Utah Bar JOURNAL

Spring Convention Registration Inside

Volume 22 No. 1
Jan/Feb 2009

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Interested in writing an article for the Bar Journal?

The Editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine. If you have an article idea or would be interested in writing on a particular topic, please contact us by calling (801) 297-7022 or by e-mail at barjournal@utahbar.org.

Guidelines for Submission of Articles to the Utah Bar Journal

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.

Authors: Authors must include with all submissions a sentence identifying their place of employment. Authors are encouraged to submit a headshot to be printed next to their bio. These photographs must be sent via e-mail, must be 300 dpi or greater, and must be submitted in .jpg, .eps, or .tif format.

Publication: Authors will be required to sign a standard publication agreement prior to, and as a condition of, publication of any submission.

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Table of Contents

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

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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 that reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published that (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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The Utah Bar Journal

Published by The Utah State Bar
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Letter to the Editor

Dear Editor,

A book review in the September/October 2008 edition began with the assertion that prosecutors are the cause of many of the problems in the criminal justice system, and that prosecutors intentionally disregard evidence of a defendant's innocence or police misconduct. I personally know the author of the book review, and have had a favorable opinion of our working relationship, but I was disappointed by the author's decision to malign the very individuals he works with on a daily basis. The author's generalized allegations immediately cast aspersion on any prosecutor who has ever worked with him, including myself. I was perplexed that the author chose to impugn an entire group of fellow professionals rather than take the more responsible and, in our self-regulating profession, ethically required step of reporting the specific individuals who engaged in the conduct he complains of to the appropriate disciplinary body. I was also disappointed to find such commentary printed in the publication of the very organization that strongly advocates for increased civility and professionalism among the members of the Utah Bar.

I have worked as a prosecutor in Salt Lake County for several years, and I am continually impressed by the ethical standards and concern for our community that I see displayed by my colleagues. Prosecutors are charged with a public trust that is multi-faceted and complex, and includes a responsibility to see that criminal defendants receive procedural justice. The prosecutors that I know are disciplined, hard-working individuals whose constant concern is to "do the right thing," at times in the face of criticism from the media, individual victims, law enforcement, and the public. These individuals simply do not deserve the treatment they received in the September/October book review.

Alicia H. Cook
Salt Lake County Deputy District Attorney

EDITOR'S NOTE: *The editorial staff of the* Bar Journal *believes that the publication of strong opinions (of which Mr. Dellapiana's book review is but one example), with which we do not necessarily agree, is an important part of the* Bar Journal's *mission.*

Challenging Times

by Nathan D. Alder

The past several months have highlighted the extraordinary challenges we face. It goes without saying, but we have a lot of work ahead of us. The world has tremendous problems. Our nation is in financial turmoil, among many other pressing concerns. We have all been impacted. Locally, we are in a serious budget shortfall at the state level, and many of our clients are facing uncertain outcomes. Foreclosures are at record levels. Unemployment is rising. Retirements have been lost. People are suffering. Now is not the time to rest on our laurels. We are pubic servants, officers of the court, professionals, problem solvers, pro bono lawyers, providers of meaningful and necessary services, and we are community leaders. Let me offer a few thoughts on our role as lawyers and leaders in the context of our current societal challenges.

Our Democracy

Lawyers are in a unique position in our democracy. We are law-trained and court-approved. We are advocates who contribute to the system's success or failure based on the level of sophistication, competency, and professionalism we bring to the work. Many in our society don't understand the role of judge in our democracy, or how the court system works. We must take opportunities to advocate for a fair and impartial judiciary, one that is separate from political pressure and bias but instead is based on the rule of law. From everyday conversations to presentations and other opportunities to influence for good, lawyers should stand firm in advocating for our third branch of government. During uncertain times, attacks on the judiciary can be expected for short term gain. Together we can promote constitutional democracy which provides society with long-term stability through a judicial system that is designed to be fair and nonpolitical.

Political Processes

Lawyers are particularly qualified to advocate for important causes in political arenas. Immediately, I am quite concerned what the State's budget shortfall will mean for the proper operation of our State courts. All members of the Bar should watch this issue closely. I encourage you to stay alert to developments, become informed, talk to elected representatives, and make sure that access to the courts is not adversely impacted by the State's current budget woes. There may be other issues that arise this year that will be important to our Bar, to sections, and to individual practices. Longer term, I strongly encourage members of our Bar to develop good relationships with all three branches of government, not just the one branch we use the most – the Judiciary. The Legislative and Executive branches are also important to you as a professional. Each branch of government is relevant to the people we serve, to us as professionals, and to our profession in general. Lawyers who are interested, concerned, politically astute and able to meaningfully connect with decision makers, can help bring about necessary and appropriate action on issues of importance in our democratic system.

New Lawyers

Our profession succeeds by instilling in each new lawyer the important traditions and hallmarks of preceding generations. In large part, the practice of law is taught to new lawyers by lawyers who have experience. Even lawyers who truly start out on their own still learn through observation and collaboration. Law schools have not yet fully embraced the notion of bridging the gap between academic learning and the actual practice of law. If new lawyers come into the practice and view it as a typical business, instead of as a profession, the ripple effects of that negative development will be felt for generations to come. The average age of the Utah lawyer is 41. Half of our Bar has under 14 years in practice. Many members of our Bar are young, and an increasing number of them are going into solo practice right out of law school. Our largest demographics include young lawyers and the solo or small firm setting. Many of our younger members are hurting financially in this difficult economy, and not just from heavy law school debt, but because they are particularly susceptible to the effects of the economic downturn. They are looking for ways to succeed. I hope these younger lawyers can take a long-term view. Many are looking for mentors. The Bar's New Lawyer Training Program will not affect current young lawyers, only those to be admitted starting in 2009. As colleagues, I encourage all Bar members

to extend a hand of friendship to one another during these troubling economic times. In particular, I hope that veteran members will reach out to those younger members of our Bar who are struggling. I know that all lawyers have been, and will continue to be, affected by the economic downturn. I ask that we care for one another as professionals and colleagues.

Pro Bono

During the devastation of Hurricane Katrina my young daughter was watching the news and listened to an appeal by the Red Cross. Without hesitation, she went to her room, gathered up all of her money, brought it to me and said "Let's give this to the people who are hurting." The next day, we took her envelope of cash to the Red Cross. I was quite moved by her response. I am grateful to fellow Bar members who routinely engage in pro bono service. It is rewarding. It may also present a challenge when we are burdened by so many other pressures and demands. But I encourage you to do more this year than you have done before. Take one additional case. Give one more day. Find one more way to provide institutional pro bono service. If you need assistance in getting started, call the Bar's pro bono coordinator, Anna Jespersen (801-297-7049), or send me or your Bar Commissioner an email. I encourage you to call any of the legal aid agencies or other pro bono outreach groups or services, or find a bar group that is reaching out. The law schools have ways you can supervise a student in a pro bono project. Ask a colleague how he or she provides pro bono; develop ideas on how you can participate. I promise you, there are myriad ways to take part in this professional responsibility, and you will feel good about contributing.

Leadership

Lawyers have leadership responsibilities in our democratic society. As members of the Bar, we are privileged to be as educated, experienced, and well-positioned as we are; we are capable of making an impact well beyond our own lives. I am continually impressed by lawyers who understand their leadership potential, volunteer, take on challenging problems in their work, embrace pro bono, are involved in public service, sacrifice and give, lead boards and commissions, start groups and form causes, write and speak, and are connected to societal projects and the larger community. At a time when many nonprofit organizations, community groups and societal agencies are struggling for help, I encourage you to find ways to use your experience and skills to help provide leadership to our society. Lawyers are leaders. Of course, leadership is not for the faint of heart. Fortunately, lawyers have always had passion, greater understanding, vision, and dedication. We have always made a difference. I hope we always will.

The Irrevocable Life Insurance Trust: An Underutilized Tool

by Gregory C. Zaugg

The Irrevocable Life Insurance Trust (ILIT) is a powerful and often underutilized estate planning tool. Significant tax advantages are possible when life insurance policies are held in an ILIT. A properly drafted ILIT can remove the life insurance proceeds from the insured-grantor's estate and the surviving spouse's estate, while allowing the proceeds to be available to meet the needs of the surviving spouse and children.

An ILIT is an irrevocable trust that is typically designed to be a grantor trust, so that it is taxed to the grantor during the grantor's life, and the grantor can sell assets to the ILIT without triggering any taxable income. A grantor trust is a trust over which the grantor retains the power to control or direct the trust's income or assets, thereby causing the income of the trust to be taxed to the grantor, rather than to the trust. *See* Treas. Reg. § 1.671-1 (2008).

Upon the death of the grantor, the ILIT can be taxed as a simple trust or a complex trust. The Internal Revenue Code defines a simple trust as one in which, under the terms of the trust document, all net income is required to be distributed to the beneficiaries on an annual basis and no distributions may be made of principal or to charity. *See id.* at § 1.651(a)-1. A complex trust is any trust that is not a grantor trust or a simple trust. *See id.* at § 1.661(a)-1. Under the terms of a complex trust, the income can be held in the trust or paid out to the beneficiaries. Generally, if income is held in a complex trust, unless the income is required to be distributed to the beneficiaries and is not, then the trust pays tax at its taxable rate. However, if the income is distributed to the beneficiaries or is required to be distributed to the beneficiaries, then the beneficiaries pay tax at their taxable rate. *See* I.R.C. §§ 661, 662 (2008).

A complete estate plan requires the attorney to consider whether an ILIT to hold insurance policies is advantageous and will help fulfill the objectives the client seeks to accomplish. Following are eight reasons an ILIT may be useful to your client.

1. Keep Life Insurance Proceeds Out of the Insured's Estate

Perhaps the most common and basic reason to use an ILIT is to remove the life insurance proceeds from the insured-grantor's and the surviving spouse's gross estates. This can be done while also allowing the proceeds to be available to provide for the surviving spouse's health, education, support, and maintenance. Care should be taken to ensure that the insured-grantor does not retain any "incidents of ownership" over the policies or have power over the ILIT or its trustees that would cause the insurance proceeds to be included in the insured-grantor's estate for estate tax purposes. *See* I.R.C. § 2042(2). Incidents of ownership include the outright ownership of the policy, and the right, individually or as trustee, to (a) change the beneficiaries, (b) change the ownership of the policy or proceeds, (c) change the time or manner of enjoyment of policy proceeds, (d) borrow against the policy or use it as collateral for a loan, and (e) assign or revoke an assignment of the policy. *See* Treas. Reg. §§ 20.2042-1(c)(2), 20.2042-1(c)(4). However, the insured-grantor can safely retain the power to replace the trustee as long as the insured-grantor cannot appoint a related or subordinate trustee. *See* Rev. Rul. 95-58, 1995-2 C.B. 191.

2. Provide Liquidity to the Insured-Grantor's Estate

The life insurance proceeds held in an ILIT can provide an otherwise illiquid estate with much needed liquidity to pay estate tax and other obligations without aggravating the estate tax liability. The insurance proceeds can be available to support a surviving spouse and minor children. The proceeds can also be used to purchase assets from the insured-grantor's estate to provide the

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estate with liquidity without forcing it to sell assets to outside parties. The ILIT should not state that the trust assets be used to pay the insured-grantor's estate tax or other obligations, as this would cause inclusion of the trust assets in the insured-grantor's estate. *See* Treas. Reg. § 20.2042-1(b). However, the ILIT can have a provision that allows, but does not require, the trustee to purchase assets from the insured-grantor's estate for fair market value. Such a provision will enable the trustee to purchase illiquid assets from the estate to provide the estate with the liquidity needed to pay estate tax and other obligations while keeping the illiquid assets for the benefit of the ILIT beneficiaries, which are typically the insured-grantor's spouse and children. Because the trustee is not obligated to purchase estate assets, and if purchased, the purchase price must be at fair market value, the provision does not cause the ILIT assets to be included in the insured-grantor's estate. Also, because the estate assets generally receive a step-up in basis to the date of death value, the estate avoids recognition of a taxable gain on the sale. This is especially helpful in cases involving appreciating assets such as real estate.

Because of the increase in land values over time, the values of many farmers' and ranchers' estates are in excess of the estate tax applicable exclusion amount, which is currently $3,500,000 for those dying in 2009. For example, an unmarried rancher who dies in 2009 with an estate valued at $10,000,000 composed primarily of land leaves his or her heirs with approximately $6,500,000 subject to the federal estate tax at a rate of 45%. The heirs are then faced with the challenge of procuring the cash necessary to pay the estate tax. This difficulty could have been avoided if the rancher had established an ILIT to hold life insurance in an amount sufficient to pay the estate tax.

3. Leverage the Insured-Grantor's Generation Skipping Transfer Tax Exemption

The ILIT can be designed to be an effective type of Dynasty Trust, since the insured-grantor's generation skipping transfer tax (GSTT) exemption can be allocated to an ILIT holding a life insurance policy that may substantially increase in value. The GSTT was introduced in 1986, and was designed to prevent affluent persons from setting up trusts that avoided estate tax upon the death of their children and grandchildren. Each individual is granted a GSTT exemption (currently $3,500,000), which can be allocated during life or at death. *See* I.R.C. § 2631(c). A Dynasty Trust is an irrevocable trust that is designed to continue for a long period of time and provide benefits to future generations, without any additional estate or GST tax liability.

The insured-grantor's GSTT exemption can be leveraged considerably using an ILIT. The Dynasty Trust ILIT can be allocated GSTT exemption sufficient to cover all assets owned by the trust, including the insurance policy. Upon the insured-grantor's death, the trust assets increase considerably due to the payout of the insurance policy. Because GSTT exemption was granted to the trust, the trust assets can be shielded from future estate tax and GSTT. Accordingly, the purpose of structuring an ILIT as a Dynasty Trust is to allow numerous generations to benefit from trust assets free of federal estate tax and GSTT while shielding the assets from creditors of the beneficiaries. Attorneys must be aware that special drafting considerations must be made if the ILIT is to function as a GSTT exempt Dynasty Trust, and that gifts to the ILIT utilizing the gift tax annual exclusion will not be GSTT exempt unless properly structured.

4. Provide Asset Protection to the Beneficiaries

Assets held in a properly drafted ILIT are protected from the creditors of the beneficiaries. A life insurance policy held by an individual, payable to the beneficiaries upon the death of the insured, exposes the proceeds to the current and future creditors of the beneficiaries. The ILIT can be designed with a spendthrift provision and a trustee with discretionary power to make distributions to the beneficiaries. If the trustee is granted broad discretion over trust distributions and the trust has a properly drafted spendthrift provision, the trust assets are protected from the beneficiary's creditors because neither the beneficiary nor a creditor has any right to demand a distribution from the trust or to attach the beneficiary's interest in the trust. As long as the assets remain in the ILIT, the assets are protected from the beneficiaries' creditors. For this reason, an ILIT may be a good place to hold assets such as cash or securities that the insured-grantor does not need.

In the event that beneficiaries of the ILIT have creditors pursuing them, the trustee can use trust assets to pay the beneficiaries' expenses directly, such as their house payments, rather than giving the beneficiaries cash to pay expenses, which cash would be subject to collection by the creditors. The trustee can also use cash in the ILIT to purchase assets that beneficiaries can use, such as automobiles, but which are protected from creditors because they are owned by the ILIT, not the beneficiaries.

5. Provide Management and Control of the Proceeds

The ILIT can be designed to distribute the insurance proceeds in a variety of ways. The insured-grantor may have children who are minors or who are not financially astute. The ILIT can be set up with an experienced trustee to protect these inexperienced beneficiaries from losing the insurance proceeds due to mismanagement or frivolous expenditures until the beneficiaries

reach a designated age, or until the trustee is comfortable with the beneficiaries' ability to manage money.

6. Incentivize Positive Behavior

The ILIT can provide beneficiaries with incentives to conform their behavior to the values of the insured-grantor client. Distributions from the ILIT can be conditioned upon the achievement of certain objectives, such as graduating from college, getting married, or other such benchmarks. The ILIT can also require the trustee to withhold distributions from a beneficiary if certain behavior is manifest, such as illegal drug use or excessive gambling. In addition, the ILIT can be designed to set aside funds to be used for certain desired activities like family reunions, family vacations, or to provide a down payment to assist a beneficiary in purchasing a first home.

7. Potential Avoidance of the "Three-Year Rule" of Internal Revenue Code Section 2035

Section 2035 of the Internal Revenue Code provides that an insurance policy transferred by the insured during the three-year period ending on the date of the insured's death will be included in the estate of the insured for estate tax purposes. *See* I.R.C. § 2035. In order to avoid the "Three-Year Rule," the trustee should apply for the insurance policy, with the ILIT as the owner and beneficiary of the policy. The Three-Year Rule does not apply, however, to a "bona fide sale for an adequate and full consideration in money or money's worth." *Id.* § 2035(d). Therefore, the Three-Year Rule can be avoided when an existing policy owned by the insured-grantor is sold to the ILIT, with the insured-grantor taking back a note in exchange. The insured-grantor can forgive a portion of the note each year using his or her gift tax annual exclusion amount (currently $13,000 per person per year) in favor of the ILIT beneficiaries pursuant to "Crummey power," as long as it does not exceed the greater of $5000 or 5% of the value of the trust assets. *See Crummey v. Comm'r,* 397 F.2d 82, 88 (9th Cir. 1968). Alternatively, a back up marital deduction gift can be contained in the ILIT to avoid estate tax liability if the insured-grantor is married and dies within three years of the transfer. The Three-Year Rule can be avoided altogether where the trustee of the ILIT is the one that takes out the insurance policy on the life of the insured-grantor.

Generally, the sale of an insurance policy by the insured to a grantor trust will not be a taxable event because the insured-grantor remains the owner of the policy for income tax purposes. The caveat here is that anytime a life insurance policy is transferred for valuable consideration, the "Transfer for Value Rule" of Section 101(a)(2) must be considered to ensure that the proceeds of the insurance policy are not subject to income tax upon the insured-grantor's death. *See Id.* § 101(a)(2). Therefore, the ILIT must be properly drafted as a grantor trust in order for the transfer to fall within the safe-harbor exception to the Transfer for Value Rule.

8. Payment of Policy Premiums that Avoid Gift Tax

Generally, the insured-grantor will pay the premiums on the life insurance held by the ILIT by making cash gifts to the ILIT. The trustee then uses the gifted cash to pay the policy premiums. The insured-grantor's transfer to the ILIT is considered a gift to the ILIT beneficiaries. Unless the gift either qualifies for the annual exclusion or the insured-grantor uses some of his applicable credit, gift tax may be owed. An individual can currently gift up to $1,000,000 during his lifetime without incurring gift tax by using his applicable credit. However, any applicable credit used during life reduces the amount of applicable credit available to shield the estate from estate tax.

In order for a gift to qualify for the annual exclusion, it must be a gift of a present interest. *See* I.R.C. § 2503(b)(1). Generally, gifts made to an ILIT are future interests, and will therefore not qualify for the annual exclusion. *See* Treas. Reg. § 25.2503-3. However, the beneficiaries of the ILIT can be given "Crummey power" that can make the transfer a present interest and qualify for the annual exclusion. *See Crummey,* 397 F.2d at 88. The Crummey power gives the beneficiary the right to withdraw the transferred amount within a specified amount of time, after which the beneficiary's right to withdraw the amount lapses. To ensure that the lapse of the Crummey power is not considered a taxable transfer, the right to withdraw should be limited to the greater of $5000 or 5% of the value of the trust assets. *See* I.R.C. § 2514(e).

An alternative way to provide funds to the ILIT for insurance premiums is for the insured-grantor to make a gift to the ILIT using his or her applicable credit. Using this method, Crummey power is not required. For example, the insured-grantor can gift $1,000,000 of marketable securities to the ILIT using all of the insured-grantor's applicable credit. The ILIT trustee can use the income produced by the securities to pay the annual premiums on the life insurance.

Conclusion

The ILIT continues to be an important and powerful part of many estate plans. Although the ILIT is a traditional estate planning tool, a thorough understanding of the numerous applicable tax rules is necessary to avoid the possible pitfalls. A carefully drafted ILIT can accomplish many objectives at a reasonable cost.

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On Beyond GRAMA and the Open Meetings Act – The Proposal for Greater Transparency, Openness, and Inclusion in Salt Lake City Government

by Edwin P. Rutan, II and Esther Hunter

AUTHOR'S NOTE: *Ed Rutan, City Attorney, and Esther Hunter, Senior Policy Advisor to the Mayor, are supporting the Transparency Project administratively for the City.*

The Open and Public Meetings Act (the Open Meetings Act) has been on the books in Utah for thirty years now and the Government Records Access and Management Act (GRAMA) for nearly twenty. These two Acts are fundamental pillars of the way that the business of government is conducted in Utah. The Open Meetings Act states a very clear public policy that the state and its political subdivisions are to "take their actions openly" and "conduct their deliberations openly." Utah Code Ann. § 52-4-102(2) (2007). Similarly, GRAMA recognizes "the public's right of access to information concerning the conduct of the public's business" (while also recognizing "the right of privacy in relation to personal data gathered by governmental entities"). Utah Code Ann. § 63-2-102(1) (2004). These two Acts laid the foundation for a growing public expectation of "transparency" in our local governments.

As important as these two Acts are, they do not require transparency beyond the specific threshold they create. Their structure limits the breadth of transparency that is required in three key respects. First, local government entities are only obligated to provide information under GRAMA on a reactive basis. There is no obligation to provide information without a request. Similarly, GRAMA applies only to existing documents. There is no obligation to create a new document presenting the information in a readily understandable way. In other words, a GRAMA request is like a document request as opposed to an interrogatory. Second, the Open Meetings Act generally does not apply to the operations of the executive branch. In local governments today, the decision-making process of the Mayor and the departments of the executive branch can be every bit as important to the public as the decision-making process of the City Council. Third, GRAMA only directly benefits the person making the request. The information doesn't necessarily become available to the public at large unless a journalist who subsequently reports on it makes the request. Similarly, the Open Meetings Act directly benefits only those who attend the meeting or who see or read a journalist's report. The access provided doesn't necessarily directly benefit the public at large.

To be sure, GRAMA and the Open Meetings Act do not prohibit efforts by government entities to provide increased transparency. Salt Lake City, like many other local governments, already provides access to information well beyond the minimum required by the two Acts. However, the two Acts do not provide local governments with a practical guiding framework for taking transparency to higher levels.

Moreover, the value of open meetings and access to information is dissipated to the extent that members of the public do not understand the governmental processes they are observing, the significance of the information they have received, or both. Public education is understandably beyond the scope of GRAMA and the Open Meetings Act, but it is nonetheless fundamental to the achievement of true transparency.

Even if the public has access to information and fully understands it, a government is not truly "open" if the citizens do not have the opportunity to provide their input at the relevant "impact

EDWIN P. RUTAN, II has served as City Attorney since 2002 and has been a member of the Bar's Character & Fitness Committee since 2003.

ESTHER HUNTER was a senior policy advisor to the Salt Lake City mayor.

points." A variety of state statutes already provide for public input through public hearings and otherwise in specific contexts, but there is no across the board requirement.

Finally, like everything else over the past two generations, the computer has impacted the potential for transparency. More and more cities around the country are pursuing "e-government."

The Proposal for Greater Transparency, Openness, and Inclusion in the Salt Lake City Government Initiative recently announced by the Mayor and City Council is an effort to provide a centralized focus and policy context for on-going transparency initiatives by the various parts of City government. The project will look beyond the minimum legal requirements of GRAMA and the Open Meetings Act and current City practice to identify new areas where City government can be made more effective through greater transparency. A preliminary proposed "work plan" has been released for public comment. Comments may be submitted on-line at www.transparencyslcgov.com. Once public comments have been received, a final work plan will be prepared. It is anticipated that the project will address the aspects of transparency discussed below. In addition to specific initiatives, a key output of the project will be an overall City Policy on Transparency to guide future city employee decisions.

E-government and the Ubiquity of Information

At the outset, it is important to note that the benefits of effectively utilizing the full potential of e-government cannot be overemphasized. Salt Lake City has a website that already is award winning and can be made even better by presenting even more "user useful" information in a "user friendly" way. The success of the transparency project in large measure will be determined by the City's ability to use electronic media to their fullest advantage. Whether it is on the City's website or Salt Lake City Television Channel 17, the City has the electronic capability to make information available to virtually all members of the public simultaneously.

Proactive Provision of Information

The project will consider providing more information on a "proactive" basis in two senses. First, more of the City's administrative decisions or actions will be made available online. For example, the City's Community and Economic Development Department recently decided to place all of the Zoning Administrator's administrative interpretations on line. Second, the City will consider preparing special written materials to explain complex issues to the public. A recent example is the "Riparian Corridor Fact Sheet" prepared by the City Council to provide basic information on a controversial issue in a readily understandable format.

Opening Executive Branch Processes

Meetings of executive branch employees rarely, if ever, fall within the definitions of a "meeting" and a "public body" in the Open Meetings Act. But it is often within the executive branch that critical policies ultimately adopted by the City Council are initially developed. Public awareness of and input on the progress of issues through the executive branch processes can be critical to the public credibility of the City's actions. Current City policy already provides that drafts of administrative rules be circulated for comment to a reasonable audience of affected customers, but more can be done to broaden that audience and enable them to provide their input more effectively. For example, the Mayor is planning a

new section on the City's website that would provide updates on policy initiatives in the "pipeline."

With respect to executive branch meetings themselves, increased openness is certainly possible. For example, the Mayor recently opened to the media a meeting with representatives of The Leonardo on how to proceed with that project.

Public Education

A good example of the challenge is financial transparency. The legislature adopted a bill calling for more financial transparency at the state level during the 2008 session and Salt Lake City, like most municipalities, already provides a good deal of financial information to the public during the annual budget process. However, for most citizens the reams of budget documents can best be described as "mind boggling." "Truth in taxation" is a frequently heard term but probably few lawyers, much less the public at large, can actually explain the intricacies of how it works.

Another education challenge Salt Lake City faces is making its various processes – from applying for a business license to appealing a land use decision – readily understandable for the citizens affected by those processes. Simply and concisely written descriptions illustrated with flowcharts placed on the City's website could go a long way toward really opening the doors to City Hall.

Public Input

While some areas of municipal government such as land use planning and municipal finance already have well-established processes for public input, many others do not. Even within these established processes public input may be timed only at discrete points. Exploring possibilities for broader public input will be an important part of the project.

Limits on Transparency

While the City's focus will be on providing increased access to meetings and information, it must be remembered that the public interest will not be served by unlimited transparency. As noted above, GRAMA recognizes the need to balance personal privacy against the public's right to know, and the Open Meetings Act recognizes specific, narrow exceptions where the public interest is better served by a closed meeting, including, for example, discussion of the "character, professional competence, or physical or mental health of an individual." Utah Code Ann. § 52-4-205 (2007). Providing greater sensitivity to the determination of when the public's right to know trumps the individual's right of privacy will be an important challenge for the project.

One area where "openness" could actually harm the public interest that we have given preliminary consideration to is what we are referring to as the "free thinking zone." The challenges that Salt Lake City and other local governments face today require the best, most creative thinking of all their employees. "Out of the box thinking" often is called for, but most "out of the box" thoughts do not withstand the test of closer analysis. That doesn't mean that they weren't worthwhile ideas to consider, just that they didn't pan out in the end. However, there is a very real risk that out of the box thinking, "devil's advocate" thinking, or other creative thinking could be deterred by the prospect of public disclosure of preliminary ideas that didn't pan out. Thus another critical challenge for the project will be developing guidelines for determining when a new idea is ready for the public "light of day" without deterring internal creative thought and discussion.

Salt Lake City government is very excited about continuing its progress toward transparency through this project. This project can have a transformational impact on how we serve those who live and work in Salt Lake City. Your comments on the proposed work plan and the various initiatives developed as the project progresses can help make Salt Lake City government work more effectively for you.

Workers' Compensation & Liability Lawyers Beware: Section 111 of the MMSEA Imposes Significant New Penalties for Failing to Protect Medicare's Interests

by Mark Popolizio and Carrie T. Taylor

On December 29, 2007, President Bush signed into law the Medicare, Medicaid, and SCHIP Extension Act (MMSEA). Section 111 of the MMSEA significantly amends the "notice and reporting" requirements under the Medicare Secondary Payer Statute (MSP) relating to workers' compensation, liability (including self-insurance) and no-fault cases. This new law becomes effective July 1, 2009, for all primary payers except for group health plans for which the effective date is January 1, 2009.[1] The penalty for non-compliance is steep: $1000 per day, per claim.

All workers' compensation and liability practitioners need to understand the requirements of Section 111 since it will have a significant impact on claims handling and settlement. Counsel representing employers, self insureds, and insurance carriers need to pay especially close attention to not only the requirements of Section 111, but the proposed policy procedures currently being issued by the Centers for Medicare and Medicaid Services (CMS) as the new law places significant obligations on these entities.

Now is the time for counsel to be consulting with their clients to assure that they are: (1) aware of Section 111 and CMS's proposed policy guidelines, (2) developing the necessary internal procedures for proper Section 111 compliance, and (3) determining what, if any, role counsel is expected to play in the process.

In order to fully appreciate the significance and impact of Section 111, it is first necessary to understand how the new law fits into the larger picture of Medicare compliance under the MSP and, specifically, the obligation to protect Medicare's interests for conditional payments.

MEDICARE CONDITIONAL PAYMENTS & PRIMARY PAYER COMPLIANCE

The MSP, codified at 42 U.S.C. § 1395y, was enacted in 1980 to control the increasing costs of the Medicare program. The statutory provisions under 42 U.S.C. § 1395y, combined with supporting provisions under the Code of Federal Regulations, including 42 C.F.R. § 411.20, et. seq., and 42 C.F.R. § 411.40, et. seq., are often collectively referred to as the MSP.

The primary aim of the MSP is to assure that primary payers, and not Medicare, assume responsibility for medical treatment for accident related injuries. The MSP is designed to prevent a responsible third party from "shifting" the burden of an individual's medical care to the Medicare program. Under the MSP, a "primary plan" includes

> an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance.... An entity that engages in a business, trade or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.

42 U.S.C. § 1395y(2)(A).

The general rule under the MSP is that Medicare will not make payment for medical services if "payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a state or under an automobile or liability policy or plan (including self-insurance) or under no fault insurance." 42 U.S.C. § 1395y(b)(2)(A)(ii).

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However, Medicare may make "conditional payments" if a primary plan "has not made or cannot reasonably be expected to make payment…promptly." 42 U.S.C. § 1395y(b)(2)(B)(i). Any such payment made by Medicare "shall be conditioned on reimbursement to the appropriate Trust Fund." *Id.*

Primary payers are obligated to reimburse Medicare for conditional payments. "Conditional payment" is defined as "a Medicare payment for services for which another payer is responsible, made either on the bases set forth in subparts C through H of this part, or because the intermediary or carrier did not know that the other coverage existed." 42 C.F.R. § 411.21. Medicare conditional payments can arise in a number of ways as part of claims handling. For example, conditional payments can arise in situations where the primary payer denies the claim and refuses to pay for medical treatment. Alternatively, a primary payer may accept the claim or agree to pay for medical treatment, but the treating provider's billing department mistakenly bills Medicare for the treatment. In these circumstances, if the claimant is a Medicare beneficiary it is likely that Medicare will step in and pay for the claimant's Medical treatment.

Pursuant to 42 U.S.C. § 1395y(b)(2)(B)(ii) primary payers, and an entity that receives payment from a primary plan, are obligated to reimburse Medicare for conditional payments when it is demonstrated that a primary plan "has or had a responsibility" to make payment. A primary plan's "responsibility" may be "demonstrated" by a "judgment" or "a payment conditioned upon a recipient's compromise, waiver and release." 42 U.S.C. § 1395y(b)(2)(B)(ii). A "settlement" or "contractual obligation" is further indicia of "responsibility" under the MSP. *See* 42 C.F.R. § 411.22 (b)(3). It is important to note that this obligation applies "whether or not there is a determination or admission of liability." 42 U.S.C. § 1395y(b)(2)(B)(ii). Thus, even denied claims are included under the statute.

Under the MSP, Medicare is afforded broad enforcement rights on several levels. For example, Medicare has a direct right against all primary payers responsible for making payment, *see id.,* and any entity that received a primary payment, including a beneficiary, provider, supplier, physician, attorney, state agency, or private insurer, *see* 42 C.F.R. § 411.24(g). Medicare also has a subrogation right, as well as rights of joinder and intervention. *See* 42 C.F.R. § 411.26.

In terms of repaying conditional payments, if CMS does not need to take legal action, the amount of recoverable conditional payments is the lesser of either the Medicare primary payment, or the amount of the full primary payment that the primary payer is obligated to pay. *See* 42 C.F.R. § 411.24(c)(i)(ii). If it is necessary for CMS to take legal action, Medicare may recover twice the amount of the Medicare primary payment. *See* 42 U.S.C. § 1395y (b)(2)(B)(ii); 42 C.F.R. § 411.24(c)(2). Medicare's claim may be reduced by procurement costs. *See* 42 C.F.R. § 411.37.

In addition to establishing Medicare's reimbursement right, the MSP requires primary payers to place Medicare on "notice" regarding certain cases involving Medicare beneficiaries. 42 C.F.R. § 411.25(a) is the current section that deals with "notice." The present version of this section, which became effective in March 2008, provides that primary payers must place Medicare on notice "if it is demonstrated to a primary payer that CMS made a Medicare primary payment for services for which the primary payer had made or should have made." The prior version of this CFR, effective from 1990 through March 2008, provided that "if a primary payer learns that CMS has made a Medicare primary payment for services for which the primary payer has made or should have made primary payment, it must give notice to that effect to the Medicare intermediary or carrier that paid the claim." Section 111 will make significant changes to the notice aspect of the MSP.

As outlined above, primary payers have had long standing "reimbursement" and notice obligations under the MSP. Notwithstanding such requirements, primary payer compliance with the MSP, and the government's enforcement of its rights, have been inconsistent at best. Thus, Section 111 was enacted to strengthen primary payer compliance under the MSP by implementing more stringent notice and reporting requirements as discussed below.

SECTION 111 OF THE MMSEA: NEW NOTICE AND REPORTING OBLIGATIONS

Section 111 of the MMSEA, codified at 42 U.S.C. §1395y(b)(8), will significantly impact the current obligations of all primary payers to protect Medicare's interests for conditional payments and create new practical challenges on several levels for practitioners.

In general, Section 111 places an affirmative obligation on "applicable plans"to (a) determine if a claimant is entitled to Medicare and (b) notify Medicare of said entitlement as specifically required.[2]

CMS is currently in the process of releasing its proposed procedures to implement Section 111 referred to by the agency as its Mandatory Insurer Reporting (MIR) guidelines. CMS has established a dedicated website containing its proposed MIR guidelines and other information regarding Section 111. The website address is http://www.cms.hhs.gov/MandatoryInsRep.

As part of its MIR guidelines, CMS has released four documents since August outlining the agency's various proposals to implement Section 111. At the time this article was written, CMS had released

the following documents as part of its proposed MIR guidelines: *Supporting Statement* (August 2008), *Implementation Timeline* (September 2008), *Registration Process* (September 2008), and *Interim Record Layout* (October 2008). These documents can be obtained on CMS's dedicated website referenced in the above paragraph. In addition to these written proposals, CMS held national Open Forum teleconference calls to discuss its MIR proposals and to address related questions on October 1, 2008, and October 29, 2008. Additional teleconference events will be posted on the website.

Under the MIR, the entity that is required to place Medicare on notice and submit the required information is referred to by CMS as the "Responsible Reporting Entity" (RRE). The first step is to determine if one is considered a RRE. In this regard, it is imperative that all parties examine CMS's definition of what constitutes a RRE to determine potential RRE status. CMS's definition of what constitutes a RRE is contained in CMS's *Supporting Statement* at pages 13 to 15.

To a large degree, the MIR process remains a "work in progress," and there are currently many questions concerning the proposed requirements and how the MIR will actually work. A detailed examination of the various proposed requirements under the MIR, and the issues raised therein, is beyond the scope of this article. Nonetheless, now is the time for primary payers and practitioners to prepare for the significant requirements under Section 111 and the MIR.

Against this backdrop, a general overview of Section 111 and CMS's proposed MIR guidelines is provided as follows:

What is Required?

Under 42 U.S.C. § 1395y(b)(8)(A), an "applicable plan shall determine whether a claimant (including an individual whose claim is unresolved) is entitled to benefits under the program under this title on any basis." 42 U.S.C. § 1395y(b)(8)(A). If the claimant is entitled to Medicare, then Medicare must be placed on notice and provided specific information as required by CMS.

It is important to note that neither Section 111 itself nor CMS's proposed MIR guidelines provide a procedure to be followed by the RRE to "determine" Medicare entitlement status. Likewise, neither provides an implied consent provision allowing a RRE to seek this information without an authorization, and neither requires a claimant to execute an authorization allowing a RRE to request this information from the Social Security Office. At the time this article was written, CMS indicated that the agency was in the process of consulting with its counsel to determine

if a "query access" system could be devised to assist RREs in determining if the claimant is Medicare entitled.[3]

Until and unless a formal system is implemented, CMS has advised that "RREs must implement a procedure in their claims resolution process to determine whether an injured party is a Medicare beneficiary. RREs must submit either the Social Security Number (SSN) or Medicare Health Insurance Claim Number (HICN) for the injured party on all Input Claim File detail records." CMS's *Interim Record Layout* at 5. RREs and practitioners will also need to consider possible options in situations where they are unable to procure an authorization from the claimant or otherwise encounter difficulty "determining" a claimant's Medicare entitlement status.

What Must Be Reported?

Under 42 U.S.C. § 1395y(b)(8)(B), the information to be reported includes the "identity of the claimant" and "such other information as the Secretary shall specify in order to enable the Secretary to make an appropriate determination concerning coordination of benefits, including any applicable recovery claim." 42 U.S.C. § 1395y(b)(8)(B).

CMS via its *Supporting Statement* announced various "mandatory," "optional," and "situational" data fields, with corresponding instructions, that RREs would need to report under Section 111. These data fields are referenced at pages 18 to 20 of the *Supporting Statement.* Examples of some of the mandatory fields include, but are not limited to, the claimant's name, date of birth and address, social security number or health identification number, insurance information including type of insurance and policy and claim numbers, policy holder information, date of injury, and claim resolution information.

In addition, CMS's recently released *Interim Record Layout* document further outlines the information to be reported and provides the proposed "record layout" that will be utilized with respect to the reporting requirements under Section 111. The proposed record layout can be viewed in the *Interim Record Layout* at pages 8 to 60. All RREs and interested parties should carefully review the required data field sections of the *Supporting Statement* and *Interim Record Layout* to determine the necessary information to be submitted and CMS's related instructions.

How Will Notice Be Provided?

Under 42 U.S.C. § 1395y(b)(8)(A)(ii), the required information is to be submitted "in a form and manner (including frequency) specified by the Secretary." 42 U.S.C. § 1395y(b)(8)(A)(ii).

As part of its MIR guidelines, CMS has announced that notice under Section 111 will be submitted via electronic submission. CMS refers to the information required to be submitted as "production files."

CMS has outlined a specific registration process for RREs to register with the Coordination of Benefits Contractor (COBC) via CMS's "COB Secure Website" (COBSW), which is currently under construction. It is important to note that the RRE itself must complete the registration process; Agents are not permitted to complete the registration for the RRE.[4] The registration process for non-group health (non-GHP) RREs will be from May 1, 2009, through June 30, 2009. CMS's *Registration Process* instructions at 2 (section entitled Registration Timelines).

Once the registration process is completed, there will be a "testing period" commencing July 1, 2009, to September 30, 2009 for all non-GHP RREs in which the data submission process will be tested. CMS's *Implementation Timeline* document at 2. Thereafter, non-GHP RREs are scheduled to "submit their first Section 111 production files upon a predetermined schedule with the COBC" during the period October 1, 2009, to December 30, 2009. *Id.* All non-GHP RREs are scheduled to be submitting production files by January 1, 2010. *See id.*

The above outline of the registration, testing, submission processes, and timelines is an extremely generalized snapshot of the overall process. It is imperative that the requirements and processes outlined in CMS's *Supporting Statement, Implementation Timeline,* and *Registration Process* be examined closely for a complete understanding of the specific MIR requirements. In addition, RREs and interested parties should participate in CMS's Open Forum teleconference calls during which the agency discusses its MIR proposals and answers questions from the public. Information regarding the scheduling of the Open Forum sessions is published by CMS on its dedicated MIR website listed above.

When Must Notice Be Provided?

42 U.S.C. § 1395y(b)(8)(C) provides that the required information shall be submitted "within a time specified by the Secretary after the claim is resolved through settlement, judgment, award, or other payment (regardless of whether or not there is a determination or admission of liability)." 42 U.S.C. § 1395y(b)(8)(R).

As of the time of this writing, CMS had established two basic triggering events for reporting: (1) claim resolution (or partial resolution) and (2) situations where the RRE accepts "ongoing responsibility for medical payments." CMS has announced very detailed and specific requirements regarding the actual application of the above referenced triggering events which are outlined on page 5 of the agency's *Interim Record Layout.* A detailed examination of these requirements and the parameters related thereto is beyond of the scope of this article. Nonetheless, these

requirements should be carefully reviewed by all RREs and interested parties to obtain a complete understanding of CMS's exact requirements and approach in this area.

In addition, CMS has announced a "special reporting extension" (not a reporting exception) to the reporting requirements in relation to what the agency terms as "ongoing claims resolved (partially resolved) prior to July 1, 2009." The details of CMS's special reporting extension are outlined on page 7 of its *Interim Record Layout* that should be carefully reviewed by all RREs and interested parties.

What Are the Penalties?

Under 42 U.S.C. § 1395y(b)(8)(E), the penalty for non-compliance is $1000 per day, per claim, which is in addition to any other penalties available at law. As of this writing CMS had not issued any proposals regarding this aspect of Section 111.

CONCLUSION

For lawyers who practice in the workers' compensation and liability arena, Medicare compliance, at least with respect to reimbursement of conditional payments, is nothing new. However, the new notice and reporting obligations of Section 111 of the MMSEA will have a significant impact on your clients.

Keeping abreast of CMS's ongoing announcements of the agency's MIR guidelines is imperative for all legal practitioners. Even if clients do not look to you for expertise and guidance in understanding the requirements of Section 111 or for developing procedures to assist with compliance, a complete understanding of Section 111 and CMS's proposed MIR guidelines will be required to assure that all necessary measures are taken to protect Medicare's interests as part of the claims handling and settlement process.

1. The requirements regarding group health plans are treated separately under Section 111. This article does not address the requirements of Section 111 in relation to the group health context.
2. Under 42 U.S.C. § 1395y(b)(8)(F), an applicable plan includes workers' compensation, liability insurance (including self-insurance), and no fault insurance and includes "the fiduciary or administrator for such law, plan, or arrangement." 42 U.S.C. § 1395y(b)(8)(F). It should be noted that under CMS's proposed Mandatory Insurer Reporting (MIR) guidelines the agency uses the term Responsible Reporting Entity (RRE) for the actual entity that is required to place Medicare on notice and submit the required information under Section 111.
3. CMS discussed the possibility of establishing a query system at the October 1, 2008, and October 29, 2008 Open Forum Teleconference calls.
4. CMS's Registration Process document at 3. Furthermore, CMS reiterated this directive at the October 1, 2008 Open Forum teleconference call.

Researching and Using Utah Appellate Briefs and Other Appellate Resources

by Mari Cheney

WHY USE APPELLATE BRIEFS?

In law school, we were taught how to analyze legal opinions but rarely, if ever, were we required to read the briefs related to the case. Briefs help the court decide the case, and if the court has not heard your oral arguments, the briefs are the sole source of your arguments. As such, briefs can be a valuable research tool for seasoned appellate litigators, recent law school graduates, and those who are new to appellate litigation.

For example, you can review briefs with similar issues to your own to see what arguments succeeded with the appellate court, and to get an idea of how to organize your own brief. You can research briefs filed by opposing counsel to learn more about their approach to issues.

HOW TO FIND BRIEFS

Briefs are organized by appellate case number, which you will find near the beginning of the court's opinion. After the creation of the Utah Court of Appeals in 1986, docket numbers were preceded by a 2-digit or 4-digit year designation. Court of Appeals cases have the suffix "CA." Supreme Court cases will sometimes have the suffix "SC."

Examples:

Court of Appeals	**Supreme Court**
860123 CA	10823
20010054 CA	20030158-SC
	20060003-SC

Briefs are not available for every case filed with the appellate court. For example, briefs in child welfare and other juvenile-related cases are only available for review by the parties and attorneys in the case. Additionally, briefs may not be available because the parties settled before the briefing occurred.

Cases sometimes move between the two appellate courts. For example, a case filed with the Utah Supreme Court may be "poured over" to the Utah Court of Appeals. The Utah Supreme Court may also "recall" a case that had been previously "poured over" to the Court of Appeals. Cases may also be certified to the Supreme Court from the Court of Appeals if the issues merit certification. This can make it confusing for the researcher who is trying to track down briefs.

Here is a tip: The docket number assigned to the case stays with it regardless of whether it has moved back and forth between courts because the sequential docket numbering is shared by both courts. Additionally, cases can be consolidated, and may carry two or more docket numbers. If you don't find a case under one docket number, try the other.

The easiest way to find briefs is by docket number, but if you only know the party names, you can use LexisNexis, Westlaw, or the court's online opinion database to find the docket number. Law library staff and the Appellate Clerks' Office staff can also help you find the docket number.

WHERE TO FIND BRIEFS

Utah State Law Library

The Utah State Law Library, located inside the Matheson Courthouse, has the most comprehensive collection of post-World War II Utah appellate briefs in the state. Our collection includes Utah Supreme Court briefs from 1929 and the 1940s to present, and Utah Court of Appeals briefs from the inception of the court in 1986 to present. Our collection is the most comprehensive because we house both appellate courts' copies of the briefs.

Once an appellate case is closed, the original briefs are eventually sent to the Utah State Law Library. Law library staff log the briefs and file them by docket number. Eventually the briefs are bound into volumes to protect them for future researchers.

Briefs are available for your review and copying at the Utah State Law Library. We also offer a document delivery service wherein we will copy and fax, e-mail, or mail copies of briefs for a fee.

Brigham Young University, Howard W. Hunter Law Library, and University of Utah, S.J. Quinney Law Library

If there are extra briefs available when the court has finished with a case, the appellate clerk sends them to Utah's two law school libraries. Extra briefs are available only about 25% of the time, and distribution of them alternates between the two law libraries. Because neither of these collections is complete,

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.

it is best to call ahead to ensure the brief you are interested in is located at that library.

The brief collections of Utah's law school libraries include Utah Supreme Court briefs from 1895 to present and Utah Court of Appeals from 1986 to present.

Utah State Archives

The Utah State Archives has the most complete collection of older Utah Supreme Court briefs in the state, ranging from 1888 to the 1940s.

Utah Appellate Clerks' Office

Briefs in cases that are open or pending are only available from the Appellate Clerks' Office, also located inside the Matheson Courthouse.

Subscription-Based Legal Databases

Some newer appellate briefs are available on-line through Westlaw.

Court of Appeals:	UT-APP-BRIEF	Selective coverage 2005-present
Supreme Court:	UT-SCT-BRIEF	1995-present

These databases may not be included in your existing subscription plan; contact your Westlaw representative for more information.

OTHER APPELLATE RESOURCES

Appellate Docket Search

To find information about cases currently pending in the appellate court, use the Appellate Docket Search available on the court's website:

http://www.utcourts.gov/courts/appell/appellatesearch.htm

You need to have the docket number to search this database, and cases are removed from the database after the case has been closed for a year. Contact the Appellate Clerks' Office for information about older cases.

Law and Motion Files

Law and Motion files contain all documents, other than briefs, filed in an appellate court case.

Both the Court of Appeals and Supreme Court keep newer Law and Motion files in the Appellate Clerks' Office. Older Law and Motion files are housed off site at the Utah State Archives, so it can take up to a week for the Appellate Clerks' Office to retrieve these documents. Please allow enough time for those files to be retrieved.

Contact the Appellate Clerks' Office for more information about which Law and Motion files are available at the Matheson Courthouse or off site at the Archives.

Opinion Notification Service

Sign up to receive an e-mail alert when new opinions from the Supreme Court or the Court of Appeals are released to the Court's website. Visit http://www.utcourts.gov/opinions/subscribe/ to sign up.

Oral Arguments

You can listen online to Supreme Court oral arguments dating back to September 2003, and Court of Appeals oral arguments dating back to 2005. You can also listen to live streaming audio of oral arguments in either court.

For more information, go to http://www.utcourts.gov/courts/sup/streams/ and http://www.utcourts.gov/courts/appell/streams/.

Pro Se Guides

The appellate courts offer three guides directed at people who are appealing their case without the help of an attorney. However, these guides are also useful resources for attorneys who are new

to appellate litigation.

- Pro Se Guide to Appeals Procedures
- Pro Se Guide for Child Welfare Appeals
- Pro Se Guide to Filing Petition of Writ for Certiorari
- Pro Se Guide for Petition of Writ for Review (Agency Review)

These are available on the court's website.

Trial Court Records
While a case is inactive in the appellate court, the trial court records remain with the case file in the Appellate Clerks' Office.

Once the case is closed, the file is returned to the trial court. You will need to contact the clerk's office of the court in which the case was filed to request copies. Please note that juvenile court cases are not public.

Utah Rules of Appellate Procedure
The Utah Rules of Appellate Procedure govern the deadlines, format requirements, and other issues relating to briefs. Form 8 also provides a checklist for briefs which summarizes the requirements.

CONTACT INFORMATION

Appellate Clerks' Office
Matheson Courthouse
450 South State Street, 5th Floor
Salt Lake City
801-578-3900

Howard W. Hunter Law Library
J. Reuben Clark Law School
526 J. Reuben Clark Building
Provo
801-422-3593
http://lawlib.byu.edu/

S.J. Quinney Law Library
University of Utah S.J. Quinney College of Law
332 South 1400 East
Salt Lake City
801-581-6438
http://www.law.utah.edu/library/

Utah State Archives – Research Center
300 South Rio Grande
Salt Lake City
801-533-3504
http://archives.utah.gov/research/question.html

Utah State Law Library
Matheson Courthouse
450 South State Street, W-13
Salt Lake City
801-238-7990
library@email.utcourts.gov

Lawyers are Needed to Clean up Wall Street's Mess and Rebuild the Economy

by Wayne Klein

Introduction

Wall Street "quants," employing sophisticated (but flawed) algorithms, joined with shortsighted bankers to cause a near-collapse of our financial system. This meltdown precipitated severe investment losses, destroyed long-standing business relationships, and pushed companies into crisis mode. The impact is being felt in law offices as firms implode, close offices, and lay off attorneys.

Bankruptcies are rising. The government has assumed roles in the financial sector unseen in seventy-five years. News stories regularly expose excesses and abuses on Wall Street and by the inventors of incomprehensively-complex derivatives such as credit default swaps, collateralized debt obligations, and structured notes.

In the midst of this turmoil, lawyers must constantly give current and accurate advice. What changes should attorneys expect following the market crash? What new legislation might be needed to rebuild the financial system? What new challenges will attorneys and their clients face? What skills make lawyers better prepared than the masterminds of financial destruction to clean up this mess and help rebuild the economy? To answer these questions, it is useful to review briefly the events leading up to the current crisis.

How to Ruin the Economy in Four Easy Steps

Financial crises are not new; they seem to recur about every twenty years. *See* John Steel Gordon, *A Short Banking History of the United States,* Wall St. J., Oct. 10, 2008, at A17. The most recent in 1987 involved savings and loan associations that failed following a deregulatory push that unwisely granted expanded powers to financial firms.

The causes of the current financial crisis are similar to those of prior crises, suggesting that policy makers, business executives, and investors have not learned important lessons. There were four basic stages of this financial Armageddon.

1. Credit Surpluses: A confluence of several global events created huge surpluses of available credit. In 1997, the economies of several "Asian Tigers" collapsed. The restructurings of their economies induced high savings rates in those countries. In the meantime, the U.S. economy was booming, fueled by sales of consumer goods purchased from other countries. Companies outsourced services to India and Ireland. Ever-increasing amounts of oil were imported into the U.S. and countries receiving these dollars invested much of their trade surpluses in the U.S.

Following the bursting of the tech stock bubble in early 2000 and the terrorist attacks in 2001, the Federal Reserve dropped interest rates to stimulate the economy. Home loan rates fell to historic lows. Homeowners reacted by buying more expensive homes or refinancing their homes, often serially. When refinancing, many homeowners withdrew equity from their homes, treating the homes as personal ATMs from which money could be withdrawn to purchase new cars, take vacations, or invest.

Hedge funds borrowed massive amounts of this low-interest money to leverage profits for their investors. These funds used trading algorithms, computerized trading, and complex derivatives, to hedge risk and earn huge profits. Wall Street compensation plans encouraged speculative risk taking. Capital reserves were lowered for banks around the globe, freeing up more money for investing and subprime lending.

The result? Trillions of additional dollars flowed into U.S. financial markets from banks, hedge funds, pension plans, private equity funds, businesses, investors, and homeowners. All this money was looking for high returns.

2. Speculative Bubbles: Most of this money became concentrated in three areas: the stock market, real estate, and commodities. All rose to spectacular heights, as investors ignored Alan Greenspan's famous warning of "irrational exuberance." The 2000 tech crash caused a brief interlude in an otherwise inexorable rise. Lofty stock valuations facilitated a wave of friendly mergers, private-equity buyouts, and hostile takeovers, all funded by easy

WAYNE KLEIN is a principal in the Salt Lake City office of Lewis B. Freeman & Partners, Inc. where he provides expert witness, securities litigation consulting, due diligence, receivership, and internal investigation services. He is the former director of the Utah Division of Securities.

credit. Ominously, many of the large mergers occurred in the oil industry (concentrating market power in a few companies) and in the financial industry (making them too large to fail?).

The initially untrammeled rise in real estate values became self-reinforcing. The more home prices rose, the more buyers wanted to purchase costlier homes and engage in real estate speculation (home flipping). More credit became available as Wall Street investment banks securitized mortgages, pooling thousands of mortgages and selling interests in the mortgage pools to investors. The initial successes of these investments generated explosive demand for more. Soon, subprime mortgages were being pooled and sold to investors. Mortgage brokers began pitching unconventional loans: "liar" loans (no income documentation), "no income, no job, no assets" loans (NINJA loans), stretch loans (payments greater than 50% of net income), adjustable-rate loans with low "teaser" rates, and interest-only loans. Fannie Mae and Freddie Mac owned or guaranteed half of all these mortgages, a result of Congressional pressure to increase mortgages to minorities and the poor.

Even before real estate prices peaked nationally in 2005, money started to move to commodities, on the assumption they represented a hedge against rising inflation (inflation that was being driven by real estate speculation and the excessive availability of credit). Oil, metals, and agricultural commodities saw dramatic increases. Oil rose from $50 a barrel in early 2007 to $145.29 in July 2008. Gold went from $300 per ounce in 2002 to $1000 in March 2008. Wheat, corn, soybean, and rice prices doubled or tripled during the past two years.

3. Excesses and Fraud: The meteoric rises in the values of stocks, real estate, and commodities could not continue. Even without manipulation, oil can only rise so far before demand becomes elastic. Home prices rapidly became unaffordable for many Americans. Higher commodity prices translated into higher costs for finished goods and lower demand for those goods.

The bursting of these bubbles were accelerated by exposure of fraudulent and abusive conduct. New Century Mortgage, one of the largest mortgage originators in the country, set aside $14 million in reserves to repurchase loans that went bad within a year. By September 2006, the company had $400 million in repurchase requests – 28 times the total of its reserves. Bankruptcy followed seven months later.

Two-thirds of commodities trading was conducted off-exchange, through the use of unregulated swaps and derivatives. Oil trades were split between the U.S. and London, to prevent regulators from observing both sides of transactions. Swaps dealers were exempted from limits on the size of positions they could hold. Commodities regulators lacked authority to oversee trading on electronic networks. The resulting lack of transparency invited abuses: a trading company executive has been accused of earning $1 million manipulating oil futures in July 2007. Amaranth Trading sought to corner the natural gas futures market in 2005, at one point controlling 100,000 positions in natural gas, valued at $7 billion. The market collapsed and Amaranth lost $5 billion of investor money – in one week.

A venture capital company filed for bankruptcy after its founder was charged with wire fraud in October 2008 for running a $3 billion fraud scheme. Two Bear Stearns hedge fund managers were criminally charged for insider trading. UBS Securities' general counsel settled civil allegations of insider trading in auction-rate securities.

The ubiquity and variety of derivatives allowed investors to speculate on all types of market developments. The large volume of credit default swaps written by Lehman Brothers, Bear Stearns, AIG, Fannie Mae, and Freddie Mac caused their failures. Two offshore hedge funds illegally used synthetic securities to influence developments at CSX Corporation. The judge noted:

> Some people deliberately go close to the line dividing legal from illegal if they see a sufficient opportunity for profit in doing so. A few cross that line and, if caught, seek to justify their actions on the basis of formalistic arguments even when it is apparent that they have defeated the purpose of the law.
>
> This is such a case.

CSX Corp. v. Children's Inv. Fund Mgmt. (UK) LLP, 562 F. Supp. 2d 511, 516 (S.D.N.Y. 2008), *aff'd,* 2008 U.S. App. LEXIS 19788 (2D Cir. N.Y. Sept. 15, 2008).

4. Gravity: As the old adage teaches, "the bigger they are,…." The fall has been devastating. As a result of an extraordinary decline in home values, almost one in every six homeowners nationally is "under water," owing more on their homes than they are worth. The stock market swooned from over 14,000 in October 2007 to less than 8000 in October 2008. Gold is more than 25% off its high. The spot price of crude oil fell by half in a little more than three months. Even the $14 billion seaweed bubble has burst. Prices more than tripled to 18,000 Indonesian rupiah in a period of a few months, then fell 45% in two months. Fortunately, the collapse of commodities prices is resulting in lower consumer prices.

The collateral effects have been immediate and widespread.

Trillions of dollars in value have been lost as the stock market fell and real estate values plummeted. Home foreclosures are at record levels. Blue chip companies have gone bankrupt or merged into healthier institutions. Credit has become hard to find, even for profitable companies. The U.S. government has socialized, at least temporarily, large segments of the financial markets taking over Fannie Mae and Freddie Mac, taking effective control over AIG, converting Goldman Sachs and Morgan Stanley into bank holding companies, and investing directly in the largest money-center banks.

The turmoil is also having tangible effects on law firms. Some, such as the 650-lawyer Heller Ehrman firm, have dissolved. Other firms are retrenching by withdrawing offers to new hires, closing offices, cutting back on support staff, laying off attorneys, and, in some cases, asking partners to leave. Clients are imposing tighter controls on the expenses and expectations of outside counsel.

How the Legal Profession Can Respond

What role will lawyers play in the aftermath of this economic crisis?

In crucial ways, lawyers are uniquely positioned to chart a course forward and clean up the wreckage. Our critical-thinking skills and professional training to identify "what can go wrong," enable us to guide future decisions. Our problem-solving expertise will be indispensible in dispute resolution and business reorganization. Areas where specialized services will be provided by lawyers include:

Legislation: The federal government has aggressively responded to the financial crisis, exercising power in unprecedented ways such as using sparsely-written laws. Litigation can be expected to test the constitutionality of some of these laws. There has been only one case since the Great Depression in which Congress was found to have exceeded its power under the Constitution's Commerce Clause, *see United States v. Lopez,* 514 U.S. 549 (1995) (limiting Congressional power to regulate possession of a handgun near a school). Will courts again find limits to Congress's authority?

State and federal policy makers will enact new legislation as they craft new regulatory structures for the financial sector. Lawyers need to advise legislators and lobbyists on the consequences of alternative proposals. Clients will need advice on how to implement these new laws.

Takeovers: The government seized control or forced the mergers of a wide variety of firms. The closures and forced mergers upset many of the longstanding relationships these firms had with clients, business partners, and suppliers. Substantial litigation may result regarding the extent to which the new owners honor existing contracts.

Jilted merger partners are suing. After the federal government seized Wachovia and sold it to Citigroup, Wells Fargo offered a higher price to Wachovia's management – a price that would not require government financial assistance. Citigroup lost Wachovia, but filed a $60 billion lawsuit against Wells Fargo. Utah-based Huntsman Chemical won a September court ruling that private-equity group Hexion breached its obligations when it refused to complete its negotiated agreement to buy Huntsman. *See Hexion Specialty Chems., Inc. v. Huntsman Corp.,* 2008 Del. Ch. LEXIS 143 (Del. Ch., Sept. 29, 2008).

Bankruptcy, Turnaround Experts: The Lehman Brothers bankruptcy was the largest in history. Business bankruptcy filings are rising quickly, increasing from 5811 in the first quarter of 2006 to 15,471 in 2008's second quarter. Bankruptcies of large companies require extensive legal assistance. Examiners (usually attorneys) increasingly are being appointed to investigate cash transfers in the days just preceding or just following bankruptcies. Creditors and counterparties of failed financial firms are engaging lawyers to protect their interests. Bankruptcy attorneys can expect to remain swamped with work for the foreseeable future.

Other companies, seeking to avoid bankruptcy, are hiring turnaround experts – many of whom are attorneys. The skills needed for successful turnarounds and restructurings will result in lawyers continuing to succeed in this field.

Seeking Credit: As a result of the financial meltdown restricting the availability of credit, many businesses have had to delay expansion plans or seek other sources of capital – often at high rates. Attorneys need to warn their clients of the risks involved in alternative financing options, such as factoring or peer-to-peer lending. Attorneys also should review carefully any changes to the terms of their clients' financing agreements and evaluate whether traditional loan terms need revision.

Denials of credit may also spawn lender-liability litigation. As creditors revoke lines of credit, reduce the size of loans being offered, impose more stringent conditions on borrowers, or refuse to make loans, businesses may file suit.

Banking: The Treasury Department is implementing plans to infuse $250 billion of capital in banks. Attorneys need to counsel banking clients on how accepting such an investment might affect dilution of existing shareholders, the rights of other debt holders, and compensation to bank executives, and whether the company's charter and bylaws would have to be amended.

Real Estate: Most real estate market sectors are being affected. What began as a subprime mortgage problem soon affected the entire residential market and is now impacting the commercial sector. There are more than 1.5 million homes either in foreclosure or owned by banks. This may affect litigators and judges. Access to some courts may become so clogged with foreclosures that other cases will get postponed. Even foreclosure proceedings may be in jeopardy if attorneys are unable to produce original loan documents from mortgages that were pooled and sold to investors, especially if the brokerage firm securitizing the mortgage or the financial institution servicing the debt has failed or merged. Nervous buyers of custom homes or condominiums may seek returns of deposits on planned construction or walk away from purchase commitments. Intrepid bargain hunters need counsel on buying foreclosed properties.

Government Investigations: Federal and state agencies are investigating misconduct in many corners of the economy. Hedge funds are being investigated for insider trading and manipulation. CEO's are being scrutinized to determine whether statements made in defense of their companies were false. A dozen brokerage firms reluctantly agreed to repurchase over $50 billion in auction-rate securities from investors. Short sellers are being investigated for selling securities they never owned and spreading false rumors to drive company stock prices lower. Brokers have been criminally charged for lying to investors. Commodities traders are accused of manipulating oil futures. Regulators are investigating whether "gamers" manipulated stock trading in "dark pools."

Utah enforcement agencies have aggressively prosecuted many types of real estate fraud. These will continue and could expand to include prosecutions of buyers who overstated income, used the credit of another, or falsely represented that a speculator would occupy the home. Regulatory actions against securities violators may increase. The targets of all these investigations need skilled representation.

Liability of Companies and Executives: Disappointed business creditors, bondholders, and investors are seeking to hold companies, their insurers, and their officers and directors responsible for pecuniary losses. In many cases, responsibility for losses might

Receivership Manual for the Utah Judiciary

For those who were unable to attend the Litigation Section CLE program on receivers, held December 9, 2008, complimentary copies of the Receivership manual are available by sending a request to wklein@lbfglobal.com.

lie in the executive suite. Lehman CEO Richard Fuld assured investors on September 10, 2008, that the firm needed no new capital – one day after company executives had calculated the firm needed $3 billion in new capital and four days before the company filed for bankruptcy.

Private Securities Litigation Investors: Investors whose losses were caused or magnified by the misconduct of others can seek recovery. This includes brokers recommending complex or risky investments to conservative investors, inadequate disclosure of risks, unsuitable investments, and improper margin sales. Courts overseeing litigation involving buyers and sellers of exotic derivative investments first will need to resolve whether these products are commodities, securities, insurance, or outside the coverage of any laws. Fraud schemes are predicted to become more prevalent. Investors burned by the stock market will be targeted by fraudsters guaranteeing high rates of return in "safe" investments or promoting schemes promising to recoup lost money.

Professional Malpractice: Appraisers, viewed by many as aiders and abettors of the real estate bubble, may be the subject of suits by unhappy buyers who believe they overpaid for property based on improper appraisals. Regulatory agencies are investigating appraisers' conduct in fueling the housing bubble. CPAs may face additional litigation as disappointed investors and lenders try to blame the accounting profession for inadequate warnings of company financial problems.

Business Advice: Companies of all types will need legal advice about complying with new legislation, responding to government inquiries, participating in rescue packages, incorporating new industry practices, and resolving disputes. The best-informed lawyers will be best positioned to serve their clients well.

Conclusion

Despite the financial market turmoil and expected recession, the economy will adjust and strengthen. But, this financial recovery will differ from past ones. Wall Street "geniuses" and shortsighted, irrational mortgage bankers caused this crisis, but cannot solve it themselves. Will Rogers's query is apt: "If stupidity got us into this mess, then why can't it get us out?"

Lawyers from many disciplines are needed to "get us out of this mess." Implementing critical-thinking and problem-solving skills, lawyers can: (1) craft legislation for recovery programs; (2) liquidate, reorganize, and restructure businesses; (3) litigate, mediate, arbitrate, and negotiate disputes among investors, businesses, and employees; and (4) advise clients how to thrive in the new economic and financial environment.

Utah State Bar

2009 Spring Convention in St. George

March 12–14

DIXIE CENTER at St. George – 1835 Convention Center Drive, St. George, Utah

Approved for up to 9 hours CLE credit

including up to 2 hours Ethics, up to 3 hours NLCLE,
up to 2 hours for the Salt Lake County Bar film and
up to 1 hour for the Friday luncheon.

Thursday, March 12

6:00 to 8:00 pm

Opening Reception & Silent Auction

(See "Sporting Events & Other Activities" on Page 6 for further information.)

Sponsored by: Farr, Kaufman, Sullivan, Jensen, Medsker, Conklin, Olds & Nichols
Parsons Behle & Latimer
Snow Christensen & Martineau

MICHAEL LUCARELLI began his music education in 1973 on the electric guitar. Later, Michael discovered the classical guitar and went on to receive his Bachelor of Music degree in 1989 from the University of Utah and his Master of Music in 1992 from the University of Arizona in guitar performance. Currently Michael lives in Salt Lake City where he has an active schedule performing, recording, teaching, and composing for the classical guitar. Aside from being critically acclaimed as a solo artist, Michael's six CD's have received enthusiastic reviews world wide.

Friday, March 13

8:00 am

Registration & Continental Breakfast

Sponsored by: Durham, Jones & Pinegar
Jones, Waldo, Holbrook & McDonough
Van Cott, Bagley, Cornwall & McCarthy
Workman/Nydegger

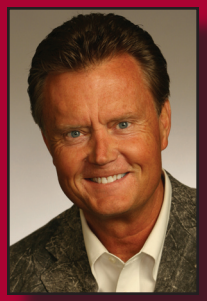
8:30 to 10:00 am
1 CLE hour

Welcome

Tiffany N. Blanchard and Hon. Wallace A. Lee –
Spring Convention Co-Chairs

Keynote Speaker

Jeffrey Thredgold, CSP, Economic Futurist



JEFF THREDGOLD is President of Thredgold Economic Associates, an economic consulting and professional speaking company based near Salt Lake City, Utah.

Jeff is the *only economist in the world* to have ever received the designation of CSP, or Certified Speaking Professional, the highest earned designation in professional speaking.

His career includes 23 years with $102 billion banking giant KeyCorp, where he served as Senior Vice President and Chief Economist. He now serves as "economic consultant" to $55 billion Zions Bancorporation, which has banks in 10 states. He also serves as economic consultant to various other clients.

Jeff has appeared dozens of times on CNBC-TV…the nation's business network, as well as numerous appearances on CNN, and is quoted regularly in the nation's financial press. He is a monthly contributor for the national publication *Blue Chip Financial Forecasts* and quarterly *USA TODAY* economic forecast surveys.

Jeff has been writing a weekly economic and financial newsletter, now entitled the *Tea Leaf*, for 33 years. His latest book, *econAmerica*, was released in July 2007 by Wiley & Sons. Other books include *A Parent's Letter to My Children in School; Economy by Thredgold;* and *On The One Hand…The Economist's Joke Book.*

He served as an adjunct professor of finance at the University of Utah for 16 years. He is a former member of both the Economic Advisory Committee of the American Bankers Association and the Economic Policy Committee of the U.S. Chamber of Commerce.

Awards

Dorathy Merrill Brothers
Advancement of Women in the Legal Profession

Raymond S. Uno
Advancement of Minorities in the Legal Profession

10:00 to 10:15 am

Refreshment Break

Sponsored by: Ballard Spahr Andrews & Ingersoll
Parr, Brown, Gee & Loveless
Barney McKenna & Olms
Richards, Brandt, Miller & Nelson
Epperson Rencher & Owens
Travis Christiansen

10:15 to 11:15 am — 1 CLE hour

A LITIGATION	B TRANSACTIONAL	C GENERAL I	D NLCLE	E GENERAL II	F GENERAL III
The Twombly Effect John H. Bogart – Howrey, LLP	*We Want You!! Mentoring Made Easy.* Annette W. Jarvis – Ray Quinney & Nebeker Jeffery J. Hunt – Parr Brown Gee & Loveless Rodney G. Snow – Clyde Snow Sessions & Swenson	*Perspective on Arbitration* James M. Elegante – Holme Roberts & Owen David W. Slaughter – Snow Christensen & Martineau Lance Tanaka – American Arbitration Assoc. Adam T. Mow – Babcock, Scott & Babcock	*Wills for Heroes Training – Basic Wills and Estate Planning* Deacon G. Haymond – Jones Waldo Hollbrook & McDonough (NLCLE)	*Art of the Witness Interview* Bryant J. McConkie – Strong & Hanni	*Having Fun with the Servicemembers' Civil Relief Act* Craig T. Peterson – Cathcart & Peterson

11:15 to 11:30 am

Refreshment Break

Sponsored by: Babcock, Scott & Babcock; Bonewell, Morris & Associates; Brindley Sullivan; McKay, Burton & Thurman; Nielsen & Senior; Thorpe, North & Western

11:30 am to 12:30 pm

G LITIGATION	H TRANSACTIONAL	I GENERAL I	J NLCLE	K GENERAL II	L GENERAL III
Construction Law Update Brian J. Babcock – Babcock, Scott & Babcock	*The Environmental Aspects of Renewable Energy Projects* Linda M. Bullen – Lionel Sawyer & Collins	*Strategies for Entering Foreign Markets and How Utah Attorneys Can Help* Diane D. Card	*Counseling Clients About Bank Accounts In an Era of Fraud and Financial Disorder* Scott H. Clark – Ray Quinney & Nebeker (NLCLE)	*Child Witnesses* Hon. Anthony W. Ferdon – Third District Juvenile Court	*Working with Troubled Lawyers* Sean Morris – Blomquist Hale Lewis P. Reece – Snow Jensen & Reece (Ethics)

12:30 to 12:45 pm

Refreshment Break

Sponsored by: Christensen & Jensen; Hillyard, Anderson & Olsen; Holme Roberts & Owen; Jenkins Ronnow Jensen & Bayles; Kirton & McConkie; Snell & Wilmer

12:45 to 2:00 pm

Lunch Presentation

Contrasting the Talmudic and American Legal Systems Approaches to the Financial Crisis, Criminal Defense, and Medical Malpractice

Rabbi Shlomo Yaffe, Dean – Institute of American and Talmudic Law

Sponsored by: Lewis B. Freeman & Partners Inc

2009 SPRING CONVENTION EXHIBITORS

Attorneys Title Guaranty Fund, Inc
Blomquist Hale Consulting – Lawyers Assistance Program
Commonwealth Law Book Co.
Lawyers Helping Lawyers
LexisNexis
MARSH
Rimkus Consulting Group, Inc.
Sage Forensic Accounting
Utah.gov
Utah Bar Foundation
Zions First National Bank

1:30 pm

Golf – Sunbrook Golf Course

1:30 to 5:30 pm

YLD/Paralegal Division Community Service Project

Wills for Heroes Project
Southern Utah Legal Community Center

6:30 to 8:00 pm

Salt Lake County Bar Film – *"Presumed Innocent"*

Leslie A. Lewis
Philip R. Fishler – Strong and Hanni
Michael R. Skolnick – Kipp & Christian
Mark R. Moffat – Brown, Bradshaw & Moffat

Sponsored by: Salt Lake County Bar Association

WILLS FOR HEROES – Presented by the Young Lawyers and Paralegal Divisions – Friday, March 13, from 10:15-11:15 a.m. and from 1:30-5:30 p.m.: The YLD and Paralegal Divisions of the Utah State Bar have joined together to provide Wills for Heroes, a pro bono community service project for the benefit of all police officers, fire fighters, paramedics, sheriffs, and other emergency first responders. Wills for Heroes is a unique program created by the Wills for Heroes Foundation, which provides free wills and other basic estate planning documents to emergency first responders, their spouses and domestic partners. To date, Wills for Heroes has assisted more than 8,000 emergency first responders in several states including Alabama, Arizona, California, Georgia, Illinois, Minnesota, North Carolina, South Carolina, Texas, Utah and Virginia.

During the 2009 Spring Convention, the YLD and Paralegal Divisions will sponsor a Wills for Heroes Event for all emergency first responders in Washington County. This event will mark the one year anniversary of the YLD's sponsorship of Wills for Heroes in Utah. Volunteer attorneys will be asked to attend a training session at the DIXIE CENTER from 10:15–11:15 a.m. to receive training on basic wills and estate planning principles, as well as the Lexis Nexis HotDocs software program used to prepare the documents. Attorneys attending the training session will receive one hour of NLCLE/CLE credit. Attorneys do not need any experience in estate planning to volunteer. Attorneys who were trained at last year's convention, or at another WFH event, do not need to attend the training. After the training, from 1:30–5:30 p.m., attorney volunteers will meet individually with emergency first responders and their significant others to provide free wills, durable powers of attorney, and advanced health care directives. WFH is a great opportunity for attorneys to give back to those people who put their lives on the line every day to protect our communities.

The 2009 Spring Convention WFH event will be held at the Washington City Community Center (about 10 minutes from St. George), located at 350 North Community Center Drive, Washington, Utah. Attorneys who are interested in volunteering on the afternoon of the 13th should sign-up *before the Convention* on the YLD website at http://www.utahyounglawyers.org, under the Wills for Heroes tab. Still have questions? For more information, contact Tiffany Brown tbrown@dadlaw.net or Sarah Spencer sarah.spencer@chrisjen.com, chair-people of the YLD WFH Committee.

Saturday, March 14

8:30 am

Registration & Continental Breakfast

Sponsored by: Cohne, Rappaport & Segal
Fabian & Clendenin
Randy S. Kester
Ray, Quinney & Nebeker

9:00 to 10:00 am
1 CLE hour

Ethics Keynote

Using Both Brains in Conflict Resolution
Genie Z. Laborde, CEO of I.D.E.A.

10:00 to 10:15 am

Refreshment Break

Sponsored by: DeBry & Associates
LaMar Winward
Olson & Hoggan
Siegfried & Jensen
Snow, Jensen & Reece

GENIE Z. LABORDE, Ph.D., is a recognized leader in the field of communications theory and its practical applications. She is president of International Dialogue Education Associates, Inc., founded 1982, and her unique qualifications have been a major contribution to the success of the firm's Excellence Seminars.

Dr. Laborde holds a Ph.D. in Confluent Education from the University of California at Santa Barbara. The Confluent Education Degree Program, based on Gestalt Psychology applied to the educational process, was founded by a Ford Foundation grant for Innovative Education. Gestalt Psychology emphasizes the importance of perception in changing behaviors, decisions, and actions.

Dr. Laborde is the author of several books, including *Influencing with Integrity: Management Skills for Communication and Negotiation,* which has been translated into French, Japanese, Spanish, German, and Polish. She has produced video training films and courses that have been purchased by Fortune 500 Companies and educational institutions including Hewlett-Packard, Chase Manhattan Bank, IBM, JP Morgan Chase, Rochester Institute of Technology, Continental Airlines, Eastman Kodak and others.

10:15 to 11:15 am — 1 CLE hour

M LITIGATION

Making Your Case – The Art of Persuading Judges
Hon. Ben H. Hadfield – First District Court

N TRANSACTIONAL

Fundamentals of Agricultural Liens
TBA

O GENERAL I

How to Use the Recession to Prepare for Your Upcoming Liquidity Event
N. Todd Leishman – Durham Jones & Pinegar

P NLCLE

60 Widgets in 60 Minutes
Lincoln Mead – Webmaster, Utah State Bar

Q GENERAL II

What Every Estate Planner Should Know About Veteran's Benefits
J. RobRoy Platt – Platt P.C.
Kevin D. Whatcott – Whatcott Barrett & Hagen
(NLCLE)

R GENERAL III

The Future of the Judicial Selection and Confirmation in Utah
Chief Justice Christine M. Durham – Utah Supreme Court (moderator)
Sen. Gregory S. Bell – Senate District 22
Brody L. Keisel – Sanpete County Attorney's Office
Robert S. Yeates – CCJJ
Hon. Wallace Lee – Sixth District Court

11:15 to 11:30 am

Refreshment Break

Sponsored by: Gallian Wilcox Welker & Olson, Howrey LLP, Strong & Hanni, TraskBritt

11:30 am to 12:30 pm — 1 CLE hour

S LITIGATION

Navigating the QDRO Minefield
Craig T. Peterson – Cathcart & Peterson

T TRANSACTIONAL

Legislative Update 2009
John T. Nielsen – Utah State Bar Lobbyist

U GENERAL I

Employment Agreements
A. John Pate – Pate Pierce & Baird

V NLCLE

Critical Issues Facing the Corporate Client Considering Chapter 11
Hon. William Thomas Thurman – United States Bankruptcy Court
Andres Diaz – Chapter 13 Trustee, 1 on 1 Legal Services
Matthew M. Boley – Parsons Kinghorn Harris (moderator)

W GENERAL II

The Top 10 Issues Facing Our Profession
Stephen W. Owens – Epperson Rencher & Owens

X GENERAL III

Legislative Update 2009
John T. Nielsen – Utah State Bar Lobbyist

12:30 pm

MEETINGS ADJOURNED

Spring Convention General Information

Registration Desk: North Lobby of the DIXIE CENTER at St. George

Continuing Legal Education Sessions: will be held at the DIXIE CENTER at St. George, 1835 South Convention Center Dr.

Badges: Your badge is your admission to all CLE and General Sessions as well as the Opening Reception. Spouses/Partners must also register and wear a badge to attend events.

Dress: None of the events or meetings require a coat, tie or dress. A jacket or sweater will most likely be needed in the evenings.

Special accommodations: If, under the Americans with Disabilities Act, you require special accommodations, please contact the Utah State Bar CLE Department, (801) 531-9077, at least one week prior to the Convention.

Mandatory CLE: The Utah MCLE Board has approved the 2009 Spring Convention for up to 9 hours of CLE credit, which includes up to 2 hours of Ethics, up to 3 hours of NLCLE credit, 2 hours for the Salt Lake County Bar film presentation, and 1 hour for the Friday luncheon. To ensure that you receive Utah MCLE credit, check in at the Registration Desk.

New Lawyer CLE Credit (NLCLE): NLCLE courses are indicated with the "NLCLE" acronym within the breakout boxes. Your hours will be reported for you.

Program Materials: will be provided to each registrant at the Spring Convention.

Refund Policy: Full refund for cancellations received by Friday, February 20, 2009. Requests received after that date, but before Friday, February 27, are subject to a $50 service fee. All cancellations must be made in writing. If you have any questions please contact Richard Dibblee, (801) 297-7029.

Hotel Accommodations – *Call the hotel/resort directly to reserve your accommodations*

Room blocks at the following hotels have been reserved. You must indicate that you are with the Utah State Bar to receive the Bar rate. Room blocks at all properties will revert back to the hotel general inventory on the dates indicated in parentheses. Rates do not include tax – 11.45%

America's Best Value Inn (2/01)
(877) 688-8383
www.bwabbeyinn.com
$76 nightly
Block Size: 10–Q/K

Best Western Abbey Inn (3/01)
(435) 652-1234
www.bwabbeyinn.com
$109 nightly
Block Size: 31

Budget Inn & Suites (2/19)
(435) 673-6661
www.budgetinnstgeorge.com
$81 – $98 nightly
Block Size: 20–DQ/Suites

Comfort Inn (2/01) NEW
(435) 628-8544
www.comfortinn.com/
$126 nightly
Block Size: 25

Comfort Suites (2/12)
(435) 673-7000
www.comfortsuites.net
$85 nightly
Block Size: 30

Courtyard by Marriott (2/15) NEW
(435) 986-0555
www.marriott.com/courtyard/travel.mi
$139 nightly
Block Size: 20–Q, 20–K

Crystal Inn St. George (2/12)
(435) 688-7477
www.crystalinns.com
$99 nightly
Block Size: 20–Q, 5–K

Fairfield Inn (2/19)
(435) 673-6066
www.marriott.com
$90 nightly
Block Size: 10–DBL, 10–K

Green Valley Spa & Resort (1/31)
(435) 628-8060
www.greenvalleyspa.com
$124 – $230 nightly
Block Size: 14 1-3 bedroom condos

Hampton Inn (2/26)
(435) 652-1200
www.hamptoninn.net
$99 nightly
Block Size: 25–DQ

Holiday Inn (2/15)
(435) 628-4235
www.holidayinnstgeorge.com
$92 nightly
Block Size: 25

LaQuinta Inns & Suites (2/12) NEW
(435) 674-2664
www.lq.com
$99 nightly
Block Size: 20–K

Ramada Inn (2/12)
(800) 713-9435
www.ramadainn.net
$89 nightly
Block Size: 20

TownePlace Suites by Marriott (2/14) NEW
(435) 986-9955
www.marriott.com/towneplace-suites/travel.mi
$139 nightly
Block Size: 20–Studio Kings

Wingate by Wyndham (2/12) NEW
(435) 986-9955
www.wingatehotels.com/Wingate/control/home
$109 – $149 nightly
Block Size: 10–DQ, 10–K, 5–Suite

Sporting Events & Other Activities

Thursday, March 12

Opening Reception & Silent Auction: 6:00 – 8:00 p.m.
The Eighth Annual "Secret Lives of Lawyers" Silent Auction will take place at the DIXIE CENTER starting at the Opening Reception and concluding at the end of the Friday lunch. All auction proceeds will benefit "and Justice for all."

Friday, March 13

Kids Fiesta Fun Activity: 9:30 a.m. – 12:00 noon
Fiesta Fun Family Fun Center, 171 East 1160 South. For children, ages 6 and older. A $20 fee per child will provide supervised activities including unlimited miniature golf, 10 arcade tokens and 2 attraction passess. Also included: 2 slices of pizza, a small drink and 1 bag of popcorn. Please provide the names and ages of children who will be attending on attached Registration Form (page 7).

Wills for Heroes: Join the YLD and Paralegal Divisions for a Wills for Heroes event, where wills and other basic estate planning documents will be prepared – free of charge – for Washington County's emergency first responders. Volunteer attorneys will be trained from 10:15–11:15 a.m. at the DIXIE CENTER. Then, from 1:30–5:30 p.m., volunteers will meet individually with emergency first responders and their significant others at the Washington City Community Center to prepare free wills, durable powers of attorney, and advanced health care directives. For more information see page 4. To volunteer please see the YLD website at http://www.utahyounglawyers.org, under the Wills for Heroes tab.

Golf Tournament: 1:30 p.m. / shotgun start.
The format is a four person scramble (1 low ball) for women, men and couples, limited to the first 144 players. The cost, $78, includes green fees and cart. Prizes will be awarded to special hole event winners. Put together your own foursome or we will do it for you. For more information contact Richard Dibblee, (801)297-7029. Please provide foursome information on the attached Registration Form (page 7).

Saturday, March 14

"Saturday Morning Matinee": 10:00 a.m. – 12:00 noon
Children and adults of all ages are invited to attend two recently released movies (children – G; adult – PG13) at the new Sunset Corner Stadium 8 theaters, 1091 N. Bluff Street, compliments of Tony Rudman, Vice President and General Counsel of Westates Theaters. The cost is $5.00 per person, which includes admission and a kid's snack (popcorn, drink and candy).

Registration Form

Registration Instructions: Please use one form per registrant. Indicate the number of persons who will participate and the total dollar amount for each item. Registration materials provided in St. George will have tickets and / or information for each of the events and activities designated. Registration and activity fees must be returned to the Bar on or before February 20 to avoid late fees. Reservations will then be accepted on a space available basis only. Fees include MCLE fees, admission to CLE sessions, materials, Opening Reception & refreshment breaks. For Refund Policy refer to Page 6.

PERSONAL INFORMATION

Name: _____ Bar Number: _____

Spouse/Partner (if registered): _____

Street Address: _____ City: _____ State: _____ Zip: _____

Office Telephone: _____ Home Telephone: _____

Early Registration (on or before 2/20/09): ____ @ $250.00 = $_____

Late Registration (after 2/20/09): ____ @ $275.00 = $_____

Paralegal Division Members: ____ @ $100.00 = $_____

Other Paralegals: ____ @ $150.00 = $_____

Non-Lawyer Spouse/Partner (admission to CLE sessions, Opening Reception & refreshment breaks) ____ @ $50.00 = $_____

Opening Reception: ____ @ N/C

Friday Luncheon (Garden Room) ____ @ N/C for paid registrants
MUST PRE-REGISTER TO ATTEND ____ @ $20 for guests

Kid's Fiesta Fun Activity ____ @ $20.00 = $_____

Names & Ages: _____

_____

Golf Tournament (Sunbrook Golf Course) ____ @ $78.00 = $_____

Foursome Players: _____

_____

_____

_____

"Saturday Morning Matinee": ____ @ $5.00 = $_____

TOTAL: $_____

PAYMENT METHODS

☐ Check ☐ VISA ☐ MasterCard ☐ Am. Express

Credit Card #: _____ Exp. Date ___/___

Pmt. Authorization Signature: _____

THREE EASY WAYS TO REGISTER

BY MAIL: Fill out registration form, detach, fold, seal edges with tape and return to address on back

BY FAX: (801) 531-0660

ONLINE: www.utahbar.org

Please seal edges with tape only!

Utah State Bar
2009 Spring Convention in St. George
645 South 200 East
Salt Lake City, UT 84111

Place Postage Stamp Here

Cultural Issues in Criminal Defense – 2nd Edition

Linda Friedman Ramirez, Editor

Reviewed by Lori J. Seppi

Consider this scenario depicting an open-and-shut case that plays daily in courts across our country:

The suspect is charged with a crime. He is arrested, waives his Miranda rights, and confesses. Later, after meeting with his attorney and discussing his case, the suspect enters a guilty plea to reduced charges. Thereafter, he is sentenced to a year in jail and placed on probation.

Now, consider the same scenario with one fact added – the suspect recently emigrated from Mexico.

In *Cultural Issues in Criminal Defense,* the editor, Linda Friedman Ramirez, and a host of authors draw upon their varied linguistic, cultural, and legal experiences to explain why this one added fact may infuse this seemingly commonplace scenario with complexity.

Did the suspect knowingly and intelligently waive his Miranda rights? Or did his cultural background and lack of familiarity with the American legal system induce him to confess? Did his difficulty speaking English hinder his attorney-client consultations? Was he too embarrassed or proud to admit it? Should he have had an interpreter at the change of plea hearing? Without one, was his guilty plea really knowing and voluntary? Did he have an undiscovered cultural defense that mitigated his culpability? Are there unanticipated immigration consequences to his guilty plea?

Cultural Issues in Criminal Defense provides straightforward answers for these questions and many more. As someone who makes her living representing the indigent in criminal matters, I could dog-ear almost every page in this book.

Organized sequentially, each chapter outlines how to effectively represent a person from another culture, nationality, or ethnic background. Starting with the initial client interview and proceeding through each stage of the case to the petition for post-conviction relief, *Cultural Issues in Criminal Defense* skillfully identifies the unique processes and pitfalls that criminal defense attorneys face in culturally-diverse cases. It then provides basic guidance and resourceful suggestions on how to successfully navigate this difficult terrain.

In chapter one, for example, the reader learns how to harness the "uniquely valuable resources" that consulates can provide. If a criminal defense attorney contacts the consulate early, the consulate can "ensure that legal rights and options are explained in culturally-relevant terms" and can detect "symptoms of mental illness or concealed misconceptions…that may hinder the attorney-client relationship." Thereafter, if the attorney builds a "close relationship" with the consulate, the consulate can help recover evidence from "foreign jurisdictions," can "encourag[e] prosecutors to offer plea bargains," and can submit "amicus curiae briefs in support of defense motions."

Next, in chapter two, the reader learns the "critical role" that interpreters play in criminal cases. "In general, counsel should err on the side of utilizing an interpreter whenever a defendant or witness is Limited English Proficient…." This is correct for the obvious reason that a defendant who speaks basic English may not be able "to understand the level of English used in a discussion of legal concepts." It is also correct for the less obvious reason that counsel may mistakenly conclude that communication difficulties reflect "the client's language limitations, rather than

LORI J. SEPPI is an appellate attorney with the Salt Lake Legal Defender Association.

cognitive impairments, such as mental retardation." Identifying the need for an interpreter is just the first step, however. The reader also learns how to find a qualified interpreter, how to use an interpreter effectively, and how to recognize and correct interpreter error.

Later, in chapter four, the reader learns that "[a]ny resolution of a criminal case, state or federal, felony or misdemeanor, short of an acquittal may have collateral immigration consequences.…" When representing a foreign national, therefore, attorneys should "think not only about obtaining the best possible outcome in the criminal case but also about the consequences to the client's immigration status." This may include such diverse duties as "[d]etermin[ing] whether the client is, was, or might be a U.S. citizen"; "[a]void[ing] admitting that the client is a drug addict or drug abuser"; and identifying alternative countries that "might accept the client" if he is afraid of being deported to his home country.

Each criminal matter is unique, of course, and will amass its own unique challenges. To help combat these challenges effectively and efficiently, *Cultural Issues in Criminal Defense* provides a convenient index and many succinct discussions, checklists, and warnings. It discusses, for example, extradition and how to obtain evidence from abroad. It teaches the reader to recognize and challenge racial profiling and selective prosecution. It identifies cultural issues that arise in motions to suppress, in jury selection, and at sentencing. It suggests ways to humanize a client and to use the client's background to benefit his case. And it encourages the reader to research potential cultural defenses and explains how to raise these defenses at trial or how to present them as mitigating factors at sentencing.

In sum, *Cultural Issues in Criminal Defense* is a reference guide that admirably accomplishes its goal to help attorneys effectively represent culturally-diverse people. Throughout, it supplies a generous helping of case law and other research. But the devil is, as usual, in the details. And *Cultural Issues in Criminal Defense* makes no attempt to exhaust any of its numerous topics. This is particularly true in the "Immigration Consequences of Criminal Convictions" chapter. There, the introduction warns that the chapter "is meant to be an overview and starting place for [] research, but is not a substitute for researching and updating the caselaw applicable to any individual client's predicament." *Cultural Issues in Criminal Defense* does not leave the reader stranded though. Where the details surpass the purposes of the text, citations and addenda steer the reader toward other useful resources.

I note, however, that the citations and addenda rarely mention Utah. I suspect, therefore, that Utah attorneys relying on *Cultural Issues in Criminal Defense* will need to be particularly thorough when independently reviewing Utah law. *See, e.g., State v. Rojas-Martinez,* 2005 UT 86, ¶ 20, 125 P.3d 930 (holding that defense counsel provides ineffective assistance if counsel "affirmatively misrepresent[s] the deportation consequences of a guilty plea").

I also note, briefly, that several conspicuous typos litter the book. While these typos suggest a lapse in the final editing process, they do not appear to expose any deeper failure in judgment or research.

At times, particularly in the sentencing chapters, this book will most assist attorneys who represent people facing federal criminal charges. But *Cultural Issues in Criminal Defense* will not gather dust on any criminal defense attorney's shelf. It provides ideas, angles, and insights that will greatly assist any criminal defense attorney – and perhaps any other attorney – who faces the daunting task of guiding a person from another culture, nationality, or ethnic background through the American legal system.

Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during the October 24, 2008 Commission meeting held at the Law & Justice Center in Salt Lake City, Utah.

1. The Commission approved Professionalism Awards to be given to Ellen Maycock and Don Winder. The *Pro Bono* Award was given to Ruth Lybbert, Paul Simmons, and David Olsen. Carma Harper was selected to receive the Community Member Award for her work on the Wills for Heroes Project and Troy Booher was awarded the Heart and Hands honor. The Commission also recognized the lifetime service of Judge J. Thomas Greene, Joseph Novak, Reed Martineau, and M. Dayle Jeffs. These awards were presented at the Fall Forum.

2. The Commission approved immediately selling the note held by Zions Bank for the Bar with First Tennessee Bank and have cash moved to federal insured cash or cash equivalent. The Commission also determined to immediately sell the note held by Zions Bank for the Bar with Zions Bancorp and have cash moved to federal insured cash or cash equivalent. The Commission will continue to monitor the Lehman Brothers bankruptcy proceedings. The Commission determined that a notice disclosing potential financial loss should appear in the November E-bulletin.

3. The Commission approved hiring Grant Clayton to make appropriate filings to secure tradename/copyright of "Utah State Bar."

4. The Commission approved filing a petition with the Utah Supreme Court revising bylaws to clarify that the license status of "active under three" is intended to mean under three years of practice in any jurisdiction, not just Utah.

5. The Commission approved the 2007-2008 draft audit report by Deloitte and Touche.

6. The Commission approved filing a petition with the Utah Supreme Court to require the collection of lawyers' email addresses on licensing forms for Bar use with a provision that lawyers may opt out for good cause shown.

7. The Commission approved that lawyers on the "Find a Utah Lawyer Director" must have a minimum of $100,000 of malpractice insurance to be required following the next fee collection cycle and thereafter via the licensing form and web sign up.

8. The Commission approved filing a petition with the Utah Supreme Court to permit the Bar to collect malpractice insurance on the licensing form for an additional two years.

9. The Commission agreed to create comprehensive New Lawyer Training Program (NLTP) presentations with staff for members of the judiciary to encourage mentor recruitment. Additionally, the Commission will organize a dynamic NLTP Mentor Recruiting Committee to include past Bar presidents and other capable participants.

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

Thank You...

Thank you to all participants and volunteers for their assistance and support in the 19th Annual Lawyers & Court Personnel Food and Winter Clothing Drive. We were able to deliver a large truck load of donated items, along with cash donations to specific shelters. We thank you all for your kindness and generosity.

Mail List Notification

The Utah State Bar sells its membership list to parties who wish to communicate via mail about products, services, causes, or other matters. The Bar does not actively market the list but makes it available pursuant to request. An attorney may request his or her name be removed from the third party mailing list by submitting a written request to the licensing department at the Utah State Bar.

Become a Mentor

Show a new lawyer the way to success

Mentor within your office, an individual, or a group

WHAT IS REQUIRED:

1. **Submit** the mentor volunteer form
2. **Appointment** by the Utah Supreme Court
3. **Meet** with your new lawyer a minimum of 2 hours a month

REWARDS – PRICELESS

Receive 12 hours of CLE Credit for your work

MENTOR QUALIFICATIONS

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

For more information on
BECOMING A MENTOR go to:

www.utahbar.org/nltp

The Benefits of Effective Mentoring

- 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

New Lawyer Training Program

Utah State Lawyer Legislative Directory 60th Legislature 2009

The Utah State Senate

Gregory S. Bell (R) – District 22
ASSISTANT MAJORITY WHIP

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

Committee Assignments: Executive Appropriations; Higher Education; Government Operations and Political Subdivisions; Health and Human Services

Elected to Senate: 2002

Practice Areas: Real Property and Business & Corporate

Lyle W. Hillyard (R) – District 25

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

Committee Assignments: Chair, Executive Appropriations; Public Education; Education; Judiciary, Law Enforcement & Criminal Justice

Elected to House: 1980; Elected to Senate: 1984

Practice Areas: Family Law, Personal Injury, and Criminal Defense

Daniel R. Liljenquist (R) – District 23

Education: B.A., Economics, Brigham Young University; J.D., University of Chicago Law School

Committee Assignments: Commerce & Workforce Services; Health & Human Services, Business and Labor; Government Operations and Political Subdivisions; Co-Chair, Retirement & Independent Entities

Elected to Senate: 2008

Practice Area: Focus Services, LLC

Mark B. Madsen (R) – District 13

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

Committee Assignments: Transportation; Environmental Quality; National Guard; Judiciary; Law Enforcement & Criminal Justice; Chair, Workforce Services & Community and Economic Development; Senate Rules

Elected to Senate: 2004

Practice Area: Eagle Mountain Properties of Utah, LLC

Scott D. McCoy (D) – District 2

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

Committee Assignments: Executive Offices & Criminal Justice; Government Operations and Political Subdivisions; Judiciary, Law Enforcement & Criminal Justice; Senate Rules

Appointed to Senate: 2005; Elected to Senate: 2006

Ross I. Romero (D) – District 7
MINORITY WHIP

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

Committee Assignments: Executive Appropriations; Higher Education; Judiciary, Law Enforcement & Criminal Justice; Revenue and Taxation

Elected to Senate: 2004

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

Stephen H. Urquhart (R) – District 29

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

Committee Assignments: Higher Education; Business and Labor; Chair, Transportation & Public Utilities & Technology

Elected to House: 2000; Elected to Senate: 2008

Practice Areas: St. George, Utah

John L. Valentine (R) – District 14

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

Committee Assignments: Chair, Higher Education; Chair, Business and Labor; Revenue and Taxation

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

Practice Areas: Corporate, Estate Planning, and Tax

The Utah State House of Representatives

Lorie D. Fowlke (R) – District 59

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

Committee Assignments: Public Education; Public Utilities & Technology; Chair, Judiciary

Elected to House: 2005

Practice Areas: Domestic Relations, Construction, Small Business, Real Property, Probate, and Contracts

Brian King (D) – District 28

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

Committee Assignments: Commerce and Workforce Services; Business and Labor; Judiciary, Ethics

Elected to House: 2008

Practice Areas: Representing claimants with life, health, and disability claims; class actions.

Kay L. McIff (R) – District 70

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

Committee Assignments: Higher Education; Judiciary; Workforce Services and Community and Economic Development

Elected to House: 2006

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

Kraig J. Powell (R) – District 54

Education: West Jordan High School; B.A., Willamette University; M.A., University of Virginia; J.D., University of Virginia School of Law; Ph.D., University of Virginia Woodrow Wilson School of Government

Committee Assignments: House Judiciary Committee; House Education Committee; Health and Human Services Appropriations Subcommittee

Elected to House: 2008

Practice Areas: Tesch Law Offices, P.C.; Municipal and Governmental Entity Representation; Zoning and Land Use

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.

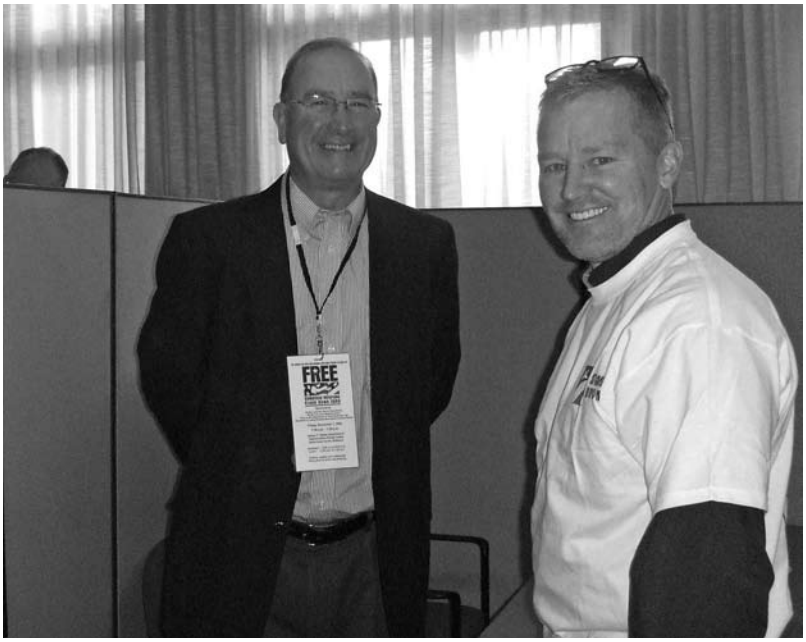
NOTE: According to the Rules for Integration and Management, residence is interpreted to be the mailing address according to the Bar's records.

V.A. Stand Down 2008

The George E. Wahlen Department of Veterans Affairs Medical Center held its Stand Down 2008 honoring the men and women who fought to keep us free.

On Friday, November 7th, 2008, people from the VA, the Utah Department of Veterans Affairs, Utah Job Services, the Utah State Bar, and many others joined together to help nearly two hundred homeless Utah veterans with food, warm clothing, blankets, vital supplies, health screenings, counseling, and legal advice.

A special thanks to Utah Association for Justice members Scott Lythgoe, Michael Deamer, Will Rodgers, and Joel Ban for volunteering their valuable time to providing the heroic homeless veterans of our area with legal advice.



Michael Deamer & Scott Lythgoe volunteer their time and expertise at the V.A. Stand Down.

As we express our gratitude, we must never forget that
the highest appreciation is not to utter words, but to live by them.
~John Fitzgerald Kennedy

Fall Forum Award Recipients

Congratulations to the following distinguished attorneys who were honored with awards at the 2008 Fall Forum:

Ellen Maycock
Professionalism Award

Donald J. Winder
Professionalism Award

Troy L. Booher
Hearts and Hands Award

Distinguished Service
Award

Ruth Lybbert
Pro Bono Attorney
of the Year

David R. Olsen
Pro Bono Attorney
of the Year

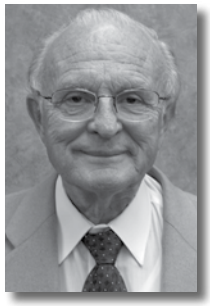
Paul M. Simmons
Pro Bono Attorney
of the Year

Carma Harper
Community
Member Award

J. Thomas Greene
Lifetime Service Award

Joseph Novak
Lifetime Service Award

Reed L. Martineau
Lifetime Service Award



M. Dayle Jeffs
Lifetime Service Award

2009 Spring Convention Awards

The Board of Bar Commissioners is seeking applications for two Bar awards to be given at the 2009 Spring Convention. These awards honor publicly those whose professionalism, public service, and public dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession. Award applications must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, **no later than Friday, January 16, 2009.** You may also fax a nomination to (801) 531-0660 or email to cabad@utahbar.org.

1. **Dorathy Merrill Brothers Award –** For the Advancement of Women in the Legal Profession.

2. **Raymond S. Uno Award –** For the Advancement of Minorities in the Legal Profession.

2009 Annual Convention Awards

The Board of Bar Commissioners is seeking nominations for the 2009 Annual Convention Awards. These awards have a long history of honoring publicly those whose professionalism, public service, and personal dedication have significantly enhanced the administration of justice, the delivery of legal services, and the building up of the profession. Your award nominations must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, **no later than Friday, April 17, 2009.** The award categories include:

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

Utah Bar Foundation

Utah Bar Foundation Announces Special Meeting to Amend By-laws

The Utah Bar Foundation will hold a special meeting for its members on Friday, March 13, 2009, at 8:00 am during the opening session of the Spring Convention in St. George, Utah in the Dixie Center to amend the by-laws. All active, licensed members of the Utah State Bar in good-standing are invited to attend. To see the proposed changes for the by-laws or for other questions, please visit the Foundation's website at www.utahbarfoundation.org or call (801) 297-7046.

Financial Report

The Bar operates on a $4.5 million annual zero-based budget in which revenues cover expenses for each year's operations. The budget is available on our web site at www.utahbar.org under the Bar Operations heading. The budget and all financial operations are reviewed by a Budget and Finance Committee consisting of accountants and bankers. We just went through another annual audit done by Deloitte and Touche and received a clean report regarding our financial operations.

Based on conservative fiscal policies and following the recommendation of the Budget and Finance Committee, the Bar has been gradually accumulating a cash surplus over the last few years, which has permitted us to allocate over $1 million dollars into reserves. Those reserves have been allocated to protect against unknown occurrences and to cover contingency losses, building expenses, and operational emergencies. Bar funds are placed in Zions Bank and managed according to guidelines of the State Money Management Act which governs the investment of all public funds. Deposits are put in cash or cash equivalent money market instruments or in short-term government backed or AAA-rated corporate notes, debentures, and bonds.

We have recently learned that Zions Bank had placed $300,000 of our reserves in an indenture with Lehman Brothers with a maturity of November 24, 2008, and that Lehman had filed for bankruptcy. The Lehman investment had been rated AA/A/A+ by all national recognized rating agencies until the last business day before declaring bankruptcy. Lehman was just not fortunate enough to benefit from a government bailout like other financial institutions, which have also failed. The Lehman bankruptcy has been reported to include $613 billion in debt and $639 billion in consolidated assets, so we were not alone. Lehman bonds are widely held by several investment companies and managers including Fidelity, Vanguard, Putnam, Mellon, and the Utah Public Treasurers Fund. We do not know at this point what our loss may be, but we are hopeful that it will be minimal and grateful that our reserves are diversified and conservative and that we remain healthy and sound. We have instructed Zions to henceforth place all of our funds in government-backed cash holdings at least until the current financial markets stabilize.

This event will have no effect on our operations, but we will tighten our belts. We will continue to budget conservatively and to rebuild our reserves back up within the next few years. The Commission recognizes that it has an obligation to exercise care and prudence in managing Bar funds, and we will redouble our efforts to be appropriate in our expenditures.

SOUND THINKING. SOUND SOLUTIONS.

SOUND ATTORNEYS.

Prince, Yeates & Geldzahler is pleased to announce that during 2008 Robert G Wing has joined the firm as a shareholder and that James C. Bergstedt and Jared N. Parrish have joined the firm as associates.

Robert G. Wing

Robert joined the firm after practicing with Holland & Hart and is primarily involved in commercial litigation with an emphasis in Federal receiverships. He also represents plaintiffs and defendants in intellectual property, real estate and contract actions. He is licensed in the State of Utah.

James C. Bergstedt

Jim joined the firm after practicing with Epperson, Rencher & Owens. His practice is focused in general civil and commercial litigation, including personal injury. He was an extern for Justice Ronald E. Nehring of the Utah Supreme Court. He is licensed to practice in the State of Utah.

Jared N. Parrish

Jared practices general civil litigation, with an emphasis in Federal receiverships. Before joining the firm Jared practiced as a Securities Analyst for the Utah State Department of Commerce, Division of Securities. He has experience in criminal prosecution and motion and trial practice. He is licensed in the State of Utah.

PRINCE•YEATES

Sound Thinking. Sound Solutions.

Legal Services Corporation Board of Directors Meets in Salt Lake City and Recognizes Utah's Pro Bono Efforts

The Legal Services Corporation (LSC) is the quasi-governmental agency that oversees the legal services programs in all 50 states that are recipients of federal legal services funding. LSC is headed by an 11-member Board of Directors appointed by the President and confirmed by the Senate. By law the Board is bipartisan. Utah Legal Services (ULS) has been the Utah recipient of LSC funding and the statewide provider of civil legal services to poor people since 1976. ULS hosted the LSC's Board of Directors when they met in Salt Lake City on Oct. 31 and Nov. 1, 2008.

The meeting began with a visit to the Community Legal Center, home to ULS as well as the Legal Aid Society of Salt Lake, the Disability Law Center, and the Multi-Cultural Legal Center. ULS serves a low-income population of nearly 400,000 with 20 lawyers located in five offices throughout Utah. Anne Milne, executive director of the program since 1985, welcomed the Board members and introduced them to her senior staff who presented on various aspects of the program's work, including its important partnerships with other legal services providers, pro bono recruitment efforts, and extensive work in the areas of family and housing law. The Board also participated in an exercise designed to show the difficulties legal aid programs face in setting case priorities, and heard from three clients who had received critical legal assistance from the program.

Left to right: Aaron Randall, President of the Southern Utah Bar Association; Mona Burton, Holland & Hart; David Hall, Chairman of LSC's Provisions Committee; Cecilia Romero, Holland & Hart; Helaine M. Barnett, LSC President; James Baker, solo attorney; Christine Durham, Chief Justice of the Utah Supreme Court; Steven Burt, Ballard Spahr; Anthony Kaye, Ballard Spahr; Jennie Garner, Dorsey & Whitney; Todd Weiler, Dorsey & Whitney; C. Richard Henriksen, Henriksen & Henriksen.

The group heard a keynote address from Christine Durham, Chief Justice of the Utah Supreme Court, who spoke about the overwhelming need for civil legal services in her state and throughout the country. She argued that states and state courts are uniquely situated to advance the issue of a right to counsel in civil cases.

The Board's Provision for the Delivery of Legal Services Committee, chaired by Professor David Hall of Boston, continued its tradition of honoring exceptional pro bono work on behalf of legal aid clients. Those recognized included:

The Southern Utah Bar Association (SUBA) was recognized for helping Utah Legal Services establish a new office in a rapidly growing area of the state. SUBA has 216 members and is an ardent supporter of the Southern Utah Community Legal Center, which opened its doors one year ago. This small local bar association has challenged each of its members to donate their time by taking a pro bono case or volunteering at the free legal clinic at the Center, and also to make monetary donations. SUBA has organized an annual golf tournament and banquet with silent auction with all of the proceeds going to the Southern Utah Community Legal Center. Aaron Randall, the President of SUBA was present to accept the award.

C. Richard Henriksen assisted a young bride from China who moved to the United States to wed her American husband. After only a few years of marriage, her husband passed away leaving her impoverished and with one small child. The client did not speak English and was completely unaware that her husband had a prior wife and family in Utah. She desperately needed representation.

The ex-wife in Utah had stipulated to a divorce decree but was now trying to set aside the decree in order to obtain property that had been hidden from both wives. A friend of the second wife, contacted Utah Legal Services asking if a Utah attorney could intervene. The client was frantic because if the first wife succeeded in setting aside the divorce then her marriage would be void and her son illegitimate.

Mr. Henriksen agreed to represent the client pro bono. After several months of negotiations and hearings, the Utah divorce was rendered valid. Mr. Henriksen then worked with the client to maintain her status as a legal resident and remain in the country with her child. Mr. Henriksen spent over 120 hours on this case. A pro bono volunteer his whole legal career, he is known for his work ethic and commitment to his clients.

James Baker assisted a father and his adult disabled daughter with a probate matter. The father was an elderly man who had worked his entire life supporting his six children. His wife had passed away but the family home was still in both his and his wife's names. The client wanted to make sure his youngest daughter, who was unable to work due to her disability, be allowed to live

in the home until her death.

As the case proceeded, the father's health deteriorated. Two of the siblings were extremely difficult to work with and even tried to move their sister out of the home and into a group home while their father was in the hospital.

Mr. Baker determined that the daughter needed more than just a life estate in the house. After numerous mediation sessions Mr. Baker set up a trust and a guardianship for the daughter so that someone would care for her and the house when her father passed away. The elderly father now has peace of mind knowing that his daughter will be able to live on her own in the home.

The firm of **Ballard Spahr** represented a pro bono client caught in a foreclosure scam. This client had purchased her home for $153,000 but still owed $154,000. She was three months pregnant and had four children. Four weeks earlier she had undergone surgery for skin cancer. Due to the pregnancy, she was unable to take the pain mediation for the surgery and so was in a great deal of pain and unable to work. Her husband had recently left her and she was having problems making the house payments.

The client was only a few months behind on the mortgage. However, she was scared she would lose the home when she received a solicitation in the mail from an individual who claimed he could save her house. She agreed to borrow $15,000 from this person. The full loan amount would be due that following March at 28% interest. The lender had been involved with several other scams in Utah County. Mr. Steven Burt and Mr. Tony Kaye at Ballard Spahr agreed to review the loan and work to get the client out from under this bad loan. They were successful and the trust deed was rescinded. This allowed the client to sell her home on the open market and pay back the original lender, with some funds remaining for the client to use to relocate.

The Firms **Dorsey & Whitney** and **Holland & Hart** assisted with Visa applications for trafficking victims. ULS represented 60 workers from Thailand brought to work in the United States at great cost to their families. Each of the workers had a claim for unpaid wages, employment discrimination and could apply for a T-Visa, establishing their presence in the United States as victims of trafficking. 60 separate personal statements outlining the clients' hardship and treatment had to be prepared for the immigration applications.

The firms Dorsey & Whitney and Holland & Hart helped draft approximately 20 individual personal statements for the T-Visa applications. Dorsey & Whitney volunteered to do approximately 12 of these and Holland & Hart did 7. Each personal statement had to be unique, which required several different attorneys with different styles to draft the statements.

The awards for Dorsey & Whitney were accepted by Jennie Garner and Todd Weiler and for Holland & Hart by Mona Burton and Cecilia Romero.

The Legal Services Corporation and Utah Legal Services wish to thank all of the lawyers who volunteered for ULS throughout 2008. Your work and dedication to equal justice helps close the justice gap for hundreds of low-income Utahns.

Pro Bono Honor Roll

Andres Alarcon – Family Law Clinic
Nicholas Angelides – Senior Cases
Justin Ashworth – Family Law Clinic
Judy Barking – Protective Order hearing
Thomas Barr – Guadalupe Clinic
Lauren Barros – Family Law Clinic
Brett Benson – QDRO Case
Ryan Bolander – Tuesday Night Bar
Bob Brown – Tuesday Night Bar
Bryan Bryner – Guadalupe Clinic
Lauralyn Cabanilla – Divorce Case
Heather Carter-Jenkins – Housing case
George Chingas – Contract Case
Ian Davis – Guadalupe Clinic
Jana Dickson – Family Law Clinic
Keith Eddington – Consumer Case
Kristin Erickson – Family Law Clinic
L. Mark Ferre – JAG Case
Shellie Flett – Bankruptcy
Chad Gladstone – Family Law Clinic
Jason Grant – Family Law Clinic
Jerald Hales – Family Law Clinic
Darin Hammond – Real Property Case
Lou Harris – Bankruptcy
Kathryn Harstad – Guadalupe Clinic
Garth Heiner – Guadalupe Clinic
April Hollingsworth – Guadalupe Clinic
Kyle Hoskins – Farmington Clinic
Isaac James – Family Law Clinic
Kristin Jaussi – Wage Claim Case/Guadalupe Clinic
Louise Knauer – Family Law Clinic
Julie Ladle – Tuesday Night Bar
Michael Langford – Guadalupe Clinic
Kelly Latimer – Tuesday Night Bar
Elizabeth Lisonbee – Family Law Clinic
K. Paul MacArthur – Adoption Case
Jennifer Mastrorocco – Family Law Clinic
Jessica McAuliffe – Protective Order Hearing
Stacy McNeill – Guadalupe Clinic
Christina Micken – Tuesday Night Bar
Joanna Miller – Family Law Clinic
James Morgan – Guadalupe Clinic
Doug Owens – Habeas Corpus Case
Philip Patterson – Family Law Case
Carolyn Pence – Family Law Clinic
Christopher Preston – Guadalupe Clinic
DeRae Preston – Family Law Clinic
Stewart Ralphs – Family Law Clinic
Jeremy Reutzel – Real Property Case
Brent Salazar-Hall – Family Law Clinic
Lauren Scholnick – Guadalupe Clinic
Kathryn Steffey -Guadalupe Clinic
Steve Stewart – Guadalupe Clinic
Linda F. Smith – Family Law Clinic
Virginia Sudbury – Family Law Clinic
Aaron Tillmann – Guardianship Case
Huy Ngoc Vu – Family Law Clinic
Edwin Wall – Habeas Corpus Case
Kent Wallin – Real Property Case
Murry Warhank – Guadalupe Clinic
Tracey Watson – Family Law Clinic
Theodore Weckel – Family Law Clinic
Jonathan Wentz – Guadalupe Clinic
Gabriel K. White – Tuesday Night Bar
Daniel Widdison – Habeas Corpus Case
Morgan Wilcox – Family Law Clinic

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AND
THE YOUNG LAWYERS DIVISION
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Park City Marriott
Salt Lake Roasting Company
Takashi Sushi Bar & Restaurant
Utah State Bar Association

CONGRATULATIONS TO THIS YEAR'S TOURNAMENT WINNER!
PARSONS BEHLE & LATIMER

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

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.

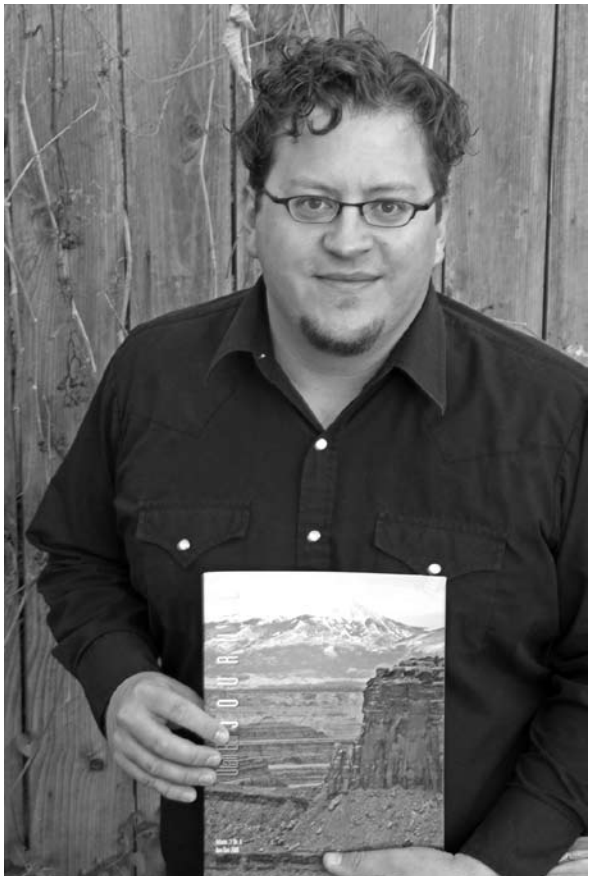
In order to reduce campaign costs, the Bar will print a 200-word campaign statement from the final candidates in the *Utah Bar Journal,* a 500-word campaign statement on the web site, and will include a one-page statement in the ballot envelope. For further information, please contact John Baldwin at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

2008 Utah Bar Journal *Cover of the Year Announced*



The winner of the *Utah Bar Journal* Cover of the Year for 2008 is Brett Johnson of Salt Lake City. His photo of snow on the La Sal mountains, taken in Canyonlands, Utah, was featured on the cover of our November/December issue.

Brett is one of nearly 80 attorneys or members of the Paralegal Division of the Bar whose photographs of Utah scenes have appeared on covers since August 1988. Brett began submitting photographs to the *Journal* shortly after being admitted to the Bar in 1997. His first cover photo was published on the February 1998 issue, and a number of his other photographs have also been featured.

Here is what Brett had to say when notified that his photo had won: "Attorneys are driven people with all sorts of diverse interests outside the practice of law. I have always appreciated the *Bar Journal* for its nod to those of us passionate about photography."

Brett is a partner with Snell & Wilmer. You can see more of his photos at www.brettjohnsonphotography.com.

RB&SA

Practice Concentrating in:

- Medical Malpractice
- Product Liability
- Brain & Spinal Cord Injuries
- Wrongful Death
- Traffic Accidents
- Auto & Tire Defects
- Police Misconduct
- Civil Rights

Police Misconduct

Sometimes even the good guys get it wrong

The police have a difficult job protecting our safety. That is why it is so damaging when a police officer violates civil rights guaranteed by the Constitution. It is the responsibility of civil rights attorneys to stand up for the rights of the people against police misconduct.

- **Illegal Searches & Seizures –** Illegal entry and warrantless searches violate the 4th Amendment and threaten the sanctity of our homes. Such actions violate one of our most basic freedoms.
- **Excessive Force –** Even a lawful arrest can be a civil rights violation if excessive force was used.
- **Civil Rights –** We represent clients whose rights have been violated in a wide variety of other contexts, including 1st, 5th, and 8th Amendment violations.

Robert B. Sykes and Associates are well known in the civil rights field. We have achieved significant settlements for our clients and are willing and able to try cases in court that do not settle fairly. Over a 33-year period, Robert B. Sykes & Associates, P.C., a three-attorney firm, has successfully litigated or tried to jury verdict dozens of complex cases involving a variety of personal injuries and wrongs arising from traffic accidents, medical malpractice, defective products, industrial accidents, unsafe pharmaceuticals, birth injuries, police misconduct, and civil rights. The firm has successfully appealed many cases to the Utah Supreme Court and the Tenth Circuit. Consider adding our experience and expertise to your client's civil-rights case.

Robert B. Sykes, Esq.

Alyson E. Carter, Esq.

Scott R. Edgar, Esq.

ROBERT B. SYKES & ASSOCIATES, P.C. ATTORNEYS AT LAW

311 South State Street, Suite 240 Salt Lake City, Utah 84111

Phone: 801-533-0222 | Fax: 801-533-8081 | www.sykesinjurylaw.com

Attorney Discipline

PUBLIC REPRIMAND

On October 23, 2008, the Honorable Robert K. Hilder, Third District Court, entered an Order of Discipline: Public Reprimand against Samuel J. Conklin for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Conklin was hired to protect his client's current wife's assets. Mr. Conklin was given a retainer. Mr. Conklin set up a trust but would not relinquish the trust documents until he was paid additional money.

Mr. Conklin was also hired to do paperwork to establish his client's current wife's business. Mr. Conklin made errors in the Limited Liability Company (LLC) papers. However, Mr. Conklin failed to address the mistakes he made in establishing the LLC. Mr. Conklin requested and received additional money. Mr. Conklin did not give his clients a receipt for the monies. On numerous occasions Mr. Conklin's clients requested an accounting of their funds, but were never given one. Mr. Conklin also failed to timely respond to the OPC's Notice of Informal Complaint.

DISBARMENT

On October 17, 2008, the Honorable James R. Taylor, Fourth District Court, entered an Order of Discipline: Disbarment against Troy L. Crossley for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 3.1 (Meritorious Claims and Contentions), 3.3(a) (Candor Toward the Tribunal), 3.4(a) (Fairness to Opposing Party and Counsel), 3.4(c) (Fairness to Opposing Party and Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

In one matter, Mr. Crossley was hired to file a bankruptcy. Mr. Crossley's clients asked that the equipment they purchased for their restaurant be listed in the bankruptcy. Mr. Crossley informed his clients that the bank could not collect on the equipment after it was discharged. His clients sold the equipment back to the dealer they had purchased it from. The bank had a lien against the equipment and filed an adversary proceeding seeking a judgment against Mr. Crossley's clients. Mr. Crossley put the incorrect amount of the equipment on the bankruptcy. Mr. Crossley did not explain to his clients how this error could effect their bankruptcy. Mr. Crossley notified his clients of the adversary proceedings. Mr. Crossley left the law firm he was working for and did not notify his clients. Mr. Crossley sent his clients discovery requests that had been served on him by the bank. His clients responded and sent the documents back to Mr. Crossley. Mr. Crossley failed to answer the bank's discovery requests and failed to conduct any discovery on behalf of his clients. Mr. Crossley failed to meet with the bank's counsel to discuss the pretrial orders. Mr. Crossley failed to respond to the proposed Pretrial Order and the subsequent motion to compel. Mr. Crossley was present when the trial date was set. Three days before trial Mr. Crossley filed a motion to continue. One day before trial Mr. Crossley filed a motion to set aside the pretrial order arguing that his mistakes were excusable neglect under the federal rules. Mr. Crossley stipulated, via telephone conference, that his clients owed the bank over $20,000.00. Judgments were entered against Mr. Crossley's clients. The clients did not approve of the stipulation. Mr. Crossley's clients learned of the judgment when they were closing on their home. When confronted by his clients, Mr. Crossley indicated they had lost and there was nothing they could do about it.

In the second matter, Mr. Crossley was hired to pursue a discrimination suit and a bankruptcy. Mr. Crossley failed to include the discrimination suit as an asset in the bankruptcy. After the bankruptcy was discharged, the court granted a motion from the trustee to reopen the case. The client attempted to reach Mr. Crossley several times but Mr. Crossley failed to return the calls. Mr. Crossley faxed his client the signature page of the interrogatories. The client requested a complete copy of the interrogatories but was never given one. During a deposition, the client was provided a copy of the interrogatories, and it was discovered that the signature on the interrogatories was not that of the client. Mr. Crossley had forged the signature and notarized the document. Thereafter, Mr. Crossley was dismissed as counsel from the discrimination suit. Mr. Crossley failed to provide his client's file to the new counsel.

PUBLIC REPRIMAND

On October 20, 2008, the Honorable John P. Kennedy, Third District Court, entered an Order of Discipline: Public Reprimand against F. Kevin Bond for violation of Rules 1.5(a) (Fees), 1.8(a) (Conflict of Interest: Prohibited Transactions), 1.15(a) (Safekeeping

Property), 1.15(b) (Safekeeping Property), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Bond represented a client in a divorce and other legal matters. Mr. Bond deposited money from his client into his firm's trust account for unpaid legal work and a non-refundable flat fee for a slander and libel suit the client was contemplating filing in the future. Mr. Bond did not timely withdraw the earned attorney fees from his client trust account. Given the work performed, Mr. Bond collected an excessive fee in the slander matter. Mr. Bond performed some initial work on the slander matter but the client told him to hold off on pursuing the matter further. Mr. Bond did not refund any of the non-refundable flat fee to the client. Mr. Bond paid a couple of his client's support payments to the client's former spouse as loans to his client. Mr. Bond did not inform his client of the loan terms in writing, he did not obtain the client's written consent to the transactions at the time of the transactions, and he did not inform the client of the client's right to seek independent counsel concerning the transactions.

Several months later, Mr. Bond's client petitioned for a Chapter 7 bankruptcy. Mr. Bond was served a subpoena duces tecum to produce documents related to the funds he received from his client when he was deposed as a witness in the bankruptcy matter. Mr. Bond objected to the first deposition because he was not paid the witness fee with the subpoena. Mr. Bond did not file an objection to the subpoena duces tecum for the second deposition or produce all of the documents requested although he asserted that some documents not produced were protected by attorney-client privilege. Mr. Bond did not promptly deliver funds to the Trustee or provide the Trustee an accounting upon the Trustee's request regarding funds in his trust account. However, about two months later, Mr. Bond accepted a settlement from the Trustee, that was approved by the court, regarding the Trustee's claim to the funds in Mr. Bond's trust account. Mr. Bond's client did not complain about Mr. Bond's representation.

PUBLIC REPRIMAND
On September 29, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against John E. Cawley for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Cawley was hired to represent a company in collection matters. In one case, Mr. Cawley was given complete information and asked to file and serve a debt collection action. Mr. Cawley had the case for over a year and within that time did not file or serve a complaint. During the time that Mr. Cawley had the file, the statute of limitations ran. During the course of the representation, Mr. Cawley failed to adequately review, diligently keep track of the matter, and files were lost by his office. Mr. Cawley failed to respond to numerous letters from his client requesting status reports on the case. Mr. Cawley did not contact his client's representative before the statute of limitations ran to tell him of his difficulties in completing the work, thereby giving his client an option to hire another attorney before the statute of limitations ran. Mr. Cawley's actions caused potential and actual damages to his client.

PUBLIC REPRIMAND
On August 19, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Bruce L. Nelson for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the

Rules of Professional Conduct.

In summary:
Mr. Nelson was hired to obtain a Temporary Restraining Order (TRO) against a business associate of his clients. Mr. Nelson did not file an action for a TRO, even though his clients made it clear this was their primary objective. Instead of filing and seeking a TRO, Mr. Nelson got an informal, "hypothetical" opinion from a sitting judge. Mr. Nelson's clients believed that the opinion was from the same judge that would be hearing the case. Mr. Nelson then told the clients that a hearing date had been set in the matter. Mr. Nelson's representations that a TRO hearing was scheduled and that he had spoken to the judge deciding the matter were knowingly false. Mr. Nelson failed to correct his clients' misapprehensions, which he had created by his misstatements. Mr. Nelson charged his clients for work he claimed to have performed but did not perform. Mr. Nelson deposited attorney fees in his personal account without having first earned the fees. Mr. Nelson failed to respond to the requests of the OPC, failed to disclose facts necessary to correct his clients' misapprehensions, and was less than candid with the Screening Panel.

PROBATION
On September 3, 2008, the Honorable W. Brent West, Second District Court, entered an Order of Discipline: Probation against W. Gregory Burdett for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) and 1.4(b) (Communication), 1.5(a) (Fees), 1.16(a), 1.16(c), 1.16(d) (Declining or Terminating representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In one matter, Mr. Burdett was hired to represent his clients in a property rights dispute. Mr. Burdett quit private practice but did not tell his clients. Mr. Burdett allowed his clients' case to be dismissed by the court and Mr. Burdett failed to notify his clients that their case had been dismissed. Additionally, Mr. Burdett failed to promptly give his clients their file and failed to respond to the OPC's Notice of Informal Complaint.

In another matter, Mr. Burdett was hired to represent a client in a suit filed by beneficiaries of her father's trust, of which his client is trustee. Mr. Burdett failed to respond to the motion for summary judgment filed against the client and failed to withdraw in a manner that protected his client's interests. Additionally, Mr. Burdett failed to promptly comply with his client's reasonable requests for information regarding her case, including repeatedly failing to respond to communication from his client and notifying his client that a motion for summary judgment had been filed. Mr. Burdett's client terminated his representation in mid-August 2005, but Mr. Burdett failed to make any attempt to withdraw until October 20, 2005. Mr. Burdett failed to return his client's file as requested and failed to refund to his client the unearned portion of the attorney's fees that she paid him in advance. Mr. Burdett also failed to respond to the OPC's Notice of Informal Complaint.

PUBLIC REPRIMAND
On September 23, 2008, the Honorable Jon Memmott, Second District Court, entered an Order of Discipline: Public Reprimand against Brent E. Johns for violation of Rules 1.2(a) (Scope of Representation), 1.4(a) and 1.4(b) (Communication), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Johns received a Qualified Domestic Relations Order (QDRO) for his approval as to form related to a divorce case in which he had represented the husband about nine years prior. After the divorce case had ended, Mr. Johns had no further contact with his former client. The ex-wife's new attorney left the QDRO with Mr. Johns's office for his signature even though the ex-husband had represented himself pro se in the last court matter between the parties. Mr. Johns' office later called opposing counsel to pick up the QDRO with Mr. Johns's approval as to form. Mr. Johns did not contact his client before or after approving the QDRO as to form. The QDRO was filed with the Court leading to an increase in the amount of retirement benefits received by the ex-wife.

After the former client retired and became aware of the QDRO, he confronted Mr. Johns about the QDRO and later pursued the matter in small claims court. Mr. Johns stated that he did not believe the signature on the approval as to form of the QDRO was his signature. Mr. Johns failed to investigate the signature on the QDRO which led him to negligently make a false statement to the small claims court that was prejudicial to the administration of justice.

STAYED DISBARMENT
On September 22, 2008, the Honorable Samuel D. McVey, Fourth District Court, entered an Order of Discipline: Stayed Disbarment, including license suspension of three years, and Probation against Craig M. Bainum for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) (Fees), 1.15(a) (Safekeeping of Property), 5.3(b) (Responsibilities Regarding Nonlawyer Assistance), 5.4(a)

(Professional Independence of a Lawyer), 8.1(b) (Bar Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary there are eight cases:
In two of the cases, while at a law firm Mr. Bainum was hired by clients and accepted a retainer fee. In one of the cases, he deposited the retainer fee into his own trust account and in the other case he deposited the retainer into his personal account. In neither case did Mr. Bainum deposit the money into the lawfirm's trust account.

In two of the cases, one in which Mr. Bainum was hired to seek post-conviction relief on behalf of his client's son and one in which Mr. Bainum was hired to help corporate counsel prosecute a case in federal court, Mr. Bainum was paid $5,000.00 in fees. However, in the post-conviction relief case, Mr. Bainum failed to communicate to the client in writing the basis or rate of his fees; only met with the client's son several times at the prison; and upon termination of the representation failed to justify his fee. And, in the corporate counsel case, after a return of the file, there was no evidence that Mr. Bainum had performed any work. Mr. Bainum also failed to timely respond to the OPC's Notice of Informal Complaint in both cases.

In two of the cases, one involving the representation of a client in an assault defense and one involving the criminal defense of a client, Mr. Bainum failed to appear at scheduled court hearings. More specifically, Mr. Bainum did not appear at the trial in the assault case forcing the court to reschedule, and in the criminal defense case, Mr. Bainum failed to appear at two status conference hearings and an Order to Show Cause hearing. In the criminal defense case, Mr. Bainum made no effort to check the correctness of his address or the status of the matter with the court.

In one case, Mr. Bainum was hired to pursue a claim arising from an assault. The client tried to contact Mr. Bainum regarding the status of the case, however, Mr. Bainum did not notify the client of his departure from his law firm, did not provide the client with new business contact information, and failed to return the client messages left on his cell and home phones.

In another case, Mr. Bainum was performing credit repair services for clients and contracted with a non-attorney to assist him with these services. Mr. Bainum had direct supervising authority over the non-lawyer, yet failed to meet with each of the clients at the start of the representation. Some clients signed engagement agreements without first meeting with Mr. Bainum and Mr. Bainum did not meet with the clients to explain the legal consequences of the engagement agreement and the legal work to be performed. In fact, Mr. Bainum never met with some of the clients he performed legal work for and Mr. Bainum paid the non-lawyer 90% of the fees that he collected from credit repair clients.

PUBLIC REPRIMAND
On November 10, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Kent Snider for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Snider was hired to pursue a domestic matter for his client. When the case settled, Mr. Snider failed to timely prepare the order reflecting the parties' settlement. Mr. Snider submitted the order to the court without permitting the client to review it for inaccuracies. Mr. Snider also failed to respond timely and candidly to the OPC's inquiries and to the NOIC.

The Panel found mitigating circumstances as follows: respondent was candid with the tribunal and seemed to accept responsibility for his conduct. The Panel found aggravation of: the respondent had prior discipline history.

ADMONITION
On November 10, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.7(a)(2) (Conflict of Interest: Current Clients), 1.7(b) (Conflict of Interest: Current Clients), 1.9(a) (Duties to Former Clients. Conflict of Interest: Former Clients), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney represented two clients concurrently and sent a demand letter on behalf of one client while representing the other. Consent of both clients was obtained; however, the consent that was obtained was belated and uninformed. Additionally, at the same time the attorney's firm represented one client, the firm represented the opposing client at a deposition. It was unclear when the representation of the adverse client ended.

The Panel found mitigating circumstances as follows: lack of prior disciplinary history, absence of any improper motive, and attorney's relative lack of experience.

Salary Survey 2008: Highlights and Analysis

by Karen McCall, in Collaboration with the Salary Survey Committee

In September 2008, the Paralegal Division conducted a salary survey to assess the current state of our profession in Utah. The results, some of which are highlighted below, provided us with not only valuable data on paralegal education, training, work environment, and, of course, salaries, but also with insights on how our Division can continue to improve and grow. For the complete survey results, please visit our website at www.utahparalegals.org.

The survey had a total of 99 respondents, 93.9% of whom are female, mirroring the low number of male paralegals in our Division membership. In addition, our membership reflects a wide range of experience in the paralegal profession – 31.6% of respondents have been employed in the field for 1–5 years, while 21.4% have been employed for 16–20 years.

Barely over one-half of respondents, at 52.5%, report membership in the Paralegal Division, while 35.4% claim membership in the Legal Assistants Association of Utah (LAAU). Twenty-four percent do not belong to any organizations, higher than the 18.2% belonging to the National Association of Legal Assistants (NALA).

We found that only 51.5% of respondents have earned a paralegal certificate, which they understand to be required for hiring or advancement by only 42% of Utah employers. Nearly 72% of paralegals hold an associate's or bachelor's degree, with 90.4% possessing a degree in a subject other than paralegal studies. Passing a national certification exam, whether for a Certified Legal Assistant (C.L.A.) or Certified Paralegal (C.P.) designation, is reportedly not required by 92% of employers; 76% of survey respondents have not obtained either of these designations.

With regard to paralegal salaries, 22% of respondents report making $40,000–$44,999 per year. An equal number earn under $40,000, with 3.2% pulling in less than $25,000 each year. Another 11.6% of respondents make between $45,000 and $49,999 per year, with 20% earning $50,000–$54,999. The higher salary ranges of $60,000–$64,999, $65,000–$69,999 and $70,000–$74,999 are paid to only 5.3% of survey respondents respectively.

Nearly 43% of respondents indicate that their organization employs only 1 to 5 paralegals, while over 43% report that their organization has over 40 attorneys. It may not come as a surprise, then, that 69.8% of paralegals report having to work overtime in an average month, with 22.9% of this number having to put in more than 10 hours of overtime.

We were pleased to find that nearly 62% of employers provide some form of in-house training for paralegals, giving those who belong to the Paralegal Division or other associations a valuable opportunity to satisfy their CLE requirements in a convenient way.

In response to our question on software and online program usage, we found that Microsoft products such as Word, Excel, and Outlook are dominant, with only 45.8% of respondents still using WordPerfect on a routine basis. For legal research, Westlaw was slightly preferred over LexisNexis, 41.7%–40.6%.

We appreciate all who participated in this survey and hope that it will lead to a larger discussion of the topics covered, as well as provide tools for your professional advancement. Our goal going forward is to conduct a similar survey on an annual basis to evaluate our Division's effectiveness and identify areas where improvement is needed in our profession. Thank you for your genuine feedback and continued support of our efforts.

KAREN McCALL is Co-chair of the Salary Survey Committee on the Paralegal Division's Board of Directors. She works in insurance defense at Richards Brandt Miller & Nelson.

CLE Calendar

DATES	EVENTS (Seminar location: Utah Law & Justice Center, unless otherwise indicated.)	CLE HRS.
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
02/03/09	**2009 I.P. Summit.** All day event at Little America, 500 South Main, SLC. Cost and details TBA.	TBA
03/12–14	**2009 Spring Convention in St. George**	TBA
07/15–18	**2009 Summer Convention in Sun Valley, Idaho**	TBA

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

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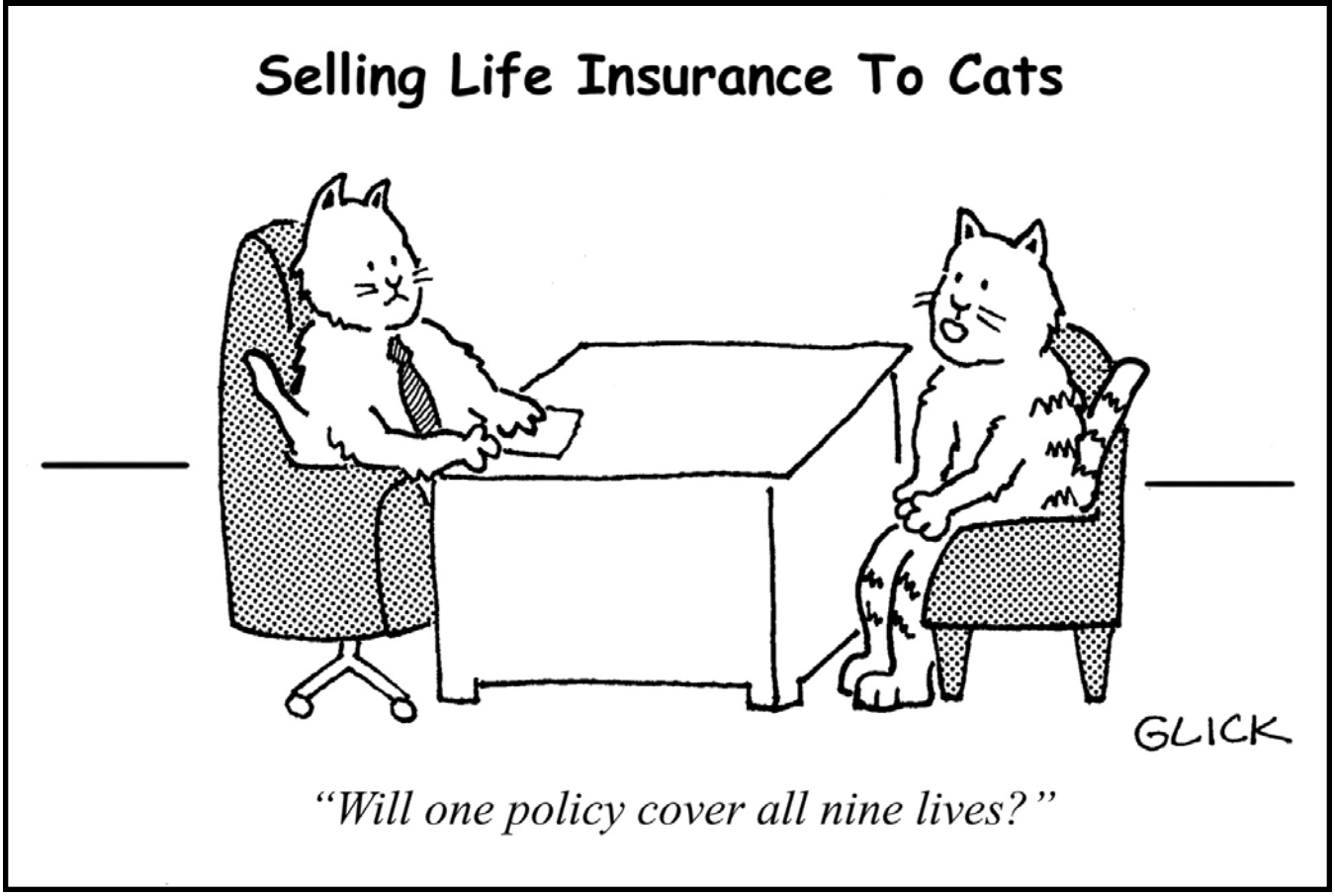

"Will one policy cover all nine lives?"

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.

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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.

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Date of Activity	Program Sponsor	Program Title	Activity Type	Regular Hours	Ethics Hours	Professionalism & Civility	NLCLE Hours	Total Hours
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I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the State of Utah including Rule 14-414.

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

Date: _____ Signature: _____

EXPLANATION OF TYPE OF ACTIVITY

A. Audio/Video, Interactive Telephonic and On-Line CLE Programs, Self-Study
No more than twelve hours of credit may be obtained through study with audio/video, interactive telephonic and on-line CLE programs. Rule 14-409 (c)

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

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

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

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

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

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

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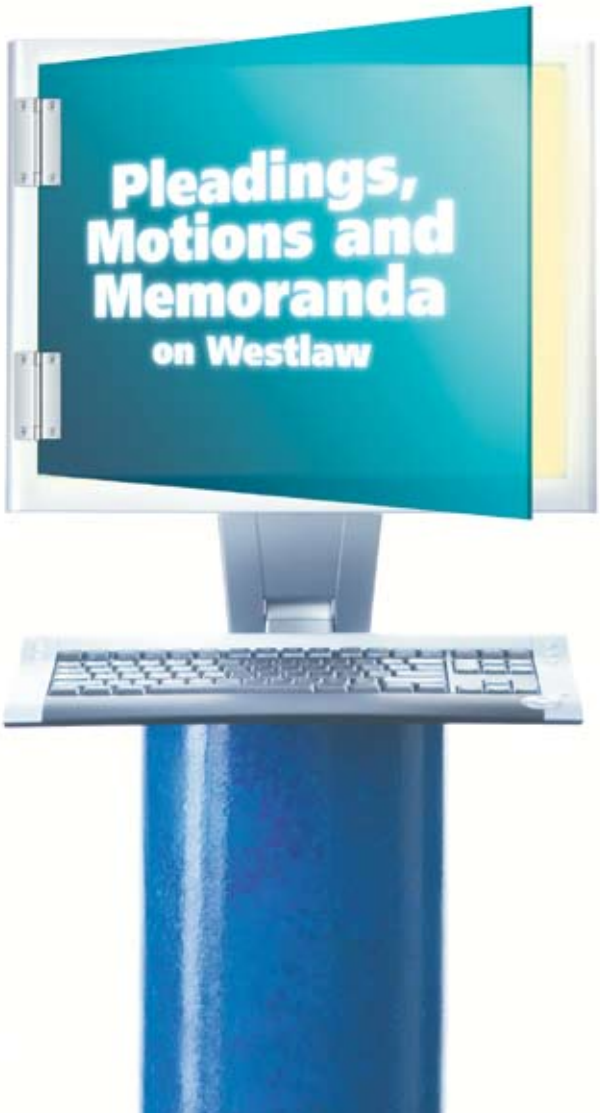

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