

Utah Bar Journal

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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, please contact us by calling (801) 297-7022 or by e-mail at barjournal@utahbar.org.

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The *Utah Bar Journal* encourages the submission of articles of practical interest to Utah attorneys and members of the bench for potential publication. Preference will be given to submissions by Utah legal professionals. Submissions that have previously been presented or published are disfavored, but will be considered on a case-by-case basis. The following are a few guidelines for preparing submissions.

Length: The editorial staff prefers articles of 3,000 words or fewer. If an article cannot be reduced to that length, the author should consider dividing it into parts for potential publication in successive issues.

Submission Format: All articles must be submitted via e-mail to barjournal@utahbar.org, with the article attached in Microsoft Word or WordPerfect. The subject line of the e-mail must include the title of the submission and the author's last name.

Citation Format: All citations must follow *The Bluebook* format, and must be included in the body of the article.

No Footnotes: Articles may not have footnotes. Endnotes will be permitted on a very limited basis, but the editorial board strongly discourages their use, and may reject any submission containing more than five endnotes. The *Utah Bar Journal* is not a law review, and articles that require substantial endnotes to convey the author's intended message may be more suitable for another publication.

Content: Articles should address the *Utah Bar Journal* audience – primarily licensed members of the Utah Bar. Submissions of broad appeal and application are favored. Nevertheless, the editorial board sometimes considers timely articles on narrower topics. If an author is in doubt about the suitability of an article they are invited to submit it for consideration.

Editing: Any article submitted to the *Utah Bar Journal* may be edited for citation style, length, grammar, and punctuation. While content is the author's responsibility, the editorial board reserves the right to make minor substantive edits to promote clarity, conciseness, and readability. If substantive edits are necessary, the editorial board will strive to consult the author to ensure the integrity of the author's message.

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Letters Submission Guidelines:

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

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Letters to the Editor

Dear Editor,

Thank you, *UBJ*, for publishing Eric K. Johnson's "Open letter to the Newly Established Utah Supreme Court Professionalism Counseling Program Board" (Sept/Oct.2008). This piece is a refreshing alternative voice for those of us who are already regulated to death and don't feel the need for still another layer of micromanagement and regulation of our practices. Eric's counterpoint, like Alexander Pope's "wit," contains views "oft thought, but ne'er so well expressed."

One of my favorite Palestinian philosophers once raged at "lawyers and pharisees," denouncing both in the same breath for their burdensome pettiness and emphasis of form over substance. He proposed an alternative – one "Golden Rule," as aspiration for our better intentions, and not subject to arbitrary accusation, committee review, or judicial inquisition.

Do the new civility rules help? Good question. Like mandatory *pro bono* (another failed attempt to force attorney "goodness") civility should be encouraged, with judges and those who would impose regulated civility on those of us who do the daily "heavy lifting" to lead the way, set the example and let their lights shine on for the rest of us to absorb and thus be guided.

Do we really need this "Program Board?"

Do we really need courts using "civility" of counsel as a basis for decision, rather than case merit? Is there even a sensible way to define "civility" in the context of attorney misconduct *sans* contradiction, vagueness, dissonance, and overbreadth?

I would not object were the entire "Program Board" scheme to be returned to the committee that hatched it, for reconsideration, internal commentary, and asphyxiation.

Sincerely,
R. Clayton Huntsman

Dear Editor,

In the most recent *Utah Bar Journal*, Eric K. Johnson wrote a letter to the newly-established Utah Supreme Court Professionalism Counseling Program Board. The law firm Smart, Schofield, Shorter & Lunceford wishes to make it known that the opinions expressed in the letter are not a reflection of the attitude and position of our firm. This letter was published without the knowledge or consent of the shareholders. Our firm supports the efforts to improve the civility and professionalism of attorneys toward each other.

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The Bar is Looking for a Few Good Mentors Actually, We Need Hundreds of You to Step Forward

by Nathan D. Alder

On September 30, 2008, the Bar petitioned the Utah Supreme Court to replace the first year of mandatory New Lawyer Continuing Legal Education ("NLCE") with a one-on-one mentoring program called the New Lawyer Training Program ("NLTP"). While we await the Supreme Court's final action on the petition, as well as Bar members' comments, the Court has endorsed the mentoring concept and approved the Bar's recruitment of mentors. Many new lawyers indicate that they do not feel well-prepared for the practical aspects of practicing law. And, adequate on-the-job training too often is subordinated to billable hours and business pressure. The new program matches a newly-admitted lawyer with an experienced attorney to help the new lawyer acquire the practical skills and judgment necessary to practice in a highly competent manner. The mentor can also help the new lawyer to better understand ethical and professional requirements and constraints and to develop networking and long-term relationships within the profession.

Rod Snow and Margaret Plane chaired the committee which developed the NLTP. Over the past two years, the committee conducted extensive research on mentoring, attended conferences and meetings on the topic, and consulted with hundreds of Bar leaders and young lawyers. They also examined in detail two after-licensure mentoring programs that are currently successfully operating in Georgia and Ohio.

In 2009, between four and five hundred new lawyers will be admitted to the Utah Bar. If NLTP is approved, we will need around one hundred and fifty mentors for the new lawyers admitted in May 2009, and at least another three hundred for the October 2009 admittees. Obviously, we need your help.

The NLTP recommends that the mentor and new lawyer spend at least two hours a month over a one-year period developing their relationship and learning from each other as the mentoring plan is implemented. Each new lawyer's training program will be

designed by the new lawyer and his or her mentor using a set of required activities and elective learning opportunities suggested in the NLTP manual. Mentors must have been in practice for at least seven years, have no past formal disciplinary proceedings, and carry malpractice insurance in an amount of at least \$100,000/\$300,000 if in private practice. The Supreme Court's Advisory Committee on Professionalism will review all mentor applications and make recommendations to the Supreme Court for appointments. Mentors will receive twelve hours of CLE credit, including two ethics hours.

You will not be left alone in your mentoring assignment. A Mentor Training Resources Committee, chaired by Annette Jarvis of Ray, Quinney and Nebeker, and Jeffrey Hunt of Parr, Waddoups, Brown, Gee & Loveless will meet periodically with mentors, firms and government entities to provide training on effective mentoring techniques.

The Supreme Court has published the Bar's NLTP petition for review and comment. It can be found at <http://www.utcourts.gov/resources/rules/comments/>. You may also get additional information and apply to be a mentor at www.utahbar.org/nltp.

This is a major step forward for our Bar. I encourage you to help a new lawyer and our profession by participating in this program.



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Does the Wrongful Lien Statute Apply to Mechanics' and Other Types of Liens?

by R. Spencer Macdonald

Although the response to the question in the title of this note may seem obvious, attorneys in Utah may be surprised to learn that several district courts have concluded that the Wrongful Liens and Wrongful Judgment Liens Statute, (the Wrongful Lien Statute), *see* Utah Code Ann. § 38-9-1 to -7 (2005), categorically does not apply to mechanics' liens. However, recent developments on this issue have demonstrated that the Wrongful Lien Statute can, in fact, apply to mechanics' liens (and other types of liens) in some circumstances.

The question posed in the title is important to lien claimants (who may be exposed to substantial liability under the Wrongful Lien Statute), property owners (who may not be aware of this powerful tool for quickly dispensing with wrongful liens), and attorneys (who may not be aware of recent developments that may have a significant impact on lien claims).

INTRODUCTION

In Utah, liens are exclusively creatures of statute, most of which are found in title 38 of the Utah Code. *See id.* § 38-9-1(6)(a) (prohibiting all liens not "expressly authorized by this chapter or another state or federal statute"). One of the most common types of lien is a "mechanics' lien," which is available to "all persons performing any services...in the construction, alteration, or improvement of any building or structure or improvement to any premises...for the value of the service rendered." *Id.* § 38-1-3.

A mechanics' lien, like all liens recorded against real property, constitutes a cloud on title and must be cleared if the owner wishes to sell or refinance the property. Getting rid of a lien can be particularly time-sensitive, for example, in a new construction situation where the owner wishes to convert a construction loan into permanent financing. Unfortunately, there are only two ways an owner can expeditiously remove a cloud on title caused by a lien (other than paying off the lien claimant).

First, the owner can litigate the enforceability of the lien and, during the pendency of the litigation, have the lien released

by posting alternate security (a surety bond or cash deposit) pursuant to section 38-1-28. This option can be expensive (the bond amount varies between 150% and 200% of the lien amount) as well as odious to a property owner who believes the lien is frivolous or otherwise improper. It may also be unavailable to a property owner whose financial condition may not enable him to qualify for a bond.

The second option is to file a petition and request an expedited hearing to have the lien declared wrongful pursuant to the Wrongful Lien Statute. A sufficient petition will trigger a hearing "within ten days to determine whether the document is a wrongful lien." *Id.* § 38-9-7(3)(b). No other matter may be heard at this summary proceeding, as its sole purpose is "to determine whether or not a document is a wrongful lien." *Id.* § 38-9-7(4).

A successful petition under the Wrongful Lien Statute will not only result in the release of the lien, but also an award of damages, attorney fees and costs. The statute contemplates two possible penalties. The lesser penalty applies to a lien claimant who receives written notice from the property owner that the lien is wrongful and refuses to remove or correct it within ten days. *See* Utah Code Ann. § 38-9-4(2). The penalty under this provision is \$3000 or treble actual damages, whichever is greater, as well as reasonable attorney fees and costs. *See id.*

The other, more severe penalty applies to a lien claimant who records a lien while knowing or having reason to know that the lien is wrongful, groundless or contains a material misstatement or

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false claim. *See id* § 38-9-4(3).¹ The penalty under this provision is \$10,000 or treble actual damages, whichever is greater, as well as reasonable attorney fees and costs. *See id* § 38-9-4(3).

Some attorneys and district courts in Utah are under the impression that the Wrongful Lien Statute does not apply to mechanics' liens. This note explores this question and concludes that a recent Utah Court of Appeals case, *Football Park, LC v. Judston, Inc.*, 2008 UT App 113, 182 P.3d 924, holds that the Wrongful Lien Statute can and does apply to mechanics' liens if a petitioner, in a summary proceeding, can show that the lien claimant was not entitled to a mechanics' lien at the time the lien was recorded.

HISTORICAL OVERVIEW OF THE WRONGFUL LIEN STATUTE²
Utah's Wrongful Lien Statute became law in 1985 and was later amended in 1997 and 1999.

In 1985, Senator Matheson of the Utah State Senate brought the wrongful lien bill in response to liens that were being filed by members of certain fundamentalist groups in southern Utah against local city and county officials who attempted to enforce Utah law against these fundamentalist groups.

Senator Matheson stated that approximately \$12 million in

liens had been filed against these public officials, and that these liens were generally referred to as "common law liens" and had no basis or support in the law. At that time, Senator Carling raised his concern that the language of the bill as proposed would also apply to statutory liens such as mechanics' liens. He further indicated that this bill should not apply to those liens. The original language of the bill defined a wrongful lien as a lien that was without basis in the law, or that was "otherwise invalid." The senators agreed that this language was too broad inasmuch as it could be read to include any statutory lien such as a mechanics' lien. In order to protect statutory liens, Senator Matheson agreed that the phrase "or is otherwise invalid" be stricken from the bill.

Furthermore, Senator Moll indicated that the purpose of the bill was to keep fringe groups from filing common law liens and that the bill should have no application whatsoever to mechanics' or materialmen's liens. *See Senate Floor Debates*, afternoon session, February 21, 1985, [10] 4:05 – 4:39 / [1] 01-64.

DISTRICT COURT INTERPRETATIONS OF THE WRONGFUL LIEN STATUTE

As noted previously, some confusion exists among attorneys and at the district court level as to whether the Wrongful Lien



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Statute applies to mechanics' liens (or other statutory liens). One district court judge, noting the legislative history of the statute, concluded: "It is clear from the plain language of the wrongful lien statute, as well as the legislative intent that the wrongful lien statute is not to apply to mechanic's liens or any other liens filed by lien claimants who are authorized by statute or law." *See infra*, note 2.

Another source of confusion is undoubtedly Utah Code section 38-9-2(3), which states: "This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens." One district court judge recited this provision and then concluded that "the Wrongful Lien Act is expressly inapplicable to mechanic's liens," and that "the penalty provisions of the Wrongful Lien Act were not intended to apply to mechanic's liens." *See Ruling and Order* issued by Judge Bruce C. Lubeck in the Third Judicial District, Summit County, on June 19, 2007 (*Strata Dev., LLC v. Weaver*, Case No. 070500246). As will be seen below, these categorical statements are, to some extent, incorrect.

APPELLATE COURT INTERPRETATIONS OF THE WRONGFUL LIEN STATUTE

Two recent decisions by the Utah Court of Appeals have clarified the applicability of the Wrongful Lien Statute to mechanics' liens

(these cases clarify the application of the statute to other types of liens as well):

Packer v. Cline

In *Packer v. Cline*, 2004 UT App 311 (mem.), the Utah Court of Appeals affirmed the trial court's invalidation of a mechanics' lien pursuant to the Wrongful Lien Statute. The defendant, Mr. Cline, recorded a purported mechanics' lien for \$70,000.00 against the plaintiffs' residence for the value of a mural painted in the residence by a third party.

The trial court found, and the appellate court affirmed, that Cline's lien was not a mechanics' lien because it did not substantially comply with several requisite provisions within the mechanics' lien statute, including (A) what work, if any, he performed on the mural; (B) the value of that purported service; (C) how he derived a value for his service; (D) when the work was allegedly performed; and (E) notice of the steps the Packers could take to have the lien removed. *See id.*


The appellate court further affirmed the trial court's finding that because Cline's lien did not comply with the mechanics' lien statute, "Cline's *purported* mechanics' lien was a wrongful lien under section 38-9-1(6) because it was not authorized by statute, by order or judgment of a court of competent jurisdiction, or by the Packers." *Id.* (emphasis added) (citation omitted).

This is a sensible conclusion. Mechanics' liens, and indeed *all* liens in Utah, are creatures of statute. *See AAA Fencing Co. v. Raintree Dev. & Energy Co.*, 714 P.2d 289, 291 (Utah 1986); Utah Code Ann. § 38-9-1(6)(a). As such, a document that *purports* to be a mechanics' lien, but does not substantially comply with the mechanics' lien statute, is, by definition, *not* a mechanics' lien and is instead a "wrongful lien" actionable under the Wrongful Lien Statute. However, *Packer* was not a published decision, and the facts of the case left the question of the applicability of the Wrongful Lien Statute unclear.

Foothill Park, LC v. Judston, Inc.

The Utah Court of Appeals definitively addressed whether the Wrongful Lien Statute applies in *Foothill Park, LC v. Judston, Inc.*, 2008 UT App 113, 182 P.3d 924, in which the trial court had found that the defendant's mechanics' lien was void when it was not enforced within 180 days of the first notice as required by statute. *See id.* at 927-28.

The court of appeals analyzed the trial court's finding that the void lien was a "wrongful lien" under the Wrongful Lien Statute. The defendant argued that "mechanics' liens are outside of the scope of [the Wrongful Lien Statute]." *Id.* at 930. The court of appeals qualifiedly agreed, noting that while the statute "is inapplicable under the unique facts of this case," it is not so



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broad “as to exempt *any* filing that purports to arise under the mechanics’ lien statute” but instead “only excludes persons ‘entitled’ to a mechanics’ lien.” *Id.* (emphases added) (internal citation omitted). That is, the provision that seemingly excludes mechanics’ liens from the Wrongful Lien Statute (Utah Code section 38-9-2(3)) in fact only excludes mechanics liens filed by “a person *entitled to a lien* under Section 38-1-3.” *Id.* (quoting Utah Code Ann. § 38-9-2(3)). Liens that are filed by persons *not* entitled by statute, including those styled as mechanics’ liens, are therefore subject to the Wrongful Lien Statute.

The court went on to reverse the trial court’s finding of liability under the Wrongful Lien Statute because the case was one of first impression, and thus whether or not the defendant was entitled to file its lien was “unresolved...at the time of [the lien’s] filing.” *Id.* However, the court also noted: “With this decision, however, any uncertainty about whether a laborer in [the defendant’s] position is entitled to file a mechanics’ lien has been eliminated.” *Id.* at 930 n.11. In other words, *Judston* created a precedent that lien claimants should heed.

GUIDELINES FOR APPLYING THE WRONGFUL LIEN STATUTE

Judston establishes the basic principle that the Wrongful Lien Statute applies to all wrongful liens, including those styled as mechanics’ liens. Some additional considerations are in order.

First, the Wrongful Lien Statute “only applies to liens and encumbrances which are wrongful from inception, and not to documents which are justifiably recorded.” *Jack B. Parson Cos. v. Nield*, 751 P.2d 1131, 1134 n.1 (Utah 1988); *see also Judston*, 182 P.3d at 930; *Eldridge v. Farnsworth*, 2007 UT App 243, ¶50, 166 P.3d 639, (citation omitted) (noting that the statute “requires a court to determine whether a lien is wrongful by evaluating it ‘at the time it is recorded or filed’”). Consequently, scrutiny of a lien’s validity must be restricted to the point in time in which the lien was recorded.

Second, an attorney challenging a lien under the Wrongful Lien Statute need not restrict the challenge to the face of the lien. Rather, the practitioner may present any evidence of the lien’s objective wrongfulness at the time the lien was recorded (several of which are outlined below).

Third, the Wrongful Lien Statute contemplates invalidating a lien in a summary proceeding. Consequently, district courts generally will be reluctant to invalidate a lien under this statute unless the petitioner can unequivocally show at the summary proceeding that the lien claimant was not entitled to maintain a lien at the time the lien was recorded. Following are a few illustrations as to when such an unequivocal showing is possible:

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Lien Claimant Has Not Made Improvements to Real Property: A lien is susceptible to attack under the Wrongful Lien Statute if the lien claimant has not made improvements to the encumbered real property. *See* Utah Code Ann. § 38-9-3. The lien in *Packer* was invalidated under the Wrongful Lien Statute because the lien claimant had not made improvements to the property. The so-called “common law liens” noted in the legislative history would also be susceptible to summary invalidation under the Wrongful Lien Statute because Utah Code section 38-9-1(6)(a) only allows liens that are “expressly authorized by this chapter or another state or federal statute.” *Id.* 38-9-1 (6)(a).

Lack of Licensure: A person who makes improvements that require licensure as per Utah Code section 58-55-604 but is not properly licensed “may... not commence or maintain any action in any court of the state for collection of compensation for performing any act for which a license is required.” Utah Code Ann. § 58-55-604. Because an individual’s licensure status is a matter of public record, this can be an effective challenge to a lien under the Wrongful Lien Statute. However, the individual circumstances of each case must be taken into account.

For example, a lien claimant might be able to proceed with a mechanic’s lien despite lacking the requisite licensure if (A) the property owner is not a member of that class of individuals the

statute requiring licensure was designed to protect; (B) the property owner receives by other means the benefit of the protection contemplated in the statute; or (C) the property owner did not rely on the contractor’s licensure status to infer the contractor’s competence. *See Lignell v. Berg*, 593 P.2d 800, 805 (Utah 1979). The trial court has substantial discretion on this point, because “‘the general rule’ (of nonenforceability [of a contract due to lack of licensure]) is not to be applied mechanically but in a manner ‘permitting the court to consider the merits of the particular case and to avoid unreasonable penalties and forfeitures.’” *Id.* at 805 n.7 (quoting *Corbin on Contracts*, Vol. 6A, § 1512).

Challenging a mechanics’ lien under the Wrongful Lien Statute based on the lien claimant’s lack of licensure is obviously fact-sensitive and must be evaluated on a case-by-case basis.

Untimely Notice of Lien: A party wishing to encumber property with a lien must record a “written notice” of the lien with the county recorder’s office. Utah Code Ann. § 38-1-7(1)(a)(i). The deadline for filing such a notice is, depending on the circumstances, either 180 days after “final completion of the original contract” or 90 days after a “notice of completion” is filed. *Id.* § 38-1-7(1)(a)(i)(A) and -(B).

An untimely written notice will invalidate the lien claim. For example, in *Interiors Contracting v. Smith, Halander & Smith Assocs.*, 881 P.2d 929 (Utah Ct. App. 1994), the court of appeals affirmed the trial court’s invalidation of a mechanics’ lien “since it was not timely filed within the requirements of [Utah Code] § 38-1-7.” However, attempting to invalidate a lien based on an untimely written notice does not always lend itself to disposition in a summary proceeding because the actual deadline is somewhat malleable and often disputed by the parties.

Failure to File Preliminary Notice: In 2005, the Utah legislature amended Title 38 of the Utah Code to include provisions pertaining to the “State Construction Registry” (the SCR). The SCR is designed to “provide a central repository for notices of commencement, preliminary notices, and notices of completion filed in connection with all privately-owned construction projects as well as all state and local government-owned construction projects throughout Utah.” Utah Code Ann. § 38-1-27(2)(c). Primary filing and access to the SCR, as well as notification to interested persons, are all done electronically.

To claim the benefit of the SCR’s preliminary notice requirements on a project to which they apply, a property owner must file a “Notice of Commencement” within fifteen days of building permit issuance by the local authority issuing the permit. *See Id.* § 38-1-31(1)(a)(i)(A)(II).

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A subcontractor who wishes to maintain a lien must comply with the SCR by filing a "Preliminary Notice" within the later of either "20 days after commencement of its own work or the commencement of furnishing labor, service, equipment, and material to a construction project" or "20 days after the filing of a notice of commencement." *Id.* § 38-1-32(1)(a)(i)(A) and - (B). This provision only applies to subcontractors who do not contract directly with the property owner or laborers compensated with wages. *See id.* § 38-1-32(1)(a)(i).

If a subcontractor fails to file a Preliminary Notice, it is statutorily barred from holding a lien on the Property. *See id.* at § 38-1-32(d)(1)(A). Consequently, a lien that is expressly prohibited by statute (such as by Utah Code § 38-1-32(d)(1)(A)) is, by definition, not "expressly authorized by statute," *see id.* § 38-9-1(6)(a)), and is therefore a wrongful lien subject to dismissal under the Wrongful Lien Statute.

In addition to mechanics' liens, other types of encumbrances are also potentially actionable under the Wrongful Lien Statute. For example, in *Winters v. Schulman*, 1999 UT App 119, 977 P.2d 1218, the Utah Court of Appeals found a "Notice of Lis Pendens" to be invalid and actionable under the Wrongful Lien Statute.³ In *Centennial Investment Company, LLC v. Nuttall*, 2007 UT App 321, 171 P.3d 458, the court of appeals also

found an improperly-filed "Notice of Interest" to be actionable under the Wrongful Lien Statute.

CONCLUSION

Judston corrected the notion that the Wrongful Lien Statute is *per se* inapplicable to liens recorded under color of law. Rather, the Statute can be used to invalidate a lien where the lien claimant was not entitled to a lien at the time the lien was recorded. *Footbill Park LC v. Judston*, 2008 UT App 113, ¶¶ 18-21, 182 P.3d 924. Careful scrutiny of the documents and underlying facts of each case is nevertheless required to ensure that challenging a lien under the Wrongful Lien Statute will succeed.

1. A lien is "groundless" if it is not (A) expressly authorized by this chapter or another state or federal statute; (B) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or (C) signed by or authorized pursuant to a document signed by the owner of the real property. Utah Code § 38-9-1(6).
2. Most of the material in this section is found in an order issued by Judge W. Brent West in the Second Judicial District, Ogden Department, on May 10, 2004 (Case No. 040900301).
3. The Wrongful Lien Statute expressly provides that "[t]he provisions of this chapter shall not prevent a person from filing a lis pendens..." Utah Code § 38-9-2(2) *Eldridge v. Farnsworth*, 2007 UT App 243, ¶ 48, 166 P.3d 639 (citing Utah Code Ann. § 38-9-2(2) (2005)). However, the court in *Eldridge* also cited, without commentary, *Winters* for the proposition that a lis pendens may be evaluated "[for] compliance with statutory requirements," which includes compliance with the Wrongful Lien Statute. *Id.* ¶ 49.



Congratulations to Clark Waddoups on his appointment as a United States District Court Judge.

The honor bestowed upon Clark leaves us with mixed emotions. He helped build one of the strongest law firms in the region and is a valued colleague. We know that his service as a federal judge will reflect the same exceptional devotion to the law that he has always shown, but we will miss his skill, wisdom and friendship as a member of the firm.

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Unbundled in Utah

by Virginia Sudbury

There are certain keys to a better life; among them world peace, the Cubs in the World Series (next year!), and, of course, accessible legal services. Few things are more keenly needed than the latter, and often at cruelly unexpected times. I am an attorney who believes passionately in public interest law, and yet I want to eat relatively well. I want a way to engage in the private practice of law while wearing public interest clothes. Practicing “unbundled” law is providing me that satisfaction.

What is “Unbundled” Law?

The terms “unbundled legal services,” “limited scope legal assistance,” and “*a la carte* legal services” all mean the same thing: that a lawyer assists clients with only those legal services that the clients want and specifically engage the lawyer to do. This might sound obvious, but the traditional model for providing legal services is a different picture. In that customary image, the client hires the attorney to handle an entire matter. The client remains involved, but may have very little *meaningful* input or involvement in his or her case. Unbundled services contemplate that the client *and* lawyer – together – select the services the office will provide.

When I first heard of this notion, I didn’t much like it. I graduated from law school in 1982, when we still used the term “Shepardize.” A few years ago, I read about Forest Mosten’s unbundled practice in California and was taken aback. I contemplated the potential aspects of an unbundled legal practice. I foresaw a nightmarish oral argument, before an impatient court, reliant upon an incoherent memorandum written by a client. No, no, no. But – there was that desire to help *only* where the client wanted or could afford.

I’ve had seven years of family, criminal, and civil law litigation experience, including founding and operating a non-profit legal services firm in another jurisdiction. I’ve also had four-plus years of disability law experience in Utah. I opened a private practice doing unbundled family law in Salt Lake in June of 2007.

Who Needs Unbundled Legal Services?

Groups whom an unbundled practice could benefit are **those who are above income for legal aid but who are unable to come up with a big retainer or pay the expense of full-service representation.** In fact, this may describe most of the middle class (I know it describes me). There exists an enormous number of bright client/litigants who have the wherewithal to draft a Petition to Modify Child Support utilizing the Online Client Assistance Program (OCAP), but who may want limited procedural advice on that petition – or advice on attendant pleadings, next steps, or coaching for an upcoming mediation. Or, just to be told that they’re doing it right.

Pro se litigants are another obvious group that will benefit from unbundled services. It’s the cost of traditional full-service representation that is not affordable for many clients. Clients frequently pay lawyers an adequate amount to obtain the entire limited representation they need, but that amount is used as a deposit for full-service legal representation. When the client can’t pay a later installment of the full-service fee, the attorney discontinues the legal work. This rarely ends well. However, many *pro se* litigants have enough available income to pay for the limited representation they truly need.

Many litigants visit the Legal Aid and Family Law clinics housed in the Matheson Courthouse. Some are completely capable of handling their own case but have the occasional question or discrete request for specific guidance. Others are comfortable completing their own pleadings, using a service such as the OCAP, but may want an attorney to review those pleadings prior

VIRGINIA SUDBURY is a solo practitioner practicing unbundled and “traditional” family law.



to filing – or step in as needed, when needed. Others want more constant involvement. Unbundled representation is tailored to the litigants’ specific needs.

Another group that will benefit greatly from unbundled legal representation is the **judiciary**. In the great majority of family law cases filed in the Third District, one or both of the parties is appearing *pro se*. This corresponds to a *lot* of explaining by the patient clerks – and commissioners and judges. No matter what level of professional assistance a client needs, judicial expediency will be improved if *pro se* litigants possess the relevant information assistance to make knowledgeable and informed procedural decisions and presentations to the court.

Unbundled representation will help the courts to manage their dockets more efficiently and fairly. It can enhance the quality of pleadings, narrow and focus the issues, and lead to outcomes that are more fair and just.

Opposing counsel will also benefit from an unbundled, limited-scope approach as well. There are many aspects to litigation that can be easily navigated with a quick call to opposing counsel. Many *pro se* litigants are unaware that they can, and may even be expected to, speak directly with opposing counsel. Worse (and more likely) they may feel ill-equipped to deal directly with them. Having an attorney “on call” to represent a party in a limited capacity, even on procedural aspects only, will enable the litigant to focus on the substantive aspects of her case, and hasten resolution.

What are the Parameters of Unbundled Representation?

Rule 75 of the Utah Rules of Civil Procedure provide the procedural basis for unbundled representation. This Rule states:

Rule 75. Limited appearance.

(a) An attorney acting pursuant to an agreement with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes:

- (a) (1) filing a pleading or other paper;
- (a) (2) acting as counsel for a specific motion;
- (a) (3) acting as counsel for a specific discovery procedure;
- (a) (4) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding; or

(a) (5) any other purpose with leave of the court.

(b) Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall enter on the docket the attorney’s name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11.

(c) Any party may move to clarify the description of the purpose and scope of the limited appearance.

(d) A party on whose behalf an attorney enters a limited appearance remains responsible for all matters not specifically described in the Notice.

Utah R. Civ. P. 75.

That the Utah State Courts endorse some level of limited legal representation is illustrated by its Self-Help Resources page, which notes that “limited scope legal representation” or “unbundled services” are alternative ways to get legal help. Indeed, the website provides lists of attorneys in the Second, Fourth, and Fifth Districts who offer limited legal services.

Utah State Bar Ethics Advisory Opinion Committee Opinion No. 08-01 also addresses whether an attorney may provide legal assistance (including the preparation of written documents) to *pro se* litigants without disclosing the nature or extent of such assistance to opposing counsel or party. In so doing, it offered an inclusive, considered opinion and history of limited scope representation. It also analyzed the potential difference in the ways the Utah State Courts and the Tenth Circuit may treat some aspects of limited scope representation.

It also is noteworthy that this Main Advisory Opinion sparked a Dissenting Opinion. Both are well-reasoned and I would recommend them to any practitioner considering unbundled law. The Opinion describes the “global” evolution of the traditional legal representation model with an informed *and* informal client base, which has resulted in a more responsive, timely, and precise delivery of legal services. At the same time, the opinion acknowledges that difficulties in that delivery may arise. Not surprisingly, one solution may be more communication between litigants, limited scope counsel, and opposing counsel.

Logistics: the Devil is in the Details

This is the hard part. The boundaries of representation must be clearly understood by both the attorney and the client. For instance, a client may draft and file a motion, but then hire me to represent him, via a limited appearance, at the motion hearing. Leaving aside substantive issues for the moment, let's say I represent him at that hearing, prevail, and the court orders me to prepare the order. Is that preparation included in the client's understanding of "representation at a hearing"? Or is the client responsible for drafting the order? Is the very common "back and forth" with opposing counsel to achieve an approved order also included? Client agreements must be particularly distinct.

Client Agreements should also be easily understandable. It serves no one – least of all the attorney – if the agreements are a muddle of legalese. If we are to encourage an unbundled practice, we must also encourage a genuine understanding of our agreements by both clients and attorneys. Eschew obfuscation.

I have run into another issue that is potentially concerning. Assume I am hired in a limited scope capacity. The initial pleadings have been filed, and the next step is mediation. The client wants to attend mediation without me. However, the opposing party will have counsel present. Opposing counsel is wary of going into mediation with a *pro se* opposing party whom he knows has counsel – in whatever limited role.

When opposing counsel calls me, a good response might be to discuss the precise parameters of my limited representation. While this may not alleviate counsel's concern, communication is certainly a positive step towards an understanding of, and familiarity with, the notions of unbundled representation.

Utah State Bar Ethics Advisory Opinion Committee Opinion No. 08-01 also addressed the communication issues attendant in the above scenario.

Another aspect of limited representation that warrants comment is Rule 4.2, which prohibits communicating with persons a lawyer "knows" to be represented "in the matter" without that lawyer's permission. When the lawyer has entered a limited appearance in court, Utah Rule of Civil Procedure Rule 75 governs and explicitly provides that "the party remains responsible for all matters not specifically described in the Notice" of limited appearance. When there is no appearance in the court, the matter is less clear.

Why One Would Want to be Unbundled in Utah, Even in Winter

Cost: Limited scope representation limits the huge expenses of representation. Obtaining records, files from the Court, and performing other "legwork" are a few tasks that clients can do themselves. The client pays only for those services the client needs or can afford, and hires the attorney to perform.

Empowerment: Unbundled legal services empower clients. They bring a higher level of client understanding, personal investment, and ownership in outcomes. They can result in improved compliance with agreements and orders. They help to "demystify" the law and the daunting legal system. Oftentimes the litigant has an excellent grasp of the *substantive* issues, but doesn't know how to go about bringing the matter before the court *procedurally* to obtain relief. Unbundling can bring those procedural aspects of the law into focus and provide crucial perspective to the litigant.

However, unbundled representation is not for every litigant. I tried at first to do exclusively unbundled work – thinking that I would empower and educate clients even if I had to push them off the cliff – but I soon learned that an unbundled approach is not *always* appropriate. I respect that reality and now try to assess the appropriate approach for a specific client.

Coordinated Solutions: Other factors fueling demand for limited scope assistance include the loss of the middle class, the increase in consumerism, the self-help ethic (reinforced by forms available on OCAP and the Internet), and disaffection with the excesses and high cost of the traditional adversarial legal system.

Conclusion

A shift in the paradigm of providing legal services is occurring. I urge Utah Bar members to think sideways, and inclusively, about the interactions between litigants, lawyers, and the courts. Yes, this can be time consuming and foreign. It's innovative and unusual and may be out of our comfort zone. But remember – Bertrand Russell said, "In all affairs it's a healthy thing now and then to hang a question mark on the things you have long taken for granted."



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A Notary Primer for Utah Attorneys

by Scott M. Ellsworth

We all know the frustration of having a notary form attached to a document that innocently asserts that the document was signed in front of a notary when in fact it has already been signed and all that's needed is an acknowledgement. Few people are even sufficiently into notarial minutiae to distinguish among jurats, acknowledgements, copy certifications, and pronotarial oaths (and, of course, such people could, with some justification, reply "that's what attorneys are for"). The problem is, however, that chapter 46-1 of the Utah Code (the Notaries Public Reform Act) just doesn't come up all that often, and we can hardly expect our assistants and paralegals to comprehend the ins and outs of notarial verification (at least, not without some training) unless they themselves are notaries. And even notaries are often unaware of which kind of document requires what kind of certificate.

Then again, the Utah Supreme Court, in *Penta Creeks, LLC, v. Olds*, 2008 UT 25, 182 P.3d 362, had occasion to remind us of the distinction between "verification on oath" and "mere notarization":

[I]n order for there to be a valid verification "(1) there must be a correct written oath or affirmation, and (2) it must be signed by the affiant in the presence of a notary or other person authorized to take oaths, and (3) the latter must affix a proper jurat." *Mickelsen v. Craigco, Inc.*, 767 P.2d 561, 564 (Utah 1989) (interpreting the Utah Code section 38-1-7 (1974) requirement that a mechanics' lien "must be verified by the oath of [the claimant]"). Verification on oath is distinguished from a mere notarization in that verification requires that "the applicant swears to the truthfulness of the representations made in the application." *Longley v. Leucadia Fin. Corp.*, 2000 UT 69, ¶ 31, 9 P.3d 762 (Howe, C.J., concurring).

The requirement of verification contemplates the presence of visible evidence that the person submitting the objection

appreciated that its contents were to be prepared with the utmost rectitude.

2008 UT 25, ¶¶ 18-19. A review of my firm's form files revealed a large number of notarial variations, most of them variations on the same theme:

On this _____ day of _____, 2003, appeared before me Ms. Anne Ominous, who acknowledged before me that she had executed the foregoing document for the purposes stated therein.

Notary Public

On the _____ day of _____, 2005, there appeared before me Mr. José Quienquiera, the president of S" Food, LC, who, after being duly sworn, acknowledged that he signed the above agreement.

Notary Public

On this _____ day of _____, 2001, appeared before me Mr. Walker Nampe, who executed the foregoing

SCOTT M. ELLSWORTH is a partner at the law firm of Smith Hartvigsen.



as chairman of the Hakateweh Mosquito Abatement District, for the purposes set forth therein.

Notary Public

These, and many other, similar acknowledgements, turn up on affidavits, contracts, deeds, license applications, and so on and on. Without recourse to chapter 46-1, though, there is no way to tell whether any of these notary statements sufficed for the documents upon which they appeared, nor what those documents actually required by way of notary certification, nor where the form of certification that *was* used on each came from in the first place.

After noting the suspicious (and rather disheartening) homogeneity of all these various forms, we decided to update our cache of certifications, rediscovering in the process the proprieties of

notarization: the several kinds of notarial acts, which to use when and on what sort of document, and what needs to be done to validate each type of certification.

It was quite an instructive review, actually, and we immediately set about creating a database of notary forms for every conceivable document. We'll never be done, I expect, but we'll be far less likely to overlook or have to repair defective notarial certificates, either.

In an effort to assist our fellow attorneys – at least those who have, as we had, stumbled into the quagmire of certificate recycling, losing the tree in the forest, as it were – we offer for their review the brief table and outline of essentials we created for quick reference, along with an example or two of each type of notarial act. Included in our review was the totally nonnotarial “self-authentication” statute, designed to streamline procedures under the Utah Rules of Criminal Procedure, Civil Procedure, and Evidence. *See* John H. Bogart & Scott D. McCoy, 20 UTAH B.J. 22 (July/August, 2007).



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UTAH CODE SECTION 46-1-6 SPECIFIES FOUR TYPES OF NOTARIAL ACT:**I. JURAT**

specifically meant to aver the truth of the statement in the document notarized (i.e., affidavits and such)

II. ACKNOWLEDGMENT

meant to verify that the signer did in fact agree to the provisions of the document (i.e., contracts and such)

III. COPY CERTIFICATION

Meant to certify the accuracy of copies of otherwise unavailable documents.

IV. OATH / AFFIRMATION

A general category which (since it invokes “perjury”) asserts the truth of the matter notarized.

- CERTIFIES THAT -**A signer –**

- (a) is known to the notary or has been satisfactorily identified,
- (b) has signed a document,
- (i) voluntarily, and
- (ii) in the presence of the notary, and
- (c) ***vouches for the truthfulness of the document signed.***

A signer –

- (a) is known to the notary or has been satisfactorily identified,
- (b) has signed a document,
- (i) voluntarily,
- (ii) ***for the purpose stated therein,*** and
- (c) has, in the presence of the notary, admitted doing so.

A photocopy – is *an accurate copy* of a document neither

- (a) a public record, nor
- (b) publicly recorded.

A person – *has made a vow* or affirmation

- (a) on penalty of perjury,
- (b) in the presence of the notary.

UTAH CODE SECTION 78B-5-705 NON-NOTARIAL WRITTEN DECLARATIONS:**V. SELF-AUTHENTICATION**

If the Rules of Criminal Procedure, Civil Procedure, or Evidence require or permit ***a written declaration upon oath***, an unsworn written declaration has the same force and effect if signed and dated, under penalty of section 78B-5-705(2) (Class B misdemeanor), in substantially the following form:

I declare (or certify, verify, or state) under criminal penalty of the State of Utah that the foregoing is true and correct.

– Executed on (date), (Signature)

Note, however, that self-authentication will **not** necessarily satisfy a **statutory** requirement of a written declaration upon oath – it only applies to the URCrP, the URCP, and the URE Court Rules.¹

I. JURATS

Aver the truth of the document notarized.

Notary Public

The signer –

- (a) (i) is known to the notary, or
(ii) has been satisfactorily identified;
- (b) has signed the document
(i) voluntarily, and
(ii) in the presence of the notary; and
- (c) vouches for the truthfulness of the document signed.

E.g.: Verified Complaints

STATE OF _____)
: ss

COUNTY OF _____)

On this ____ day of _____, 20____, appeared before me _____, who is personally known to me, or whose identity has been satisfactorily established, and voluntarily executed the foregoing Verified Complaint in my presence, avouching thereby the truthfulness thereof.

Affidavits

STATE OF _____)
: ss

COUNTY OF _____)


Affiant _____ declares upon oath as follows:

[text of affidavit]

Subscribed and sworn to before me this ____ day of _____, 20____, by _____, who is personally known to me or whose identity has been satisfactorily established.

Notary Public

Note: Obviously, most of this language is omitted from affidavits, since it is assumed (a) that the affiant is who he or she claims to be, and (b) that the whole point of the affidavit is to speak what the affiant believes to be true.



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II. ACKNOWLEDGEMENTS

Verify that the signer did in fact agree to the provisions of the document.

The signer –

- (a) (i) is known to the notary, or
- (ii) has been satisfactorily identified;
- (b) has signed a document,
 - (i) voluntarily,
 - (ii) for the purpose stated therein; and
- (c) has, in the presence of the notary, admitted doing so.

E.g.: Deeds

STATE OF _____)
: ss

COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____ & _____, the Grantors herein, personally known to me, or whose identities have been satisfactorily established to me, who duly acknowledged to me that they had voluntarily executed the foregoing deed for the purpose stated therein.

Notary Public

Or

STATE OF _____)
: ss

COUNTY OF _____)

On this ____ day of _____, 20____, appeared before me _____, the president of IncCo, LC, the Grantor herein, who, [his/her] identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of IncCo, LC, has authorized [him/her] to execute the foregoing quitclaim deed, and did duly acknowledge in my presence having executed the same for the purpose stated therein.

Notary Public

III. COPY CERTIFICATION

for Evidence and the like.

A photocopy – is *an accurate copy* of a document neither

- (a) a public record, nor
- (b) publicly recorded.

STATE OF _____)
: ss

COUNTY OF _____)

On this ____ day of _____, 20____, I hereby certify (1) that the foregoing [or attached] document is an accurate and unaltered copy of ____ [the name or a description of the document]_, presented to me by _____, the document's custodian, and (2) that, to the best of my knowledge, the copied document is neither a public record nor publicly recorded.

Notary Public

Note: Many notaries appear to be unaware of this particular aspect of their office: the examination and certification of photocopy accuracy, which can become rather burdensome if the copy to be certified is bulky (an unpublished manuscript, for example, or a journal, or a lengthy but unrecorded will) or deeply detailed (such as a photograph, engineering drawings, or a map). Obviously, the best practice would be to make the photocopy with the notary there to see; failing that, well, this particular exercise of the notarial authority might require rather more time than taking oaths, watching signatures, or listening to simple acknowledgements.

IV. OATH /AFFIRMATION

Certifies that a vow or affirmation was made in the notary's presence.

A person – has made a *vow or affirmation*

- (a) on penalty of perjury
- (b) in the presence of the notary.

STATE OF _____)
: ss

COUNTY OF _____)

I hereby certify that, on this ____ day of _____, 20____,

[the name of the oathtaker] did swear [or affirm], in my presence and on penalty of perjury, that [the words or substance of the oath or affirmation].

Notary Public

V. SELF-AUTHENTICATION UTAH CODE SECTION 78B-5-705

Grants certain unsworn written declarations the same force as a declaration upon oath.

A signer – satisfies a URCrP, URCP, or URE provision requiring or permitting a written declaration upon oath by affixing instead an unsworn written declaration, expressly under criminal penalty (*class-B misdemeanor*), that a document is **true** and **correct**. (This is essentially just a non-notarial Jurat.).

I certify, under criminal penalty of the State of Utah, that the foregoing [the name or description of the document] is true and correct.

Signed: _____

Date: _____

Note: The self-authentication provision, enacted at the Utah Legislature's 2007 General Session (2007 Utah Laws c. 278), was originally codified at Utah Code Section 46-5-101. This section, however, no longer exists, having been renumbered as Utah Code Section 78B-5-705 by the 2008 Legislature (2008 Utah Laws c. 119) as part of its sweeping rearrangement and bifurcation of former Title 78, the Utah Judicial Code.

1. It's not entirely clear why this same option is not available under either the Utah Rules of Juvenile Procedure or of Court-Annexed Alternative Dispute Resolution.

CONGRATULATIONS TO JASON SCHATZ!

FOR BECOMING UTAH'S **FIRST** AND **ONLY** ATTORNEY WHO IS
BOARD CERTIFIED IN DUI DEFENSE LAW
BY THE NATIONAL COLLEGE FOR DUI DEFENSE



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The Advantages of a Degree:

Finding Success as a Graduate of
the Paralegal Studies program
at Utah Valley University

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS Occupational Outlook 2008-09) despite – and possibly because of – recent economic downturns, employment opportunities in the coming decade for well-qualified, trained paralegals and legal assistants are expected to double the growth rate of most other fields – including that of lawyers. Consequently, the BLS considers the job market for paralegals one of the best-bets for the foreseeable future as businesses, government, and law firms look to reduce the cost of legal services by expanding their base of paralegal staff. Additionally, as the market for paralegals expands, it is projected that the best entry-level positions and opportunities for advancement will be most readily available for paralegals with experience *and* formal training.

The paralegal profession has never required formal training to call one's self a "paralegal." In fact, Utah does not have a state-sponsored certification or licensing procedure of any kind. Still, formal training in an accredited paralegal program is one of the hallmarks of distinction that any practicing or aspiring paralegal should look to for the best jobs, best wage, and advancement.

The Utah Valley University Paralegal Bachelor's Degree is an American Bar Association Approved Program – one of the *few* bachelor's degree programs offered in Utah with ABA approval. Students come from all over the United States and several foreign countries to earn a degree from the UVU Legal Studies program and enhance their education while preparing themselves to be a paralegal, attend law school, or pursue other educational opportunities.

As part of its ongoing ABA approval, UVU conducts annual surveys of its students, graduates, and prospective employers. This article details a sampling of the surveys' findings that are most compelling for the prospective and current paralegal, as well as the consumers of paralegal services – lawyers and law firms.

UVU Statistics:

For the years 2006-2007, UVU Paralegal Graduate Surveys suggest that 28% of the graduates were working in the paralegal profession, while 18% of the graduates were pursuing other continuing legal education, such as attending law school. For the year 2008 a student survey was conducted wherein 70% of the current paralegal students stated that they were planning on applying to law school after completing their Bachelor's Degree in Paralegal Studies. It is most apparent that students have developed an increasing desire to attend law school and pursue a *Juris Doctorate* degree in law. The most complimentary part of the Program is that preparing to become a paralegal also helps to prepare a student to attend law school. Naturally, a paralegal bachelor's degree is not required to apply to law school, but it seems that it certainly helps in introducing a student to the law field. It also succeeds where a traditional law school education fails – in teaching and training students to *practice* law.

Throughout the survey, 60% of our 2008 paralegal students also stated that they were primarily interested in criminal law, while 55% of our students stated they were interested in family law. 15% of the students stated they were interested in a civil law practice, while 10% of the students stated they were interested in employment law. Consequently, no matter what type of law the paralegal student chooses to pursue, an overall understanding taught in bachelor degree courses is greatly desired by the students.

Employer Survey:

An Employer Survey was also conducted for 2007-2008 in law firms that hire paralegals and work with paralegals on a daily basis. The survey questioned attorneys about ways in which UVU can improve their Paralegal Program and enhance the student's educational opportunities. Out of the surveys that were completed, 100% of the law firms stated that they did, in fact, utilize paralegal services within their firm. This is extremely exciting news for the Paralegal Studies program – demonstrating that employment opportunities for graduating students are, and will continue to be, readily available. The survey also indicated that 90% of the law firms use paralegals for some of the following tasks:

- ▲ Draft Motions and Memorandums
- ▲ Perform Intake with Clients
- ▲ Attend Court with attorneys to assist in legal matters
- ▲ Prepare pleadings
- ▲ Organize files and discovery
- ▲ Schedule appointments with clients
- ▲ Help to manage the office staff

In response to the question as to what positive services paralegals bring to their law firms, the attorneys stated the following:

- ▲ Paralegals bring a basic understanding of the legal system
- ▲ Paralegals bring useful writing skills
- ▲ Paralegals bring organizational skills
- ▲ Paralegals bring patience and good communication skills
- ▲ Paralegals bring effective research skills

What was most encouraging is that 100% of the employers responding to the survey stated that they felt that their paralegal was equipped for the job. There is room for improvement in paralegal's writing and research skills upon entry into the profession – which paralegals without formal training almost never bring to the workplace. But ultimately the survey indicated that paralegals are fulfilling their responsibilities in the office.

The Paralegal Career:

Every student pursues post-graduate employment experience in different forums, but there are a variety of opportunities a paralegal graduate can take with a distinct and palpable edge over a “paralegal” that lacks formal training. Some students choose to pursue law school, while others choose to work with a private firm, government agency, or corporate office. Many paralegals choose to work in the courts as legal assistants and/or clerks. Additionally, graduates report that they are more able to advance in their careers, earn positions of greater responsibility, and merit higher pay over their counterparts without the education and formal paralegal training. Regardless the road that a graduate pursues, a Bachelors or an Associates Degree in Paralegal Studies provides the student a degree or certificate that allows them to pursue fulfilling and expanding career opportunities.

Edited by Professor Hugh Rode

To learn more about pursuing a degree in Paralegal Studies, call Utah Valley University at (801) 863-1645



Carolyn E. Howard-Morris, J.D. is the Utah Valley University Paralegal Director where she oversees the Bachelors and Associates Degree in Paralegal Studies. Carolyn is also an attorney practicing in criminal defense and family law.



Aaron S. Bartholomew, J.D. is an Assistant Professor at Utah Valley University where he teaches in the Paralegal Program. Aaron is also managing partner in Bartholomew Silva & Assocs. where he practices in family law, criminal and civil law.

Summary of Utah State Bar Operations 2007–2008

Vision of the Utah State Bar

To lead society in the creation of a justice system that is understood, valued, respected, and accessible to all.

Mission of the Utah State Bar

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

Introduction and Grants of Authority

In 1981, the Utah Supreme Court promulgated Rules for Integration and Management of the Utah State Bar, restating its inherent authority under the Utah Constitution to regulate the practice of law, acting to “perpetuate, create and continue” the Utah State Bar under its “direction and control” and delegating specific responsibilities to the Bar. In 1993, “the purposes, duties and responsibilities of the Utah State Bar” were stated to include, but not be limited to:

1. Advance the administration of justice according to law;
2. Aid the courts in carrying on the administration of justice;
3. Regulate the admission of persons seeking to practice law;
4. Regulate and discipline persons practicing law;
5. Foster and maintain integrity, competence and public service among those practicing law;
6. Represent the Bar before legislative, administrative and judicial bodies;
7. Prevent the unauthorized practice of law;
8. Promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means;
9. Provide service to the public, to the judicial system and to members of the Bar;
10. Educate the public about the rule of law and their responsibilities under the law; and,
11. Assist members of the Bar in improving the quality and efficiency of their practice.

The Court acknowledged in the 1993 order that it was exercising “its authority to govern the practice of law without engaging in the daily management and operations of the Bar” and granted the Board “all powers necessary and proper to carry out the duties and responsibilities of the Bar and the purposes of the Rules and that they should have all authority not specifically reserved to the Court.” The Court reserved the authority to:

1. Approve Bar admission and licensure fees;
2. Approve all rules and regulations formulated by the Board for admissions, professional conduct, client security fund, fee arbitration, procedures of discipline, legislative activities, unauthorized practice of law, and bar examination review on appeals;
3. Review all appeals from the findings of the Bar Commission on formal disciplinary matters (which need has since been obviated as a result of changes in the Rules of Lawyer Discipline and Disability); and
4. Establish appropriate rules and regulations governing mandatory continuing legal education.

In addition to the Rules for Integration, the Bar’s internal operations are governed by **By-laws** adopted pursuant to authority granted from the Court, and through the establishment of a variety of administrative **policies and procedures**. Other rules necessary to regulate and manage the practice of law have been promulgated by the Bar and approved by the Court and have been amended from time to time as needs have changed and demands have increased. These other rules include the **Rules Governing Admission, Rules of Lawyer Discipline and Disability, Rules of Professional Conduct, Rules for Lawyers’ Fund for Client Protection, the Law Student Assistance Rule and the Rules of the Utah State Bar Dispute Resolution Committee.**

Bar Leadership

The Bar is a 501 (c)(6) non-profit Utah corporation governed by a fifteen-member Board of Bar Commissioners, which includes eleven elected lawyer representatives, two elected officers and two court-appointed public members. The Commission also includes nine non-voting *ex officio* members. The Commission hires an executive director to carry out the operations and policies of the Commission and who employs and supervises the activities of operations staff, which numbers twenty-five full-time and five part-time employees.

During the 2007-2008 year, the Bar Commission consisted of the following:



Elected Officers:

V. Lowry Snow, *President*
Snow, Jensen & Reece, St. George

Nathan D. Alder, *President-Elect, 3rd Division*
Christensen & Jensen, Salt Lake City

Elected Lawyers and Geographic Area:

Herm Olsen, *1st Division*
Hillyard, Anderson & Olsen, Logan

Felshaw King, *2nd Division*
King & King, Farmington

Christian W. Clinger, *3rd Division*
Clinger Lee Clinger, Salt Lake City

Yvette Donosso, *3rd Division*
Jones, Waldo, Holbrook & McDonough, Salt Lake City

Lori W. Nelson, *3rd Division*
Jones, Waldo, Holbrook & McDonough, Salt Lake City

Stephen W. Owens, *3rd Division*
Epperson & Rencher, Salt Lake City

Scott R. Sabey, *3rd Division*
Fabian & Clendenin, Salt Lake City

Rodney G. Snow, *3rd Division*
Clyde, Snow, Sessions & Swenson, Salt Lake City

Rob Jeffs, *4th Division*
Jeffs & Jeffs, Provo

Curtis M. Jensen, *5th Division*
Snow, Jensen & Reece, St. George

Public Members Appointed by the Supreme Court:

Steven R. Burt, *AIA, Public Member*
Entelen Design-Build, Salt Lake City

Mary Kay Griffin, *CPA, Public Member*
Mayer, Hoffman, McCann, Salt Lake City

Ex Officio Members, Appointed by the Commission for One Year Terms:

Augustus G. Chin, *Immediate Past Bar President*
Summit County Attorney's Office, Criminal Division

Hiram E. Chodosh, *Dean, S. J. Quinney College of Law*

Stephanie W. Pugsley, *Young Lawyers Division President*
Rooker Rawlins, LLP

Charlotte L. Miller, *Utah State Bar's Delegate to the ABA*
Unishippers Association, Inc.

Karthik Nadesan, *Minority Bar Association Representative*
Nadesan Beck, PC

Paul T. Moxley, *State ABA Members' Delegate*
Parsons, Kinghorn & Harris

Laurie D. Gilliland, *Women Lawyers of Utah Representative*
U.S. District Court

Sharon M. Andersen, *Paralegal Division Representative*
Strong & Hanni

Kevin Worthen, *Dean, J. Reuben Clark School of Law*

Other Representatives:

Marilyn Branch, *Utah Supreme Court Liaison*

2007–2008 Commission Priorities

The Bar Commission annually reviews its long range planning objectives and sets specific goals for the upcoming year within the plan. For the 2007-2008 year, those goals included the following:

Long Range Plan & Operations Review

On January 26, 2007, the international accounting firm of Grant Thornton concluded its year-long evaluation of the governance and the organizational structure of the Utah State Bar and presented their conclusions and recommendations for improved oversight and management practices. Among the recommendations adopted by the Bar Commission on March 8, 2007 was to more “regularly format and document a long-term strategy for the Bar.” Within the recommendation to document a long-term strategy was a proposal that the Bar perform regular operations reviews of its programs and services.

On September 21, 2007 the Commission adopted a Strategic Plan of Long Range Goals and Values and set into place a system by which during the 2007-2008 year it reviewed:

1. The management and technology operations of the Utah State Bar;
2. The Admissions Department;
3. The Access to Justice/*Pro Bono* Program;
4. Public and member communications; and
5. The Group Benefits Program.

Reports and recommendations of the committees were reviewed and adopted by the Commission.

Mentoring Program Development

In the summer of 2006, the Bar Commission committed to develop a mentoring program through which new lawyers would be trained during their first year of practice in professionalism, ethics and civility, and to be assisted in acquiring the practical skills and judgment necessary to practice in a highly competent manner and to be provided a means to learn the importance of organizational mentoring, building developmental networks and long-term, multiple mentoring relationships. Through a subcommittee co-chaired by Rod Snow and Margaret Plane, the Bar Commission has studied various other state bar mentoring programs, received input from law firms and lawyers on implementation and recruiting, and has drafted a Utah Supreme Court petition to authorize a new lawyer training program (“NLTP”). The petition was filed with the Supreme Court on September 30, 2008.

Public Education, Public Relations, Surveys

Through the Communications Program operational review, the Bar Commission recommitted to increasing positive exposure and media coverage of Bar activities and lawyers, to increase civics education proposals and double the number of surveys sent to lawyers on issues regarding the practice of law, the profession, individual practice needs, continuing education and Bar conventions. The Bar has seen an increase in the number of articles in newspapers and television media about its activities, officers, and awards, and has received greater input on how it can better meet the needs of lawyers in providing insurance, medical help, and lifestyle issues.

Lawyer Referral Service Improvement

The Bar has created a new online service by which members of the public may more easily find a Utah lawyer and by which Utah lawyers might become more available to clients looking for assistance.

Access to Justice / *Pro Bono* / “Low” *Bono*

The Bar Commission authorized the establishment of a new position at the Bar to reenergize recruitment of attorneys to provide *pro bono* services and to facilitate referrals and communications among groups in the state. That position has been filled. The Commission has continued to work with local providers of legal services for the poor and indigent in creating a more comprehensive network of referrals and a better understanding of services provided.

Professionalism

The Commission continues to work with the Supreme Court’s Advisory Committee on Professionalism and its own CLE Department and convention planners in promoting educational opportunities. The goal is to encourage lawyers to understand their obligations to interact with one another and members of the public in a professional and efficient manner, which will more effectively promote the administration of justice and encourage the decorum necessary for client’s rights to be protected and public confidence to be maintained.

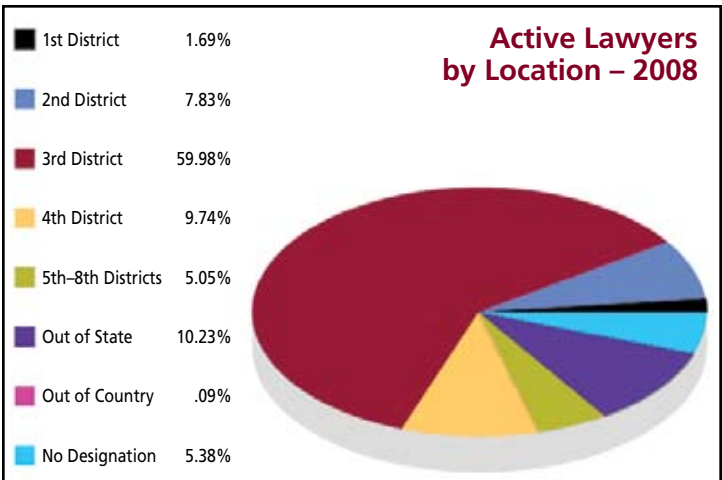
Licensing Statistics

	2006-2007	2007-2008	Change
Active Status	7,060	7,399	339
Active Lawyers	6,030	6,320	290
Active Under 3 Years	887	922	35
Emeritus	139	135	(4)
In House Counsel	4	22	18

By Location

1st Judicial District	127	125	(2)
2nd Judicial District	551	579	28
3rd Judicial District	4,188	4,438	250
4th Judicial District	624	721	97
5th – 8th Judicial Districts	363	374	11
Out of State	647	757	110
Out of Country	5	7	2
No Division Designated	555	398	(157)
	7,060	7,399	339

	2006-2007	2007-2008	Change
Inactive Lawyers	2,129	2,119	(10)
Inactive, Full Service	757	752	(5)
Inactive, No Service	1,192	1,165	(27)
Inactive, Emeritus	180	202	22
Total Active & Inactive	9,189	9,518	329



Bar Programs and Services

Regulatory Services

Special Admissions

Special admissions include reviewing and processing Military Lawyers, House Counsel, Admission on Motion and *Pro Hac Vice* applications. During the Fiscal 2007 year, we had the following special admissions applications:

	Applications	Admitted	Pending	Denied	Withdrawn
Military	0				
House Counsel	20	18	2		
Motion	48	31	14	1	2
<i>Pro Hac Vice</i>	265				

Admissions

Admissions includes the application process, character and fitness file reviews and hearings, Bar exam question drafting and selection, preparation and administration, grading essay exams, the Admissions Ceremonies and all reciprocal admissions. Committees include the *Admissions Committee*, *Character and Fitness Committee*, *Bar Examiner Committee*, and the *Bar Exam Administration Committee*.

July 2007 Bar Examination Statistics

305 Took the July Bar Exam.

252 Passed the July Bar Exam.

Pass Rate for the July 2006 Bar Exam: 83%

Essay Scores 60 Points Possible Average Score: 35	Multistate Scores 200 Points Possible Utah Average: 145 National Average: 144 (50,181 tested)	Combined Scores Utah Median Score: 290 Passing Score: 270
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February 2008 Bar Examination Statistics

176 Took the February Bar Exam.

134 Passed the February Bar Exam.

Pass Rate for the February 2007 Bar Exam: 76%

Essay Scores 60 Points Possible Average Score: 35	Multistate Scores 200 Points Possible Utah Average: 143 National Average: 138 (20,822 tested)	Combined Scores Utah Median Score: 286 Passing Score: 270
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Professional Conduct Enforcement

The Office of Professional Conduct investigates complaints of unethical conduct; provides ethics education seminars; formal and informal advisory opinions; makes presentation to hearing panels; and either resolves or prosecutes cases. Committees include the *Ethics and Discipline Committee (Hearing Panels)*, *Ethics Advisory Opinion Committee*, and involvement with *Supreme Court Rules of Professional Conduct Committee*, *Supreme Court Advisory Committee on Professionalism*. The office has prepared a separate report on its operations.

Continuing Legal Education Seminars

In the past year, the CLE Department coordinated or presented 166 seminars in 35 general practice areas, for a total of 342 total credit hours at a charge to lawyers of about \$30 per credit hour. The CLE Department coordinates with and assists the *New Lawyer CLE Committee*.

General Bar Management and Operations

General Bar management includes annual licensing, maintenance of databases, personnel, financial controls, inventory, equipment, governance organization and support, long range and planning. Bar staff manages policy implementation and operations through various voluntary leadership committees, including: *Bar Commission*, *Bar Commission Executive Committee*, and the *Bar Commission Budget & Finance Committee* of Ray O. Westergard, CPA, Nathan D. Alder, Marilyn M. Branch, Jonathan K. Butler, Cynthia J. Crass, Peter K. Ellison, Robert M. Graham, CPA, Mary Kay Griffin, CPA, Louise T. Knauer, V. Lowry Snow, Jeff Einfeldt, CPA, and John C. Baldwin.

Other *Ad Hoc* committees appointed this year include the *Mentoring Program Study Committee*.

"Group " Services

Fall Forum, Summer & Spring Conventions

The goals of the conventions include providing opportunities for lawyers to network in congenial, social, and informal settings to renew friendships; to learn and to facilitate the administration of justice, foster professionalism, and engender a collective identity through familiarity with fellow professionals. These events provide unique seminars and speakers, educate lawyers about issues facing the Bar, the profession and the judiciary, permit interaction with judges, and are budgeted to break even.

Events are coordinated by staff with assistance from the *Fall Forum*, *Summer Convention*, and *Spring Convention Committees*.

Group Benefit Programs

The Bar has negotiated group benefit discounts with 33 different partners, including free legal research through *Casemaker* and free professional counseling through *Blomquist Hale Consulting* and peer-to-peer assistance through *Lawyers Helping Lawyers*. The *Lawyer Benefits Committee* meets to review and promote benefits.

Committee Support – Unrelated to Other Programs

Stand-alone committees charged to provide professional leadership and study of issues include the *Courts and Judges*, *Law and Technology*, and *Law and Aging Committees*. All other committees support specific Bar operations and activities.

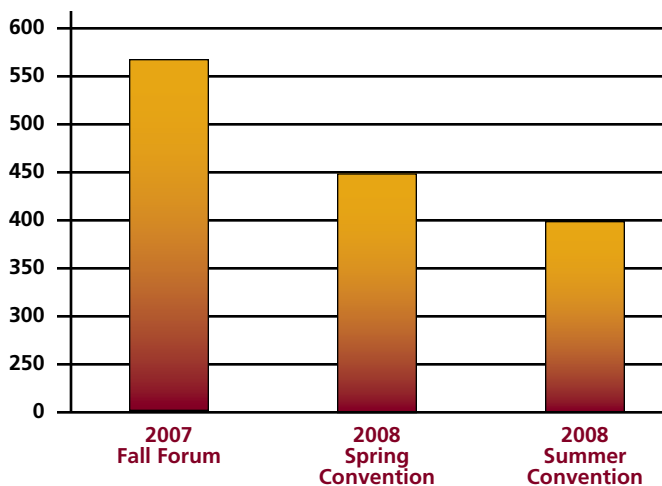
Section & Division Support

Staff provides support services to 34 *Sections* and 2 *Divisions* which are independent and financially self-sustaining. Activities include section meetings and CLE luncheons, dues collection, general administrative and financial services, member communications, and the maintenance of web sites and blogs.

Communications Programs

The Bar provides information on professional issues, law office management, legal education and law related opportunities. The *Utah Bar Journal*, which was published six times this past year by the *Bar Journal Committee*, was provided to members. In addition a current and interactive web site, monthly E-bulletins, regular mailings, posters, banners, convention and seminars, and surveys kept members and public informed.

Bar Convention Attendance



The 2007 Fall Forum in Salt Lake: 588 lawyers; 7 CLE hours.

The 2008 Spring Convention in St. George: 460 lawyers; 9.0 CLE hours.

The 2008 Summer in Sun Valley, Idaho: 414 lawyers; 15 CLE hours.

Public Services

Access to Justice Programs

Bar staff matches approximately one hundred members of the public with *pro bono* services and volunteers, and coordinates weekly presentations at Senior Citizen Centers. The Bar also participates in the activities of the statewide Access to Justice Commission.

Client Security Fund

The *Client Security Fund Committee* conducted hearings during Fiscal 2007, resulting in Commission awards of \$60,592 to clients harmed by the inappropriate activities of their lawyers.

Tuesday Night Bar

Each Tuesday night, lawyers organized by the Young Lawyers Division provide free legal advice to over two dozen members of the public at the Law & Justice Center. Other Tuesday Night Bar activities occur each week in various other locations around the state. Utah State Bar staff makes Tuesday Night Bar appointments and staffs the desk.

Young Lawyers Division

The Young Lawyers have produced video mentoring on their web site; promote Law Day Activities, and provide numerous service projects, including Wills for Heroes.

Unauthorized Practice of Law Committee

During the fiscal year 2007-08, the *Unauthorized Practice of Law Committee* and staff received 28 complaints about the unauthorized practice of law. The Committee is actively investigating 6 cases; 2 of which are formal complaints. Every complaint was thoroughly investigated by the Committee and of the 28 closed complaints (6 of which were carried over from previous years for further investigation and hence closed during the 2007-08 fiscal year):

9 cases were determined not to be the unauthorized practice of law

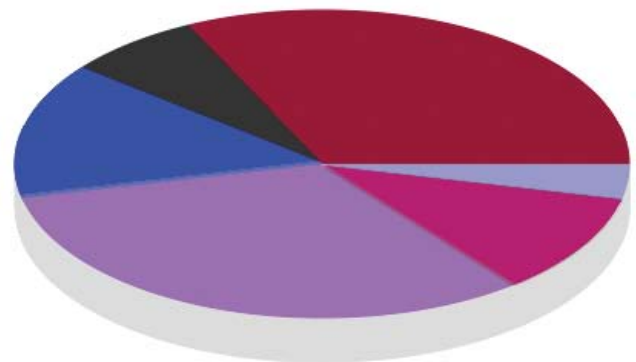
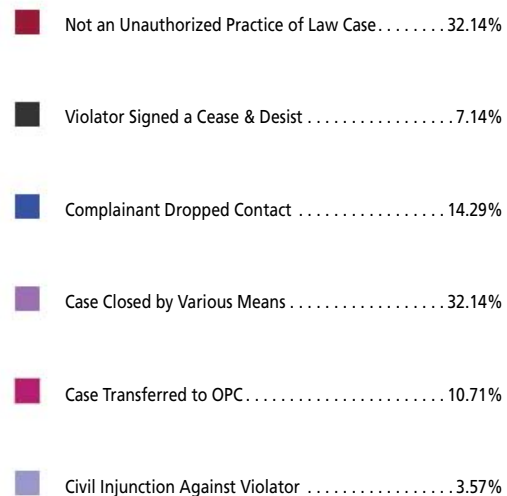
2 alleged UPL violator(s) signed a Cease & Desist Agreement

4 cases were closed because the Bar received no further information from the complainant to complete the investigation

9 cases were closed by various means (e.g., letter of admonishment, violator moved out of state, etc)

3 cases were transferred to OPC because the violator was a disbarred/suspended or inactive status Utah attorney.

1 case the Bar received a civil injunction against the violator.

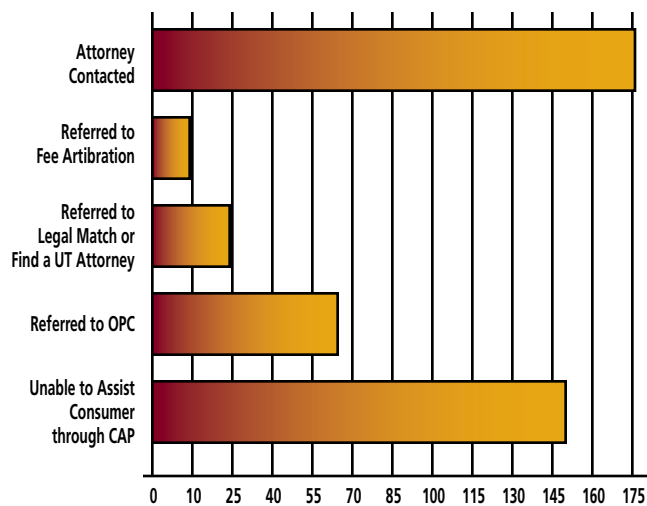


Joint "Group" & Public Services

Consumer Assistance Program

The program offers support to both consumers and attorneys who need assistance in their communication with each other. Work performed eases the load for the OPC by dealing with minor complaints submitted by consumers, whose main concerns usually include not getting return telephone calls from their attorneys; not receiving regular billing statements; and not receiving regular updates about their cases. Complaints which rise to the level of ethical concerns are handled exclusively by OPC, which has more time and resources to spend attending to more serious problems. At times, CAP has also assisted attorneys who have needed help communicating with other attorneys.

CAP Case Resolution



During the last fiscal year, the part-time staff lawyer handled 1104 telephone conferences with consumers who had questions about the management of their legal matters and concerns about their lawyers. The CAP attorney opened 531 files, and contacted lawyers about their clients' concerns in 176 (30%) of those matters. Of the remaining files, 9 were referred to the Fee Arbitration Program, 25 were referred to Legal Match or the new Find a Utah Attorney online listing, and 66 were referred to the Office of Professional Conduct. In 150 matters, the CAP attorney was not able to assist the consumers. In those cases, the CAP attorney tried to clarify for the consumers how their concerns are best addressed through means other than those offered by the Utah State Bar's various programs.

Fee Dispute Resolution Program

In the last fiscal year the *Fee Dispute Resolution Committee* and staff prepared and conducted hearings with a volunteer lawyer or panels of volunteer lawyers, judges and lay people to resolve disputes about legal fees in a process through which parties voluntarily agree to be bound. Last year, the committee opened 54 cases; settled 6; arbitrated 19 and mediated 8. The committee and staff were unable to resolve 14 cases because parties refused to participate. Ten cases are still pending and 3 cases have been deemed ineligible.

Law & Justice Center Operations

The Utah State Bar owns and operates the 33,000 square foot building known as The Utah Law & Justice Center. The Center provides low cost meeting room space and services for mediations, arbitrations,



continuing education seminars and other charitable, non-profit, educational and public purposes. Services by the Center staff include audio-visual rental, catering, low cost leases, tenant support, interior and exterior grounds maintenance and security. There were 623 meetings in the building during the year. Bar-related sections, committees, divisions, seminars, and associated meetings constituted 412 of that total and 211 meetings were non-Bar related charitable, educational, public and commercial groups.

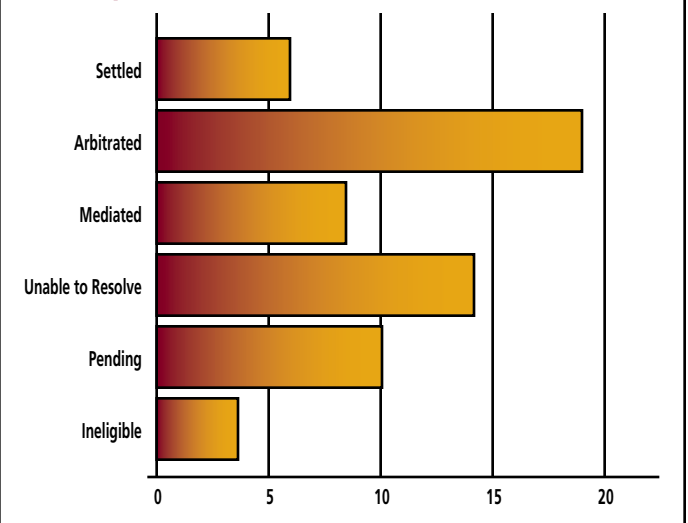
Public Education, Services and Special Projects

The Bar Commission regularly provides public education projects including participation with the American Bar Association; makes appointments to Utah State Boards and Committees; helps to fund the Law Related Education Project; and sponsors the Law Day Celebration with the *Law Day Committee*; among other things.

Governmental Relations

The Bar hires a legislative representative and supports the activities of its *Governmental Relations Committee* which makes recommendations for action on bills and provides assistance to legislators with specific questions on legislation. This was also mentioned as one of the priorities listed and outlined above.

Fee Dispute Resolution Cases



The Spider to the Fly

by Just Learned Ham

I have a confession to make. I am an in-house lawyer, and I've been one for a long time. I am the reason your clients no longer think of you as a trusted advisor, but just another cost in need of control (well, that plus your \$450 billing rate – for that kind of money, shouldn't you at least offer to wash my windshield?). It's my fault your bills have those incomprehensible matter numbers. If it's any comfort, those numbers don't mean anything to me, either. The whole point is so you, and my CEO, will think I'm watching you (that's the kind of thing we talk about at those corporate counsel CLE's in the Lesser Antilles). And I still get to tell people I practice law (and no, I don't feel bad saying that – Jim Matheson still gets to call himself a Democrat, doesn't he?).

I am a traitor to my own profession. I've gone native. I am Colonel Kurtz and the Jordan River is my Congo. I love the smell of Compliance Committee meetings in the morning.

Over the years I've recruited others. And it's time to do it again.

I've always enjoyed interviewing and hiring. I got over the guilt of talking bright, shiny young lawyers into a big mistake a long time ago. They all read *Faust* as undergrads, and they decided to go to law school anyway, so I figure my hands are pretty clean. I mean, it's not something really evil, like selling mortgage-backed securities. I'd never do that. Unless you want to say my home loan was actually a security I sold to my bank, but I think that's a stretch, even for the Utah Court of Appeals. And if you're going to go down that path, my obligations under that divorce decree are probably securities, too. There's an idea...all the ex-spouses of the world get together, pool their alimony and child support obligations, and sell the securitized payment streams to pension funds. If any nervous Nellie fund managers get scared, I'm sure they could buy a swap from AIG to cover the risk (they could call it ex-wife swapping). I'm surprised nobody's thought of it before.

Where was I? That's right – hiring (got to stay on-message, stick to the talking points, re-fill the Ritalin prescription before Dan's closes).

So we call the headhunter and 72 hours later I'm looking at 114 resumes. And here's the head-scratcher: why would 114 otherwise intelligent people be so eager to devote their lives, or at least a few slow, under-compensated years of their lives, to the daily legal misadventures of a pesticides company? Maybe it

works better as a multiple choice question.

- a. a lifelong dream to rid the world of creepy crawly things, amp up crop yields, and alleviate the human drudgery of weeding;
- b. the irresistible power and celebrity;
- c. law firm life has fewer giggles and yucks than you'd expect;¹
- d. part of a cunning plan to infiltrate and overthrow corporate America;² or
- e. ask a lemming.

"Why are you leaving your old job?" The question startles some people, as if there were something unfair about it. But if someone's trying to sell me a used Buick, I always ask why it's for sale. It's usually pretty easy to figure out who's telling the truth – and they never get the job. "Well, where I work now they're looking for a new general counsel, and it's pretty clear they aren't even going to interview me." I didn't ask the obvious follow-up because it doesn't really matter, does it? Whether it was how he embarrassed himself at the Project Toadstool negotiations or at the Christmas party, if he can't come up with a better answer than that, there is no hope.

I stare at those fresh faces – full of confidence and anxiety – and I get nostalgic...or neuralgic, I get them confused.

I can't help but reflect on my own experiences as an interviewee. It was only a summer clerkship, but I think it still counts. My landlord, who I will call Fred, worked in the print shop at the world headquarters of the John Birch Society – back in the good old days when they still used people to operate presses. Before the liberal media (not to mention the international banking conspiracy and the Bilderberg Group) made everybody go electronic. He knew the general counsel, who I will call Harry, and told me he could arrange an interview. I accepted because I was curious, and because I didn't want Fred, or Harry, to think I was some bomb-tossing pinko.

I showed up on the appointed day, and was surprised to find the world headquarters so poorly secured. Why, anyone could have

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just walked in there and fluoridated the place. Harry was kind enough to give me a tour (and this is the thanks he gets...). I met people and made small talk. "So, why do you work for the JBS?" "Because contrary to what the Libs think, we can't all be on welfare." I met the movie reviewer. Yes, the John Birch Society had a movie reviewer. He liked *Patton*. Harry led me to Robert Welch's office and told me he thought he could get Mr. Welch³ to spend a few minutes with us. While I waited in the hall, Harry ducked into Mr. Welch's office. He slipped back out quietly and apologized that Mr. Welch was taking a nap and would not be able to see us. I recall saying "the price of freedom is eternal vigilance," but no one seemed to think that was very clever.

We went back to Harry's office and talked about legal stuff. I remember bringing up *Gertz v. Welch*, since we'd just read it in Constitutional Law (although I no longer have the faintest idea what it was about...the constitution, as I recall). I remember Harry dismissing the case with a casual "We were clearly without malice." I pointed out the irony of the antichrist William O. Douglas authoring an opinion favorable to the JBS, to which Harry responded with an ambiguous "hmm."

I actually considered accepting. A summer at the John Birch Society was bound to be interesting. On the other hand, how would I explain it on a resume to anyone I really did want to work for? In the end it didn't matter – I didn't get an offer.

And speaking of offers, by the time you read this, I will have sent 113 polite decline letters, and made one person surprisingly happy. The horror! The horror!

1. To be fair, although the giggles are scarce, there is a fair amount of yuck.
2. My first year Property professor announced this as his personal and sincere hope for each of us – just before we learned the rule against perpetuities by reciting it out loud repeatedly as a class. I sense your skepticism, but it worked much better than the Socratic Method. I remember it like it was yesterday, "No interest is good unless it must vest, if at all, no later than 21 years of the expropriation of surplus capital by the bourgeoisie." Professor K will go down in history as one of the pioneers of the Dogmatic Method.
3. For those readers whose minds have been anesthetized by lifelong exposure to New World Order propaganda and who therefore have never heard of Robert Welch, Mr. Welch was the founder of the John Birch Society. He attended the U.S. Naval Academy and Harvard Law School, but dropped out of both because of their liberal political leanings. He went into the candy business instead, and is generally credited with inventing the Sugar Daddy, Sugar Babies, Junior Mints, and Pom Poms. He retired and founded the JBS. A keen judge of character, he once denounced Dwight Eisenhower as a "conscious, dedicated agent of the communist conspiracy." (I found that quote in Wikipedia – I never heard him say it, and I don't want anyone to think I'm maliciously defaming the man...you never know who might be listening.) Robert Welch passed away in 1985, which gives you some idea of how old I am.

Utah Legislative History Research Tips

by Mari Cheney

Researching legislative history can be daunting. It is often a multimedia experience that includes print, online, and audio resources. You may have to visit more than one place, including your law library, the Archives, and Capitol Hill. A renumbered code section can complicate your research. And sometimes you will go through the entire process and have no more insight into what the legislature's intent was than when you started.

Don't be discouraged. Here are some tips to help you through the process.

Know What Resources to Use

A complete legislative history includes all documents and audio files related to the introduction and passage of a law. Be sure to look at both House and Senate documents, regardless of where the bill was introduced. These documents can include:

- Bill proposal by legislator, lobbyist, citizen, or special interest group
- Bill request to the Office of Legislative Research and General Counsel
- Draft of bill to the Rules Committee
- Standing Committee reports and hearings (including audio tapes)
- Floor debate and votes (including audio tapes)
- House and Senate Journals
- House and Senate versions of bill
- "Enrolled" (final version) bill
- Governor's action
- Session law(s)
- Annotated version of the law as it appears in the Code

Don't Reinvent the Wheel

Check law review articles for legislative histories and in-depth discussions of Utah legislation. Your best bet would be to search the journals of the J. Reuben Clark Law School at Brigham Young University and the S.J. Quinney College of Law at the University of Utah. HeinOnline, LexisNexis, or Westlaw can be used to search

for articles that discuss legislative histories and Utah legislation.

Understand the Utah Code

The Utah Code Annotated was completely recodified in 1953. Since then, the Utah Code has been updated with pocket parts, supplements, and replacement volumes. The Utah State Law Library, Brigham Young University Howard Hunter W. Law Library, and University of Utah S.J. Quinney Law Library should all have superseded versions of the Utah Code.

What we call the Utah Code today was also known as the *Revised Statutes of Utah* and the *Compiled Laws of Utah* in the past. The Laws of Utah (session laws) or House and Senate Journals may refer to the Utah Code by these other names. Also, the term "bill" is often used interchangeably with statute, law, and code.

Start Your Research With the Current Code and Work Your Way Back in Time

- Check the history line after the law in the current edition of the annotated Code. This provides information about the original enactment and all subsequent amendments.
- Use the history information to get session law information (chapter and section) for the dates you are interested in researching.
- Check the Laws of Utah (session laws) to get the House or Senate bill number and date of passage.
- If the law was enacted in 1990 or later, search the legislature's website (<http://le.utah.gov>) for history information.
- If the law was enacted before 1990, use the print House and Senate Journals to find more information about the bill, including which committees handled it.

MARI CHENEY is the reference librarian at the Utah State Law Library. She has a JD from American University, Washington College of Law, and an MLIS from the University of Washington. She welcomes questions and comments about this article at maric@email.utcourts.gov.



- Identify whether audio material is available. This may include committee hearings and floor debates.

Vary Your Research Strategy When Researching Older Statutes

The steps above can vary slightly if you're researching older statutes because fewer resources are available (such as audio recordings and meeting minutes) and the books have fewer finding aids.

The House Journal didn't include an index until 1901; the Senate Journal didn't have one until 1899. Additionally, both the House and Senate journal didn't include indices in 1905 and 1907. The only way to locate information in the House and Senate Journals during the years without indices is to scan the pages for references to your bill.

House and Senate Journals are organized chronologically, so you can start your search for references to a bill with the passage date and work your way backwards. Luckily the early House and Senate Journals are relatively thin volumes.

Put the Law in Context

The Laws of Utah and the Utah Code are organized differently. The Laws of Utah are organized chronologically. The Utah Code is organized by chapter and section number under a subject heading.

Once a bill has been signed into law, the Office of Legislative Research and General Counsel determines where provisions of the bill belong in the Utah Code. Provisions can be split up, so

that pieces of the new law appear in different parts of the code. This is another reason why reading the final version of a bill in the session law is useful. If you are looking for context, reading the bill in the session law is useful because you can see what other laws were included in the bill.

Use Research Guides to Locate Information

Legislative Research Library and Information Center, Legislative History Research Resources, available at <http://le.utah.gov/documents/researchresources.pdf>

University of Utah S.J. Quinney College of Law, Utah Legislative History, available at http://www.law.utah.edu/_webfiles/library/UT_Leg_Hist08.pdf

Utah State Archives, Legislative Intent and Legislative History, available at <http://historyresearch.utah.gov/guides/leghist.htm>

Utah State Law Library, Research Guide: Utah Legislative Resources, available at http://www.utcourts.gov/lawlibrary/docs/legislative_website.pdf

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Legislative Update: Senate Bill 83 “Check Cashing and Deferred Deposit Lending Registration Act”

by Jill O. Jaspersen

Senate Bill 83 modified what was known as the Check Cashing Registration Act to the more correct title of Check Cashing and Deferred Deposit Lending Registration Act (the Act). It was sponsored by legislator Karen Mayne and approved by the governor on March 14, 2008. The Act went into effect May 5, 2008.¹ The bill makes technical and conformation amendments to the Utah Code, found mainly in Title 7. In part, the bill was a housekeeping effort to add the words “deferred deposit lender” or “deferred deposit lending” alongside the words “check casher” already used in other parts of the code. The bill was considered a compromise between legislators and consumer advocates in trying to establish further regulation of check cashers and deferred deposit lenders.

The most substantive part of the bill initiates an “Operation Statement” in concurrence with registration and renewals from all deferred deposit lenders in Utah. This new legislation will be found in Utah Code section 7-23-201. This Operation Statement includes the:

- a. average deferred deposit loan *amount* that the deferred deposit lender extended;
- b. average number of *days* a deferred deposit loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;
- c. minimum and maximum amount of *interest or fees* charged by the deferred deposit lender for a deferred deposit loan.

The last requirement also asks for interest or fees in relationship to a \$100 loan, and a one-week extension. Further information to be reported by the deferred deposit lender is the total number of loans rescinded by request of the customer.

The Operation Statement is confidential between the state and deferred deposit lender: the records supplied are not subject to Government Records Access Management Act requests. However, as part of the Department of Financial Institutions’ (DFI) annual report to the governor and legislature as required by Utah Code section 7-1-211, the commissioner of DFI shall report findings from one or more of those Operation Statements. The report, however, cannot be so specific as to identify a particular deferred deposit lender. The next annual report of July 1, 2007 to June 30, 2008 may include some Operation Statement information from the effective date of the Act, May 5, 2008, to the end of the annual reporting period of June 30, 2008. This report and future reports will further help the legislature, consumer advocates, and the public at large determine the effects deferred deposit lenders have in Utah.

There was another change in the bill that made sponsor Mayne happy. A deferred deposit lender could not offer a new loan on the same day that a customer makes their last payment on an old loan. The customer has at least a day to think it over before making another loan with the lender.

1. See <http://le.utah.gov/~2008/htmdoc/sbillhtm/SB0083.htm>

JILL O. JASPERSON is an Associate Professor of Legal Studies at Utah Valley University.





2008-2009 Utah State Bar Commission "in their Friday casual." Back row, left to right: Paul T. Moxley, Felsbaw King, James D. Gilson, Herm Olsen, Steven R. Burt, V. Lowry Snow. 2nd row, left to right: John Baldwin, Charlotte L. Miller, Stephen W. Owens, Julie Eriksson, Lori W. Nelson, Rodney G. Snow, Robert L. Jeffs. Front row, left to right: Curtis M. Jensen, Rusty Vetter, Yvette D. Donosso, Nathan D. Alder, Evelyn J. Furse, Chrystal Mancuso-Smith, Christian Clinger, Scott R. Sabey.

Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during the September 12, 2008 Commission meeting held at the Law & Justice Center in Salt Lake City, Utah.

1. The Commission approved a Distinguished Service Award for "and Justice for All" in recognition of their outstanding service toward the creation of a better public understanding of the legal profession and the administration of justice.
2. The Commission approved appointments to the Bar Operations Review Committees for evaluations of the Office of Professional Conduct, Continuing Legal Education, Fee Dispute Resolution, the Fund for Client Protection, and the Law & Justice Center. Evaluations of these Bar programs are set to begin in October 2008.
3. The Commission selected and approved liaisons to the various Bar committees and sections and also liaisons to the local and specialty bars. Commissioners were encouraged to keep in regular contact with the chair and/or specialty bar president, offer support, and solicit input on Bar issues whenever it would be appropriate.
4. Nominations for the Second District Trial Court Nominating Commission vacancy were named. This Commission nominates judges to fill vacancies on the district court and the juvenile court within the Second Judicial District. One lawyer will be appointed by the Governor from a list of six nominees provided by the Bar. Joseph Bean, Laura Rasmussen, James Hasenyager, Bernard Allen, Steve Kaufman, and Camille Neider were selected as nominees to be proposed.
5. The Commission approved the creation of the new Communications Law Section.
6. Charlotte Miller was reappointed as the Bar's ABA Delegate.
7. The Commission approved the list of 2008-2009 Commission priorities by consent. The 2008-2009 Commission priorities are: 1. The New Lawyer Training Program; 2. The Operations

Review for the Office of Professional Conduct, Continuing Legal Education, Fee Dispute Resolution, the Fund for Client Protection and the Law & Justice Center; 3. Public Relations; 4. Governmental Relations; 5. Access to Justice / *Pro Bono* / *Low Bono*; and, 6. Community Leadership and Service.

8. The July 16, 2008 Commission minutes were approved by consent.
9. The Commission agreed to name candidates at the October Commission meeting for recognition by the Utah Nonprofits Association at their December awards luncheon.
10. The Commission created a quarterly evaluation form and schedule for the Bar's Executive Director.
11. Third Division Bar Commissioner Rusty Vetter agreed to follow up with staff on a formal written proposal for a CLE/ Outreach program on KCPW Radio.
12. Margaret Plane and Rod Snow will work with Katherine Fox to finalize the New Lawyer Training Program Petition.
13. President-elect Steve Owens will further develop Self-Insured Health Insurance Proposal.

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

Whistle-Blower Policy

Bar Commissioners, Bar staff, and any member of the Bar may anonymously report concerns regarding fraud, violations of law, conflicts of interest, other breakdown in internal controls, financial reporting issues, and other areas of major governance concern to the Chief Justice of the Utah Supreme Court for investigation and action as is deemed by the Chief Justice to be appropriate.

The Utah State Bar may not discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee or any person acting pursuant to a request of the employee has reported concerns about operations, management or governance issues of the Bar; testified or is about to testify in any investigation or proceeding dealing with such concerns; or assisted or participated or is about to assist or participate in any manner in such investigation or proceeding.

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Notice of Election of Bar Commissioners

Third, Fourth, and Fifth Divisions

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

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective division. Nominating petitions may be obtained from the Bar office on or after January 2, 2009, and **completed petitions must be received no later than February 2, 2009**, by 5:00 p.m. Ballots will be mailed on or about April 1 with balloting to be completed and ballots received by the Bar office by 5:00 p.m. May 1. Ballots will be counted on May 4th.

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

1. Space for up to a 200-word campaign message plus a photograph

in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. *Campaign messages for the March/April Bar Journal publications are due along with completed petitions, two photographs, and a short biographical sketch no later than February 2nd.*

2. A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their division.
3. The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates will be responsible for delivering to the Bar **no later than March 16th enough copies of letters for all attorneys in their division.** (Please call Jeff Einfeldt at 297-7020 for count of the number of lawyers in your respective division.)

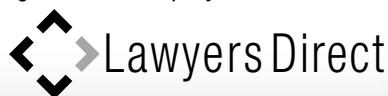
If you have any questions concerning this procedure, please contact John C. Baldwin at 531-9077.

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



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Notice of Election of Bar President-Elect

Any active member of the Bar in good standing is eligible to submit his or her name to the Bar Commission to be nominated to run for the office of president-elect in a popular election and to succeed to the office of president. Indications of an interest to be nominated are due at the Bar offices, c/o Executive Director John Baldwin, 645 South 200 East, Salt Lake City, Utah, 84111 or via e-mail at director@utahbar.org by 5:00 p.m. on January 2, 2009.

The Bar Commission will interview all potential candidates at its meeting in Salt Lake City on January 23, 2009, and will then select two finalists to run on a ballot submitted to the active Bar membership. Final candidates may also include sitting Bar Commissioners who have indicated an interest in running for the office.

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

In order to reduce campaign costs, the Bar will print a 200-word campaign statement from the final candidates in the *Utah Bar Journal*, a 500-word campaign statement on the web site, and will include a one-page statement in the ballot envelope. For further information, please contact John Baldwin at 531-9077, or at john.baldwin@utahbar.org.

Mandatory CLE Rule Change

Effective January 1, 2008, the Utah Supreme Court adopted the proposed amendment to Rule 14-404(a) of the Rules and Regulations Governing Mandatory Continuing Legal Education to require that one of the three hours of "ethics or professional responsibility" be in the area of professionalism and civility.

Rule 14-404. Active Status Lawyers

(a) Active status lawyers. Commencing with calendar year 2008, each lawyer admitted to practice in Utah shall complete, during each two-calendar year period, a minimum of 24 hours of accredited CLE which shall include a minimum of three hours of accredited ethics or professional responsibility. One of the three hours of ethics or professional responsibility shall be in the area of professionalism and civility. Lawyers on inactive status are not subject to the requirements of this rule.



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Notice of Petition for Reinstatement to the Utah State Bar by Cheri K. Gochberg

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of the Verified Petition for Reinstatement of Cheri K. Gochberg (Petition) filed by Francis J. Carney, counsel for Cheri K. Gochberg, in *In the Matter of the Discipline of Cheri K. Gochberg*, Third Judicial District Court, Civil No. 080901793. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

Notice of Petition for Reinstatement to the Utah State Bar by Charles C. Brown

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of the Verified Petition for Reinstatement of Charles C. Brown (Petition) filed by John A. Snow, counsel for Charles C. Brown, in *In the Matter of the Discipline of Charles C. Brown*, Third Judicial District Court, Civil No. 970905495. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

Did you know? Past issues of the *Utah Bar Journal* are available on the Bar's website in both pdf format and a searchable text format. Looking for an old article? Doing research? Take a look... www.utahbar.org/barjournal

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Announcing the formation of the new Communications Law Section of the Utah Bar

The communications industry is evolving rapidly, spurred by innovations in technology as well as recent and pending regulatory changes. The new Communications Law Section is intended to bring together attorneys with experience in the communications industry to better serve clients in the Utah market. The purposes of the Section are broadly defined and the Section's meetings and CLE presentations will encompass everything from legal issues encountered by traditional broadcast companies to First Amendment issues.

All attorneys are welcome to join the Section, including those who are merely interested in getting into the telecom legal field and those who already have experience representing clients in the radio, television, satellite, telephone, wireless/cell phone, newspaper, and entertainment industries.

Those interested in joining should contact one of the Section officers:

<p>President J. Ladd Johnson Holme Roberts & Owen 299 S. Main St., Ste. 1800 Salt Lake City, UT 84111 801.323.3202 ladd.johnson@hro.com</p>	<p>Vice President Jake Redd Jones Waldo Holbrook & McDonough 170 S. Main St., Ste. 1500 Salt Lake City, UT 84101 801.534.7473 jredd@joneswaldo.com</p>	<p>Secretary David J. Shaw Kirtan & McConkie Pinehurst Business Park 518 W. 800 N., Ste. 204 Orem, Utah 84057 801.426.2100 dshaw@kmclaw.com</p>	<p>Treasurer Howard Young Jones Waldo Holbrook & McDonough 170 S. Main St., Ste. 1500 Salt Lake City, UT 84101 801.534.7294 hyoung@joneswaldo.com</p>
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The Section's first CLE presentation will likely be in early to mid-November. Please contact one of the officers for details.

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Annie Deprey – Divorce Case	Nicole Skolout – Wage Claim Case
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Anthony Kaye – Federal Court Case	Pam Thompson – Family Law Clinic
Louise Knauer – Family Law Clinic	Paul Tsosie – Custody Case
Steven Kuhnhausen – Divorce Case	Melanie Vartabedian – Custody Case
Michael Langford – Guadalupe Clinic	Murry Warhank – Guadalupe Clinic
Michael Loveridge – Probate Case	Tracey Watson – Family Law Clinic
Brandon Mark – Federal Court Case	Amanda Williams – Family Law Clinic

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Salt Lake Community College**

**Former Director of the
nonprofit organization
Lawyers Helping Lawyers**



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801-579-0600

UTAH STATE BAR
2009 Spring Convention
in St. George



March 12~14
DIXIE CENTER at St. George

Full online Brochure/Registration
will be available January 5, 2009.
ACCOMMODATIONS: www.utahbar.org

Brochure/Registration materials available in the
January/February 2009 edition of the Utah Bar Journal

UTAH STATE BAR
2009 Summer Convention

July 15~18
Sun Valley, Idaho



ACCOMMODATIONS: www.utahbar.org

2009 “Spring Convention in St. George” Accommodations

Room blocks at the following hotels have been reserved.
You must indicate you are with the Utah State Bar to receive the Bar rate.
After “release date” room blocks will revert back to the hotel general inventory.

Hotel	Rate (Does not include 11.45% tax)	Block Size	Release Date
America’s Best Value Inn (877) 688-8383 / bwabbeyinn.com	\$76	10–Q/K	2/01/09
Best Western Abbey Inn (435) 652-1234 / bwabbeyinn.com	\$109	31	3/01/09
Budget Inn & Suites (435) 673-6661 / budgetinnstgeorge.com	\$81–\$98	20–DQ/Suites	2/19/09
 Comfort Inn (435) 628-8544 / comfortinn.com/	\$126	25	2/01/09
Comfort Suites (435) 673-7000 / comfordsuites.net	\$85	30	2/12/09
 Courtyard by Marriott (435) 986-0555 / marriott.com/courtyard/travel.mi	\$139	20–Q 10–K	2/15/09
Crystal Inn St. George (fka Hilton) (435) 688-7477 / crystalinns.com	\$99	20–Q 5–K	2/12/09
Fairfield Inn (435) 673-6066 / marriott.com	\$90	10–DBL 10–K	2/19/09
Green Valley Spa & Resort (435) 628-8060 / greenvalleyspa.com	\$124–\$230	14 1–3 bdrm condos	1/31/09
Hampton Inn (435) 652-1200 / hamptoninn.net	\$99	25–DQ	2/26/09
Holiday Inn (435) 628-4235 / holidayinnstgeorge.com	\$92	25	2/15/09
 LaQuinta Inns & Suites (435) 674-2664 / lq.com	\$99	20–K	2/12/09
Ramada Inn (800) 713-9435 / ramadainn.net	\$89	20	2/12/09
 TownePlace Suites by Marriott (435) 986-9955 / marriott.com/townplace-suites/travel.mi	\$139	20–Studio Kings	2/14/09
 Wingate by Wyndham (435) 986-9955 / wingatehotels.com/Wingate/control/home	\$109 \$149	10–DQ 10–K 5–Suite	2/12/09

Mentors Needed for the New Lawyer Training Program

Join the best and the brightest group of Utah lawyers and become a mentor for a new attorney through the New Lawyer Training Program (NLTP)

What is Required:

1. Submit the mentor volunteer form
2. Approval by the Utah Supreme Court Committee on Professionalism
3. Meet with your new lawyer a minimum of two a month.

The rewards that come from mentoring are priceless, but as an added bonus you will receive 12 hours of CLE credit for your work.

Mentor Qualifications

1. Seven years of practice
2. No past or pending formal discipline proceeding of any type or nature by a court or a state bar.
3. Malpractice insurance in an amount of at least \$100,000/\$300,000 if in private practice

Why Become a Mentor

- Increases productivity for the individual and the organization
- Improves client relations and client attraction
- Reduces the likelihood of new lawyers leaving the organization
- Boosts morale
- Assists in attracting better talent to the organization
- Enhances work and career satisfaction
- Clarifies professional identity
- Increases advancement rates
- Promotes greater recognition and visibility
- Encourages career opportunities within the organization and visibility

For more information on how you can become a mentor go to: www.utahbar.org/nltp.

The Mechanics of Trial



with
Frank Carney & friends

The tools you didn't get in law school – but need for your first trial

SESSION FIVE

- Computers in the Courtroom
- Special Verdict Forms
- The Critical Chore of Jury Instructions

November 13, 2008 • 4:00 – 7:00 pm | Utah Law & Justice Center

SESSION SIX

- Your Rebuttal Case
- Wrapping it Up — Closing Argument
- The Gotchas to Remember

January 15, 2009 • 4:00 – 7:00 pm | Utah Law & Justice Center

Final two sessions of this popular 6 part series

You need not attend all six sessions to benefit from the information provided in each session.

CD & materials available for purchase
\$85 per session or \$450 for the six-part set
Purchase online at: <https://utahbar.org/cle/mechanicsoftrial.html>

To register or more information go to www.utahbar.org/cle

Sponsored by the Utah State Bar, Utah Association for Justice and the Litigation Section.

**3 hrs. CLE/NLCLE
credit per session**

**\$85 for attorneys
within their first
compliance term**

\$100 for all others

Nineteenth Annual Lawyers & Court Personnel Food & Winter Clothing Drive for the Less Fortunate

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

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

Selected Shelters

The Rescue Mission

Women & Children in Jeopardy Program

Jennie Dudley's Eagle Ranch Ministry

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

Drop Date

December 19, 2008 • 7:30 a.m. to 6:00 p.m.

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

Volunteers will meet you as you drive up.

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

Volunteers Needed

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

Leonard W. Burningham, Branden T. Burningham,
Bradley C. Burningham, Sheryl Taylor,
April Burningham or Jamie Hardrick (801) 363-7411
Lincoln Mead (801) 297-7050

Sponsors

Utah State Bar
Legal Assistants Association of Utah

Salt Lake County Bar Association
Securities Section

Thank You!

What is Needed?

All Types of Food

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

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

New & Used Winter & Other Clothing

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

New or Used Misc. for Children

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

Personal Care Kits

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

Bar Thank You and Welcome to New Admittees

Over 300 new admittees were welcomed into the Utah State Bar at the October 23, 2008 admission ceremony, held at the Salt Palace. A sincere thank you goes to all the attorneys who donated their time to assist with the July 2008 Bar exam. Over 86 attorneys volunteered their time to review the Bar exam questions and grade the exams. The Bar greatly appreciates the contribution made by these individuals and gives a big thank you to the following:

Bar Examiner Reviewers

Craig Adamson	Hon. Thomas Higbee	Brett Paulson
John Anderson	Elizabeth Hruby Mills	Wayne Petty
Branden Burningham	Jeff Hunt	Margaret Plane
David Castleton	David Leta	Bruce Reading
Brent Giauque	Terrie McIntosh	Allen Sims
Craig Hall	Langdon Owens, Jr.	Mark Sumsion

Bar Examiners

Mark H. Anderson	Shannon Freedman	Julie Morriss
Mark Astling	Andrea Garland	Kim Neville
Bruce Badger	Heidi Goebel	Jamie Nopper
Justin Baer	Bill Jennings	Michael Olmstead
Mark Baer	Mickell Jimenez Rowe	Jonathon Parry
Bart Bailey	Randy Johnson	Kara Pettit
Joseph Barrett	David Johnson	Jerry Reynolds
Rolf Berger	Kevin Jones	Ann Rozycki
Karla Block	James Jones	Ira Rubinfeld
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Marina Condas Gianoulis	David Lambert	Carrie Taylor
Kelly De Hill	Greg Lindley	Heather Thuet
David Eckersley	Phil Lowry	Padma Veeru-Collings
Stephen Edwards	Nathan Lyon	Kelly Walker
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Jennifer Falk	James McConkie, III	Elizabeth Whitsett
Russ Fericks	Tony Mejia	Jason Wilcox
Mark Ferre	Lewis Miller	Judy Wolferts
Michael Ford	Doug Monson	Brent Wride
Charlie Freedman	Heather Morrison	

Thank You!

Attorney Discipline

ADMONITION

On July 18, 2008, the Vice-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 1.2(c) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.2(d) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney represented a client in a real estate transaction. Attorney was left alone with the closing documents after the documents, including a deed, had been executed. The attorney removed the original, two-page version of the legal description and attached an altered version of the property's legal description to the quit claim deed. The attorney made the changes while alone with the executed documents. The attorney altered a signed deed, delivered to be recorded, by changing property description, and by whiting out the stated number of pages on the deed's face. The attorney did not intend to misrepresent or defraud anyone, but was attempting to correct what he understood to be a ministerial error that had been made when the wrong description was attached.

PROBATION

On July 16, 2008, the Honorable Dino Himonas, Third District Court entered an Order of Discipline: Probation for one year

against Mark R. Emmett for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Emmett represented a debtor in a Chapter 7 bankruptcy matter. Mr. Emmett failed to file papers required to advance the bankruptcy matter, including the Statement of Financial Affairs and Schedules. Mr. Emmett did not inform his client that he had ceased work on her case. Due to Mr. Emmett's failure to file the required papers, the court dismissed his client's bankruptcy case, and Mr. Emmett failed to inform his client of the dismissal. Mr. Emmett suffered from depression. Mr. Emmett did not withdraw from his representation of his client once it became apparent his mental condition was impairing his ability to pursue the matter.

RESIGNED WITH DISCIPLINE PENDING

On May 16, 2008, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Wesley F. Sine.

In summary:

On February 4, 2005, Mr. Sine was found guilty of four counts of mail fraud pursuant to United States Code, Title 18, section 1341. Mr. Sine was sentenced to serve 70 months in prison and ordered to pay \$2,294,000.00 in restitution to the victims.

When Witnesses Attack: Dealing With Third-Party Harassment and Threats

by Karen McCall

Despite the adversarial nature of most legal proceedings, the parties involved normally conduct themselves in an appropriate and civil manner. However, as many of us know firsthand, there are exceptions to this rule. While threats or other alarming or dangerous behavior toward legal professionals are perhaps seen, or at least reported, more frequently in family law, no one in any practice area is immune.

Consider the uncooperative adverse witness who becomes hostile when served with a deposition subpoena; the unrepresented plaintiff who feels, justifiably or not, that calls are being ignored; or, the past client who seeks to avenge a perceived bad case outcome. In all of these scenarios, and many others, there are several strategies that can either prevent or intercept threatening behavior against law firm personnel.

The Paralegal Division of the Utah State Bar has concluded our 2008 Salary Survey. We thank you for your participation and invite you to check out our analysis of the survey data coming soon on our website, www.utahparalegals.org. Additional coverage of the survey results will appear in the January/February 2009 edition of the Utah Bar Journal.

Thank you,
Salary Survey Committee
Paralegal Division, Utah State Bar

When harassment or any other type of alarming behavior is shown, keeping a record of communications with the person takes on a new importance. Besides retaining written correspondence to and from the person, this can be accomplished by recording and transcribing every telephone call with the person, as well as memorializing your understanding of each phone call with a follow-up letter to the person, if deemed necessary. You may also feel the need to suspend telephone contact with the person altogether and communicate only in writing, should the individual's calls become too frequent or otherwise disruptive. If a meeting with the person is scheduled, you might suggest that it be conducted at a local courthouse, for added security.

If the person shows up at the law office unannounced, security measures should be in place to handle any situation that may arise, and all firm personnel should be aware of what those measures are. For example, pre-selected code words or names may be utilized by the receptionist to alert other law firm employees to a potential threat; the "threat level" may be communicated via the particular code word or name chosen. In this way, law enforcement or other security personnel can be contacted, if necessary, in a timely manner, before the situation can escalate.

As in all other aspects of our profession, advance preparation in this area is key. If your firm has no safeguards in place, suggest them. If they are in place, employees should be reminded of them on a routine basis. The peace of mind will be worth it, whether or not they ever need to be used.

KAREN McCALL is a paralegal at Richards Brandt Miller & Nelson in the areas of asbestos litigation and insurance defense. She is currently the Paralegal Representative to the Utah Bar Journal.



DATES	EVENTS (Seminar location: Utah Law & Justice Center, unless otherwise indicated.)	CLE HRS.
11/07/08	New Lawyer Required Ethics Program. 8:30 am – 12:30 pm. No admittance after 9:00 a.m. Attorneys arriving after 9:00 a.m. will be required to register for the next New Lawyer Required Ethics Program. \$60.	Fulfills New Lawyer Ethics Requirements
11/13/08	The Mechanics of Trial with Frank Carney and Friends – Session Five. 4:00 – 7:00 pm. \$85 for attorneys within their first compliance term, \$100 for all others.	3 CLE/NLCLE per session
11/19/08	Probate Essentials. Troy T. Wilson, Wilson Law Office. \$100	4
11/20/08 evening 11/21/08 all day	 FALL FORUM – Salt Lake City Salt Palace. A full day of CLE and networking for attorneys, paralegals and companies providing services and products to the legal community.	Approx. 9 incl. Ethics & Professionalism
12/05/08	Annual Lawyers Helping Lawyers Ethics Seminar. 9:00 am – 12:30 pm. “Motivational Interviewing,” featuring Dr. Kelly Lundberg. “Candid Look at the Profession-Stress and Burnout,” with Brook Millard.	2 Ethics/ Professionalism
12/09/08	Receivers: The Consummate Problem Solvers. 9:00 am – 12:00 pm. Panel 1: Statutory and Historical Uses of Receivers. Panel 2: How Federal Agencies Use Receivers. Panel 3: Experiences of Receivers, Forensic Accountants, Turnaround Specialists. \$65 for Litigation Section members, \$90 others. Registrants get a copy of the Receivership Manual for the Utah Judiciary.	3 Ethics includes 1 hr Professionalism
12/11/08	NLCLE: Administrative Law – Everything You Can Learn in 3 Hours on Utah Administrative Processes: DOPL Real Estate Division Consumer Protection. 4:30 – 7:45 pm. Pre-registration: \$60 YLD members, \$80 others. Door registration: \$75 YLD members, \$95 others.	3
12/19/08	5th Annual Benson & Mangrum on Utah Evidence. 8:15 a.m. – 4:15 pm. \$230 (includes book \$107).	6.5 incl. 1 hr. Professionalism & Civility
01/15/09	The Mechanics of Trial with Frank Carney and Friends – Session Six. 4:00 – 7:00 pm. \$85 for attorneys within their first compliance term, \$100 for all others.	3 CLE/NLCLE per session
01/21/09	OPC Ethics School. 9:00 am – 4:00 pm. \$175 early registration before 1/14, after \$200.	6 Ethics including 1 hr Professionalism
03/12–14	2009 Spring Convention in St. George	TBA
07/15–18	2009 Summer Convention – Sun Valley, Idaho	TBA

For further details regarding upcoming seminars please refer to www.utahbar.org/cle

Classified Ads

RATES & DEADLINES

Bar Member Rates: 1-50 words – \$50 / 51-100 words – \$70. Confidential box is \$10 extra. Cancellations must be in writing. For information regarding classified advertising, call (801)297-7022.

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

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

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

NOTICE

If anyone knows of a last will and testament of Dennis Timothy McKenna, please contact Denice DeBirk at (801) 263-9202 or (801) 550-5381.

OFFICE SPACE/SHARING

Excellent class A office share available in prime Sugarhouse location. Office space is approx. 13'x10' with additional cubicle/workstation for assistant/secretary, office furniture available. Shared receptionist, 2 conference rooms, workout room/shower included. Shared copier, fax, credit card terminal, postage meter available for additional costs. Excellent and plentiful parking, convenient freeway access from I-215. \$800/month unfurnished, \$900 with furniture. Available immediately. Contact Jim at (801) 463-2600.

Modern, industrial office space just north of downtown Salt Lake in Marmalade. Seven open offices, reception area, and two conference rooms. 2650 sq. feet. Easy access to highway. Fully wired. Plenty of parking in adjacent off-street lot and on-street. Call Lauren Scholnick of Strindberg & Scholnick, LLC at (801) 359-4169 ext. 3.

Beautifully remodeled Sugarhouse office space, 1200+ sq. ft., close to downtown Salt Lake City. Located on a corner lot with great visibility. Includes: three large offices, a large conference room, and common area, kitchen, men's and women's individual restrooms, private parking with building entrance. Price includes maintenance and utilities. Contact David at (801) 910-7907 for more details or any questions you may have.

Office Space Available in downtown SLC. Newly remodeled class A space near all courts and Trax. Conference room, break room, and receptionist provided. File room, copier, and fax use available. Ask about office furniture. Plenty of parking. \$1200 per month per office (3 available). Call (801) 746-2677.

Ogden office space available for rent. One block away from Ogden District Court. Includes reception, space for secretary, and access to copier and fax. Great law library/conference room. \$800.00 per month. Call Jennifer (801) 621-3646.

Move in Condition – 3340 Harrison Blvd., Ogden UT 84403. For Lease \$11.00 NNN. 2042 SF Attorney Suite: 5 offices, reception, conference room, and library. Close to Weber State. New roof, HVAC, tile, plumbing and data lines. Hardwood moldings, carpet and new bath, plus office shower. Visit www.OgdenCommercialRealEstate.com or call 393-2733.

Prime Layton Legal Offices – One to three offices and large conference room available. Total of 1700 sq. feet upstairs in Barnes Bank Building on Hillfield Road and Main Street. Incredible location/parking. Great terms! Contact Gridley, Ward and VanDyke @ 621-3317.

POSITIONS AVAILABLE

REQUEST FOR PROPOSALS: RFP UT-08-03WJ LEGAL SERVICES – Utah Transit Authority is requesting proposals any time prior to the hour of 2:00 p.m. MDT on Wednesday, December 10, 2008 from qualified attorneys and/or law firms to provide legal services. Requests for proposal documents or any related questions should be in writing and directed to Utah Transit Authority, Attention: Wes Jones, Grants and Contracts Administrator, 3600 South 700 West, Salt Lake City, Utah 84119 or via email at wjones@rideuta.com. Complete instructions to proposers are included in the proposal documents.

Jones Waldo is seeking a Construction Associate for its Salt Lake office. Candidate should have 2 to 6 years experience in commercial litigation (construction litigation matters a bonus). Associate works directly with partners with a national construction practice representing owners, contractors, architects and engineers. Applicants should also have a working knowledge of both Federal and Utah Rules of Civil Procedure. Excellent academic records and interpersonal and writing skills required. Qualified candidates please mail or email your cover letter/resume (resume should include your final law school class ranking) to: Blake Terry, Lateral Hiring Coordinator, Jones Waldo, bterry@joneswaldo.com (no calls please)

Established law firm, with offices in St. George, UT and Mesquite, NV seeking an experienced litigation attorney (3+ years) licensed in Utah and/or Nevada for St. George office. Strong academic credentials and excellent research and writing skills required. Civil and Commercial Litigation. Competitive salary and benefits. Send resume to jrobertson@barney-mckenna.com.

Kennedy Childs and Fogg, P.C.'s Delta office seeks an associate with 3+ years' experience in insurance defense, medical malpractice preferred. This is a unique opportunity to do high level litigation at a Denver salary and live in the mountains. Needs 2-3 years courtroom experience, excellent research and writing skills, ability to take direction and work independently, and depositions experience. Competitive salary and excellent benefits. Please send cover letter with salary requirements, resume, references and writing sample by fax to Melinda Strickland, HR Director, (303) 825-0434 or by email to mstrickland@kcfpc.com. To learn more about our firm, visit our website at www.kcfpc.com.

Large Salt Lake City law firm seeks associate with 2 to 4 years experience in corporate and securities law. *Strong research and writing skills are required.* Salary negotiable depending on experience, with excellent benefits. Must be a member of the Utah State Bar or be willing to become a member within one year. Please send resume to Christine Critchley, Confidential Box #1, Utah State Bar, 645 S. 200 E., Salt Lake City, Utah 84111 or respond via email to ccritchley@utahbar.org

Established law firm in Provo, Utah, with office in beautiful historic and restored downtown building seeks new attorney. Ideal candidate will have at least two years experience and ability to bring their own caseload with them. Office operates on a shared expense arrangement, call Laura Cabanilla at (801) 373-4912.

Tax Law Attorney – We are looking for an experienced attorney/partner with an accounting background, LLM, or CPA degree. We do high-end estate planning, estate administration, and probate litigation. Attorney must have experience in estate and trust tax law, as well as tax law in general as it may relate to estate and trust law. Please call Amy at (801) 364-5600 or e-mail her at awinkler@hegattorneys.com.

City of West Jordan Civil Litigator (\$80,184 – \$102,356) Performs duties providing legal services related to civil litigation including trying federal civil rights cases before juries/judges, legal research, prepares ordinances, administrative rules and regulations. Requires good standing Utah State Bar Association membership, six years of full-time paid employment in the practice of law, including trial work in State and Federal courts, Juris Doctorate from accredited law school. City application and resume to: HR, City of West Jordan, 8000 S. Redwood Road, West Jordan, UT 84088 or fax (801) 563-4747. Visit www.wjordan.com for complete job posting. Posting is open until filled.

SERVICES

Fiduciary Litigation; Will and Trust Contests; Estate Planning Malpractice and Ethics: Consultant and expert witness.

Charles M. Bennett, 257 E. 200 South, Suite 800, Salt Lake City, UT 84111; (801) 578-3525. Fellow, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

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Drafting and Research; Civil and Criminal; State and Federal; Trial Court Motions / Memoranda and Appellate Court Briefs. Over 21 Years' Litigation Experience. JD, '86, Univ. of Michigan. Flat Rates or Hourly. Call Gregory W. Stevens, Esq., (801) 990-3388; or email utlaw@aol.com.

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CALIFORNIA PROBATE? Has someone asked you to do a probate in California? Keep your case and let me help you. Walter C. Bornemeier, North Salt Lake. (801) 292-6400 or (888) 348-3232. Licensed in Utah and California – over 35 years experience.

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UTAH STATE BOARD OF CONTINUING LEGAL EDUCATION

For Years_____ through _____

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EXPLANATION OF TYPE OF ACTIVITY

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

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

B. Writing and Publishing an Article, Self-Study

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

C. Lecturing, Self-Study

Lecturers in an accredited continuing legal education program and part-time teaching by a practitioner in an ABA approved law school may receive three hours of credit for each hour spent lecturing or teaching. No more than twelve hours of credit may be obtained through lecturing or part time teaching. **No lecturing or teaching credit is available for participation in a panel discussion.** Rule 14-409 (a) (c).

D. Live CLE Program

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

The total of all hours allowable under sub-sections (a), (b) and (c) of this Rule 14-409 may not exceed twelve (12) hours during a reporting period

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

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

Rule 14-414 (b) – Each lawyer shall pay a filing fee in the amount of \$15.00 at the time of filing the certificate of compliance. Any lawyer who fails to complete the MCLE requirement by the December 31 deadline shall be assessed a \$100.00 late fee. Lawyers who fail to comply with the MCLE requirements and file within a reasonable time, as determined by the Board in its discretion, and who are subject to an administrative suspension pursuant to Rule 14-415, after the late fee has been assessed shall be assessed a \$200.00 reinstatement fee, plus an additional \$500.00 fee if the failure to comply is a repeat violation within the past 5 years.

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

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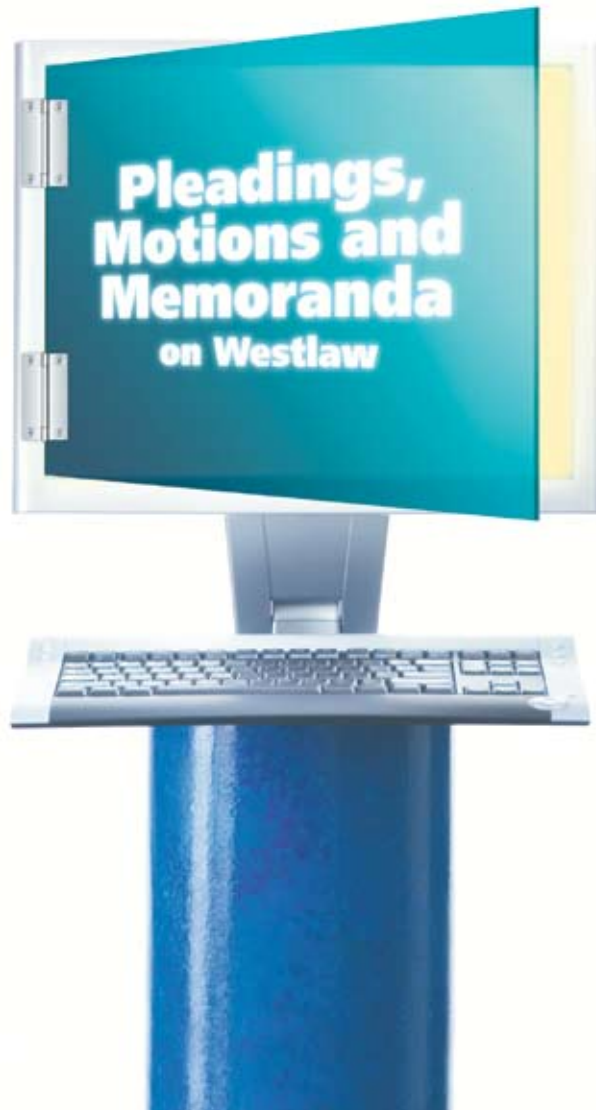
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