- 1. depressed mood most of the day;
- 2. markedly diminished interest or pleasure in all, or almost all, activities most of the day;
- 3. significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month), or decrease or increase in appetite;
- insomnia or hypersomnia (wanting to sleep much more than normal);
- 5. psychomotor agitation or retardation (not merely subjective feelings of restlessness or being slowed down);

- 6. fatigue or loss of energy;
- feelings of worthlessness, or excessive or inappropriate guilt (which may be delusional);
- 8. diminished ability to think or concentrate, or indecisiveness;
- recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.

Depression is treatable

Fortunately, 85% of people with depressive illness who receive treatment significantly improve. Unfortunately, only 1 in 3 people with depressive illness seek treatment. There is evidence that lawyers, comfortable in their roles as trained helpers and problem solvers, tend to be less willing to seek professional help for a broad range of distressing and sometimes debilitating personal problems. This is extremely unfortunate. Not only does this result in needless suffering, reduced productivity, and broken marriages, it also can impact a lawyer's career. According to the ABA, a large portion of lawyers who face disciplinary action suffer from depression, anxiety, or substance abuse.

Responding to the challenge

The legal profession is attempting to respond to the challenge of distressed lawyers. Today, all 50 states, the Canadian provinces, and Great Britain have comprehensive lawyer assistance programs. The Utah State Bar has taken this matter seriously. In March



of 2006, as an adjunct to the excellent services traditionally rendered by the Utah Lawyers Helping Lawyers (LHL) program, the Utah State Bar acted to expand the professional counseling resources available to lawyers. It created the Lawyers Assistance Program (LAP) and contracted with Blomquist Hale Consulting to provide members and their families with an expanded array of free professional assistance.

What is the LAP?

The LAP provides professionally licensed counselors free-of-charge to Bar members and their immediate dependents. It provides face-to-face help to resolve such concerns as: marital difficulties, family problems, stress, burnout, depression, anxiety, personal cash flow management difficulties, elder care challenges, and assessment for drug/alcohol dependence. Importantly, the LAP is:

- free of charge to the Utah State Bar and their eligible dependants;
- a short-term, solution-focused counseling resource with no set limit to the number of free sessions:
- a resource for good recommendations when longer term care is appropriate;
- available 24/7 to help with crisis and emergency situations;
- available for critical incident stress debriefings;
- a resource for free, multi-week groups that focus on relationship

skills, parenting, raising kids with ADHD, and personal growth;

• confidential under HIPAA as well as Utah's Rules of Professional Conduct 8.3 (which expressly provides confidentiality during participation in an approved lawyers assistance program).

Lawyers or their family members who access the LAP find that most difficulties are addressed in just a few sessions over a couple of months. Unlike more traditional therapy approaches that seek primarily to help clients achieve insight, solution-focused therapy assists clients in developing strategies and skills to successfully address their problem themselves. Using this supportive approach, clients are encouraged to take the steps necessary to effectively resolve their difficulties.

Some types of problems are not appropriately treated by short-term therapy, and the LAP therapist will provide recommendations for community providers within your insurance panel. Thus far, over 95% of the cases have been handled completely within the free services of the LAP.

It is easy to get help through the LAP

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

Salt Lake City
Ogden
Orem
Logan
Brigham City

Where can I get more information about the LAP?

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

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^{2.} Id



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"Ain't Stress Grand?"

by Herm Olsen

The fault, dear Brutus, Is not in our stars, But in ourselves

- William Shakespeare, Julius Caesar, I, ii.134

Lt's 5:13 a.m. – you're bone-dead tired. But you can't get your eyes to slam shut. Deadlines eat at you. Clients are getting frustrated because you're not prompt at getting back to them. Your secretary is irritated because her bonus isn't as large as she deserves.

Stressors happen to us every day. It's a constant barrage. We get stress from opposing counsel; we get stress from Judge Schmuck at hearings and trial; and we get overexpectation stress from clients. And there's the oldie-but-goodie financial stress from mortgage lenders and sweet families. Over time, a constant diet of stress will beat you up, wear you down, and eventually – kill you.

I used to work as Legislative Counsel to Congressman Gunn McKay and the Interior Appropriations Committee for the U. S. House of Representatives in Washington D.C. It was a pressure-cooker environment where our performance affected millions of people and billions of dollars. But *none* of that stress compared even remotely to the emotional intensity of my first client when I returned to the practice of law in Logan. His neighbor's chickens made so much noise he couldn't sleep at night, and he was steamed! Forget the millions and billions, he seemed to challenge "Just take care of 50 crummy chickens!" Now *that* is stress!

Aarrgghh! Is there any way you can get off this rollercoaster? Some days, bagging groceries or pumping gas at the corner market seems like a much wiser career path than the practice of law. That no doubt accounts for why a near-majority of us, according to a recent poll of attorneys, would rather be doing something else – anything else.

A recent Swedish longitudinal study found that those with high levels of stress and little emotional support from family or friends were four times more likely to die within the next seven years as those with the same stresses but ample social support. According to a 1990 John's Hopkins University study, lawyers are 3.6 times more likely than other workers in the United States to become clinically depressed, ranking at the top of 100 occupational groups.

But wait a minute. Does it *have* to be like this? Does the pressure of practice have to cause near-paralysis? Take a deep breath and re-read "An Attorney's Prayer" as adapted from the *Florida Bar Journal*, December, 1977: "Grant me not to confuse a point of law with the point of existence. Give me the grace to hear patiently, to consider diligently, to understand rightly, and to decide justly. Inspire me to be the wise counselor, eager to impart peace."

That's a start in de-stressing your world. It continues with civility. Isn't it truly a better day when you can cordially discuss your disputes with opposing counsel rather than hanging the phone up in a snit? Former Supreme Court Justice Sandra Day O'Connor pointed out: "The justice system cannot function effectively when the professionals charged with administering it cannot even be polite to one another."

Each year, a well-known Phoenix law firm helps new associates diminish the stressors of practice with an internal seminar on how to be a decent human being *and* effective attorney:

- 1. It's a smaller town that you think. If you are a jerk, word gets around.
- 2. Classy lawyers get better results. Judges, juries, and appellate courts trust classy lawyers more.
- 3. Being a decent person is more efficient. Less time is wasted on petty and needless disputes.

HERM OLSEN is a partner in the law firm of Hillyard, Anderson, & Olsen, P.C. where bis practice focuses on personal injury, criminal defense, and municipal law.



4. Being a decent human being is good for the firm, because those attorneys get more referrals.

U. S. District Court Judge David Sam suggested at a Federal Court Litigation Practice seminar in 1996 that attorneys:

Have respect for the fairness and dignity of the role of the law in maintaining a free society. Work out matters with other attorneys without imposing on the court. Give extensions and waive formalities unless real prejudice results to the client. View compromise as a tool. Refuse to take any course of action that is without merit. Do not disparage or attribute bad motives to opposing counsel.

Can you remember the attorney's oath each of us signed?

I will maintain the respect due to courts of justice and judicial officers. I will not counsel or maintain any suit or proceeding which shall appear to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land.

I recall the counsel of former Supreme Court Justice Warren E. Burger in the 1984 address to the American Bar Association: "The entire legal profession – lawyers, judges, law teachers – have become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers of conflicts..., not hired guns." Lawyers are given many gifts. As is often the case for beneficiaries of largess, we sometimes forget how much we have been given.

Remember the real key to developing successful relationships with clients and opposing counsel is to recognize the problem, slow down for introspection, and let go of the external concept of strife for strife's sake. "Developing an honest relationship with self is the key," says District of Columbia Counselor Ed Honnold. "The experience of just being, of slowing down and tuning in to personal needs is what leads lawyers to a healthy balance between work and life."

With a little practice, you can learn how to refuse delivery of artificially created stress and the unnecessary disruption of life, which attends such stress. So the next time 5:13 a.m. rolls around, and you're bone-dead tired, you will be able to roll over and go back to sleep – at least until 6:30 a.m.

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A Sober Look Back

by Anonymous

Hello, my name is "Steve," and I am a career prosecutor. I've practiced law for over two decades and I haven't billed an hour yet. In that time, I have prosecuted everything from barking dog cases to capital homicides. Of course, I've prosecuted illegal narcotics cases, automobile homicides, and DUIs; lots of DUIs.

I am also an alcoholic. I cannot recount my career as an alcoholic with the same precise detail with which I can retrace my rise as a prosecutor; I did not maintain a resume of my drinking. I can say with confidence, however, that my drinking progressed apace with my profession, and eventually overtook it. My alcoholism took most of those two decades to progress to the point where I forfeited friends, fitness, and health. I allowed it to rob me of the respect of colleagues, judges, and adversaries. Even as it threatened my career, my relationship with my family and my very life, I surrendered to its ever-tightening grip.

After the inevitable (and lengthy) period of time during which I proclaimed and I believed that I could quit anytime I wanted, I came to realize that I could never quit. The progression of my struggle can be seen today on my bookshelf: *How to Quit Drinking Without AA*; *The Truth About Addiction and Recovery*; and *Chicken Soup for the Alcoholic Soul*. (OK, I made that last one up.) At the constant entreaties of family, friends, and the rarely-consulted medical professionals, I entered and completed a local outpatient treatment program. I stayed sober for over a year.

I used that year to convince myself that I wasn't truly alcoholic, I merely had transitory issues that were exacerbated by alcohol. I began drinking again, cautiously and "responsibly" and thereby confirmed my self-diagnosis. As the disease again progressed, it overcame me like the recurrence of a cancer, and the inevitable despair was overwhelming.

Alcoholism is a disease of deception. We alcoholics will lie to anyone to protect our addiction. We lie to family members, friends, lovers, doctors, colleagues, and bosses. We lie even when we know the truth is evident. We lie to ourselves. Ironically, we lie to ourselves first, and we are the last to disbelieve our own lies. And I continued to lie to myself even when I no longer believed my own lies.

Notably absent from the history thus far is any mention of involvement in Alcoholics Anonymous. I was, of course, aware of AA. One could not grow up in the United States in the latter half of the Twentieth Century without having some rudimentary knowledge and preconceived impression of the mother of all Twelve Step programs.

Unfortunately, my impressions of AA were formed by mass media parody (even the cartoon feature Finding Nemo had an obligatory AA scene), and by the perceptions of my family and peers, primarily my mother. Mom considered "alcoholics" to be men and women of weak moral character and lack of self-control who could not handle their liquor. Never mind that Mom herself struggled with the ravages of alcohol addiction for much of her adult life; she wasn't about to acknowledge that: (a) she had a problem with alcohol, or (b) she could control that problem by engaging in a fellowship with others of similar constitution.

Thus, my image of AA and its participants was that of a group of dirty, poorly educated, unemployed, and largely unintelligent men and women. The kind that would approach me on the street to beg for spare change, or that I would see in the courtroom dealing with the aftermath of their uncontrollable addiction. On the occasions when it occurred to me that I may benefit from such an organization, I quickly discounted it as a last refuge for the truly stricken.

Furthermore, I had what I considered to be a rock-solid defense against the pressure to try AA, an excuse that I not only took to heart, but which I could use to defuse the urgent pleading of loved ones to give it a try. I was, after all, a prosecutor; the public front man for the entire system of criminal justice, the last in a long line of law enforcement professionals responsible for keeping the world safe from, well, people like me.

I argued, effectively, that I could not trust the concept of anonymity. Would not a charged offender, learning of my identity and my disease, be tempted to blackmail me, or to expose me as a hypocrite? Would not the judges before whom I appeared find my credibility wanting when I urged a stiff sentence for a drunk driver or a drug offender? Would I not become the laughing stock of the court, the defense bar, and my colleagues in my own office? I was not about to find out. So I struggled, and drank, and continued to make promises to myself and others, promises I knew as I made them I could not keep. I could stock a liquor store if I possessed every "last bottle" I ever purchased.

As often happens in the life of an alcoholic, the things that I

feared would result from participation in AA came anyway as a result of my lifestyle. I found myself ineffective in court, especially in the mornings. I felt the sting of hypocrisy when a judge would ask a defendant, prior to accepting guilty plea, whether he had consumed alcohol in the last 24 hours. I began to take the path of least resistance on cases, compromising them in order to keep the flow moving with a minimum of effort. Rumors started and persisted. In the cruel irony that faces many alcoholics, I was the last to know that everyone, to one extent or another, already "knew." Still, I protected my addiction with every tool I had available.

When things came to a head, they came quickly. I was finally confronted directly about my drinking by a supervisor. I told another of those lies we both knew was untrue. I was confronted at home, and lied again. The result there was different than it had been on previous occasions, and an ultimatum was set down: stop drinking or move out.

It is said that the last thing an alcoholic man will sacrifice is his job, and the last thing an alcoholic woman will try to hold on to is her family. I suddenly found myself faced with the loss of both. I knew that I literally stood at a crossroads of life, and that the wrong choice would lead to divorce, professional ruin and eventually, death. Yet I had absolutely no hope, no belief that I could quit. Every attempt I had made was met with sickness, intense craving, and a feeling of impending doom. It was as though I were being asked never to draw another breath of air.

In my desperation, however, I made a phone call to a man whose number a friend had given me. This man was a tangential part of my life long ago, and I had no idea he knew of my predicament, or that he was in either a position or a mind set to help. I will never forget the call; I sat in the parking lot of my office during a hellacious thunderstorm, and we must have talked for an hour. This man, whom I barely knew and who was a very busy professional, seemed to have all the time in the world for me. And in that hour, the only thing I remember hearing was this: "If you want to learn more about your alcoholism, talk to a psychiatrist. If you want to quit drinking, go to AA."

I agreed to meet him the next day at an AA meeting that took place near my office. When I arrived, I was filled with apprehension, but with a strange sense of resolve that I hadn't felt before. I had no real confidence that AA would work, but nothing else I tried had worked either. It was counter-intuitive to me to believe that merely by talking about this problem with other drunks I would somehow be relieved of my obsession to drink. As I sat and watched the other participants, I was surprised by their affect, their appearance, and their openness. When they spoke, I was

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impressed with their articulation, their intelligence, and their insight. When the time came, and I announced myself as a newly self-declared alcoholic, I was greeted with a genuine welcome. After the meeting I was presented with meeting schedules, phone numbers, offers of help, and a copy of the Alcoholics Anonymous "Big Book."

That day was over two years ago now. I still attend that meeting, as well as others, every week. On that day, I would have told you I couldn't quit drinking for two days, let alone two years. But the message that I received was simple: I didn't have to quit for two days, I only had to commit not to drink that day. Tomorrow would be soon enough to worry about what to do then.

"One day at a time" seems trite and overused, but it is the mantra by which alcoholics like me stay sober. A rather infamous law professor, known by many who will read this, was fond of saying, "By the inch it's a cinch, by the yard it's hard." That is no truer anywhere than it is in the life of an alcoholic or addict. Life becomes much more manageable when it is broken down into little bits. If a day seems too much, an hour or even a minute at a time will do.

As for my fears of being exposed, amazing things have happened. I went to my supervisors and told them what I was doing and



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why. I reasoned that I could immunize myself from threats of blackmail if I exposed the very trait I feared would be disclosed. I was met with unanimous relief and genuine caring. I spoke to judges, who congratulated me on my decision and offered their support. I told friends and colleagues, who were likewise committed to helping me succeed. You see, all of them already knew or suspected I was an alcoholic, and they were hoping that I would come to the realization and seek the support I needed.

The other fears, of encountering defendants at meetings, have also fallen by the wayside. Many of the participants in AA come to their first meetings as a condition of probation. The lucky ones stay after it is no longer required. Many of those who attend the meetings I frequent are aware of my profession, and I have encountered persons I have prosecuted in the past. I have held hands and recited the "Serenity Prayer" with people who have gone to prison for crimes I have prosecuted. Yet not once, in over two years, has any of them sought my advice on legal matters, asked me to intervene in a case, or suggested I was hypocritical for carrying out my profession as a declared alcoholic.

It has not always been easy, and at times it has been very painful. A sober look backward at the carnage left in my wake yields many unwelcome sights. The loss of friends and the respect of family and others have been slow to return. I have made great inroads of reconciliation in many relationships, but I mourn the loss of others. The process of seeking out those I have harmed and making amends, a necessary step in recovery, is difficult and uncomfortable. There are those, few though they may be, who relish in my struggles. I simply cannot afford to concern myself with how others view me, or what judgments they may make.

I realize that by writing this, I invite further exposure. When I began in AA, I assumed the purpose of anonymity was to protect the individual from disclosure. The roots of anonymity, however, lie in the organization's desire to protect itself from unnecessary scrutiny which comes when a highly-publicized participant "relapses" or abandons the AA principle. It is for that reason, not for protection of my own identity, that I write this under a pseudonym.

I spent many unnecessary years suffering as a practicing alcoholic because this message didn't find its way to me sooner, and because I feared to seek it out. It is easy for me to fantasize about what would have come of my life had I not found it when I did. If this thesis finds its way into the hands and heart of one person, be he or she a lawyer, prosecutor, judge or layperson, and it leads them to seek the peace I have found, it will be worth all of the exposure I risk here. The Twelfth Step of Alcoholics Anonymous explains why: "Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs."





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Stress in Practicing Law and How to Minimize it from the Perspective of a Family Law Practitioner

by Carolyn Zuethen

Although most lawyers will agree that the practice of law is demanding and intense, the legal community does not agree on how one finds satisfaction, fulfillment, creativity, and happiness in the practice of law. Perhaps the choices I have made to reduce the stress in my practice will serve to illustrate that a positive attitude is possible. As a lawyer practicing in family law for the past twenty years, I have certainly struggled with the intensity and demanding nature of the practice of family law. But I believe that I have come to enjoy it now more than ever. There are several reasons for this, but the most important are the choices I made that helped me to come to terms with the stressful environment in which I work.

Since law school the complicated issues of family law piqued my interest. When I started my practice, I felt that I should practice in several diverse areas such as real estate, criminal, and even personal injury. However, it was the family law cases that interested and motivated me. I received the greatest satisfaction when helping a client. It took me several years to discover this and realize that what really matters is doing what I enjoy and in an area in which I am truly interested. I learned that there were other areas of law in which I could earn more money or get more recognition, but which in my case, provided little satisfaction. I then made the important decision to limit my practice to family law with the attendant areas of guardianship, wills, trusts, and serving as a Guardian Ad Litem. By limiting my practice, I became knowledgeable in specific areas of law and soon discovered that focusing on one area, and knowing it well, allowed me to become more creative in my work. My mind was not continuously racing to become proficient in many topics, and as a result, the amount of stress I had to endure decreased.

However, the stress I experienced in the early years of practice did not entirely disappear. Even after several years of practice, I found myself frustrated, especially when cases did not settle, either because the parties wanted to seek revenge or because the opposing lawyer insisted on going to trial in lieu of at least an attempt at a peaceful and practical settlement. At this point, I had already learned that the "Rambo" style litigator who finds it necessary to go on the offensive is not effective in the emotionally charged family law arena and that this attitude eventually takes its toll on both parties, as well as their lawyers. This style does not work for the lawyer who believes, as I do, that effectiveness in my work with clients is directly correlated with my personal satisfaction and the meaning I derive from the ways I help them. When mediation became a requirement, the mediation process helped me to resolve more cases, bringing greater satisfaction to my clients and more peace to my law practice

Because of the existence of the "Rambo" litigator and the clients who seek them, I made another choice in my law practice. I decided that it was most important to know what cases not to take. The client who came to me to wage war with a spouse or a former spouse got a quick referral to another lawyer. I found it was far less stressful to go to trial with a client who needed to assert rights as to particular issues of law or fact rather than in an attempt to trample on or destroy the other party.

I also found that the practice of law took an excessive amount of time. Consequently, I noticed that by the weekend I was too tired to be social, spend time with family, and sustain friendships. I only wanted peace, rest, and time to prepare for the week ahead. It was then that I decided to get serious about reducing the stress that was devouring me. I made several choices to change what was happening in both my personal life and my practice.

When I decided to take the time to improve my personal life, I recognized that my time could not be reduced to a monetary value. I realized that I could only develop my relationships with family and friends by taking the time. I looked at my marriage and family and realized what a great value they have always been to me. I made it a high priority to spend a lot of time with those closest to me. This resulted in taking time for short trips and longer vacations. By making this switch, I found that I was becoming

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more relaxed. I also allotted time to relax with friends and engage in activities such as hiking, skiing, and backpacking. Last, and most important, I took time out for myself. By learning and practicing meditation, not only did I find out how to relax but also how to focus better on the work I did. I used the additional time to become physically fit with a corresponding drop in minor ailments. Having the freedom to make choices as to my free time greatly reduced my stress and eventually I was able to get rid of the feeling that I should always be in the office working.

The choice to reduce stress in my law practice has also worked. When I understood that clients who are divorcing are suffering a loss of a relationship and need understanding and compassion I began to apply this understanding in my daily practice of law. And when I became more compassionate, it helped me become a better lawyer by having greater insight into my clients needs which in turn helped my clients considerably. This idea is affirmed in Professor Hall's book, *The Spiritual Revitalization of the Legal profession: A search for Sacred Rivers*, when he discussed the attorney personality and the lawyer's soul:

The lawyer's keen analytical mind sits next to her passionate ear. They do not work against each other, but serve as a catalyst for each other's growth for some of our most creative and thoughtful ideas and solutions come when our minds are still, and when our hearts have been stirred.

When we have been advised to be detached from the client and the problem, we could suffer the inability to do our jobs effectively and to live our lives to the fullest. We run the risk of becoming like hired guns or "Rambos" and address the technicalities of the law without ever considering how the client feels or even what he or she wants; or have any idea how to resolve their legal problems in a creative way. I have seen lawyers allow themselves to insult the other party without even considering the consequences to their client and a satisfactory resolution of the case. If we believe that these actions will not have an effect on our personality and personal life, we are very much mistaken. As Professor Hall stated, "creative and effective thinking does not come from detachment, but from immersion." I believe that I have enjoyed my practice in large part because I have become more sensitive to my clients' feelings while still being objective as to how to help them with their legal matters. I now listen to my clients and respond to their feelings while working toward a positive resolution of the case, always in relationship to the client's future happiness.

Some other principles I have adopted to reduce stress involve fees and frequent communication with clients. Before I start working on a case for a client, I always ask for a retainer fee and a signed retainer agreement. I personally explain my charges and bill my clients every month so that they know exactly where their money is going. I encourage my clients to ask questions about fees at any time and make sure they know that I may require another retainer in particular circumstances. I do not hesitate to discuss fees no matter how sensitive the case is or how urgent the matter is for the client. This works because it lessens the chance of not being compensated for work performed, which is a definite source of great stress for lawyers. Likewise, the client endures less stress because of the continuing communication about fees and the billing process. Another way to keep the client from being stressed over fees is to attempt to minimize the legal costs by encouraging mediation or meetings with the opposing party and lawyer.

Another major stress reducer for both the lawyer and the client is taking the time to fully explain the legal process and particular proceedings with the client and then encourage them to call and ask questions if there is something they don't understand. I never promise great outcomes of a case but, instead, attempt to give a realistic appraisal of the merits of their case. As to returning calls, I consider every call important, as does the client, and return them as rapidly as possible.

I believe the positive choices I have made to reduce the anxiety and stress in my law practice have worked. If I had been aware of these choices earlier, the practice of law may have been a lot easier for me. It is still a struggle sometimes to relax when I see what I perceive to be unfairness and that bothers me. But I now mostly enjoy practicing law and have overcome, in a very large part, the stress that once threatened my work and personal life.



Lessons from Recent Utab Legal Malpractice Cases

by Michael Skolnick

We can all learn from our mistakes. But it's likely less painful to learn from other's mistakes – either actual or alleged. This article is offered in that spirit – a compilation of some recent Utah attorney malpractice cases containing a grab bag of valuable lessons for every day practitioners. "Recent" is arbitrarily defined as the last two years.

Utah's most recent attorney malpractice case is *Crestwood Cove Apartments Business Trust v. Turner*, 2007 UT 48, 164 P.3d 1247 (Utah 2007). In *Crestwood Cove*, the former client claimed that the appellee had committed malpractice by failing to timely contest the application of Utah's unlawful detainer statute and its treble damage provision, and by failing to raise the appropriate measure of damages. The underlying unlawful detainer case is almost comical in its mishandling. Prior to the appellee's representation, Crestwood had been represented by a succession of other attorneys. Due to the client's inattentiveness and various contributions by a variety of counsel, Crestwood's opponent transformed a judgment for several thousand dollars into ownership of an apartment complex worth millions.

In this case, the appellee unsuccessfully argued to the trial court that it should not have trebled damages in setting the redemption price for the apartment complex. The trial court, as it turns out incorrectly, disagreed and set a redemption price of nearly \$1,000,000. Crestwood appealed the trial court's decision, but eventually settled its claims in the underlying case and dismissed its appeal. Crestwood then filed a legal malpractice action against appellee.

Appellee moved for summary judgment, based on the doctrine of abandonment. Appellee argued that by settling the appeal in the underlying case, the former client effectively precluded appellee from proving that it was judicial error and not attorney error which caused the adverse outcome in the underlying case.

The trial court in the malpractice action agreed and granted appellee's Motion for Summary Judgment. However, the Utah Supreme Court refused to apply the abandonment doctrine, instead upholding the summary judgment on proximate cause grounds. The supreme court concluded there was no reason to adopt the abandonment doctrine because the existing framework for legal malpractice actions in Utah adequately protects attorneys' rights, even when there has been a settlement of the underlying case. *See Id.* ¶24. The supreme court concluded that "it is more appropriate to examine whether the individual facts of

each case support a finding of proximate cause." Id ¶23.

The supreme court emphasized that it was "not foreclosing the possibility of ever applying the abandonment doctrine. Rather, we simply conclude that it was unnecessary to apply the doctrine in this case, which can be summarily resolved on traditional causation principles." *Id.* ¶28. But if the court was not prepared to adopt the abandonment doctrine in this case, where the court agreed that the trial court's decision in the underlying case was clearly erroneous, it is difficult to see when the abandonment doctrine might pertain.¹

This aspect of the *Crestwood Cove* decision should make attorneys sit up and take notice, because it permits their clients to sue them for a bad outcome without having to pursue a reversal of that outcome in the underlying case. The *Crestwood Cove* decision effectively shifts the economic burden of proving that judicial error caused an adverse outcome in the underlying case, as opposed to attorney malpractice. The *Crestwood Cove* court viewed this as simple application of well-established causation principals, but likely did not take into account all the hidden costs in an attorney malpractice case. Those costs include potential loss of professional reputation, economic harm from lost time at work, emotional distress at being sued, and payment of a deductible if the attorney is insured.

Other lessons from *Crestwood Cove* include the importance of protecting your client's record at the trial stage. Appellee was accused of not arguing forcefully enough or early enough in the trial that the unlawful detainer statute did not apply. The supreme court rejected that argument, holding that appellee adequately argued inapplicability of the unlawful detainer statute. The fact that appellee raised the argument against unlawful detainer in post trial motions was not determinative. The important thing was that the trial court had a chance to correct its error prior to rendering a final decision.

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In *Shaw Resources, Ltd., L.L.C. v. Pruitt, Gusbee & Bachtell, P.C.,* 2006 UT App. 313, 142 P.3d 56, the court of appeals considered a case brought by certain oil and gas companies against attorneys who owned an interest in an oil and gas exploration firm. The complaint alleged breach of fiduciary duty, breach of contract, fraudulent non-disclosure, and various related causes of action against the involved attorneys, as well as, the exploration firm in which the attorneys owned an interest. The court of appeals affirmed the trial court's grant of summary judgment.

Shaw Resources is notable for its thorough discussion of an attorney's duties when entering into a business relationship with a client. The court held that when a law firm represents multiple clients in the same business and geographic area it owes great caution to those clients in maintaining their confidentiality and loyalty. This is even more true when attorneys in the law firm have personal stakes in the client's businesses or in similar businesses. The court stated that "[i]n all relationships with clients, attorneys are required to exercise impeccable honesty, fair dealing, and fidelity." *Id.* ¶43 (internal quotations marks and citation omitted). Few among us are likely to be able to meet a standard of impeccable honesty, fair dealing and fidelity, at least under the cold scrutiny of a jury of our peers. This strongly suggests the inadvisability of involving oneself in a client's business, or competing directly with a client's business.²

Shaw Resources is also helpful for its discussion of formation of an attorney-client relationship, and the importance that an attorney adequately define the scope of that relationship. Shaw argued that it had an attorney-client relationship with the defendant law firm. The firm disagreed, but on appeal the court found sufficient evidence to support Shaw's claim, thus precluding summary judgment on that element of Shaw's attorney malpractice claims. The attorney-client relationship issue focused on whether the law firm represented an LLC, along with related entities which included Shaw Resources. Unfortunately, the firm began its engagement with a letter confirming representation of the LLC "and its related entities." Id. ¶25 (emphasis omitted). In upholding an attorney-client relationship for the related entities, the court of appeals noted "it may well be that there is a duty of loyalty that extends not only to the named or billed client, but also to other related entities of which an attorney has knowledge." Id. ¶26. The lesson here is that knowing who your client is at the outset of the representation helps avoid a host of problems, including unanticipated conflicts of interest.

In *Armstrong v. McMurray*, 2005 UT App. 88, 2005 Utah App. LEXIS 88, the court of appeals issued a memorandum decision, not for official publication, wherein the court reaffirmed the inapplicability of the discovery rule in cases where the malpractice plaintiff knew or reasonably should have known of the existence



of his cause of action in time to file a claim within the limitations period. The decision relies on *Williams v. Howard*, 970 P.2d 1282 (Utah 1998). In *Williams*, the malpractice plaintiff retained counsel to file a personal injury action against Springville City, related to an accident that occurred on July 19, 1991. The attorney did not file a notice of claim prior to expiration of the one year time limit of July 19, 1992. The attorney, in a meeting on July 31, 1992, informed his client of the failure to timely file notice. Plaintiff then filed a malpractice action on July 30, 1996. The attorney filed a motion to dismiss the action, arguing that it was time barred. The trial court denied the motion. The Utah Supreme Court reversed, holding that the four year limitation period began to run on July 19, 1992 – the date on which the client's potential cause of action against Springville City failed because of failure to file notice.

An important lesson to be derived from *Williams* and *Armstrong* is that once an error is made, it is best to notify the client immediately. Aside from likely being required under applicable rules of professional responsibility, prompt, written notice initiates the client's limitation period, and prevents the client from asserting the discovery rule at some later point in time.

In another unpublished Court of Appeals memorandum decision, *Christopher, Farris, White, & Utley, P.C. v. Pugh,* 2006 UT App. 68, 2006 Utah App. LEXIS 70, the court affirmed summary judgment



on behalf of the defendant law firm. The defendant firm represented Pugh in a Fifth District Court lawsuit pursuant to a signed legal services contract. The central issue was whether Pugh's deceased son should remain buried in St. George, Utah or be disinterred, cremated, and then have his ashes sprinkled in the Rio Grande River. Pugh became dissatisfied with the firm's representation, and while the case was still in the trial court, the law firm withdrew and Pugh retained new counsel. The law firm subsequently sued Pugh for breach of contract, alleging unpaid services in the amount of \$9806, plus interest, as provided for in the contract. The firm also sought attorney fees under the contract.

Predictably, Pugh answered and counterclaimed for malpractice.³ The decision notes "[a] fter numerous filings and arguments in the trial court, the trial court granted the law firm summary judgment on its breach of contract claim and dismissed all of Ms. Pugh's counterclaims. This appeal followed." Id. The principal lesson to be derived from the Pugh case: don't sue your client for fees unless you want to receive a counterclaim for malpractice. If you feel you have no choice but to sue your client for fees (perhaps because the fee has grown too large to abandon), have an independent law firm review your entire file to determine whether any possible ground for legal malpractice exists. Even if the reviewing firm gives your file a clean bill of health, you probably still should not sue for fees, due to the above-mentioned hidden costs of a malpractice claim. The firm in the Pugh case probably incurred well in excess of their \$9806 fee in such hidden costs.

These are but a few highlights of some of Utah's most recent attorney malpractice cases. Careful review of these and other similar cases can both help improve the quality of our practices, and avoid errors that may result in legal malpractice claims.

1. The court commented

[up] on reviewing the relevant statutory language, we conclude that it was error for the trial court to apply the unlawful detainer statute to the redemption lawsuit and award treble damages under that statute. The express language of the unlawful detainer statute applies only to tenants 'for a term less than life,' and Shangri-La was never a tenant....[It] was judicial error that necessitated Shangri-La's appeal – judicial error that cannot be attributed to appellee's actions and that presumably would have been corrected on appeal had the underlying redemption action not been settled.

Id. ¶¶36, 37 (emphasis added).

- In a much earlier case the supreme court described the duty of an attorney doing business with his or her client as being "the most perfect good faith" – another fairly difficult standard to attain regularly. *See Omega Inv. Co. v. Woolley*, 72 Utah 474, 271 P.797, 802 (Utah 1928) (internal quotation marks and citation omitted).
- 3. "Predictably" because statistics maintained by legal malpractice insurers demonstrate that a relatively high percentage of fee suits result in a counterclaim for malpractice. That's why your malpractice insurance application asks how many times you have filed a fee suit in the preceding year.

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Stress Management for New Lawyers, Or "You Can Do It!"

by Marianne McGregor Guelker

write this article about stress management to new lawyers as a relatively new lawyer. However, the tips contained in this article may be helpful to all lawyers.

Remember who you are and stay true to your best qualities. Remember the positive characteristics, which helped you to be admitted to and to complete law school. The law is a profession which prizes character, grit, intelligence and industry. You could not have completed law school without having these qualities. Remember that you possess these strengths and that you can rely upon them as you practice law.

Be careful with whom you do business.

Select both clients and business partners with care. The practice of law in Utah is competitive. There are many lawyers in Utah in comparison to the overall population and size of the economy. The number of lawyers in Utah is only expected to increase. The pressure of competition can lead a normally prudent lawyer to make poor decisions and to enter into attorney-client and business relationships which are poor choices. Trust your instincts. If you believe that a prospective client has unrealistic expectations about his or her case or that a prospective business partner does not share your zeal in avoiding bar complaints or malpractice lawsuits, politely decline to do business with him or her. If you would not advise your spouse, significant other or best friend to enter into a business relationship with a prospective client or business partner, then you should take your own advice and decline to enter into a business relationship with that person. In business relationships, as in life in general, an ounce of prevention is worth more than a pound of cure.

There tend to be higher numbers of bar complaints in certain areas and kinds of practice. Govern yourself accordingly.

Some areas of law, such as family law, and types of practice, such as solo practices, generate more than their fair share of bar complaints. There are often logical explanations for this, such as that family law clients tend to be going through a very difficult time in their lives and may have unrealistic expectations about what their lawyers can achieve for them or how much it will cost the lawyers to do so, and such as that solo practitioners have no higher authority in their firms to appeal to when they encounter clients with whom they develop fee disputes. Family law and solo practice offer many benefits to practitioners as it can be very rewarding to help people through sad times or to have the freedom associated with running your own business. Having said this, if you find yourself practicing in an area of law or in a type of practice in which there tend to be higher numbers of bar complaints, be your own best lawyer and best friend and take as many precautions in your practice as you can. The Utah State Bar offers continuing legal education on law practice management which may be of interest to you.

Find and use mentors.

The learning curve for the practice of law is steeper than the learning curve in law school. Education takes a lifetime, and as learned as one is when one is graduated from law school and passes the bar, one is still at the very beginning of the professional continuum. A new lawyer has even more growth and development yet to experience as a practitioner than do lawyers in general. Find and use a mentor whom you can ask what you perceive to be stupid questions. Although you might think that as a new lawyer you are being overly cautious in following up on a socalled "stupid" question, your question may in fact be the key to the whole case and you might be the only person at your firm to have noticed the problem. New lawyers in solo and small firm practices are in particular need of mentoring. For these new lawyers, I suggest utilizing any support network to which you have access, including law school alumni associations as well as families and friends who are lawyers or who may know lawyers. All new lawyers, but particularly solo or small firm lawyers, are strongly encouraged to become involved in the Utah State Bar or in other bar organizations in order to meet more experienced lawyers who might become mentors. Finally, while it is nice to find a mentor who looks like you, if you are unable to find a lawyer of your gender, ethnicity, or other background, just as good legal advice can come from lawyers of all shapes, sizes, and colors, good mentoring advice can come from a variety of

MARIANNE McGREGOR GUELKER graduated from the University of Utab S.J. Quinney College of Law in 2001 and is admitted to practice in Utab and in Nevada. She has served on the board of Lawyers Helping Lawyers since 2003. sources as well. In fact, if more lawyers made efforts to bridge the gap between different cultures when they chose whom to mentor and by whom to be mentored by, both mentors and mentees would increase consciousness of the value of diversity and learn to serve clients better.

Prioritize, do not bite off more than you can chew, learn to say no (nicely), and balance your lifestyle.

There is usually never a time when a lawyer could not be doing something for someone else, be it for a client, for the firm, for his or her family, or for an organization in which the lawyer is active outside work. You literally cannot do it all. As such, you must prioritize. This may involve saying no so that you do not bite off more than you can chew. Many of us would like to save the world. Be that as it may, as there are only so many hours in a day, we must chose to do the activities that are the most important or meaningful to us, to do the best that we can at them in the time in which we have to spend on them, and to feel good that we did as much as we did. If you do not learn to prioritize and to say no, you may find that you are unable to achieve the balance which you prefer between work, family, exercise, outside activities, and fun. Know also, that especially as a new lawyer, it takes time to achieve a balance between the law and everything else that you do. Until you strike that balance, try anything and everything that you can think of to help you do well both at work and in your personal life. Achieving a sense of wellness through a time management system which works for you is an ongoing, lifelong process.

Do what you love and take time out for you.

It is hoped that you enjoy the practice of law and that it is all that you hoped that it would be. There are many lawyers who love the practice of law and who thrive upon it. There are also many lawyers who find that although as a profession the law has many attributes to recommend it, it is a very high-pressured, competitive and effort intensive way to earn a living. Whether you find yourself in the former group or the latter, the practice of law as a new lawyer is likely to be stressful. For those of you who find yourself in the latter group, that is to say, the group which has found the practice of law to be quite stressful, I have the following to say. If you have given the practice of law the old college try and find that it is just not for you, it is well known that there are many law trained persons who work in every facet of the economy and who have found their legal education to have benefited them. If however, you feel that the practice of law is stressful but that you will continue to practice, try to incorporate into your life something that you love to do that is just for you. This is especially important for lawyers who do not exercise much control over their own schedules, such as practitioners of

criminal law or people who have extensive family responsibilities, such as parents of young children or caregivers of relatives. Many people find great joy in nature. We are lucky in Utah to enjoy beautiful mountain scenery in which we can hike or relax. Take advantage of the greatest free stress reliever, nature.

Take Continuing Legal Education, participate in the Young Lawyers Division (YLD) and get involved in the community. Often as lawyers, we think law, eat law, and sleep law. It seems paradoxical, but sometimes when we jump into a law related extracurricular activity with both feet, somehow we wind up feeling refreshed. CLE not only helps you brush up on the law but it is also an excellent opportunity to network. The YLD is one of the most active groups of the Utah State Bar and performs a lot of community service on behalf of the Bar. It is a very nice way to meet other new lawyers who may be going through some of the same issues as you are and who are thriving. All members of the Utah State Bar who are age thirty-six or younger or who have been admitted to practice in their first jurisdiction of bar admission for three years or less are automatically members of the YLD, free of charge. Lawyers who are interested in joining the board should contact YLD President Ms. Stephanie Pugsley at (801) 534-0800. Lawyers are also always needed by community organizations. Find an organization whose mission you support and become involved. While I enjoy working with and volunteering with other lawyers, it is also nice sometimes to spend time with people who do not know about [insert your own arcane legal concept here] and who are not particularly concerned about that fact.

If you have a problem, call Lawyers Helping Lawyers (LHL). LHL is committed to render confidential assistance to any member of the Utah State Bar whose professional performance is or may be impaired because of mental illness, emotional distress, substance abuse, or any other disabling condition or circumstance. Contact LHL at (801) 579-0404.

Lastly, be proud of being a lawyer.

Contrary to popular media portrayals, the law is an honorable profession. It counts the true life Abraham Lincoln and the fictional Atticus Finch as its members. If you forget what is good about being a lawyer, volunteer at a pro bono clinic such as Tuesday Night Bar or judge a middle school or high school level Law Related Education mock trial in the spring. When you help that stranger with his or her legal problem or see that young person who is as polished as any real life lawyer arguing before the supreme court and who only desires to become a lawyer, you will remember why you went to law school and why it is good to be a lawyer.

My Mentors

by Stephen W. Owens

Y ou will be hearing a lot about mentoring in the coming months. Rod Snow and Margaret Plane are leading a bar commission subcommittee on this issue. Alan Sullivan has also been a leader in this area.

In the not-too-distant future, you may see a formal matching of new lawyers to seasoned lawyers organized through the bar with a list of practical experiences the new lawyer will be expected to complete. The Minority Bar and Women Lawyers of Utah already have such programs in place.

I have benefited from a number of important mentors in my life. Each of these individuals has taken a personal interest in my career and in me personally. Each has taught me through example to work hard, smart, and ethically, and to do so with a sense of compassion and humor.

I am sure you could easily create your own list. Here is mine:

1. Richard Howe. I was fortunate to be chosen to clerk for Justice Howe at the Utah Supreme Court following law school. I thank the heavens that I was able to have this stimulating, healing experience after the rigors of law school. As a new lawyer some forty plus years earlier, Justice Howe had opened up a general law office on State Street in Murray where he took anything and everything that came in the door. He loved the law and was thoughtful about how it should be applied. Among many other lessons, he taught me to uplift and help people rather than to embarrass or put them down. I remember several times when lawyers were shell-shocked and squirming during oral argument, Justice Howe would throw a lifeline and say, "Isn't your strongest argument...?"

2. Anne Stirba. Judge Stirba taught me to be kind to staff members, even when they fall short, and to keep an eye on the "big picture." I watched her in admiration as she exposed a certain prosecutor who was being over-reaching and unfair. She called him on his actions and moved forcefully to protect the rights of the accused. Later, I watched as Judge Stirba showed incredible poise and courage in her fight with breast cancer.

3. Dave Epperson. Dave taught me how to be a lawyer. He took me to my first hearing, deposition, and trial. He signed all the letters and pleadings I wrote for the first year. He explained how to get things done. He gave me tremendous opportunities, always with an open door for anytime that I felt that I was over my head. He taught me never to get bogged down in personalities

or unimportant issues and to stay focused on the client while remaining on good terms with all opposing counsel.

4. Wayne Owens. My dad taught me that the law can have a real impact on individuals. For many years, he fought in the Courts as a private attorney for "downwinders" compensation against the federal government. When the Courts eventually threw the effort out based upon the existing law, my dad ran for Congress and passed a bill that *made* it the law. He never received a fee for all of those years of work, but his efforts established a fund that benefited thousands and obtained an acknowledgment and apology from our government.

After he left public service, my dad gained a new client: the King of Jordan. I was not a lawyer at the time, but I knew that it was good to have a client with the title "King." At the same time, President Clinton nominated my dad to be on the Utah Reclamation and Mitigation Commission related to the completion of the Central Utah Water Project, a bill my dad had passed in Congress. The Commission was essentially a volunteer position. My dad learned that ethically he could not represent a foreign power; i.e., Jordan, and serve on the Commission. Without hesitation, he declined further representation of the King and went to work to serve on the Commission, becoming its chair.

There are many others who have influenced my legal career: Glenn Iwasaki, Kate Lahey, Paul Cassell, Walt Plumb, Kay Christensen, Matt Durham, Mark Gibb, Scott Matheson, Jim Warlaumont, Steve Clyde, Rich Mauro, Dan McConkie, Phil Fishler, and Dave Slagle, among others.

I thank and pay tribute to each of these individuals. To young lawyers, seek out mentors who are doing interesting things and whom you respect. Soak up their advice like a sponge. To experienced lawyers, seek out young lawyers whom you can show the way to the marvelous responsibilities and opportunities our profession offers.

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Reducing Stress

by Robert H. Henderson

Stress. My life has been haunted by stress (I shamelessly borrow Norman MacLean's last line from *A River Runs Through It*). I'm the King of Stress. You are thinking, "no way reading this piece can benefit me." You are wrong – I can help you. Suspend disbelief for 5 minutes while I briefly qualify myself.

In the early 60's, we were hysterically afraid of the communists, much as we are now of the terrorists. President 35 asked me to go to a service academy. You know, part of that "ask what you can do for your country" bit. You have to admit, he had a certain charm, and I was a sap. My beloved U.S. of A. had just been through the Bay of Pigs and the Cuban Missile Crisis. So, at 17, I found myself at the United States Military Academy at West Point, New York. Huge mistake. I couldn't quit without my father's permission. My father had flown bombing missions in the South Pacific during World War II, and he was not in a permitting mood. I am now a fervent believer than no human being should commit to anything beyond the next day or so before their age starts with a 3. Anyway, at the end of my second year, I was 12th from the bottom of my class in "military aptitude," in a class of 800 or so. They kicked out 10 of the 11 below me. The "cutoff man" had been my roommate. Two years later, I graduated, with relief. The Latin phrase is "summa cum difficultate." To me, those 4 years seemed to last as long as the 40 since. I was a total failure as a cadet. This was a very stressful time for me.

There was a war going on. President 36 foretold of dire consequences if we didn't "win" in Viet Nam, much as President 43 now predicts if we don't "win" in Iraq. It was left to President 37 to get us out 4 long years later. It turned out 37's 1968 secret plan to end the war coincided with his 1972 reelection. Vintage Tricky Dick. I won't even get into where Presidents 42 and 43 were at this time; we know 43's Veep "had other priorities at the time." Being a West Pointer, I was sent to jump school and ranger school. I was discharged from jump school in disgrace - I have a dreadful fear of heights. I vividly recall an ancient Jump Master, perhaps he had jumped with the Wright brothers, literally picking me up and throwing me out of the tower you jump out of before doing the supremely unnatural human act of actually jumping out of an airplane. I failed Ranger school. I have an incredibly bad sense of direction on flat land, especially swamps. Being a West Pointer, I was required to choose a combat arm. I chose the most non-combat of the combat arms, and weaseled the least dangerous assignments. No "one for all" in this musketeer. Like Ali, I had "no quarrel with them Viet Cong." Besides Ali, my other hero was George Aiken, the Senator from Vermont who said "Let's just say we won and go

home," which is what we finally did do, and what I suggest we now do in Iraq. I wept when Jeremiah Denton, 7 and 1/2 years a POW, the first man off that C-141, got down on his hands and knees and kissed the ground at Clark Field. I digress. In sum, I was a total failure as a junior officer. This was a very stressful time for me.

As soon as allowed, I transferred from the combat arms to the Judge Advocate General's Corps. Lo! I graduated first in my class at the "U," then graduated first in my class from my Judge Advocate class. Had I found my niche? It was not to be. I tried criminal cases, lots of criminal cases, several a month, every month. One time I was in trial for 11 out of 12 days, with only the intervening Sunday off. JAG career-wise, however, I was going nowhere. I wasn't in the highest traditions of the Corps, a maverick by nature, that sort of thing. Also, I hated being a leader. All I wanted to do was try cases. After a few years, I gracefully resigned before they kicked me out. I should have been so quick from my firm. After 16 years, my severance package was \$0.00. I was a failure as a JAG officer. Not a total failure, but a failure, nonetheless. This was a very stressful time for me.

Meanwhile, my only brother was in the 101st, who oft goes first, and sat on the tarmac at Ft. Campbell for several days while President 39 agonized over what to do about Iran. 39 did nothing about Iran. My brother left the tarmac. President 40 was soon to be elected. This was a very stressful time for me.

At age 34, with 2 beautiful babies, 1 great, wonderful wife, 1 old car, a negative net worth, and a mortgage payment north of \$1000 per month, every month, I started with a firm at \$26,000 a year. I took the bus the first 2 years. At the end of the first year, I settled a plaintiff personal injury case for \$215,000. This was good money 27 years ago, and the guy really wasn't hurt that bad. My wife and I had just settled into a celebratory meal at home that evening when my leader called and accused me of malpractice for not pinning things down. I immediately got up from the table, went down to the office, and pinned things

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down. I enjoy all of Sir John Mortimer's Rumpole stories, but I especially enjoy "The Penge Bungalow" episode, where a young Rumpole, "alone, and without a leader," successfully defends a murder case. As an associate, I, of course, got none of that fee, but I did get a \$3000 bonus that Christmas. This was a very stressful time for me.

I then spent quite a few years trying lawsuits, lots of lawsuits, mostly personal injury defense. I had some horrific results. One year, in back to back trials, I had the 2 largest personal injury adverse judgments in the State of Utah that year, and 2 of the 10 largest in the history of the State, including the largest adverse judgment in the history of the State. I set a record that endured for 17 years, a long time in this business. After the one in excess of \$10,600,000, I offered to resign from the firm. Decades later, I can quote my conversation with my leader verbatim. It went like this:

Me: You want me to resign?

Him: Why?

Me: Maybe they [the client] will sue me.

Him: They are not going to sue you.

Me: Why not?

Him (ever the confidence builder): They don't want to admit to the world how stupid they were to hire you.

This was a very stressful time for me.

I could go on, I haven't even mentioned the sordid stuff, but you get my drift. Most of my life, I didn't like what I was doing, and I didn't feel good about what I was doing. Most of my life was a very stressful time for me. Bottom line, I think I am reasonably well-qualified to help you reduce your stress. That being said,

Get your heart and your head together.

In Annie Hall, Woody Allen tells how he got kicked out of his metaphysics exam because he "looked within the soul of the boy sitting next to him." I'm just asking you to look within your own. No crime there. Scary, but no crime. "It's very hard to get your heart and head together in life. In my case they're not even friendly." – Woody Allen, Crimes and Misdemeanors.

My unscientific, non-Daubert qualifying opinion is that one reason many lawyers are so stressed is that their hearts and heads are not together on what they want to get out of being a lawyer. By way of contra-example, all of the judges I know seem disgustingly happy. This, from a job that doesn't pay very well, and involves arraigning bulk quantities of dirt bags, much reading of meaningless memoranda, and listening to idiots argue summary judgment case law on a motion to dismiss. Why, other, of course, than the unending ass kissing, are they possibly so happy? I submit it's because their hearts and heads are together on exactly what they want to get out of being lawyers. They knew what the pay was when they took the job, and every day they believe in what they do, and they feel good about what they do.

In the 70's I read a piece by Solzhenitsyn that has stuck with me over the years. His point was that morality will always be higher than law, that, at best, law can only approach morality. He gave as an example that all the people in the Gulag had been duly "tried" and sentenced under "law." One of my all-time favorite flicks, one worth seeing, if you haven't, and worth seeing again, if you have, is "Judgment at Nurenberg." It makes the same point. After World War II, a German judge, magnificently played by Burt Lancaster, was on trial for, ironically, having enforced the so-called Nurenberg Laws, which had, inter alia, criminalized any fraternizing with Jews. Today, 43's Gitmo "proceedings," kangaroo courts if there ever were, shame and dishonor us. A few years ago, I wrote a piece wherein I recalled Sir Thomas Moore's quote "First, men will disclaim their hearts, and presently, they will have no hearts."

Most of us start law school with pure hearts about our chosen vocation. Indeed, we choose to pursue law school because we want to be part of an honorable profession, do good things, make the world a better place, and help people. Why, then, do we become stressed out, more alcoholics and other addicts than even the rest of society, not to mention disabling mental health issues? Years ago, maybe 20, there was a clever poster: "Stress is the confusion you feel when your mind tells your body not to beat the **** out of some ******* who desperately deserves it." (expletives deleted).

Although I can't prove it, I suspect a major cause of our stress is the dissonance in our souls between our pure hearts and what we have to do to be "successful" attorneys. To be successful, above all else, we have to bill, bill, bill. We also have to take, and sell, strained positions that even we can see are unfair. "The lawyers know too much, Bob. The lawyers know too much." – Carl Sandberg.

We work for clients who want us to screw people. We don't feel good about it, but we do it so long and so often that on the surface we are numb to it, and even worse, we do it for the money. The defense firm celebrates a meager award in a case of clear liability; the plaintiff's firm celebrates a jackpot verdict beyond all reason. True confession: I personally have celebrated sending an octogenarian home to eat dog food. Deep inside, however, the dissonance festers and rumbles because, despite everything, most of us are still good people. "I still believe, in spite of everything, that people are truly good at heart" – Anne Frank, *Diary of Anne Frank*. We are torn. We are conflicted. It's a tough business, a tough way to make a living.

Where am I going with this? I didn't think of this, Socrates did, according to Plato's *Republic*. Suppose, if you will, a universe wherein your just soul is in complete harmony, reason, emotion,
and appetite in balance, a universe wherein your appetite does not dominate, a universe wherein virtue is its own reward. What if our souls NEED to feel we do just things, what if doing things we believe are unjust is a corruption of our souls and harms us, even if we are successful at them? Look around, Dear Reader. We lawyers may not lead the league in drunks, addicts, and nuts, but we are at least in the final four, if not the semis.

If you aren't happy working for insurance companies, or other holders of huge accumulations of capital who hire and pay you to help them keep it, find something else. If you aren't happy listening to whining grifters, who hire and pay you to "get some," find something else. If you aren't happy representing sociopaths, whom you are paid by the government to defend, find something else. If you aren't happy doing what you are doing, change it. Don't work for people who make you do things you don't feel good about. Don't work for people who don't value you.

Of course, this will probably require you to abandon the quest for the gated community. The good news is that this is not only entirely doable; you will be much happier living within your means doing work you feel good about. Discover the virtues of public transportation and living in neighborhoods that include single dwellings to multiplexes to apartment houses, including subsidized housing. Neighborhoods develop. You'll meet real people. People of all economic strata learn how to live together. It's sort of, well, "American." This is nothing I thought of. It has been written on extensively by, inter alia, James Howard Kunstler in *The Geography of Nowbere, Return from Nowhere*, and *The City in Mind*.

Be nicer.

We aren't very nice to each other. It is obvious we lawyers don't like each other very much. "It's worse than dog eat dog. It's dog doesn't answer other dog's phone calls." – Woody Allen, *Crimes and Misdemeanors.* We are not willingly civil – we are grudgingly civil. Now, when I serve as a mediator, I often tell counsel "You need to know who your friends are – opposing counsel may be the only friend you have in this case." Think of it this way: who on your case has been trained in logic, reason, evidence, procedure, etc.? Try my rule: I let everybody screw me, once. As those who once loved me know, there is plenty of time for a retaliatory, global, thermonuclear strike. The Sicilians have a saying, "Revenge is a dish best served cold." Meanwhile, give the other guy a break – the happiest man I ever knew was my grandpa, and this was his rule. Somehow, in some inexplicable way, at least to me, in return people gave him their best.

Choose your battles.

Balance, balance, balance. Realize that you can't and don't need to champion every right and slight, real or imagined. You don't have to take every case. (Unless you are paid by the government to defend sociopaths.) Peter Singer once wrote a piece setting forth the moral dichotomy of helping a small child who is drowning in a small pond versus helping the Bengal Relief Fund in its fundraising for needy people overseas. Helping the drowning child is an easy choice, but Colin McGinn, a Rutgers philosopher, has called the second part of the dichotomy "positively bad, morally speaking, it encourages a way of life in which many important values [his examples were what we would have lost had Newton, Darwin, Leonardo and Socrates spent their time on The Bengal Relief Fund] are sacrificed to generalized altruism." For example, I challenge my Bar's "Justice and the Poor" campaign. I choose not to endorse it, as I don't think having "free" lawyers involved in bringing another 80,000 cases a year, every year, for "poor" people will make the world a better place, but if you feel good about it, go for it. Free will here, East of Eden.

Don't take cases you can't make any money on.

You will hate those cases, you won't want to work on them, and you will get in trouble. Unless, of course, you know you can't make money on it, and want to do it anyway.

Don't take silly cases for relatives or friends.

You will hate those cases, you won't want to work on them, and you will get in trouble.

Always be straight, but learn to say no.

No explanation necessary if giving one is a problem; just say no.

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Get in the game.

When I was a coach, I'd get any kid I thought I might need in the second half into the game in the first half, even if only to run the kid up and down a few times and get a couple of touches. You can't ask a kid who has been sitting out the whole game to go in at crunch time. He will screw up. It's unfair to the kid, and it's unfair to the team. But trust me, if the same kid is used to being in the game, he won't be so tense when he goes back in. I know "trial lawyers" who have never tried a case, never, and others who try one every 5-10 years. How good can they feel about themselves? They are pretenders. A generation before Nike, my old man used to tell me, frequently, "If you are going to do it, do it." Too bad he had no intellectual property rights. Get in the game. It's not that tough. Like I used to tell people awed by running 100 milers, "How tough can it be? A couple of hundred people do it every year." Actually being in the game, not pretending, will decrease your stress, not increase it.

Learn to lose.

The first 15 minutes after taking verdicts will, over time, define you, both to yourself and to your legal community. Come on, what do you want to be, a "Whiner," or a "Warrior?" You can't and won't win every time. Learning to lose will relieve a lot of your stress, and in a strange way, will actually make you less likely to lose. In I, Claudius, as good a first person historical fiction ever written, Robert Graves has a wonderful passage about a book Claudius (the reluctant, accidental 5th Caesar, the nephew of Tiberius, the 3rd Caesar, the uncle of Caligula, the 4th Caesar, and the grandson of Mark Antony and Octavia and Livia, before she married Augustus, the 2nd Caesar) wrote, of all things, a

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piece entitled How to Win at Dice. Claudius concluded that the Gods "unless they had a grudge against him on another score, always let the man win who cared least about winning."

Look for positives.

No matter what, here we are, Americans, living in Utah, well-educated, well-nourished, with a clean water supply and shelter, able to walk the street without checking ahead for inter-locking fields of fire. How bad can life be?

Laugh, every day.

I once saw an interview of Jane Pauley wherein she explained her love for Garry Trudeau: "He makes me laugh, every day." Woody Allen's brilliant "Hannah and her Sisters" has a scene where a suicidal Allen ducks into a theater just to get off the streets of New York City. A Marx Brother's movie happens to be playing. Before long, Allen is laughing - "Life's not all a drag," he says to himself. Laugh at yourself, too. My friend Ron Yengich and I have both survived by being able to laugh at ourselves, just how ridiculous we really are.

Stay physically fit.

Running shoes and a gym membership trump psychotherapy, and are a lot cheaper. ACTION! Movement is life. Carpe diem, or that waiting room IS going to be "As Good as it Gets."

Keep your old, pre-law friends, and make new ones outside the legal profession.

Lawyers drink too much of their own wine. The best people in my life I either knew before I was a lawyer, or know them from running or playing ball. A few happen to be lawyers, but we rarely talk "law." I greatly value these people. According to a man who devoted much of his life to this subject, Jefferson, T. once observed that lawyers get moral problems right 2, maybe 3 times out of 10, and that farmers get them right 9 times out of 10. I've never been able to pin this quote down, but it sounds good, and it comports with my experience. The worst people in my life I met through being a lawyer.

One other thing:

In one of his last pieces Kurt Vonnegut, an American POW survivor of the Allies' firebombing of Dresden, a vastly underrated writer, a thinker on the futility of war, and other subjects, and a funny guy that I admired greatly, cautioned against relationships with people who are careless with your heart. Also avoid those with the "lean and hungry look" of Cassius, not to mention the Brutuses of your world, especially on the Ides of March.

I hope these suggestions help reduce your stress. Meanwhile, I'll keep hoping for a new knee, widespread prosperity, global peace, universal liberty, dolphins, whales, no more unnecessary wars, the end to banal pledges, and The Runnin' Utes.

Book Review

The 4-Hour Workweek: Escape 9-5, Live Anywhere, and Join the New Rich

by Timothy Ferriss

Reviewed by Bentley J. Tolk

Can lawyers reduce their working time to four hours per week? Probably not. Can lawyers dramatically reduce the number of hours they work? *The 4-Hour Workweek*, a New YORK TIMES bestselling book, suggests that they can.

Timothy Ferriss, the book's author, is a Princeton graduate who began his career working 12-hour days for a start-up company. After getting burned out and discouraged with the corporate world, Ferriss started his own dietary supplement company through \$5000 in credit card debt and lots of outsourcing. Although his supplement company became successful relatively quickly, Ferriss found that he was working 12-hour days seven days a week as a result. He subsequently decided to simplify his role with the company and to make himself "expendable." Thus, Ferriss bought a one-way plane ticket to Europe, where he began operating his supplement company through one hour of e-mails each Monday morning. Astonishingly, the company's profits increased by 40% as Ferriss lessened his hands-on role in operating the company.

With the extra time that Ferriss created from drastically reducing the number of hours he was working, Ferriss has accomplished an amazing array of tasks, including: (1) world-record holder in tango; (2) Princeton University guest lecturer; (3) championship cage fighter; (4) fluent speaker in Chinese, Japanese, Spanish, and German; (5) national Chinese kickboxing champion; (6) researcher regarding the Glycemic Index; (7) break-dancer in Taiwan; (8) actor on a successful TV series in Hong Kong and China; (9) TV host in China and Thailand; (10) participant in motorcycle races; (11) shark diving enthusiast; (12) bestselling author; and (13) ultra-successful blogger.

In accomplishing these tasks, however, Ferriss has followed different, counterintuitive rules. For example, to win a gold medal at the Chinese Kickboxing National Championships, Ferriss discovered and successfully implemented two loopholes in the rules that allowed him to win all of his matches by technical knockout. *In The 4-Hour Workweek: Escape 9-5, Live Anywhere, and Join the New Ricb,* Ferriss emphasizes the importance of some counterintuitive principles that he claims

are followed by a term he has coined: the "New Rich."

In general terms, the New Rich focus on time and mobility: they work significantly fewer hours, generally work remotely, and take a lot of vacations. The New Rich build systems to replace themselves professionally, and which allow them to do the things about which they are most passionate. According to Ferriss, the New Rich (among other things) don't set retirement as a goal and instead take regular "mini-retirements" throughout their lives, believe that less work does not equate to laziness, ask for forgiveness instead of permission, emphasize their strengths instead of trying to fix their weaknesses, believe that having more money alone is not the solution, and believe that relative income (income per hour) is more important than absolute income (income per year).

In one example of the New Rich, Ferriss profiles a Los Angeles lawyer, Hans, who had consistently dreaded the prospect of working heavy hours at his law firm for the next 40-45 years when he did not particularly enjoy the nature of his legal practice. After pulling several all-nighters at his law firm over a period of time, Hans took a vacation in Brazil where he went paragliding and decided to take more risks in his life. Hans subsequently quit his law practice and founded Nexus Surf, a surf adventure company located in Brazil. Hans apparently now sits under palm trees and helps his clients live their dreams about adventure. When overworked professionals tell Hans that they wish they could do what he does, he always responds that they can.

According to Ferriss, the New Rich begin by defining specifically what it is they want in terms of happiness, income, and lifestyle.

BENTLEY J. TOLK is a shareholder with Parr Waddoups Brown Gee & Loveless, where his practice focuses on defending ERISA litigation cases, defending employment law matters, and litigating other general commercial cases.



Their goals consist of defined steps, could be considered "unrealistic," and focus on activities that will fill the void created by working fewer hours. Thus, the New Rich determine their specific dreams, set a 6-month or 12-month timeline for those dreams, calculate a monthly target income for those timelines, determine the steps toward those dreams, and take the first step toward each dream.

According to Ferriss, following "Pareto's Law," or the 80/20 Principle, is key. The 80/20 Principle states that 80% of one's results come from 20% of one's activities. The New Rich focus on the 20% of activities that produce 80% of the positive results, or the 10% of activities that produce 90% of the positive results. Ferriss recommends that employees jettison the 9-to-5 lifestyle and instead negotiate a remote working relationship where they can focus on the critical 20% or 10% of tasks. He supports this idea by citing Parkinson's Law, which states that a task will expand in perceived importance in relation to the time allowed for its completion. The implication is that employees should both shorten their work time by limiting their tasks to the important, and shorten their work time so that they only perform important tasks.

As a means of joining the New Rich, Ferriss proposes one of the more counterintuitive and controversial points in his book: the necessity of a "low-information diet." According to Ferriss, living the lifestyle of the New Rich requires more time and more action/output. He argues that increasing output requires less input in one's life, and that most information is counterproductive because it takes too much time, is irrelevant to one's goals, is negative, and cannot be controlled by the person receiving the information. Thus, Ferriss claims that during the last five years, he has never watched the news and has purchased only one newspaper. He claims that he sees newspaper headlines and becomes generally informed through what others report to him about the news, but that his selective ignorance has not caused any problems for him.

Ferriss does not recommend that one give up reading and information altogether. He reads an industry and business magazine each month, as part of what he calls "results-oriented" reading. In addition, he reads fiction for an hour before bed as a means of relaxation.

In addition to reducing one's consumption of information, Ferriss recommends avoiding interruptions and things that waste or consume one's time. One example is e-mail. Ferriss advocates turning off all audible e-mail alerts and only checking e-mail twice (and eventually once) per day: once at noon and once again near the end of the day. Rather than checking e-mail first thing in the morning, he suggests completing one's most important task of the day before 11:00 a.m. The key is to set up an e-mail autoresponder that alerts those e-mailing you of the times when you will be checking e-mail. Ferris further recommends screening incoming phone calls, limiting outgoing phone calls, avoiding most meetings, and personally checking one's e-mail infrequently (e.g., once a week).

Another cornerstone of Ferriss's philosophy is the art of outsourcing most of one's tasks. *The 4-Hour Workweek* contains an amusing, lighthearted account of a writer who literally decided to "outsource" his life by contacting two companies in India that provide remote executive assistants. The writer used one of the companies to outsource his business tasks, and the other to outsource personal tasks. In her first assignment, the remote executive assistant for business provided an impressive amount of research regarding the individual about whom the writer needed to produce an article. The remote executive assistant for personal tasks began paying the writer's online bills, ordering online medications for him, locating a "Chicken Dance Elmo" for his son, and researching a cell phone plan for him.

When the writer's wife was angry with him because he had forgotten to withdraw some cash one day, the writer e-mailed his virtual assistant at "Your Man in India" and asked the virtual assistant to apologize to his wife for him. The next morning, the writer's virtual assistant had e-mailed the writer's wife on behalf of the writer, apologized to the writer's wife (cc-ing the writer), told the writer's wife that the writer loved her, and sent her an e-card on behalf of the writer. Rather than being angry that she had received an e-mail and e-card through a virtual assistant in India, the writer's wife was pleased and told her husband that she forgave him.

Finally, and somewhat tongue-in-cheek, the writer claims that he decided to try to outsource his therapy through his virtual assistant. He had planned to give the virtual assistant a list of his neuroses and some stories about his childhood, have the virtual assistant speak to his psychiatrist for 50 minutes, and then have the virtual assistant pass along to him the psychiatrist's advice. When the psychiatrist understandably refused to take part in such an exercise, the writer decided instead to outsource his worry. He first had "Your Man in India" research and send him a thorough memorandum on stress with some visualization exercises. He next asked his virtual assistant if she would spend a few minutes each day worrying about some of the things that were causing the writer stress. The virtual assistant replied that she would worry every day for him about his particular stresses, and that he should no longer worry about them himself. According to the writer, outsourcing his worries alone was worth the price of a virtual assistant. Ferriss claims that a virtual assistant in India can cost between \$4 and \$10 U.S. per hour.

One of the primary goals of the New Rich, according to Ferriss, is to create what he calls a "muse:" a profitable business that you own, that creates a stream of income for you, and on which you spend little time. In other words, the key concepts in creating a muse are cash flow and time freedom. To create a muse, one needs a niche market that can be accessed in a relatively inexpensive way. One also needs a product.

But will Ferriss's ideas work in the legal profession? After all,

the product that most lawyers sell is their time. It is difficult for lawyers to create a "muse" if the backbone of their business is the billable hour. Many lawyers, due to the structure of their law firms, apparently cannot reduce the number of hours they work. As a result, taking additional vacations and mini-retirements can seem impossible to some lawyers. In addition, the scheduling demands of legal cases and transactions can make it prohibitive for some lawyers to leave their work for an extended period of time. On the litigation side, which is the area in which I practice, scheduling orders and the unpredictability of how a lawsuit will pose major obstacles for implementing the concepts in *The 4-Hour Workweek*.

Ferriss's concept of the "low-information diet" may also prove unworkable for some lawyers. Lawyers need to stay current on changes in the law affecting their areas of expertise. Many clients also demand that their outside lawyers be consistently available via e-mail and Blackberries. Although some legal work in the U.S. is currently being outsourced to lawyers in India, there are limits as to the types and amount of work that lawyers can reasonably outsource.

Ferriss's counterintuitive and unconventional ideas, however, should cause introspection among lawyers and a reexamination of how many lawyers manage their legal practices. As I documented in *Overcoming the 6-Minute Life*, lawyers have comparatively high levels of depression and are twice as likely as the general

population to engage in substance abuse. An alarmingly high number of lawyers are unhappy with their work, claim that they would not choose the practice of law if they could start over again, and claim that they would not recommend that their children become lawyers. By the year 2000, less than half of the Class of 1990 at Harvard Law School worked in law firms, and approximately twenty-five percent of those with entries in the class directory were no longer practicing law.

Perhaps more lawyers could focus on finding ways to reduce the number of hours they work. For lawyers in private practice, alternative billing might provide part of the solution. Parkinson's Law and Pareto's Law, which Ferriss references, imply that lawyers might be able to shorten their work time by focusing on and limiting their work to crucial tasks. Some lawyers could consider reducing their incessant checking of e-mail and could consider outsourcing certain tasks.

Regardless of one's belief about the extent of its applicability to the legal profession, *The 4-Hour Workweek* is a fun, quick, and exhilarating read. Ferriss's writing style is humorous and irreverent. I recommend that everyone listen to the recording of the "virtual book tour" for *The 4-Hour Workweek* in which Ferriss explains in detail many of the concepts contained in the book. The recording of that virtual book tour is free and can be accessed via streaming audio or MP3 for downloading to a computer, iPod, or other portable media device at <u>http://www.bentleytolk.com</u>.



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renewable energy projects. HRO approaches energy matters from all angles - creating strong, cross-practice teams to find the best way forward – generating the results you need.

Law & Mental Health Professionals – Utab

by Leslie Pickering Francis and Linda F. Smith Reviewed by Judge Judith S. H. Atherton

Providers of mental health services (MHPs) are affected by the law in numerous ways. Not only does the law govern their credentialing, licensing, business practice, and personal liability but also, and, importantly, it dictates their direct participation in the administration of the legal system. MHPs increasingly are called upon to provide expert opinions and testimony on subjects ranging from an individual's competency to participate in court proceedings, marry, enter a contract, vote, sign a will, or testify in court about that person's mental status, amenability to treatment and even the likelihood of effectively responding to a prescribed medication treatment regimen to restore competence. Lawyers and MHPs do not necessarily speak the same language, but they must interact on a regular basis. Law & Mental Health Professionals – Utab seeks to be a comprehensive and accurate review and integration of all the law that affects MHPs in Utah. This book is the latest in a series of similar state volumes published by the American Psychological Association, which has a stated goal of having such a book for each state and federal jurisdiction and for the District of Columbia. It is, then, a handbook, written primarily for the MHP, in language readily understood by nonlawyers, but it is also a valuable resource for the law-trained. It is meant to provide an accurate statement of the existing law only and offers neither critique nor commentary on the law's substance.

The book consists of eight sections, each covering a discrete area of the law that affects the MHP. Each section includes a paraphrasing of the applicable law and notes specific concerns or responsibilities MHPs may face, including instances when they may be called to testify and what matters they may need to address. The book meticulously cites the Utah Code and applicable case law, making this volume a valuable resource. However, the book contains no statutory text and does not include legislation passed by the 2007 Utah Legislature. The decision not to include the statutes themselves may have been based upon the concerns of the targeted reader, the MHP, for whom the statutory language may be intimidating or the fact that the legislature regularly tweaks statutes, rendering some of the language obsolete after each session. The statutory cites themselves are unlikely to change, however, and the legislature has an easily accessible website, <u>www.le.state.ut.us/</u>, which provides all current statutory language.

The interaction between the legal and the mental health professions is vexing, at best. Statutes, drafted by attorneys for application by attorneys and judges, impose legal standards for decisionmaking that must be followed. Those standards often do not relate to the reality of mental health concerns, including treatment and probable outcomes. For a simple example, in a competency hearing in a criminal matter the law requires the court to find that an incompetent defendant is "incompetent to stand trial with a substantial probability that the defendant may become competent in the foreseeable future" or that the person is "incompetent to stand trial *without a substantial probability* that the defendant may become competent in the foreseeable future." UTAH CODE ANN. § 77-15-6 (4)(b), (c) (2007) (emphasis added). As a practical matter the court relies almost exclusively on the opinion that the MHP evaluator is required by law to offer, to make that legal determination, even if any prediction of competency restoration is clinically impossible. The resulting determination often is a work of legal-clinical fiction. While the authors of this book do not take on the thorny issues relating to the relationship between two very different professions, their book is a very welcome resource for MHPs as an informative and accessible resource that begins to bridge the chasm between them.

JUDGE JUDITH S. H. ATHERTON was appointed to the Third District Court in July 1995. She serves Salt Lake, Summit, and Tooele counties and currently presides over the Mental Health Court in Salt Lake City.

State Bar News

Utab Supreme Court Justice Christine M. Durbam Named William H. Rehnquist Award Recipient

Chief Justice of the Utah Supreme Court Christine M. Durham has been named recipient of the 2007 William H. Rehnquist Award for Judicial Excellence by the National Center for State Courts. One of the most prestigious judicial honors in the country, the Rehnquist Award is presented annually to a state court judge who exemplifies the highest level of judicial excellence, integrity, fairness, and professional ethics. Chief Justice of



the United States John G. Roberts presented the award to Chief Justice Durham at a ceremony on November 15 in Washington, D.C.

"Chief Justice Durham has demonstrated her commitment to public service, judicial education, and the cause of justice throughout her 25 years on the Utah Supreme Court. She reflects those qualities that Chief Justice Rehnquist valued during his distinguished career," said Chief Justice Roberts.

The National Center for State Courts (NCSC) President Mary C. McQueen said the nominating committee selected Chief Justice Durham because of her "innovative leadership style and her contributions to advancing judicial branch education not only in Utah, but nationally." She is noted for developing interactive education programs in content areas that until then did not have curriculum, such as domestic violence, child witness testimony, and scientific evidence.

In the 1980s judicial education was rare. "There was little interest or understanding about the profession of adult education and how it could benefit the practice of judicial education. Christine Durham was the major force which changed this landscape," according to a nomination letter written by Utah State Court Administrator Daniel Becker and Director of Utah's Judicial Institute Diane Cowdrey.

Chief Justice Durham was selected to serve on the Utah Supreme Court in 1982 and was named Chief Justice in 2002. Prior to joining Utah's highest court, Chief Justice Durham served as a District Court judge, was an adjunct professor at Brigham Young University's School of Law, and worked in private practice. Her influence is far-reaching. She was a founding member of the National Association of Women Judges, serving as the organization's president from 1986-1987; she has served on the Board of Directors of the American Judicature Society; she serves on the Council of the American

Law Institute; she was a co-founder of the Leadership Institute for Judicial Education, located at Memphis University; and she currently serves on the ABA's Council for Legal Education and Admissions to the Bar. Chief Justice Durham graduated from Duke University School of Law in 1971, and currently serves on the University's Board of Trustees. She completed her undergraduate degree at Wellesley College.

The NCSC is a non-profit organization dedicated to improving the administration of justice by providing leadership and service to the state courts. The National Center, founded in 1971 with the encouragement of Chief Justice of the United States Warren E. Burger, provides leadership, research, consulting, education, and training to the state courts. The National Center headquarters are in Williamsburg, Va., with other offices in Arlington, Va., and Denver, Co.

According to the *Salt Lake Tribune*, in accepting the award in Washington on November 15, Chief Justice Durham commented:

It's actually quite overwhelming to be recognized by these people and for this work. I'm humbled, honored and extremely pleased. It does reflect really some recognition of our entire state judicial branch and the good work we do. I think that one of the things it means is that Utahns should be aware and be proud of the degree to which we have a very progressive and forward-looking judiciary.

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ABA Names Utab Lawyer as National Outstanding Young Lawyer

The American Bar Association has named Salt Lake City lawyer, Sean Reyes, as the 2007 National Outstanding Young Lawyer. Reyes, a 36-year-old litigation attorney at Parsons Behle & Latimer, was chosen over 24 other nominees nationwide for his legal skills and professionalism, local and national bar leadership, and commitment to public service. Reyes will be the first recipient of this newly established award.

Reyes, who was honored as the 2006 Utah Young Lawyer of the Year by the Utah State Bar, is past president of the Utah Minority Bar Association and is a

director of the Utah Hispanic Chamber of Commerce, Utah Hispanic Business Leadership Foundation, and the Utah Asian Chamber of Commerce. Besides actively encouraging diversity in the legal and business community, he has supervised an expansive English language program for immigrants sponsored by The Church of Jesus Christ of Latter-day Saints. He also established numerous community outreach programs as an LDS Bishop in the Capitol Hill area.

As a partner at Parsons Behle & Latimer, Reyes has handled multi-million dollar cases and litigated at the state supreme court and federal appellate level. He is known for working on pro bono cases that help the needy and for mentoring underprivileged students. Gilbert Bradshaw, a Brigham Young University law student mentored by Reyes and recently hired by a major New York City law firm, attributes Reyes as giving him the vision and the understanding he needed to succeed in the field of law. "He encouraged me to make the necessary life changes so that I could excel in both my academic and personal life."

Reyes, a father of five, is currently a Judge Pro Tempore and the youngest member to serve on Governor Huntsman's Judicial Nominating Commission for the Third District. Reyes has also served as an officer for Utah's Young Lawyer Division and as a member of the Utah State Bar Commission, the state bar's governing body. He has been active politically on the Utah Republican Hispanic Assembly and Utah Hispanic/Latino Legislative Task Force.



A *summa cum laude* graduate of Brigham Young University and Boalt Hall School of Law at the University of California at Berkeley, Reyes began practicing law in 1997. While in law school, he served on the board of the *Asian Law Journal*, the nation's first publication dedicated to Asian/Pacific Island legal issues and was also a member of the Cal Men's Volleyball team.

Governor Jon Huntsman Jr., who recommended Reyes for the award, wrote in a letter to the ABA:

Sean is remarkably dedicated to service and volunteering in the business, charitable, political and ecclesiastic communities. He serves on boards and commissions for businesses and non-profits statewide, and has helped organize and revitalize several ethnic chambers of commerce in the state. On the most grass roots level, he was able to unite many disparate groups in his neighborhood as an official in his church, while bridging religious, racial and other divides that had existed for years.

Of Reyes, Chief Justice Christine Durham of the Utah Supreme Court wrote in her nomination letter: "His reputation for competence and civility is excellent. His work clearly mark[s] him as a rising star with a commitment to the rule of law, equal opportunity, and high professional standards. He is a remarkable person who is using his extraordinary gifts to serve his profession and community."

The son of a Filipino immigrant artist/businessman and Japanese-Hawaiian educator, Reyes remembers that "They were tremendous examples of compassion, service and sacrifice." It was the obstacles and injustices his father faced as a minority businessman that largely motivated him to become an attorney.

The National Outstanding Young Lawyer Award will be presented to Reyes in his home town, Los Angeles, in February at the ABA Mid-Year Meeting.

Utah State Lawyer Legislative Directory 59th Legislature 2008

The Utah State House of Representatives



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

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

Elected to House: 1994

Legislative Assignments: Executive Appropriation Committee; Administrative Rules Review Committee; Legislative Managment Committee; Utah Constitutional Revision Commission

Practice Areas: Real Estate and Land Use and Development

Lorie D. Fowlke

Republican – District 59

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

Legislative Assignments: Commerce &

Revenue Appropriations Committee; Public Utilities & Technology Standing Committee; Judiciary Standing Committee



Kay L. McIff Republican – District 70

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

Legislative Assignments: Higher Education Appropriations Subcommittee;

House Public Utilities and Technology Committee; House Judiciary Committee

Elected to House: 2006

Practice Areas: Former presiding judge for the Sixth District Court, 1994–2005. Before his appointment, he had a successful law practice for many years, most recently as a partner in the law firm of Olsen, McIff, & Chamberlain.

Stephen H. Urquhart MAJORITY WHIP Republican – District 75

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



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

The Utah State Senate



Gregory S. Bell Republican – District 22

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

Committee Assignments: Higher Education Appropriations Subcommittee; Health & Human Services Committee; Judiciary,

Law Enforcement & Criminal Justice Committee; Revenue & Taxation Committee

Elected to Senate: 2002

Practice Area: Real Estate Development

Lyle W. Hillyard Republican – District 25

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

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

Elected to House: 1980; Elected to Senate: 1984

Practice Areas: Criminal, Domestic, and Personal Injury



Mark B. Madsen

Republican – District 13

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

Committee Assignments: Commerce &

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

Elected to Senate: 2004

Practice Area: General Counsel Office of Larry H. Miller



Scott D. McCoy Democrat – District 2

Education: B.A., William Jewell College; M.A., George Washington University; J.D., Benjamin N. Cardozo School of Law of Yeshiva University

Committee Assignments: Health & Human Services; Natural Resources, Agriculture & Environment; Economic Development & Human Resources

Appointed to Senate: 2005; Elected to Senate: 2006

Ross I. Romero Democrat – District 7

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



Legislative Assignments: Judiciary Standing Committee; Revenue & Taxation Standing

Committee; Commerce & Revenue Appropriations Subcommittee

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



John L. Valentine SENATE PRESIDENT Republican – District 14

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

Committee Assignments: Executive Sub-

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

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

Practice Areas: Corporate, Estate Planning; and Tax

Notice of Election of Bar Commissioners – Second and Third Divisions

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for three members from the Third Division and one member from the Second Division. 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 written petition of 10 or more members of the State Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after December 1, and completed petitions must be **received no later than February 10.** 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. on 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 *Bar Journal*. The space may be used for biographical information, platform or other election promotion. Campaign messages for March/April *Bar Journal* publication are due along with completed petitions, a photograph and short bio sketch **no later than February 10**.

- 2. A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their district.
- 3. The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates would be responsible for delivering to the Bar **no later than March 15** enough copies of letters for all attorneys in their district. Call the Bar office for the count in your respective district.

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

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

Pro Bono Honor Roll

- Lois Baar Alan Bell David Broadbent Nate Brower Brad Demile Sam Gardiner
- Jennie Garner Ronald Goodman Jason Grant Brent Johnson Chris Jones Clayton Jones

Brian King Michael Martinez David Marx Katherine Norman Dan Olson Wells Parker

- Doug Parry Ralph Petty Bill Prince Zachary Renstrom Cecilia Romero Wesley Rosander
- Rebecca Ryon Linda F. Smith Travis Terry Timothy Wheelwright Robert Wing Melissa Wood Carolyn Zeuthen

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

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 <u>cabad@utahbar.org</u>.

- 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.

2008 Annual Convention Awards

The Board of Bar Commissioners is seeking nominations for the 2008 Annual Convention Awards. These awards have a long history of honoring publicly those whose professionalism, public service, and personal dedication have significantly enhanced the administration of justice, the delivery of legal services, and the building up of the profession. Your award nominations must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, **no later than Friday, April 18, 2008.** The award categories include:

- 1. Judge of the Year,
- 2. Distinguished Lawyer of the Year,
- 3. Distinguished Section/Committee of the year.



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CONGRATULATIONS TO THIS YEAR'S TOURNAMENT WINNER! SNELL & WILMER

Special thanks to the Young Lawyers Division Pool Tournament Committee: **Ryan Christensen** of Parsons Kinghorn Harris, **Candice Pitcher** of Ray Quinney & Nebeker, and **Jonathan Benns** (bracket and rules) of Workman Nydegger



YOUNG LAWYERS D I V I S I O N

Fall Forum Award Recipients

Congratulations to the following distinguished attorneys who were honored with awards at the 2007 Fall Forum:



Francis J. Carney Professionalism Award



Christina L. Micken Pro Bono Attorney of the Year



Kelly J. Latimer Pro Bono Attorney of the Year



Matthew Wride Pro Bono Attorney of the Year



David R. Hall Special Recognition

Thank You...

Thank you to all participants and volunteers for their assistance and support in the 18th Annual Lawyers & Court Personnel Food and Winter Clothing Drive. We were able to deliver a large truck load of donated items, along with just over \$7,000 in cash donations to specific shelters. We thank you all for your kindness and generosity.

CLAYTON HOWARTH & CANNON ATTORNEYS AT LAW

is pleased to announce that

Terrence J. Edwards Registered Patent Attorney

has become a Partner of the firm

and that

David N. Preece Registered Patent Attorney

has joined the firm as an associate.

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Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during the November 9, 2007 Commission meeting held in Salt Lake City, Utah.

- 1. The Commission approved website posting of the Commission's draft for the Long-Range Plan for a 30-day comment period.
- 2. The Commission approved a "Communications Planning Guide" line item funding for an enhanced public relations campaign.
- 3. The Commission approved the Courts and Judges Committee's recommendation to facilitate consistency for fax filings (via consent calendar).
- 4. The Commission agreed to prepare a memorandum regarding an upcoming search and seizure issue.
- 5. The Commission will begin Bar program reviews as assigned.
- 6. The Commission agreed to continue developing a proposed mentoring program. Subcommittees were designated and assigned additional work.

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

Discipline Corner

ADMONITION

On September 27, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

In a civil litigation matter, the attorney failed to explain to the clients the effects of a binding settlement offer, and failed to adequately respond to the clients' requests for information. The attorney provided no documented evidence of communication with the clients.

SUSPENSION

On September 24, 2007, the Honorable Glenn K. Iwasaki, Third Judicial District Court, entered Findings of Fact and Conclusions of Law and Order of Discipline: Suspension against Mark A. Besendorfer, for violations of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.16(a) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.4(b) (Misconduct), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Besendorfer has been suspended for a period of three years, two years of the suspension are stayed with Mr. Besendorfer serving a one year unstayed suspension, effective November 15, 2007.

In summary:

In one matter, Mr. Besendorfer was hired to pursue a medical malpractice action. After Mr. Besendorfer filed a complaint, it was dismissed for failure to serve the summons. Mr. Besendorfer refiled the action. Thereafter, the opposing party filed a motion for summary judgment which was granted. Mr. Besendorfer informed his client that the case was proceeding, including that opposing party's motion for summary judgment was not successful. Mr. Besendorfer had not responded to the motion for summary judgment. Throughout the representation, Mr. Besendorfer informed his client that the trial dates were set, but were subsequently postponed. He also informed his client that there was settlement offer when there was not. The client sued Mr. Besendorfer and was awarded damages based on Mr. Besendorfer's misconduct.

In a second matter, Mr. Besendorfer was hired to pursue a civil claim. The clients paid Mr. Besendorfer for the filing costs. Mr. Besendorfer informed his clients that he had obtained a judgment on their behalf and the matter was on appeal, when in fact no judgment had been obtained on their behalf. During the representation, which lasted nearly eight years, Mr. Besendorfer generated voluminous paperwork although he had failed to proceed with the lawsuit. The paperwork included pleadings and documents that he photocopied from other client files that included judges signatures to mislead the clients to appear that the matter was proceeding forward. Mr. Besendorfer also paid money out of his own pocket to his clients to further fabricate that there was collection on the judgment. At the time Mr. Besendorfer admitted his failures, some of the statute of limitations had passed on the clients' claim.

ADMONITION

On October 10, 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) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

The attorney was appointed to represent an individual in a criminal case. After a guilty plea had been entered, the individual requested that the plea be withdrawn. The plea was not timely withdrawn because the attorney failed to open mail and/or properly calendar the plea withdrawal deadline.

PUBLIC REPRIMAND

On September 13, 2007, the Honorable John R. Anderson, Eighth Judicial District Court, entered an Order of Discipline: Public Reprimand against Karen Allen for violations of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

In her representation of a client in a divorce matter, Ms. Allen did not open all of her mail and missed the notice the court issued setting the matter for a bench trial. Due to her mismanagement of her mail, Ms. Allen did not prepare for the bench trial nor did she inform her client of the bench trial. Also during the representation, Ms. Allen did not explain the divorce process and a stipulation to the extent that her client understood the process. Ms. Allen failed to respond to opposing counsel's request that she approve as to form the decree of divorce. Ms. Allen failed to provide a copy of the proposed decree of divorce to her client prior to submission with the court. Ms. Allen also failed to notify her client of the conclusion of the case. Ms. Allen failed to timely submit a response to the Office of Professional Conduct's Notice of Informal Complaint.

Paralegal Division

Medical Expert Testimony: A View From the Utah Supreme Court

by Karen McCall

A recent decision by the Utah Supreme Court in the state's master asbestos litigation has clarified the role of out-of-state experts preparing testimony within the framework of the Utah Medical Practice Act.

Carbaugh v. Asbestos Corporation Limited, 2007 UT 65, 167 P.3d 1063, as appealed from Third District Court in Salt Lake City, involved four cases and forty-seven plaintiffs, all of whom had been diagnosed with asbestos-related illnesses after an examination by Dr. Alvin Schonfeld. Dr. Schonfeld, who is licensed to practice medicine in eleven states but not in Utah, had been designated by the plaintiffs as a medical expert witness and was prepared to offer testimony on the cause(s) of the plaintiffs' medical conditions.

The defendants sought summary judgment in these cases on the grounds that, in conducting his examinations on these plaintiffs, Dr. Schonfeld practiced medicine without a license, in violation of the Utah Medical Practice Act (UMPA), Utah Code Ann. §§ 58-67-101 to -803 (2002 & Supp. 2005). The district court granted summary judgment and dismissed the plaintiffs' cases, concluding that Dr. Schonfeld's testimony had been obtained illegally, as the UMPA does not permit a medical expert to conduct pre-testimony examinations.

However, in an opinion issued August 24, 2007, the Utah Supreme Court reversed the district court's decision, ruling that, while there is no question Dr. Schonfeld practiced medicine without a license in these cases, he did so within an "expert testimony exception" to the UMPA, *Id.* U.C.A. § 58-67-305(8). The court agreed with the plaintiffs' broad interpretation of this exception, stating that it not only allows medical experts to offer opinions while seated in the witness chair, but to perform medical evaluations and similar acts in preparation for their testimony.

Addressing the defendants' contention that the expert testimony exception is meant only to allow medical experts to hold themselves out as physicians while offering testimony, the court pointed out that experts who solely testify in legal proceedings do not "practice medicine" as defined by the UMPA. Medical experts giving testimony would only orally state beforehand that they are physicians licensed in other states, a practice not prohibited by the UMPA. Therefore, because offering expert testimony in a legal proceeding does not violate the UMPA independent of the expert testimony exception, the court concluded that the exception permits experts to conduct preparatory examinations. In its ruling, however, the court cautioned that unlicensed medical experts' activities must be reasonably related to their testimony, and that they must not exceed the scope of the expert testimony exception by taking on matters of treatment and disease management customarily unrelated to the duties of an expert.

The full text of the Utah Supreme Court's decision involving Dr. Schonfeld can be found at <u>www.utcourts.gov/opinions/supopin/</u><u>Carbaugh082407.pdf</u>.

KAREN MCCALL bas been a paralegal since 2000 and works for Melinda A. Morgan at Richards Brandt Miller & Nelson, specializing in asbestos litigation defense and insurance defense. She is Secretary to the Board of Directors of the Paralegal Division, and is also co-chair of the Salary Survey Committee and a member of the Website/ Blog Committee.



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CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
01/16/08	Ethics School. 9:00 am – 4:00 pm. \$150 before 01/10/08, \$175 thereafter.	6 hrs Ethics
01/24/08	NLCLE: Real Property. 4:30 – 7:45 pm. Pre-registration: \$60 YLD members, \$80 others. Door registration: \$75 YLD members, \$95 others.	3 CLE/NLCLE
02/21/08	NLCLE: Court Procedure Criminal Law. 4:30 – 7:45 pm. Pre-registration: \$60 YLD members, \$80 others. Door registration: \$75 YLD members, \$95 others.	3 CLE/NLCLE
03/13-15/08	Spring Convention in St. George See agenda in the center of this <i>Bar Journal</i> , or online at <u>www.utahbar.org/cle</u>	TBA
03/27/08	NLCLE: Court Procedure Civil Law. 4:30 – 7:45 pm. Pre-registration: \$60 YLD members, \$80 others. Door registration: \$75 YLD members, \$95 others.	3 CLE/NLCLE
04/24/08	NLCLE: Bankruptcy Collections. 4:30 – 7:45 pm. Pre-registration: \$60 YLD members, \$80 others. Door registration: \$75 YLD members, \$95 others.	3 CLE/NICLE
05/22/08	NLCLE: Criminal Law. 4:30 – 7:45 pm. Pre-registration: \$60 YLD members, \$80 others. Door registration: \$75 YLD members, \$95 others.	3 CLE/NLCLE

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

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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.

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