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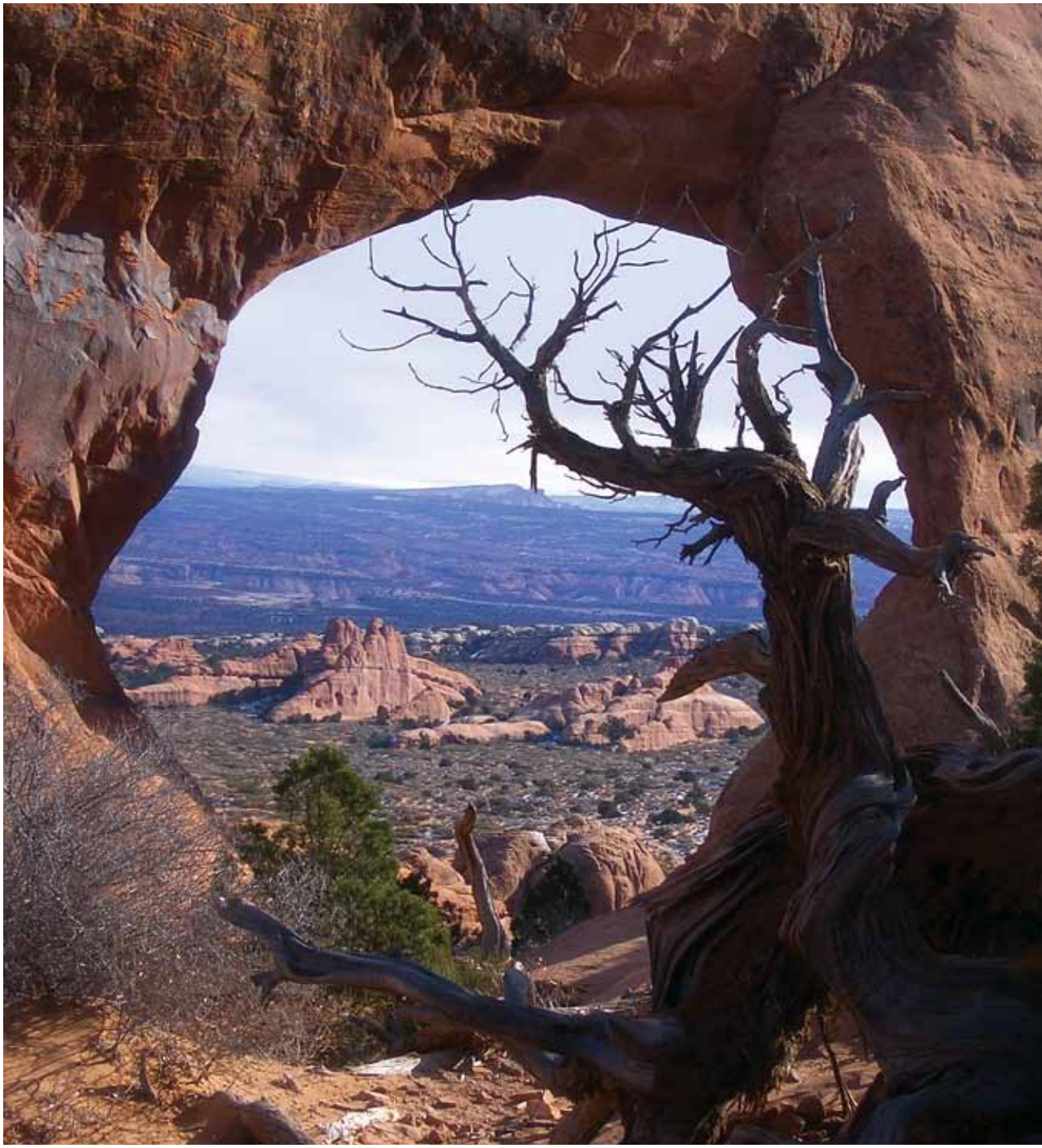

Volume 24 No. 4
July/August 2011

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Table of Contents

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Cover Art

Partition Arch, Arches National Park, by Steve Densley, American Fork, Utah.

Members of the Utah State Bar or Paralegal Division of the Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should send their photographs, along with a description of where the photographs were taken, to Randy Romrell, Regence BlueCross BlueShield of Utah, P.O. Box 30270, Salt Lake City, Utah 84130-0270, or by e-mail .jpg attachment to rromrell@regence.com. Only the highest quality resolution and clarity (in focus) will be acceptable for the cover (minimum 300 dpi at the full 8.5" x 11" size). If non-digital photographs are sent, please include a pre-addressed, stamped envelope for return of the photo, and write your name and address on the back of the photo.

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

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 3000 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 head shot 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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Letter to the Editor

Dear Editor:

I'm just completing my cycle for continuing education. Someone in authority ought to re-examine this entire process. It needs to be more reasonable. When I teach a seminar to attorneys (which requires usually about 15 hours of preparation of a written outline and to teach), or when I write an article for publication (which takes a minimum of 12 hours) or teleconference with attorneys throughout the nation for sophisticated discussion of legal topics, I find I can only count a total of 9 hours for all this activity. (12 hours in a normal cycle). Half of my CLE must be in actual attendance in a meeting with attorneys listening to a lecture on some remote case law. The least effective way of learning is attending a lecture. The best is studying and teaching or writing on a topic. Why are we required to spend half of our time in the least effective learning process?

Secondly, why do we have mandatory CLE in the first place? Most attorneys who are a problem to the Bar and the public (according to the disciplinary section of the *Bar Journal*) have "character defects" not "knowledge defects." Character defects such as stealing client funds, lying, criminal convictions, fraud, neglecting cases, failure to communicate with clients, etc. These are not knowledge issues. When was anyone disciplined for not knowing how to take a deposition, or how to cross examine an expert or how to file a probate petition? Yet our mandatory (in the classroom) CLE mainly focuses on knowledge issues not character defects. Why don't we have some reasonableness and more liberal interpretations and applications, if we have to have mandatory CLE at all?

Michael L. Deamer

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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VISION OF THE BAR: *To lead society in the creation of a justice system that is understood, valued, respected, and accessible to all.*

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

Mission of the Utah State Bar

by Robert L. Jeffs

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

As President of the Bar, I have reflected on the Bar's Mission almost daily. I don't know which of our Bar leaders had the foresight to pen those words, but I think it captures the essence of the goal I hope we all individually and collectively strive to achieve.

By the time you read this message, my term as President of the Utah State Bar will be coming to a close. I can honestly report to you that I have thoroughly enjoyed serving the Bar and its members. Having experienced Bar staff and dedicated Commissioners to work with makes the job of Bar President manageable. That is not to say I didn't get my share of irritating calls from the public complaining about the questionable pedigree of their lawyer or berating me about the "injustice" of the justice system and demanding that as Bar President, I need to change the law, remove a judge, or disbar their opposing counsel. I also received my share of calls or e-mails from myopic Bar members who believe the Bar is nothing more than a pestilence, that the Bar's Mission is misguided. Instead, they advocate that the Bar should not promote ethics, professionalism, or service to the public. But those calls come with the territory. Nevertheless, I suspect my wife and law partners will appreciate more than I that my term is up. Soon I will turn the reins over to the able leadership of Rod Snow and Lori Nelson.

Like many of the members of the Utah State Bar, I was drawn to the profession not by the prospect of wealth or status, but by a desire to serve society and the public. Of course, I had the advantage of coming from a family of attorneys, so I knew first hand that the practice of law is not a road to riches. In a recent meeting I attended with leaders from the Montana Bar they related to me that median income for attorneys in Montana is between $50,000 and $70,000 and starting salaries average about $36,000. I suspect the economic realities for the attorneys of Utah are not much different. For most of us, the practice of law presents an opportunity to make a modest income while providing a valuable service to the community. As Bar President, I have had the chance to see the myriad hours of service provided to the public and the profession by our members. The service we provide can take many forms, such as traditional pro bono representation, service on committees and sections, as well as service on municipal or state government. I want to thank all of the members who volunteer their time either in Bar service, governmental office, or pro bono service.

The conference I referred to earlier included a report by the ABA's World Justice Project. Part of the work done by the World Justice Project included an assessment of the access to justice in many of the nations of the world. Some of those findings were very disturbing, showing that the United States is not the leader as I would have expected. The U.S. judicial system is still a model for other nations. Unfortunately, the United States ranks last of the eleven nations in its income group in access to civil justice.

In prior messages and when I have had the bully pulpit as Bar President, I have tried to focus the attention of our members on the dangers of a judicial system that the public feels is too expensive and too confusing to access. It is not just the lowest economic tier of our society that feels they cannot obtain legal representation. Increasingly it is the "middle class," the foundation of our society, that cannot afford our services. Recognizing the importance of trying to address the affordability of legal services, the Bar Commission has been working on the design of a Modest Means program for the delivery of discounted legal services.

The Bar Commission obtained valuable feedback from its survey regarding the proposed Modest Means program. The program should be operational very soon. The program will marry the desire of our members to serve with the needs of lawyers

to broaden their practice by providing discounted legal services. The Modest Means program will provide an option to an under-served economic group who earn too much to receive free legal services through one of the traditional pro bono programs, but do not earn enough to pay for legal services at our regular rates. The potential benefits of the program include reducing the press of pro se litigants that clog the courts, exposing a broader spectrum of the public to the benefits of legal services, reducing the frustration of members of the public that may feel they are unable to avail themselves of the judicial system, and providing unemployed or under-employed attorneys with a supplement to their regular practice revenues.

As attorneys we are uniquely suited to provide service and leadership to the community. Our training, experience, and ability to carefully analyze problems to formulate solutions can benefit every level of government. We have too few members of the Bar who sit on City councils or Planning Commissions, too few members serve as Senators or Representatives in the state legislature. While I recognize that few Bar members are able to devote the significant time commitment it takes to serve as a state legislator, there are plenty of other opportunities. As many of you know, Utah relies on a local and state caucus system for choosing candidates. With the Republican party enjoying significant political control, many elections are determined through the voting of the delegates rather than at a primary or general election. Bar members should become active in the local and state caucus process. As a delegate, you have the opportunity to have some positive influence in the shaping of the face of our State. In addition, a delegate is in a better position to communicate concerns about pending legislation to his or her respective representative.

I claim no power to divine the future. I believe that in the future, Bar members will likely see proposed legislation attempting to re-define the practice of law, taxing legal services, or affecting the public's access to justice. Attorneys have always played a pivotal role in shaping our national and local politics. Utah will benefit from increased participation of lawyers in this process to lend their wisdom and expertise in working for legislation that supports rather than detracts from the Rule of Law.

Thank you for the privilege of serving you as Bar President.

Staub v. Proctor Hospital – *Extending the Cat's Paw*

by Chris Glauser

In March 2011, the United States Supreme Court resolved a circuit split regarding employer liability for the discriminatory acts of a supervisor who influences, but does not make, a challenged employment decision. In *Staub v. Proctor Hospital*, 131 S.Ct. 1186 (2011), the Supreme Court held that an employer is liable for the discriminatory acts of a supervisor who does not make the final employment decision if the acts of the supervisor are intended to cause an adverse employment action and are a proximate cause, in the traditional tort-law sense, of the adverse action. *See id.* at 1191-94.

Staub v. Proctor Hospital

Vincent Staub ("Staub"), a member of the United States Army reserve, was employed at Proctor Hospital ("Proctor"). *See id.* at 1189. He claimed that he was fired by Proctor's vice president of human resources after his supervisors falsely reported that he had violated hospital rules. *See id.* at 1189-90. Staub sued Proctor, claiming that his supervisors' hostility toward his military reserve obligations was a "motivating factor" in his firing, a violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). *See id.* Staub did not claim that the vice president of human resources who had made the decision to fire him was hostile toward his military obligations. *See id.* at 1190. Rather, Staub invoked the "cat's paw" theory of employer liability, claiming that the decision to fire him was based on his supervisors' discriminatory actions. *See id.* As the Supreme Court explained in *Staub*:

> The term "cat's paw" derives from a fable conceived by Aesop, put into verse by La Fontaine in 1679, and injected into United States employment discrimination law by Posner in 1990. *See Shager v. Upjohn Co.*, 913 F.2d 398, 405 (CA7). In the fable, a monkey induces a cat by flattery to extract roasting chestnuts from the fire. After the cat has done so, burning its paws in the process, the monkey makes off with the chestnuts and leaves the cat with nothing. A coda to the fable (relevant only marginally, if at all, to employment law) observes that the cat is similar to princes who, flattered by the king, perform services on the king's behalf and receive no reward.

Id. at 1190 n.1.

Under a cat's paw discrimination claim, an employer may be held liable for the discriminatory acts of an employee/plaintiff's supervisor who did not actually make the challenged employment decision if that supervisor's discrimination influenced the ultimate decision maker. *See id.* at 1190. The degree of influence the biased supervisor must exercise for the employer to incur liability varied greatly among the circuits, ranging from situations where the supervisor "may have affected" the employment decision to where he or she is "principally responsible" for the decision. *See EEOC v. BCI Coca-Cola Bottling Co. of Los Angeles*, 450 F.3d 476, 486-87 (10th Cir. 2006). In the Seventh Circuit, which controlled *Staub's* claim, a cat's paw case could not succeed unless the supervisor exercised "singular influence" over the decision maker and the challenged employment decision was the result of "blind reliance" on the supervisor's discriminatory actions. *See Staub*, 131 S. Ct. at 1190. Based on this precedent, the Seventh Circuit held that Proctor's vice president of human resources did not blindly rely on the supervisors' false reports because, in addition to the allegedly discriminatory reports from Staub's supervisors, she had independently reviewed Staub's personnel file and spoken with one of his co-workers in reaching her decision. *See id.* Therefore, the cat's paw theory did not apply and Proctor was

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entitled to summary judgment. *See id*.

In reversing the Seventh Circuit, the United States Supreme Court held that: if a supervisor performs an act motivated by antimilitary animus that is *intended* by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA. *See id*. at 1194. The Court explained that whether a discriminatory act is a proximate cause "incorporates the traditional tort-law concept of proximate cause." *Id*. at 1193. In other words, if a supervisor's discriminatory act is taken into account by the ultimate decision maker, it is a proximate cause of the employment action. *See id.* The employer is then subject to liability unless it performed an independent investigation that determined the adverse employment action was justified "for reasons unrelated to the supervisor's original biased action." *Id*.

Cat's Paw Liability in the Tenth Circuit

The Tenth Circuit has adopted the Seventh Circuit's approach to cat's paw cases. *See BCI Coca-Cola*, 450 F.3d at 487; *Staub*, 131 S. Ct. at 1190. Under the Tenth Circuit's version of this approach, a plaintiff must show that a supervisor's discriminatory action was a "causal factor" in the employment decision. *See BCI Coca-Cola*, 450 F.3d at 487. However, the Tenth Circuit has not applied the traditional proximate cause analysis mandated by *Staub*. Instead, it has focused primarily on whether the decision maker performed a reasonable independent investigation, holding that there is no causal relationship in that case. For example, the Tenth Circuit has repeatedly held that an employer is not liable for a cat's paw claim if its decision maker met with the plaintiff and gave him an opportunity to rebut allegations made by an allegedly biased supervisor. *See Pinkerton v. Colo. Dep't of Transp*., 563 F.3d 1052, 1061 (10th Cir. 2009); *English v. Colo. Dep't of Corrs.*, 248 F.3d 1002, 1011 (10th Cir. 2001); *Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220 (10th Cir. 2000). In *BCI Coca-Cola*, the Tenth Circuit reversed the district court's grant of summary judgment for an employer because it was undisputed that the employer's decision maker relied exclusively on information from a biased supervisor and the only independent investigation she performed was a brief review of a report regarding an unrelated

event in the plaintiff's personnel file. *See BCI Coca-Cola*, 450 F.3d at 491.

As these cases demonstrate, prior to *Staub*, employers within the Tenth Circuit could defeat cat's paw claims simply by showing that their decision maker performed a reasonable independent investigation of a supervisor's discriminatory accusations. But *Staub* imposes a higher burden. It requires an employer to show not only that an independent investigation was performed, but that the investigation produced a wholly independent reason for the employment decision. *Compare Staub v. Proctor Hosp.*, 131 S. Ct. 1186, 1193 (2011) ("[T]he supervisor's biased report may remain a causal factor if the independent investigation takes it into account without determining that the adverse action was, apart from the supervisor's recommendation, entirely justified."), with *BCI Coca-Cola*, 450 F.3d at 488 ("[A]n employer can avoid liability by conducting an independent investigation of the allegations against an employee. In that event, the employer has taken care not to rely exclusively on the say-so of the biased subordinate, and the causal link is defeated." (citation omitted)). Therefore, *Staub's* proximate cause analysis may represent a significant expansion of the Tenth Circuit's "causal relationship" test, under which a reasonable independent investigation alone has generally been considered sufficient to break the causal chain. *See BCI Coca-Cola*, 450 F.3d at 488.

> *"[U]ntil the Tenth Circuit provides further guidance as to how it will apply Staub, practitioners are well-advised to assume that it applies in all cat's paw cases, regardless of the claims at issue."*

Staub's Implications for Employment Law Practitioners

Although *Staub* was based on USERRA, it addressed the cat's paw theory in general terms. Significantly, the Supreme Court expressly stated that USERRA "is very similar to Title VII." *Staub*, 131 S. Ct. at 1191. The Court also noted the similarity between USERRA's imposition of liability if hostility toward military service is a "motivating factor" and Title VII's requirement that employment discrimination be "because of…race, color, religion, sex, or national origin." *Id*. In light of this language, lower courts will likely feel constrained to apply *Staub* to cat's paw cases beyond the USERRA context. In fact, in the short time since *Staub* was decided, district courts have already begun to apply it in other employment discrimination contexts. *See, e.g.*, *Memon v. Deloitte Consulting, LLP*, No. H-09-2766, 2011 WL 1044051 (S.D. Tex. March 17, 2011) (applying *Staub* to Title VII claim); *Wojtanek v. IAM Union Dist. 8*, No. 08 C 3080, 2011 WL 1002847 (N.D. Ill. March 17, 2011) (applying *Staub* in an age discrimination case). Therefore, until the Tenth Circuit provides further guidance as to how it will apply *Staub*, practitioners are well-advised to assume that it applies in all cat's paw cases, regardless of the claims at issue.

The principal difference between *Staub* and its Tenth Circuit predecessors is that *Staub* permits an employer to be liable, even after performing an independent investigation, if there is not a wholly independent reason for the adverse employment action. Therefore, Utah employment law practitioners should pay close attention to any Tenth Circuit decisions applying *Staub* in those situations. Such cases will provide important guidance for employers in developing anti-discrimination policies and for plaintiff's counsel in investigating and forming litigation strategies for discrimination claims. Attorneys who regularly practice outside of the Tenth Circuit should also review the applicable case law on cat's paw liability in those jurisdictions, as the approaches to cat's paw liability vary significantly and *Staub's* impact may be far more significant in some circuits than in others. *See, e.g., EEOC v. BCI Coca-Cola Bottling Co. of Los Angeles*, 450 F.3d 476, 486-87 (10th Cir. 2006) (describing varying approaches to cat's paw liability in the Fourth, Fifth, and Seventh Circuits).

Conclusion

Although the Tenth Circuit has previously held that cat's paw liability requires a non-decision maker's discriminatory act to be a "causal factor" in the adverse employment action, it has generally found that the required causal relationship is cut off by any independent investigation. *Staub*, if applied to employment discrimination claims outside of USERRA, will heighten this burden on employers by requiring that they show both an independent investigation and an independent reason for the challenged action. Accordingly, practitioners should be aware of *Staub*'s impact on employment discrimination claims and closely follow any cases that apply its holding so that they can provide sound advice and craft effective litigation strategies for their clients.

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Ethics and Professional Networking Groups: Worth the Gas?

by Timothy P. Daniels

Introduction

A few months ago I opened a solo practice. Almost immediately, I received some good fortune – or did I? A neighbor invited me to attend a networking group. There was no membership fee. We just got together to have lunch, talk, and share referrals (if we had any). Upon attending the group, I had some questions about the ethics of my doing so, which led to this article.

For many lawyers, there is a great lure and benefit to joining a professional networking group. Networking groups allow lawyers to become familiar with the business landscape in their community. Such groups help lawyers meet other professionals who can assist the lawyer both personally and professionally, for example, with computer problems or accounting questions. But participating in a networking group can also be a strong temptation to violate two important ethics rules – the rules against in-person solicitation and against buying referrals.

This article will discuss how other states have handled the issue of lawyers participating in professional networking groups. It will also propose guidelines for lawyers interested in participating in such groups until the Utah Bar issues an opinion on this matter.

In-Person Solicitation – Rule 7.3

Rule 7.3(a) of the Utah Rules of Professional Conduct provides, "A lawyer shall not by in-person contact or other real-time communication solicit professional employment from a prospective client. . . ." The rationale for this rule is the undue influence and intimidation that can arise when a vulnerable layperson is subjected "to the private importuning of the trained advocate. . . . The prospective client, who may already feel overwhelmed. . ., may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of *the lawyer's presence and insistence upon being retained immediately*." Utah R. Prof'l Conduct 7.3(a) cmt. 1 (emphasis added).

Utah's in-person solicitation rule is aimed at situations where the attorney knows or has reason to believe the prospective client is "overwhelmed" by his or her legal "circumstances" and is vulnerable to "undue influence, intimidation, and over-reaching." *Id*. In contrast, a networking-group setting is not comparable to an accident scene where the proverbial ambulance-chasing attorney shows up to give the victim his business card and urge the suffering prospective client to "just sign here." *See, e.g., Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 465-66 (1978); *see also id*. 449-50, 457 (considering circumstances where lawyer approached 18-year old accident victim in hospital while she was in traction and asked her to sign a representation agreement. The Court noted, "in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection"). Rather, the networking relationship is designed to provide word-of-mouth referrals such as, "My neighbor is looking for a tax attorney to help with his tax questions." Of course, Rule 7.3(a) still likely prevents the lawyer from personally calling the neighbor.

So, is it permissible under our Rules of Professional Conduct for a lawyer to participate in a networking group? That depends on what we mean by "participate." Since the in-person solicitation rule is meant to prevent undue influence in a moment of vulnerability, a lawyer attending a networking group – merely showing up to the meeting – should not be a considered in violation of Rule 7.3. Lawyers attend plenty of luncheons, meetings, and other functions with professional people – that is not new. The difference is that the main purpose of most networking groups is to provide referrals to other group members to help each other grow their businesses. But defining rule violations by the nature of the group can be tricky. For example, a lawyer could go to church or the Lions Club with the intent to quietly develop relationships with potential clients. Conversely, a lawyer could attend a networking group

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with the intent to get marketing ideas and meet other business people. Rather than focus on the name or purpose of the group, we should focus on what the lawyer actually does and says at the networking group meeting or luncheon – whether or not the lawyer solicits in person.

If the lawyer refrains from in-person solicitation while attending the group, Rule 7.3 appears to be satisfied. The lawyer may stand up at the lunch meeting and say his name, location, and practice areas without soliciting business. Further, while someone might argue, "But merely being present at the networking group is a solicitation because the whole purpose of the group is to give referrals to each other," such an interpretation goes beyond the rule. Mere presence or introduction – "Hi, I'm John Doe. I practice tax law and my office is on Center Street. Nice to be here." – does not equate to "the private importuning of the trained advocate in a direct interpersonal encounter [with a] prospective client, who may already feel overwhelmed by the circumstances." Utah R. Prof'l Conduct 7.3 cmt.1. Such a lunch-time situation is not "fraught with the possibility of undue influence, intimidation, and over-reaching." *Id*. Mere attendance or a brief introduction at a networking group should not be considered a violation of the in-person solicitation rule.

Guideline 1: Keep your introduction informational; avoid importuning, especially if you know someone in the group needs a particular kind of legal service.

Buying Referrals – Rule 7.2

Next, let's look at Utah Rule of Professional Conduct 7.2(b), which prohibits a lawyer from giving "anything of value to a person for recommending the lawyer's services." *Id*. R. 7.2(b). The comment to this rule explains, "Lawyers are not permitted to pay others for channeling professional work." *Id*. R. cmt. 5. Question: Does giving and getting referrals at a networking meeting violate this rule?

The Utah Bar website does not appear to have an ethics opinion on this issue; however, other states have addressed the question. The Washington State Bar Association provided an opinion in 2002 prohibiting lawyers from joining groups that required referrals from group members. *See* Washington State Bar Association Rules of Professional Conduct Committee, Op. 1975 (2002). "[R]equirements of referrals and potential loss of membership if no referrals take place, constitute a reciprocal obligation between the lawyer and the non-lawyer," violating Rule 7.2 because referrals are "something of value" being exchanged." *Id*.

In 2005, the Oregon State Bar decided that "[a] business referral is a thing of value," and lawyer participation in a referral exchange program would violate Oregon's version of Rule 7.2. *See* Oregon State Bar, Formal Op. 2005-175 (August 2005). Incidentally, the Oregon Bar noted the diminished value of any networking referrals. "[E]ven if the networking group does not require reciprocal referrals, [the] Lawyer cannot initiate any personal follow-up on a referral except in writing, unless Lawyer knows that the person making the referral has been expressly authorized by the prospective client to have the lawyer make the personal contact." *Id*.

In 2006, the New Hampshire Bar Association addressed whether a lawyer could join a networking group that actually required members to provide referrals and "distribut[e] the lawyer's business cards or other literature to non-member individuals, with whom the lawyer likely has no prior relationship and who may be in need of legal services[.]" New Hampshire State Bar Association Ethics Committee, Op. #2005-06/6 (October 2006). New Hampshire concluded such activity by a lawyer would violate Rules 7.2, 7.3, and 8.4. "With or without a fee, exclusive and mandatory cross-referrals constitutes paying value to a

person for recommending the lawyer's services.… The purpose behind the networking organization is to enlist other members to recommend the lawyer's services, in exchange for the lawyer recommending other members' services." *Id*.

New Hampshire further explained the problem with networking groups is that the group loyalties get in the way of the lawyer giving independent advice. *Id*. Participation in the group would pressure the lawyer to violate his obligation of competence under Rule 1.1 and independent judgment under Rule 1.7:

> A lawyer who is *beholden* to a networking organization may feel *obligated* to accept a case he or she is not competent to handle, thereby putting a client's interests at risk. Conversely, lawyers often must refer clients to outside service providers, e.g. real estate agents, financial planning specialist, etc. Again, a lawyer who is *beholden* to a networking organization may be *obligated* to refer a client to a particular specialist, when another such specialist may be more appropriate, thereby putting the client's interests at risk. This situation creates potential conflicts of interest, such as the pull to refer a client to a service provider so that the lawyer can continue to receive cross-referrals. While lawyers as part of their practice refer clients to other lawyers and service providers as part of their business, lawyers not associated with such a networking organization will be free to use their judgment, and refer their clients to the most appropriate service provider.

Id. (emphases added).

Just last year, the Virginia State Bar gave an opinion on whether a lawyer could "become a member of a lead-sharing organization and use that organization to receive leads for legal services from other members of the organization[.]" Virginia State Bar Ethics Counsel, Op. 1846 (Feb. 2, 2009) (Committee Revised Dec. 29, 2010). The hypothetical organization at issue charged a $500 membership fee and retaining membership was "often dependent on the number of leads a member passes." *Id*. Virginia gave the big thumbs-down, finding that leads or referrals were "things of value" and that "this practice of reciprocal referrals amounts to quid pro quo payment for services" in violation of Rules 7.2 and 7.3. *Id*. However, Virginia limited its opinion, noting,

> The prohibitions and cautions of this opinion are predicated and indeed limited to a hypothetical organization which bases membership on a commitment to provide referrals. Nothing in this opinion is intended to preclude a lawyer's involvement or membership in organizations that promote the interplay of lawyers and other professionals for education, community action, or social goals, out of which networking and referrals may develop.

Id.

In 1991, the State Bar of Arizona addressed our networking-group question, but the facts were different. The inquiring attorney asked if she could participate in a professional networking group, consisting "of business and professional persons who socialize over breakfast, lunch or dinner, occasionally introducing themselves to the group and explaining what they do." Arizona State Bar, Op. 91-04 (Jan. 15, 1991). *See id.* The group was informal. It did *not* charge any fees, and there was *no requirement to refer* law clients to any other group members in exchange for their referrals. *See id.* Further, the lawyer would not solicit business from group members, though she acknowledged group members might approach her once they learned she was a lawyer. *See id.* The lawyer also asked if she could set up a booth at a business exposition. *See id.*

In responding to the socialize-over-breakfast question, the Arizona Bar noted,

> Advertising similar to that proposed by the inquiring attorney has been approved by professional ethics committees in other jurisdictions. *See* Ethics Advisory Panel of the Rhode Island Supreme Court, Opinion 89-14 (July 20, 1989) (a lawyer practicing business law may attend social gatherings of local business people as long as he does not engage in in-person solicitation of professional employment).

Id. The Arizona Bar stated that the attorney "may discuss in a general way what she does with the group, but she must not exert any pressure on the participants of the group individually to retain her as an attorney." *Id*. Later, in a 2002 opinion, Arizona helped define "in-person solicitation" and echoed Utah's concerns about an over-reaching lawyer privately importuning an overwhelmed prospective client:

> The sine qua non of an in-person solicitation…is the initiation of contact by a lawyer with a member of the public in such immediate circumstances of time and place that the person would reasonably feel pressured,

> intimidated, or importuned.
>
> There is nothing inherently coercive about maintaining a booth at a business exposition so long as the decision to make "in-person" contact is made by the public, not the lawyer.

Id. Op. 02-08 (September 2002) (overruling Arizona State Bar opinion 91-04, which ruled that a lawyer could not ethically operate a booth at a business exposition). Opinion 02-08 allows lawyers to operate a booth as long as the other ethical rules were observed. *See id*.

Guideline 2: Don't be "beholden" or "obligated" to other group members. Avoid participating in a networking group that charges a fee or that makes giving referrals a condition of membership.

Using Others to Distribute Business Cards – Rule 8.4

Another issue that arises with networking groups is business cards. While it is clearly okay to give a card to someone requesting it, lawyers tread on thin ice when they ask other group members to distribute their business cards. Utah Rule 8.4(a) prohibits lawyers from violating the rules "through the acts of another." Utah R. Prof'l Conduct 8.4(a). New Hampshire applied this rule to professional networking groups this way:

> The purpose of the networking organization is to use other members of the organization to distribute literature and/or provide direct referrals to individuals the attorney does not know, for the purpose of business development. The rationale for prohibiting a lawyer from soliciting clients who the lawyer knows needs a lawyer is to protect the client from being taken advantage of at a time when he or she is vulnerable. The same rationale follows for not allowing a third-party to distribute literature as the agent of that lawyer.

New Hampshire State Bar Association Ethics Committee, Op. #2005-06/6 (October 2006).

Similarly, the Arizona Bar cautioned lawyers that they must "not direct or permit other members of the group to solicit clients on [their] behalf" as that "would constitute an improper solicitation of professional employment through the acts of another." Arizona State Bar, Op. 91-04. It is unclear how an attorney could prevent other group members from recommending him if he has a good reputation.

A Reasonable Approach

The Utah Bar Ethics Committee has not given an opinion on bar members participating in networking groups. In the meantime, the following guidelines may help lawyers interested in participating in such groups:

- There should be no membership fee. Also, there should be no fees, awards, or discounts related to the number of referrals generated by or given to group members. *See* Utah R. Prof'l Conduct 7.2.
- Membership must not be conditioned on giving referrals; the lawyer should not be beholden to other group members for channeling business. *See id.*
- The lawyer should not solicit professional work from group members and should not pass out business cards for other people to distribute. *See id.* R. 7.3 and 8.4.

Conclusion

Considering the above guidelines, distilled from the Utah Rules of Professional Conduct and the opinions issued by other states, a lawyer might reasonably conclude it is not worth the gasoline cost to attend a networking group meeting. But, if the lawyer feels there is some utility in attending, he or she should be allowed to associate with other people, have lunch together, share marketing ideas while applying the ethics rules. In a nutshell, enjoy the camaraderie, but do not solicit and do not buy referrals.

Toward Better Communications Between Executives and Lawyers

by Richard A. Kaplan

Executives and lawyers, as the stereotypes go, think they speak different languages. The executive considers the lawyer a nitpicker and naysayer, who never heard an idea the lawyer liked. The lawyer finds the executive overbearing and bombastic, self-assured to a fault and oddly indifferent to risk. Their conversations are mercifully short, their discussions sadly superficial.

To be sure, those are just stereotypes. In reality, most executives these days are probably able to find and choose lawyers they can work with effectively and are pleased with their choices. But many executives and lawyers tell me that the old stereotypes persist. This may be because some lawyers really are or do come off as overly negative, obstructive, and risk averse, or because some executives really do insist on being told what they want to hear, or perhaps both. Or perhaps the durability and persistence of the stereotypes is attributable simply to the intrinsic sway of stereotypes and caricatures. I don't know.

Regardless, for the sake of argument, I'm going to assume that executives and lawyers sometimes do experience each other essentially as unyielding oppositional forces – one insisting "we can" and the other insisting "we can't." When that occurs, neither likely hears, much less grasps, the essence of what the other is saying. Both are likely quick to forget that they don't have to be at loggerheads. Both become blind to the productive, creative value of conflict. After all, they have profoundly different roles and responsibilities. Those differences should drive dynamic and constructive discussion. Instead, the two may not have a "discussion" in any meaningful sense – perhaps just instructions to the lawyer to "figure it out. Get it done. Just minimize the risks." Or the lawyer may simply submit to authority: "Yes sir" or "Yes ma'am." Hardly a synthesis of their respective ways of looking at things.

When communications break down in this fashion, it goes without saying that the likelihood increases that anything that can go wrong will. Say the executive has proposed a new business venture or acquisition to corporate or outside transaction counsel. She and counsel should be working together to ensure they understand the reasons for going forward, the business and legal risks, and how they need those risks to be allocated between the parties to the transaction. Instead, such critical matters may be ill thought out (i.e., "Just minimize the risks") and never communicated to others who need to know. Suppose the issue is whether or how to defend or forestall a significant lawsuit. Again the real problems and risks may not be explored and brought to light at the outset, when missteps are most likely to be made. In the case of a major lawsuit, the failure of communication may occur precisely because the litigator pitching the case does not fit the naysayer model and instead voices the optimism of a "swashbuckler." Some litigators have a tendency to try to serve up "red meat" to show how tough they are. In strutting their stuff, they leave no room for serious evaluation of the weaknesses of the case. It may be hundreds of thousands of dollars in fees later before those weaknesses come to light. This problem is the subject of another article. What if the company faces a public relations crisis? The lawyer's overriding concern for minimizing legal liability may obscure the need first and foremost to protect the company's reputation.

TWO DIFFERENT LANGUAGES

The source of at least some of these failures of communication may be the fact that the languages lawyers and executives speak *are* somewhat different. The old stereotypes are not the product of hallucinations or entirely off the wall. Furthermore, even when lawyers and executives do not fit the stereotypical molds, they still tend to talk about things differently. And the differences between "executive speak" and "lawyer speak" are significant enough to have an important bearing on the quality of their communication. To oversimplify, just to get started, let me call one the language of "decisiveness" and the other the language of "analysis."

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I don't know when in a person's development he or she begins predominantly to speak one of these languages or the other. It may happen when the future executive constructs and operates a lemonade stand and makes a sale for the first time; or when the future lawyer first discovers Perry Mason raising an eyebrow to elicit a confession. Given all the cultural attention to the roles of trial lawyers in particular, you might think it is not so much differences in language that impede their communications as it is a culturally nurtured and learned bias. Actually, it seems unlikely that television, movies or even most books published these days contribute to the view that lawyers are fearful of decision-making or risk. If anything, lawyers portrayed in these media in recent years tend to demonstrate bravado, lawlessness and reckless risk taking rather than excess caution. The characters are also prone to indulging the "red meat" syndrome mentioned earlier.

HIGHER EDUCATION MAY REINFORCE THE DIFFERENCES

But regardless whether the phenomenon of miscommunication is a function of cultural bias or of language or both, one thing seems certain. The formal education and training executives receive in business schools and lawyers receive in law schools reinforces the differences between "decisiveness" and "analysis" as alternative languages. Business schools and law schools teach different ways of thinking that contribute to different ways of speaking. And those different ways of thinking and speaking become ingrained in company cultures as executives and lawyers pursue their respective roles and careers. I certainly recognize that not all business leaders, managers, and owners attended MBA or other business school programs – the percentage who did is probably quite low. But that really doesn't make any difference. The premise is that successful business people speak a language of "decisiveness" regardless whether they attended business school. Business school training reflects and reinforces that tendency and its trainees spread it.

The Business School Model

I'm going to describe certain aspects of the "case method" of instruction used at Harvard and other business schools, in part because that is what I'm personally familiar with but also because in a way that allows us at least compare "red apples" to "green apples." Law schools also use the "case method" of instruction, perhaps more so than business schools. But the two "methods"

differ dramatically in content, practice, and purpose.

The typical business school "case" centers on a "middle manager" who has a problem. The problem may involve virtually anything – branding of a product; delivery or marketing of a service; interpersonal relationships with people such as a superior or subordinate; a matter of principle; a production or finance problem; a question of strategy or tactics; an issue of organization, structure, or systems; a sudden move by a competitor; or frankly any of myriad matters that confront middle managers in the course of their careers. The ultimate question for class discussion is what the middle manager should *do* to solve the problem. As part of the process, the professor helps the class develop a structure for understanding and prioritizing the issues. One objective is to understand the key elements of sound decision making and how the pieces of the puzzle fit together in any given business context. But the overarching goal is to produce skilled, experienced confident problem solvers and decision makers – people who can make up their minds and, at least more often than not, are "right." What "right" means and doesn't mean in the context of business decisions is too complex a subject to be within the scope of this article. Suffice it to say here that sometimes there is one "right" answer to a question and sometimes there are more. "Right" *ex ante* is often probabilistic, not absolute. Even the *ex post* question whether a decision was "right" is almost always a matter subject to debate.

"Resist the tendency to show how smart you are, and the equally destructive tendency to show how much work you have done and each tiny step you took in your brilliant path to the answer."

The Law School Model

In law school, by contrast, the case method ordinarily focuses on a decision that has already been made – usually by an appellate court – and emphasizes the path the court took in reaching that decision. Thus, the class focuses on matters such as the "procedural posture"[1] of the dispute, the "standard of review,"[2] the court's use of precedent as a source of authority for its result, and analytical tools such as analogy, distinction, and plain old common sense in assessing the extent to which the court's opinion is persuasive. This form of reasoning generally takes place in the context of a substantive legal area – such as torts, contracts, property, or constitutional law in the first year and more specialized subjects, including corporations and corporate finance, after that. But it is the form of reasoning itself that makes a lawyer a lawyer, and the specialty is just that, a specialty.

Thus, "learning the law" is only partly about mastering the legal principles that govern corporations or contracts or product liability or myriad other matters that are important to businesses and individuals – put differently, it is only partly about memorizing answers. "Learning the law" at its core concerns the process of recognizing, understanding and analyzing legal issues, of developing arguments in support of or against legal outcomes, and of predicting the results of disputes to the extent, and only to the extent, that can reasonably be done. Thus, one of the central goals of legal education is to train a student to recognize and articulate problems and issues that others miss, to know what the student does not know in the Socratic sense of wisdom, to ask questions and to find answers or at least arguments in precedents, and essentially to be proficient in all forms of legal analysis. Simply put, "legalese" is not the language of decisiveness – unless, like the famous anecdote about former Secretary of Defense Clark Clifford, then in private practice, the lawyer gives a one-word answer, in Clifford's case "No." Clifford is said to have charged his client $25,000 for that advice and to have considered that fee a bargain.

TOWARD A SYNTHESIS OF LANGUAGE

Lawyers and executives might want a conceptual framework for communication that works for both of them. Not instinctively positive; not reflexively negative. But a synthesis of the best characteristics of the two ways of thinking and talking about important opportunities and issues.

The first idea that springs to mind is "guarded optimism." That construct has the advantage of familiarity. We all have a reasonable sense of what it means. Executives and lawyers alike may have a similar concept of what it means to be "guardedly" or perhaps "cautiously optimistic." Maybe a commitment to speak in terms that are "cautiously" or "guardedly optimistic" would enhance their communication.

The disadvantage of this formulation is that it tilts sharply in favor of the executive's world view. It makes no sense to demand that a lawyer start and end a serious discussion with optimism if the optimism is feigned. Neither is guarded *feigned* optimism particularly useful.

Let me suggest that a point between "decisiveness" and "analysis"

that may warrant more consideration is "cautious enthusiasm." Although by no means perfect, that construct seems to draw a reasonable balance between each frame of reference and to incorporate and merge their most fundamental positive aspects. Caution is a fundamental characteristic of good lawyering. And enthusiasm is a fundamental characteristic of good leadership. It's perfectly fair and appropriate to demand respect for caution from an executive and respect for enthusiasm from a lawyer. It's just a small step beyond such mutual respect to ask executives and lawyers alike to embrace both caution and enthusiasm as they work together toward their best thinking.

PRACTICAL POINTERS FOR LAWYERS AND EXECUTIVES

In the meantime, here are some practical pointers for lawyers and executives to keep in mind when communicating with each other. With the obvious exception of tone of voice, expression, and gestures, these simple suggestions are useful whether the communications are written or oral.

- As trite and obvious as it may seem, lawyers need to remember to infuse their advice – the words they choose, and when speaking their tone of voice, facial expressions and gestures – with confidence (and optimism if optimism is called for). This is certainly not to say lawyers should fake or feign such confidence, unless they're darn good at it. If being yourself does not work, change yourself or find another profession. And this is true even when – perhaps especially when – they are constrained to offer words of caution and concern. According to a recent article by Adam Bryant in the New York Times Sunday Business Section feature "The Corner Office," one of the five things most important to CEO's is "battle hardened confidence." Adam Bryant, *Distilling the Wisdom of C.E.O.'s,* N.Y. Times, April 16, 2011, at BU1. Bryant's article identifies five character attributes that CEOs value highly, of which "battle hardened confidence" was one. The other four are these: "passionate curiosity," "team smarts," "fearlessness," and "a simple mind set." One could write pages about all five as they relate to the present subject. Although Bryant's interviews of CEOs apparently focused on what they look for in business leaders and managers, not lawyers in particular, you can bet that the lawyer who projects the attributes CEO's value – including battle hardened confidence – will stand out positively and be appreciated at the end of the day. And that is every bit as true for corporate lawyers and inside counsel as it is for litigators.

- Equally trite and obvious, but often honored in the breach, executives need to remember to tolerate uncertainty in their lawyer's advice. Business isn't fair; sometimes the law isn't either. Virtually nothing in business is certain. It's a matter of probability, the odds. The same is true when lawyers are asked questions such as whether a particular legal position is defensible, what and how much the company's exposure is in a particular case, "will we win?", or virtually anything else.

- Lawyers and executives alike should remember that often "wisdom is knowing what you don't know" and that they should never – underline never – pretend to know when they do not. That's a prescription for disaster. What is more, lawyers and executives should develop a healthy tolerance and respect for those who have the courage to say "I don't know." But, on the other hand, do not be saying "I don't know" more than once about the same thing, and be sure to add, "But it's important and I'll find out right away." If in the end the question is not one that can be answered with certainty, say so and give the best answer you can.

- Lawyers: Remember to start any presentation you are asked to make with your conclusions and recommendations. Then justify them with a summary of your analysis. Resist the tendency to show how smart you are, and the equally destructive tendency

to show how much work you have done and each tiny step you took in your brilliant path to the answer. Under no circumstances should you read power point slides. And you do not have to take my word for any of this. Stephen Ballmer, CEO of Microsoft, told Adam Bryant of the New York Times that Microsoft has changed the way it runs meetings to require conclusions first. The company has lost its tolerance for a presentation that takes the "long and winding road" to the point. "So most meetings nowadays, you send me the materials and I read them in advance. And I can come in and say: 'I've got the following four questions. Please don't present the deck.'" Adam Bryant, *Distilling the Wisdom of C.E.O.'s,* N.Y. Times, April 16, 2011, at BU1. To coin a phrase, "keep it simple, stupid" applies to you too. A "simple mind set" is not just okay but exactly what CEOs look for. *See id.* (discussing the attributes that appeal to CEOs).

- Nevertheless, lawyers should also remember that one size may not fit all. Your audience may consist of some people who want only the bottom line, some who want a little more explanation, and some who want the entire explanation. One way to deal with this phenomenon was pretty much imposed on me in representing a large company that consisted of both manufacturing and service businesses that had to comply with many different federal and state regulatory schemes. Our marching orders were to create a pyramid-like approach to legal memoranda. The longest and most detailed memorandum was at the bottom of the stack. It presented our entire analysis in all its tedious glory. Once that memorandum was completed, but before it was circulated to management, we created another memorandum, maybe one-tenth or less the length of the first one. That second memorandum summarized the reason for the inquiry, the issues, our analysis and conclusions. On top of that came a third memorandum – a one-page or less "Executive Summary." What is more, sometimes the General Counsel wrote a summary of the Executive Summary for the CEO and those board members who most appreciated and demanded brevity.

- Tell the whole truth, including the bad stuff. If the strategy you want to pursue is critical to the company's future (and yours) or the case you need to defend is potentially very damaging to the company (and embarrassing to you), get that out on the table. Neither the best executives nor the best lawyers are mind readers. If the matter is one that effectively puts the company or you at great risk, make sure you're clear about that and about what you think and what you want. It's easier to come to grips with a potential crisis if the person describing it to you is not in denial and is attempting to come to grips with it him or herself.

- Executives, discuss risk and risks with your lawyer. Do not just say "minimize it." That may not be even close to what you want. You may be comfortable with certain risks, uncomfortable with others. You may require certain protections, not others. Such information is critically important to the lawyer negotiating a deal. So talk through the risks and be sure your lawyer knows your position with respect to each of them.

- Lawyers, be decisive. That is most like the language your boss or client speaks, appreciates and will absorb most readily and effectively. Trust me. You can do it. Better yet, trust yourself. If you cannot you should get another job.

- Executives, take the time to be analytical. You can take comfort that you've probably got the big picture right *and* that you can add value to the lawyer's analysis of the risks. Do not be dismissive of the critical role the lawyer performs in rolling up his or her sleeves to ensure that all significant risks are identified and understood. Make sure you give due time yourself to that "devil in the details."

POSTSCRIPT

Several decades ago, some American universities began to offer four-year graduate school programs combining business and legal education. Graduates received both J.D. degrees and M.B.A.s. I don't know what exactly the impetus was for those new programs or how they are faring, but you have to think that some educators anticipated the need for people fluent in both models of thinking and speaking. Regardless, business schools and law schools would do well, in my judgment, to add classes to their curricula teaching business school students how lawyers are trained to think and law school students how executives are trained to think.

1. "Procedural posture" refers to the nature of the form of the decision facing the appellate court. An appeal from a judgment of dismissal for failure to state a claim, for example, presents different questions than an appeal from a grant of summary judgment or from a judgment after a jury verdict. These considerations shape the appellate court's analysis. If they seem highly technical and esoteric to executives, that is because they are in fact highly technical and intricate, if not esoteric, from the perspective of non-lawyers. For lawyers, however, these differences are as basic as "abc's."
2. "Standard of review" refers, for example, to the extent to which, in deciding an appeal, the appellate court is free to substitute its own judgment for that of the trial court or is constrained to affirm or approve of the decision below if there is any rational basis for it whatsoever. Here, again, this concept doubtless sounds highly technical and esoteric to executives. But for lawyers, the differences between one standard of review and another often determine the probability of success or failure on appeal, regardless of the "merits" or factual and legal strength of the arguments.

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The Primitive Lawyer

by Alan L. Edwards

It happens to almost all of us at some point. For you it may have been in law school, sitting long hours in the library instead of playing Frisbee on the quad. Or spending hour after billable hour at that high-powered law firm, wondering how to tell your spouse you'd be home late again.

The thickening torso. The loss of muscle tone. As Paul Simon aptly put it, "Why am I soft in the middle now? The rest of my life is so hard."

For some it was quick – up twenty pounds by your first bonus check. For others it was more gradual. But for almost all of us the body demons came – and stayed.

You may wonder what your physique has to do with law, but you are indeed reading the *Utah Bar Journal* and not *Cosmopolitan* or *Muscle & Fitness*, where this article might share space with eyebrow plucking and bicep shredding. How you treat your body has a very real effect on your law practice, both with regard to the quality of your representation and the amount of money you make.

Allow me to explain.

Body and Mind

Attorneys make their livings with their brains. We're paid to know the applicable law, apply a given set of facts, and come up with the contract or argument or lien or will or whatever it is that reflects that law-fact combination to the best advantage of our client.

All lawyers really need, in fact, is located above the neck: central processing unit (brain), input (eyes and ears), output (mouth). Done. All those arms and legs and torsos are so much superfluity, professionally speaking.

But for reasons that Divine Providence has chosen to keep to itself, our civilized brains are housed in decidedly uncivilized bodies. Sitting long hours researching copyright fair use may be good for your brain (and your client, who has been completely unjustly accused of illegally downloading the soundtrack to My Fair Lady and making a rap out of it), but it's terrible for the rest of your body. While our brains may have reached the pinnacle of civilized thought and reasoned discourse, our bodies cannot abide civilization. They are stuck in the Paleolithic Era, designed to run, squat, jump, twist, and wiggle, not sit at a desk for hours on end and eat second helpings of fettuccini alfredo for lunch.

Studiously ignoring the suits and ties and hose and courtrooms and boardrooms, our bodies stubbornly insist that despite this brief foray into the legal world they'll shortly be back swinging through the trees, running on the savannah, sharing food that is all too scarce, and sleeping with weapons close at hand in case the Mongols attack. Rather than thriving in this environment of ease we have worked so hard to create, our bodies rebel in the form of back pain, obesity, heart disease, diabetes, and the whole panoply of what researchers have dubbed "Western" diseases – maladies caused primarily by our modern lifestyle.

Case in point: low back pain leads to more productivity loss than any other medical condition, and "has proven to be a major cost to health services and private industry throughout the industrialised world (sic) and now represents a global health issue." T. Bendix, *Low Back Pain and Seating, in The Hard Facts About Soft Machines: The Ergonomics of Seating* 147 (Kageyu Noro & Rani Leuder eds., 1994). What's more, the longer we sit, the worse it gets. *See* P. Wilkin, *Are You Sitting Comfortably? The Political Economy of the Body*, in 31 Sociology of Heath & Illness, 35-50, 35 (2009). The reason: while sitting, our backs do nothing. Rather than bending and flexing and laboring the way nature intended, we freeze them hour after

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hour in a state of motionless torpor. And when our backs complain through aches and pains about their lack of activity, we go out and buy $2000 ergonomic chairs designed by the best minds of Western civilization for the express purpose of – yes – enabling us to sit motionless even longer.

Is there perhaps something wrong with this picture?

And here's the kicker: in a deeply ironic twist, our brain's functioning is not independent of the body in which it is housed. The body's discontent affects our mental performance, which in turn impacts the quality of our practice.

Legal work is stressful, often confrontational, and when the adrenaline starts flowing, rather than physically pursuing or brawling or escaping – nature's way of responding to stress – we do the civilized thing. We talk. Or write. And without a physical outlet the stress accumulates, often overflowing into depression, anxiety, addiction, divorce, and suicide, all of which are highly prevalent in the legal profession, and all of which bar associations around the country, including the Utah Bar Association, are taking note and responding to in the form of free counseling, Lawyers Helping Lawyers, and various other programs.

The Solution

What, then, can we do? How can we accommodate our bodies' requirements without ripping off the suit and returning to the jungle – or by keeping the suit on but spending hours of non-billable time in a gym after work when we should be home putting Joey to bed?

Most of us try for an uneasy compromise, spending thirty minutes on a treadmill once in a while and ordering the wheat bread sandwich for lunch. But except for Brad down the hall who wakes up at 5:00 every morning to train for his next triathlon, such attempts are often unsatisfying and quickly given up.

Don't get me wrong: exercise is unquestionably good. But even rigorous exercise – at least the way we usually do it – doesn't solve the problem so much as contain the damage. Our bodies were designed for more or less constant movement, not long

hours of immobility offset periodically by strenuous activity.

> [A modern sedentary] life that keeps us sitting down, often immobile, for many hours a day, both at work and at leisure, only to oblige us to make up for the need of movement in a short but intense period of 2 or 3 hours a week in the gym or jogging is, to say the least, rather strange.

A. Grieco, *Sitting Posture: An Old Problem and New One*, in 29 Ergonomics, 345-62, 360 (1986). It seems an unsolvable conundrum – how can we possibly accommodate our bodies' need to move all day while performing almost entirely stationary work?

Happily, there is an answer: we can give our bodies what they need even while we're doing our jobs, and doing them better than ever.

The answer is simply this: get on your feet.

"Over years and decades we have gradually come to take it for granted that we do our best thinking sitting down, but that simply isn't true."

Standing is our body's natural working posture, whether fighting off a rhinoceros or writing a brief. Consider: have you ever had to fight off the mid-afternoon doldrums, or struggle to stay awake in a post-lunch meeting, while you're standing up? As you have no doubt experienced yourself, standing is the non-chemical equivalent of Coke; when you stand, your systems become active, your thoracic muscles work to keep you balanced, your heart pumps harder, your brain gets more blood and thus more oxygen, you feel more alert, you think more clearly – and clear thinking, after all, is what clients pay us for.

All this with a simple change in posture.

Over years and decades we have gradually come to take it for granted that we do our best thinking sitting down, but that simply isn't true. Nineteenth century office workers routinely did their work at stand-up desks. Mental luminaries including Ernest Hemingway, Winston Churchill, and Thomas Jefferson worked at stand-up desks. There's no reason we can't do the same.

> Research in this area suggests that there is no particular advantage to carrying out mental tasks while sitting at a desk; they can be performed just as, or more, successfully whilst standing up. Again, the idea that thinking and sitting are connected is simply a powerful cultural convention but no more than that.

Wilkin, at 41. Even without changing a thing in your current office setup, you can stand more than you do now. While talking on the phone, for example, or during informal meetings. Take ten seconds to walk to your assistant's workstation rather than shouting. Stand while listening to your associate's research summary (or while presenting said summary yourself). Walk to your co-workers' offices rather than calling them. And if you're only going up or down a floor or two, taking the stairs is faster than waiting for the elevator.

A few small office changes can free you up even more. A long telephone cord enables you to pace while talking. Clearing that souvenir Coney Island ashtray from your bookcase transforms it into a stand-up desk. Putting your telephone out of arm's reach forces you to stand to answer it. Every step taken and every minute standing makes a difference.

My Own Experience

Unfortunately I can't work at my own stand-up desk for more than ten or fifteen minutes before my body wants to move around, so I bought what I consider the greatest thing since the original lineup of Van Halen – a treadmill desk.

Such desks, which you can see in action at http://www.youtube.com/watch?v=CPjN07JyVjo (last visited June 1, 2011), provide the best of all possible worlds. Everything I did at a regular desk I can do while walking at one and a half miles per hour – reading, editing documents, typing on the computer, talking on the phone. The only thing that's hard to do is write (with a pen) but my assistant will tell you it was impossible for my handwriting to get any worse anyway.

I now walk or stand almost the entire working day (I'm walking as I

type these words), with lunch and commute usually my longest sedentary periods. The old mid-afternoon lull has disappeared. My mind is clear and my energy level is consistent. I am a better, more effective, and more profitable attorney.

For me personally, however, it goes well beyond lethargy avoidance. After taking my first job as an associate at a New York City intellectual property firm, I became increasingly anxious and high-strung. The job was stressful and demanding, of course, with long hours and high pressure, and I constantly fretted about my work being up to snuff, not to mention the ever-looming billable hour requirement. (An acquaintance of mine billed 2900 hours his first year; he worked every single day of the year, including Christmas.)

I was hanging in there, but I sure wasn't having any fun, and I often had to force myself through a mental fog to get my work done, a fog which followed me like a hostile specter when I moved my family to Utah. Finally I swallowed my pride and went to what became an array of psychiatrists and psychologists, who talked to me about my feelings and prescribed an eventual pharmacological cornucopia: Prozac, Celexa, Lexapro, Wellbutrin, even a monoamine oxidase inhibitor, the nuclear bomb of psychiatric medications whose side effects, if you eat the wrong sort of food, include – well, death.

The results of all this time-consuming and expensive treatment – mixed. Things would get easier, then harder. Sometimes a lot harder. The solution, finally, came not from a bottle of pills or a therapist's couch, but a simple discovery – it was impossible for me to be anxious or depressed while I was on my feet. Sitting, all bets were off. Standing, I was golden.

A whole new world opened up. I began incorporating standing and walking into my professional life, culminating in the purchase of my treadmill desk. The old anxiety simply went away. I became happily and enthusiastically engaged in the practice of law, with an interesting and rewarding book of work, simply by acknowledging the needs and incorporating the habits of the primeval human into my civilized working life.

Quit the chair. Stand and move. Your body – and your practice – will thank you.

Personal Bias

by Keith A. Call

What causes the hometeam advantage in sports? Some have suggested various factors, including lack of travel fatigue, the ability to stay at home rather than at a hotel, familiarity with the home field or home court, the actual or psychological advantage of friendly crowd noise, and environmental factors such as weather and altitude.

A behavioral economist and a sports writer recently put forward a novel explanation for the home team advantage. Tobias Moskowitz (University of Chicago – where else?) and Jon Wertheim use a combination of statistical analysis and behavioral science to argue that the leading cause of the home team advantage is referee bias in favor of the home team. *See* Tobias J. Maskowitz & L. Jon Wertheim, *Scorecasting: The Hidden Influences Behind How Sports Are Played and Games Won*, 138, 165 (2011).

Moskowitz and Wertheim cite fascinating research from Major League Baseball (MLB). Using cameras now installed in every MLB stadium and a system called "Pitch f/x," MLB is able to determine the location of every pitch relative to the strike zone within about one inch. *See* Wikipedia, http://en.wikipedia.org/wiki/PITCHf/x (last visited June 1, 2011). Using complex statistical analysis and data from Pitch f/x and its predecessor, Moskowitz and Wertheim were able to empirically conclude that umpire "ball" and "strike" calls dramatically favor the home team, especially in crucial situations. *See* Moskowitz, 141-50, 157-65. They attribute this to a natural tendency for people to conform their own views to those accepted by a larger social group. *See id.*

What is really interesting is what happened when MLB had installed umpire-monitoring systems in some, but not all, of its stadiums. In stadiums where umpires knew their calls were being monitored, the strike-ball advantage for the home team disappeared! The home team bias remained, however, in stadiums where umpires knew they were not being watched. *See id.* at 144-45.

Were the umpires being dishonest? Probably not intentionally. But, as ethicist Quinn McKay teaches, one of the keys to being honest is to "recognize pressure as a major determinant of honesty." Quinn McKay, *The Bottom Line on Integrity: 12 Principles for Higher Returns*, at xv (2004).

Utah Rule of Professional Conduct 3.3 states that lawyers shall not knowingly make false statements of fact or law or offer evidence known to be false to a court. *See* Utah R. Prof'l Conduct 3.3. Rule 4.1 states (in broad terms) that a lawyer shall not knowingly make false statements (or material omissions) to others. *See id.* R. 4.1. In fulfilling our duties of candor and honesty, it is important to remember that the pressure to shade the truth can be intense. This temptation can spawn from a fear of reprisal, fear of loss, or fear of embarrassment. It can also arise from noble objectives, such as a desire to be loyal or to please others. These pressure-causing factors are compounded by a competitive marketplace and the obsession most lawyers have to "win" for their clients. Perhaps what is most difficult is that these intense pressures can cause people to unintentionally stray from the truth in ways that are extremely difficult to recognize in oneself.

So, in order to make sure you are fulfilling your obligations of honesty and candor, take the time to "self realize" the intense pressure every person feels to look good in front of others. Recognize that lawyers in particular feel compelled to "succeed" in an intensely competitive and adversarial environment. Try to eliminate those pressures to the extent you can. Work to establish clear and high personal standards of honesty. And always try to remember and recognize how the pressures you face might be affecting your own perception of the "strike zone."

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Objecting to Subpoenas in State and Federal Cases Pursuant to Rule 45

by Tanya N. Lewis

Introduction

In the course of a civil litigation case, parties are required by rule to disclose documents in their initial disclosures and, if served, in responses to requests for production. *See* Utah R. Civ. P. 26, 34. But what about obtaining documents from individuals and entities who are not parties to the case? The drafters of the Federal Rules of Civil Procedure, upon which the Utah Rules of Civil Procedure are based, anticipated a need on the part of civil litigants for documents within the scope and control of witnesses and other third parties. Utah Rule of Civil Procedure 45 was based on that need. *See id.* R. 45.

In a personal injury case, for example, either a defendant or a plaintiff might seek to subpoena records from a nonparty employer, or medical providers. In a breach of contract case, a party may need to obtain records from a company's accounting firm that is not party to the suit. Rule 45 allows a party or its attorney to serve a subpoena on the recipient, describing the documents to be produced. Once the subpoena is properly served, the burden to either respond or object shifts to the recipient. There are many reasons a recipient might wish to object to a subpoena. For example, it may request trade secrets, information protected by the attorney-client privilege; or it might be overly broad. Or, in this age of electronic communications, it may ask for information outside of the scope or control of the recipient. Whatever the reason, a recipient wishing to object to the service of a document subpoena should follow the procedures laid out in Rule 45 carefully to protect the recipient's rights. The state and federal versions of Rule 45 differ in several key ways, and the careful practitioner should know these differences to ensure best representation on the client's behalf.

Objecting to a Utah state court subpoena

In Utah state courts, Rule 45(e) provides protection for persons subject to subpoena. *See id.* R. 45(e). Rule 45(e)(1) mandates that the party or attorney responsible for issuing a subpoena shall take "reasonable steps to avoid imposing an undue burden or expense on the person subject to the subpoena." *Id.* R. 45(e)(1). The court is tasked with enforcing this duty and can impose sanctions, including lost earnings and attorney fees, on parties who breach this duty. *See id.* Additionally, a subpoena to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things, or to permit inspection of premises must also comply with Rule 34(a) and (b)(1). *See id.* R. 45(e)(2). Notably, the person subject to the subpoena must be allowed at least fourteen days after service to comply instead of the thirty days afforded by Rule 34(b)(2). *See id.*

Rule 45(e)(3) provides a detailed list of circumstances when a person subject to the subpoena may object. *See id.* R. 45(e)(3). It also provides that a nonparty affected by the subpoena may also object to the subpoena. *See id.* Objections may be lodged when the subpoena fails to allow reasonable time for compliance; or if it requires a resident of this state to appear where the person does not reside, is not employed or does not transact business in person. *See id.* R. 45(e)(3)(A), (B). Objections also can be made if the subpoena requires a nonresident of Utah to appear other than in the county in which the person was served, or requires the person to disclose privileged or other protected matter and no exception or waiver applies. *See id.* R. 45(e)(3)(C). The objection may not apply if the appearance is a trial or formal court hearing.

A recipient also may object if the subpoena requires the person to disclose a trade secret or other confidential research, development or commercial information; subjects the person to an undue burden or cost; requires the person to produce electronically

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stored information in a form to which the person objects; or requires the person to provide electronically stored information from sources that are not reasonably accessible because of undue burden or cost. *See id*. R. 45(e)(3)(E)-(H). The recipient may also object if the subpoena requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute, and resulting from the expert's study that was not made at the request of a party. *See id*. R. 45(e)(3)(I).

If the person subject to the subpoena or a nonparty affected by the subpoena objects, that objection must be made before the date for compliance. *See* Utah R. Civ. P. 45(e)(4)(A). The objection must be stated in a concise, non-conclusory manner. *See id.* R. 45(e)(4)(B).

A party objecting on the basis of privilege, protection or trade secret should sufficiently describe the nature of the documents, communications or things not produced to enable the party or attorney responsible for issuing the subpoena to contest the objection. *See id*. R. 45(e)(4)(C). A full privilege log is not required. Also, if the recipient's objection is that the electronically stored information is from sources that are not reasonably accessible because of undue burden or cost, the objecting party must show that the information sought is not reasonably accessible because of that burden or cost. *See id*. R. 45(e)(4)(D).

The advisory committee notes provide additional guidance as to procedures when objecting to a subpoena. *See id*. advisory committee note. "To quash a subpoena, a party should file a motion for a protective order under Rule 26, and a non-party affected by the subpoena should file an objection under this rule." *Id*. The non-party might be the person subpoenaed or someone who has an interest in the testimony of the subpoenaed person or in the documents or other materials ordered to be produced. *See id*. In addition to filing the motion to quash or an objection, it should be served on all parties in the case.

The objection or motion shall be served on the party or attorney responsible for issuing the subpoena. *See id*. R. 45(e)(4)(E). The party or attorney responsible for issuing the subpoena shall

serve a copy of the objection on the other parties. *See id*.

Once an objection or motion for protective order is made, the subpoena's issuer is not entitled to compliance but may move for an order to compel compliance. *See id*. R. 45(e)(5). The motion should be served on the other parties and on the recipient. *See id*. An order compelling compliance shall protect the person subject to or affected by the subpoena from significant expense or harm. *See id*. The court also may quash or modify the subpoena. *See id*. If the subpoena issuer shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions. *See id*.

Subpoenas Issued in Federal Court

In federal court, protection to subpoena recipients is afforded by Rule 45(c), and the rule is not as specific as its Utah counterpart. *See* Fed. R. Civ. P. 45(c). A recipient of a federal court document subpoena who is commanded to produce documents, electronically stored information or tangible things, or to permit an inspection, is not required to appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing or trial. *See id*. R. 45(c)(2)(A).

"The respective rules provide different protections and procedures for objecting, and the prudent course of action would be to tailor each objection based upon where it ultimately will be filed."

The recipient may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials, to inspecting the premises, or to producing electronically stored information in the form requested. *See id*. R. 45(c)(2)(B). The objection must be served before the earlier of the time specified for compliance or fourteen days after the subpoena is served. *See id*. If the recipient objects, the serving party may move the issuing court for an order compelling production or inspection at any time. *See id*. R. 45(c)(2)(B)(i). Compliance may be required only as directed by the court, and the rule specifies that the court must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance. *See id.* R. 45(c)(2)(B)(ii). **A key change from our state counterpart is that the federal rule does not appear to allow a non-recipient the right to object to a subpoena.** *See id*. R. 45(c)(2)(B).

Additional procedures for quashing or modifying a subpoena are laid out in Rule 45. On a timely motion, the issuing court must quash or modify a subpoena that fails to allow a reasonable time to comply. *See id*. R. 45(c)(3)(A)(i). It also must quash a subpoena that requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed or regularly transacts business in person. *See id*. R. 45(c)(3)(A)(ii). However, the person may be commanded to attend a trial by traveling from a place within the state in which the trial is held. *See id*. The subpoena also must be quashed if it requires disclosure of privileged or other protected matter, if no exception or waiver applies, or if it subjects a person to undue burden. *See id*. R. 45(c)(3)(A)(iii).

The court may modify or quash a subpoena if it requires the recipient to disclose a trade secret or other confidential research, development or commercial information, or an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party. *See id*. R. 45(c)(3)(B)(i)-(ii). The court can also modify or quash a subpoena that requires a person who is not a party or a party's officer to incur substantial expense to travel more than 100 miles to attend trial. *See id.* R. 45(c)(3)(B)(iii).

The court may order appearance or production instead of quashing or modifying a subpoena under specified conditions if the serving party shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and ensures that the subpoenaed person will be reasonably compensated. *See id*. R. 45(c)(3)(C)(i)-(ii).

Conclusion

When a client is not a party to a civil action or their counsel wishes to object to a subpoena in Utah, it is important to note whether the subpoena was served in conjunction with a case pending in state or federal court. The respective rules provide different protections and procedures for objecting, and the prudent course of action would be to tailor each objection based upon where it ultimately will be filed.

John Adams, David Frakt, and Other Lawyers of Courage

by Judge Monroe G. McKay

EDITOR'S NOTE: *The following remarks were made by Judge McKay on April 29, 2011, at the annual Law Day luncheon, sponsored by the Young Lawyers Division. This year's Law Day theme was "The Legacy of John Adams, from Boston to Guantanamo."*

The Tumbuka people of southeastern Africa advise us that even if we are so poor we are reduced to eating pumpkin seeds, we should always share some with a neighbor. What follows is a share of my pumpkin seeds.

We are living in the middle of a cultural cycle dominated by anger, selfishness, and mean-spiritedness. They flourish in a double milieu of hysteria about terrorism and drugs. In general we seem devoid of noble and generous comments or behavior. I should be reluctant to take these on because the cultural pressures are so extreme that Lucy's oft-expressed advice to me seems appropriate: "You might as well save your breath to cool your tea."

Of course, it would only be appropriate for me to comment on what lawyers should do in this environment. Since I was asked to speak about President John Adams and the case of the British soldiers, it fits right in with my thoughts on the matter. I have expanded to include some other cases including the here-and-now which represent the bar at their best. These are acts of great courage and noble vision in the face of extreme cultural pressure. Having lived through the time when we locked up our own citizens of Japanese ancestry without cause, the McCarthy era when we destroyed the lives and careers of hundreds of loyal citizens by branding them "commies, pinkos, and fellow travelers," and now the current hysterias, I have some real sense of how truly difficult it is to insist on the rule of law in such times.

In the case of Adams, it was made all the more difficult because he was politically ambitious. So I need to make clear that these acts of nobility defending great principles do not come cheaply. Great principles, to be greatly administered, always involve hazard – not only to the lawyer or the other implementers of that principle but also to the community which has a stake in the consequences of the implementation. But there is no guarantee of the rule of law, if it only applies when convenient or in times of calm or for people we approve of.

To put Adams' case in perspective, he was called upon to defend Captain Preston and the other soldiers who carried out the Boston massacre. The prosecution was seeking the death penalty for all of them. For inspiration to any lawyer, I quote from Mr. Adams' diary entry for March 5, 1773, the third anniversary of the Boston Massacre:

> I…devoted myself to endless labour and Anxiety if not to infamy and death, and that for nothing, except, what indeed was and ought to be all in all, a sense of duty. In the Evening I expressed to Mrs. Adams all my Apprehensions: That excellent Lady, who has always encouraged me, burst into a flood of Tears, but said she was very sensible of all the Danger to her and to our Children as well as to me, but she thought I had done as I ought, she was very willing to share in all that was to come and place her trust

JUDGE MONROE G. MCKAY was appointed to the Tenth Circuit Court of Appeals by President Carter in 1977. He assumed senior status at the end of 1993.

in Providence.

> Before or after the Tryal, Preston sent me ten Guineas and at the Tryal of the Soldiers afterwards Eight Guineas more, which were…all the pecuniary Reward I ever had for fourteen or fifteen days labour, in the most exhausting and fatiguing Causes I ever tried: for hazarding a Popularity very general and very hardly earned: and for incurring a Clamour and popular Suspicions and prejudices, which are not yet worn out and never will be forgotten as long as History of the Period is read…It was immediately bruited abroad that I had engaged for Preston and the Soldiers, and occasioned a great clamour.…
>
> The Part I took In Defence of Cptn. Preston and the Soldiers, procured me Anxiety, and Obloquy enough. It was, however, one of the most gallant, generous, manly and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country. Judgment of Death against those Soldiers would have been as foul a Stain upon this Country as the Executions of the Quakers or Witches, anciently. As the Evidence was, the Verdict of the Jury was exactly right.
>
> This however is no Reason why the Town should not call the Action of that Night a Massacre, nor is it any Argument in favour of the Governor or Minister, who caused them to be sent here. But it is the strongest Proofs of the Danger of Standing Armies.

Shift forward to a time when the ancestors of many of you were the target of extermination. Their marital practices were branded as one of the two relics of barbarism, along with slavery. On the scene came one Thomas L. Kane. He was a Lawyer. He was not a Mormon. His only stake in the affair was what he saw as injustice. At great risk to his fragile health, his future career, and his political ambitions, among other things, he sailed from New York to California and then overland to mediate the dispute that had President Buchanan sending the U.S. Army under Colonel Albert Sydney Johnston to extinguish the Mormon "rebellion" in the Great Basin. He rode through snowy mountain passes to Camp Scott near Fort Bridger. After being shot at and then arrested, he challenged Colonel Johnston to a duel for his harsh treatment. (Dare I say, "enhanced interrogation.") He thereupon ignored Colonel Johnston and appealed directly to Governor Cummings, who was sent to be installed as the governor of the territory. Thereby, as one writer has put it, "The feared Utah war had been practically single-handedly averted by (lawyer) Thomas Kane."

Moving forward to Pearl Harbor and the Korematsu case, it has an upside and a downside. The downside was Justice Douglas whom I otherwise generally admired. To put it in his own words:

> The evacuation via detention camps was before us, and I have always regretted that I bowed to my elders and withdrew my [concurring] opinion. On the same day that we decided the evacuation case we held that there was no authority to detain a citizen, absent evidence of crime. Meanwhile, however, grave injustices had been committed. Fine American citizens had been robbed of their properties by racists – crimes that might not have happened if the Court had not followed the Pentagon so literally. The evacuation case, like the flag-salute case, was ever on my conscience. The [Dissenters] had been right.

For the upside, I commend to you the reading of the courageous dissent of Justice Jackson. I give you just this quote:

> Much is said of the danger to liberty from the Army program for deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. All who observe the work of courts are familiar with what Judge Cardozo

> described as "the tendency of a principle to expand itself to the limit of its logic." A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image. Nothing better illustrates this danger than does the Court's opinion in this case.

I continue on to demonstrate that notwithstanding the contrary aphorism, we never seem to learn from our past experience with hysteria and continue to make the same mistakes.

Nobody, not even the very popular then-President of the United States dared to take on Senator Joseph McCarthy, who was destroying innocent people's lives by the hundreds with a witch hunt. He even took on the U.S. Military to brand them as disloyal during the cold-war hysteria.

It took a respected Boston lawyer named Joseph Welch, at great risk to his professional career and without fees, to stand up. The Senator was in the process of defaming a young lawyer named Fred Fischer in Welch's firm, who was helping defend the Army.

Welch responded to this attack as follows:

> Little did I dream you could be so reckless and cruel as to do an injury to that lad…it is, I regret to say, equally true that I fear he shall always bear a scar needlessly inflicted by you. If it were in my power to forgive you for your reckless cruelty, I will do so. I like to think I am a gentleman, but your forgiveness will have to come from someone other than me….Let us not assassinate this lad further, Senator. You have done enough. Have you no sense of decency sir, at long last? Have you left no sense of decency?"

That was the beginning of the end of a sordid chapter in our national evolution from crisis to crisis.

Another historic moment occurred earlier. I quote from Mintz, *Industrialization and the Working Class*:

> In 1905, former Governor Frank Steunenberg was killed by a bomb, rigged to go off when he opened the gate to his house. Harry Orchard, who had killed 13 men in 1904 when he dynamited a railroad depot during a labor conflict in Colorado, confessed to the ex-governor's murder, but said he had undertaken it at the behest of leadership in the Western Federation of Miners, a militant labor organization.
>
> Three Federation leaders, including "Big Bill" Haywood, the Federation's secretary-treasurer, were kidnaped from Colorado and brought to Idaho to face murder charges. Haywood, along with Eugene V. Debs, had founded the International Workers of the World (aka the "Wobblies"). Both men were reviled by the press and politicians, including President Roosevelt.
>
> Clarence Darrow elected to defend Haywood [who, by the way, was born in Salt Lake City]. The press called Darrow the "attorney for the damned." In his closing statement, which lasted more than 11 hours, Darrow said:
>
> > Out on our broad prairies where men toil with their hands, out on the wide oceans where men are tossed and buffeted on the waves, through our mills and factories, and down deep under the earth...the poor, the weak, and the suffering of the world are stretching out their helpless hands to this jury in mute appeal for Will Haywood's life.
>
> Haywood was ultimately acquitted. President Roosevelt later called the verdict "a gross miscarriage of justice."

Time passes so I will be brief with the last two. The next one involved a dispute with a sitting President. The lawyers involved put at risk their very successful careers and futures. Attorney General Elliot Richardson appointed Archibald Cox as independent counsel to investigate Watergate. When the President, who had a personal stake in the matter, ordered Richardson to fire Cox, he refused and resigned in protest. The same order was issued to the Deputy Attorney General, who also refused and resigned.

Not many of us will face surrendering a position as great as that of Attorney General of the United States.

The next one is touchier because we are in the middle of it. Among others, it involves one of my former law clerks, Major David Frakt. It is Guantanamo. Sadly, it looks very parallel to the cold war and the internment policy of World War II.

While some lawyers were busy justifying what was plainly illegal torture by calling it "enhanced interrogation," a number of others were advocating on behalf of our Constitution and our laws. As one commentator put it: "The detention policies [of the administration] were unconstitutional and illegal, and no higher legal authority than the Supreme Court of the United States agreed." For their efforts lawyers defending Guantanamo detainees have been branded with the pejorative term "the Gitmo Nine." They are accused of being terrorist sympathizers and of giving aid and comfort to our enemies. David is among those being reviled. He has interrupted his teaching career at great risk to his future to return to his role as a member of the JAG assigned to defend detainees. Among his clients is a young Afghan man. According to David's report, he was a homeless, illiterate teenager who had been drugged and forced to fight with the Afghan militia. He was then abused by the United States and transported halfway around the world to Guantanamo where he was imprisoned for five years without charge. Because

of proof that his confession was the product of torture and that he was in fact innocent, the federal judge handling the case ordered him to be released.

I wish I had time to give a full report on Lt. Col. Darrel Vandeveld who was an enthusiastic prosecutor at Guantanamo Bay. It is enough to say that eventually he resigned as prosecutor "because he had grave doubt about the integrity of the system he had so vigorously defended" – all at great risk to his career as a professional military officer and lawyer. He was pressured explicitly by his superiors not to talk about his work at Guantanamo. He was directed to undergo a psychological evaluation. He was ordered to stay at home and prohibited from coming into his office pending his official release from military service.

Such nobility is not confined to a few in the United States. I have seen it in Africa.

I wish I had time to also tell you of parallel efforts by my friend, Chief Justice Dumbutshani, who wrote the opinion for the Zimbabwe Supreme Court holding that Parliament could not expel Ian Smith, the former white leader who opposed independence. Smith had since been elected to Parliament and had given a speech in next-door South Africa calling his colleagues baboons. Under the tyrant Mugabe, this was nothing short of an Adams-like act upholding the new constitution.

While most of us will not be faced with such dramatic choices, we can at least be eager to defend the lawyers who do so among our many friends who fail to understand, in their purported devotion to the Constitution, what it provides and why. You might even want to try to persuade them why, in the long run, it may be in their own interest in this world without majorities but only shifting alliances of people with their own agendas. Anyone of today's majority may be tomorrow's hated minority.

I would hope that when you come to my age you will be able to say that at some place and some time, not convenient to you or even propitious, you did something more noble than opposing taxes and finding ways to avoid paying them. That you did something at some risk to your financial or career success for reasons that were noble. You have the capacity, individually and collectively,

to change the mood from anger and selfishness to one of optimism and generosity; to do something worthy of our generally admired reputation as a country of exemplary rule of law and generosity of spirit.

I end with this disclaimer. I speak only for myself, not for the Court – when I do speak for the Court, I have to get at least one more vote. I have neither sought nor received any votes for what I have said today. Nor does what I have said necessarily indicate what I would do in an individual case. I am constrained by precedent and judicial discipline in ways that may well contradict my own personal feelings.

And lest you think otherwise, I do not boast that I am certain what I would do if faced with these kinds of challenges. I only aspire to make them so much a part of my conscious commitment that I will have some hope of rising to the occasion.

To enhance your reflection on these pumpkin seeds of mine, I should share with you the translation of a poem by the Dutch poet, Keuls, written during the revival of Dutch letters during the late 1800s. This is how it came to me:

Judge Dumbauld was a Federal District Judge in Uniontown, Pennsylvania. He was as fine a judge and scholar as I have ever known. I met him when he occasionally sat with us as a visiting judge. In conversation he learned that I speak a few lines of Afrikaans, which is derived from Dutch. He told me he had a doctoral degree from Amsterdam University and recited some Dutch poems. When I became Chief Judge of the 10th Circuit, he attended the ceremony celebrating my appointment, which I promoted. At a dinner following, I think because he thought I might be a little full of myself, he recited a poem. Here is the English translation:

> What have you preserved from your frenzy?
> A lamp that flickers; an eye that weeps.
> What is there from the storm, that you withstood?
> A mournful leaf, that has not yet found rest.
> What has love done in your heart?
> It has made me understand the pain of the lonely.
> What remains of all the glory that surrounded you?
> Nothing but a singing memory.
>
> H.W.J.M. Keuls

In the words of Forrest Gump: "That's all I have to say about that." At least for today.

Poetry Winners Announced

The winners of the Appellate Practice Section's more-or-less annual poetry contest were recently announced by the section. The winner in each category – haiku and limerick – receives a $75 gift certificate to The Tin Angel Café. Congratulations!

The winning Haiku:

Marshal Evidence
Was not an Old West lawman
Appeal is denied

Edward R. Munson
Jones Waldo

The winning limerick:

A lawyer whose looks were appealing,
Would argue each case with much feeling.
With his appearance divine,
He would win every time–
Like candy from kids to be stealing.

Joseph C. Rust
Kesler & Rust

Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during the June 1, 2011 Commission meeting held in Provo, Utah.

1. The Commission selected Robert Sykes as the Lawyer of the Year Award recipient.

2. The Commission selected the Honorable Dee Benson as the Judge of the Year Award recipient.

3. The Commission selected the Unauthorized Practice of Law Committee as the Committee of the Year Award recipient.

4. The Commission selected the Elder Law Section and the Young Lawyers Division as joint recipients for Section of the Year Award.

5. The Commission selected Lowry Snow to receive a Distinguished Service Award at the Fall Forum.

6. The Commission appointed Rob Jeffs as Chair for the Commission's Advertising Committee along with Tom Seiler and John Lund as members in addition to two undesignated members of the Court's Advisory Committee on the Rules of Professional Conduct. Additional members may also be added with Executive Committee approval.

7. The Commission approved the Young Lawyers Division's funding request for $35,000 plus an amount of up to $2500 to send two representatives to the 2012 Western States Bar Conference in Las Vegas.

8. The Commission approved Utah Dispute Resolution's funding request for $20,000.

9. The Commission postponed the funding request for Lawyers Helping Lawyers depending on submission of additional information on revenue sources and submission of the ABA's most recent audit review.

10. The Commission approved the proposed 2011-12 budget with the following adjustments: (a) added $25,000 to the Public Relations budget; (b) took the Public Relations budget line out of the Special Projects Department to become the Public Education Department; and (c) within the Public Education Department, separated the budgeted amount of $125,000 into budget lines for the consultant ($50,000) and funds for the media ($75,000).

11. The Commission approved the April 24, 2011 Commission Meeting Minutes via the Consent Agenda.

12. The Commission reappointed Margaret Plane as a State Bar Delegate to the ABA via the Consent Agenda.

13. The Young Lawyers Division agreed to review possible service opportunities as Social Security Representative Payees for disabled and elderly.

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

Notice of MCLE Reporting Cycle

Remember that your MCLE hours must be completed by June and your report must be filed by July. If you have always filed in the odd year you will have a compliance cycle that will begin January 1, 2010 and will end June 30, 2011. Active Status Lawyers complying in 2011 are required to complete a minimum of eighteen hours of Utah accredited CLE, including a minimum of two hours of accredited ethics or professional responsibility. One of the two hours of ethics or professional responsibility shall be in the area of professionalism and civility. (A minimum of nine hours must be live CLE.) Please visit www.utahmcle.org for a complete explanation of the rule change and a breakdown of the requirements. If you have any questions, please contact Sydnie Kuhre, MCLE Board Director at skuhre@utahbar.org or (801) 297-7035.

NOTICE

Please take notice that the Sixth Judicial District of Garfield County will be moving from the current location at 55 South Main St., Panguitch, Utah on May 13, 2011. A new court facility will be constructed at the current court location.

The temporary address for the court office will be 740 North Main, PO Box 77, Panguitch, Utah. All court hearings will be held in the Panguitch City Council Chambers at 25 South 200 East Panguitch, Utah. During the construction period the hours of operation will temporarily be changed. The new hours will be 8:00 am to 5:30 pm, Monday–Thursday at 40 North Main. All court hearings scheduled with the court will be at the Panguitch City Council Chambers, 25 South 200 East, Panguitch, Utah.

For court assistance call 435-676-1104 Monday–Thursday. For immediate assistance on a Friday call 435-676-8585 where a court clerk can be reached.

2011 Fall Forum Awards

The Board of Bar Commissioners is seeking nominations for the 2011 Fall Forum 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 or adminasst@utahbar.org by Friday, September 16, 2011. The award categories include:

1. Distinguished Community Member Award

2. Professionalism Award

3. Outstanding *Pro Bono* Service Award

View a list of past award recipients at: http://www.utahbar.org/members/awards_recipients.html

Notice of Petition for Reinstatement to the Utah State State Bar by James L. Stith

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of Respondent's Verified Petition Requesting Reinstatement to the Practice of Law and Attached Exhibits ("Petition") filed by James L. Stith in *In the Matter of the Discipline of James L. Stith*, Third Judicial District Court, Civil No. 050500491. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

Notice of Petition for Reinstatement to the Utah State Bar by Jonathan W. Grimes

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of Respondent's Verified Petition for Reinstatement ("Petition") filed by Jonathan W. Grimes in *In the Matter of the Discipline of Jonathan W. Grimes,* Third Judicial District Court, Civil No. 080910239. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

Utah State Bar 2011 Summer Convention Award Winners

During the Utah State Bar's 2011 Summer Convention the following awards were presented:

DEE BENSON
Judge of the Year

ROBERT B. SYKES
Lawyer of the Year

UNAUTHORIZED PRACTICE OF LAW COMMITTEE
Commitee of the Year

YOUNG LAWYERS DIVISION & ELDER LAW SECTION
Sections of the Year

Welcome to New Admittees

Congratulations to the new lawyers sworn in at the joint admissions ceremony to the Utah Supreme Court and the U.S. District Court of Utah held on May 18, 2011.

Heather Adair
Robert Jeremy Adamson
Elizabeth Anono Adoyo
Charles Owen Ainscough
Jared M. Allebest
Eric S. Allen
Thomas E. Anthony
Adam R. Baird
Christopher Andrew Bauer
Jordan P. Bennett
Leah J. Bennion
Adam Michael Birk
Hailey A. Black
Wayne Lewis Black
Heidi B. Bogus
Travis Lyle Bowen
Peter E. Bracken
Matthew Allen Brass
Taylor M. Burton
Sean T. Carpenter
Lannie K. Chapman
Andrew R. Choate
Anders B Christensen
David A. Christensen
Karen M. Clemes
Leellen Coacher
Michelle R. Colburn
Robert Mahi Congelliere
Gary Lee Cooper
Victor P. Copeland
Rasheedah S. Corbitt
John T. Deeds
Alan Dunaway
Brittany D. Enniss
Mitchell Eric Evers
Russell W. Farr
Elizabeth L. Fasse
Kristy K. Finlayson
Jesse M. Flores
Seth A. Floyd
Christian A. Fox
Brian T. Frees
Paul S. Fuller
Tony Frank Graf
John Spencer Hall
Jedediah C. Hartgrove
Jenna Hatch
Roberto Hernandez
Kimberly M. Herrera
Stewart Ian Hiatt
Michael Lynn Holdsworth
Joseph M. Hood
David O. Hoyal
Adam C. Hull
John A. Inglish
Michael Brooks Ipson
Craig A. Jackson
Ian C. Johnson
Brieanne M. Kitchen
Diana C. Knowles
Andrew R. Kolter
John W. Kunkler, III
Katie Laird
Jon S. Lindsey
Brandee Rae Lynch
J. Tyler Martin
Paul Roger Maxfield
John M. Mbaku
Jan McCosh
Michael McDonald
Hope E. Melville
Anissa B. Morse
Erica A. Mortensen
Alan S. Mouritsen
Michelle Mumford
Kara M. Nally
Mark R. Nelson
Ryan D. Nelson
Kara H. North
Nariman Noursalehi
Thomas G. Nuila
Bradley N. Olsen
Kyler E. Ovard
David K. Pang
Gigi C. Parke
Gregory M. Perry
Adam B. Peterson
Julia Anne Peterson
Anthony Lee Plachy
G. Wesley D. Quinton
Kristin Mae Rabkin
Brittany Mae Ratelle
Miesha E. Redmond
Brian D. Rice
Stacy M. Roberts
Christy Robison
Christopher E. Rogers
Anthony M. Saunders
Robert Allen Saunders
Karmen Schmid
Joseph M. Shapiro
Mathew S. Shields
Robert Edward Snyder
Simon L. So
Bryan J. Stoddard
Craig Alan Stokes
Daniel R. Strong
Brady G. Stuart
Stephen M. Styler
James A. Tanner
Alan Curtis Taylor
Mark D. Taylor
Trevor D. Terry
Virginia T. Tomova
Blake R. Voorhees
Douglas J. Wawrzynski
David B. Wiles
Tyler A. Woodworth
James K. Yeates
Joseph D. Young

House Counsel
Michael J. Newman

Mandatory Online Licensing

The annual Bar licensing renewal process has started and can be done only on-line. Sealed cards have been mailed and include a login and password to access the renewal form and the steps to re-license online at https://www.myutahbar.org. ***No separate form will be sent in the mail. Licensing forms and fees are due July 1 and will be late August 1. Unless the licensing form is completed online by September 1, your license will be suspended.***

If you need to update your email address of record, please visit www.myutahbar.org. To receive support for your online licensing transaction, please contact us either by email to onlineservices@utahbar.org or, call (801) 297-7021. Additional information on licensing policies, procedures, and guidelines can be found at http://www.utahbar.org/licensing.

Upon completion of the renewal process, you should receive a Certificate of License Renewal that you can print and use as a receipt for your records. This certificate can be used as proof of licensure, allowing you to continue practicing until your renewal sticker, via the U.S. postal service. If you do not receive your license in a timely manner, call the Licensing Department at (801) 531-9077.

Supreme Court Seeks Attorneys to Serve on MCLE Advisory Board

The Utah Supreme Court is seeking applicants to fill several vacancies on the Utah Mandatory Continuing Legal Education Advisory Board. The purposes and objectives of the Board include oversight of the MCLE program, accreditation of CLE courses or activities, and handling of compliance issues. Appointments are for a three year term. No lawyer may serve more than two consecutive terms as a member of the Board. Interested attorneys should submit a resume and letter indicating interest and qualifications to:

Diane Abegglen, Appellate Court Administrator
Utah Supreme Court
P.O. Box 140210
Salt Lake City, UT 84114-0210

Applications must be received no later than August 5, 2011.

Pro Bono Honor Roll

Aaron Kinikini – American Indian Clinic
Aaron Tarin – Immigration Clinic
Abram Hardy – Domestic Case
Adam Buck – Tuesday Night Bar
Adam Kaas – Tuesday Night Bar
Al Pranno – Family Law Clinic
Alisa Rogers – Immigration Clinic
Amy Morgan – Domestic Case, Tooele Clinic
April Hollingsworth – Street Law Clinic
Barbara Ochoa – Tuesday Night Bar
Ben Machlis – Tuesday Night Bar
Brad Christopherson – Tuesday Night Bar
Brenda Teig – Park City Clinic
Brent Hall – Family Law Clinic
Brian Johansen – Tuesday Night Bar
Brian Taylor – Debtor's Clinic
Brian W. Steffensen – Debtor's Clinic
Bryan Bryner – Street Law Clinic
Bryce Petty – Tuesday Night Bar
Callie Buys – Street Law Clinic
Candice Pitcher – Rainbow Law Clinic
Carly Williams – Tuesday Night Bar
Carolyn Morrow – Housing Cases
Carolyn Pence-Smith – Domestic Case
Casey Jones – Tuesday Night Bar, Legal Assistance to Military Program
Chris Preston – Street Law Clinic
Chris Stout – Tuesday Night Bar
Chris Wharton – Rainbow Law Clinic
Christina Micken – Tuesday Night Bar
Christopher Wharton – Domestic Case
Clemens Lardau – Tuesday Night Bar
Coleen Tanner – Tuesday Night Bar
Curtis White – Domestic Case
Daniel Barnett – Tuesday Night Bar
Daniel Staker – Tuesday Night Bar
David Blum – Domestic Case
David Heinhold – Tuesday Night Bar
David Petersen – Debtor's Clinic
DeRae Preston – Domestic Case
Dorothy Gillespie – Domestic Case
Dorothy Ward – Domestic Case
Doug Anderson – Tuesday Night Bar
Doug Farr – Tuesday Night Bar
Elizabeth Conley – Senior Center Legal Clinic
Emilie Lewis – Street Law Clinic
Emily Moench – Tuesday Night Bar, Tribal Case
Erin Stone – Street Law Clinic
Garth Heiner – Street Law Clinic
Grace Acosta – Tuesday Night Bar
Gracelyn Bennett – Bankruptcy Hotline
Gregory Stewart – Domestic Case
Harry McCoy II – Senior Center Legal Clinic
Heather Tanana – Street Law Clinic, American Indian Clinic
Huy Vu – Family Law Clinic
James Backman – Domestic Case
James Deans – Domestic Case
Jana Tibbitts – Family Law Clinic
Jane Semmel – Senior Center Legal Clinic
Jason Grant – Family Law Clinic
Jason Kane – Debtor's Clinic
Jay Kessler – Senior Center Legal Clinic
Jeannine Timothy – Senior Center Legal Clinic
Jeff Gittins – Street Law Clinic
Jen Korb – Street Law Clinic
Jennifer Bogart – Street Law Clinic
Jessica McAuliffe – Senior Center Legal Clinic
Jill Crane – Tuesday Night Bar, Family Law Clinic
Jim Baker – Senior Center Legal Clinic
Jonathan Benson – Immigration Clinic
Jory Shoell – Tuesday Night Bar
Joseph Alamilla – Habeas Corpus Case
Joshua Rupp – Tuesday Night Bar
Karen Allen – Roosevelt Clinc
Kathie Brown Roberts – Senior Center Legal Clinic
Katie Sundwall – Immigration Clinic
Kelly Latimer – Tuesday Night Bar
Kent Burggraaf – Tuesday Night Bar, Domestic Case
Kent Scott – Consumer Case
Kevin Deiber – Bankruptcy Case
Kyle Hoskins – Layton Family Law Clinic, Domestic Cases
Lamar Winward – Domestic Case
Landon Hardcastle – Tuesday Night Bar
Langdon Fisher – Family Law Clinic
Laurel Hanks – Domestic Case
Lauren Barros – Rainbow Law Clinic
Laurie Hart – Senior Center Legal Clinic
Leslie Orgera – Tuesday Night Bar
Linda F. Smith – Family Law Clinic
Linh Tran – Layton – Immigration Clinic
Lori Cave – Domestic Case
Louise Knauer – Family Law Clinic
Mary D. Brown – Family Law Clinic
Matt Hutchinson – Debtor's Clinic
Matt Wells – Tuesday Night Bar
Matthew Jensen – Street Law Clinic
Mehana Kwong – Domestic Case
Melanie Clark – Senior Center Legal Clinic
Michael A. Jensen – Senior Center Legal Clinic
Michael Black – Tuesday Night Bar
Michael Palumbo – Tuesday Night Bar
Mike Reason – Domestic Case
Morgan Wilcox – Family Law Clinic
Nathan Miller – Senior Center Legal Clinic
Nick Angelides – Senior Case
Nicolle Beringer – Bankruptcy Hotline
Paul Dodd – Domestic Case
Phillip S. Ferguson – Senior Center Legal Clinic
Rachel Otto – Street Law Clinic
Rachel Pearson-Williams – Domestic Case
Randy Kester – Domestic Case
Richard Mrazik – Tuesday Night Bar
Robert Brown – Tuesday Night Bar

Robert Latham – Tuesday Night Bar

Roland Uresk – Tribal Case

Roy Schank – Bankruptcy Hotline

Russell Skousen – Domestic Case

Russell Yauney – Family Law Clinic, Debtor's Clinic, Street Law Clinic, American Indian Clinic

Ryan Petersen – Domestic Case

Sally McMinimee – Family Law Clinic

Sarah Starkey – Family Law Clinic

Saul Speirs – Tuesday Night Bar

Scott Karen – Tuesday Night Bar

Scott Thorpe – Senior Center Legal Clinic, Bankruptcy Hotline

Scott Trujillo – Farmington Clinic

Sharon Bertelsen – Senior Center Legal Clinic

Shauna O'Neil – Consumer Case, Debtor's Clinic, Bankruptcy Hotline

Shawn Foster – Immigration Clinic

Shawn Stewart – Tuesday Night Bar

Silvia Pena-Chacon – American Indian Clinic, Tribal Cases

Skyler Anderson – Immigration Clinic

Solomon Chacon – Tribal Case

Stacy McNeil – Street Law Clinic

Stephen Knowlton – Family Law Clinic

Steven Burton – Tuesday Night Bar

Steven Gunn – Family Law Clinic

Steven Walkenhorst – Tuesday Night Bar

Stewart Ralphs – Family Law Clinic

Susan Griffith – Family Justice Center

Swen Swenson – Tuesday Night Bar

Terrell R. Lee – Senior Center Legal Clinic

Tessa Santiago – Domestic Case

Tiffany Panos – Tuesday Night Bar

Tim Barnes – Domestic Case

Timothy G. Williams – Senior Center Legal Clinic

Tony Williams – Volunteer at ULS

Trent Nelson – Family Law Clinic

Tyler Foutz – Domestic Case

Walter Bornemeier – Consumer Case

Wendy Bradford – Family Law Clinic

Will Morrison – Bankruptcy Case

Zack Winzeler – Tuesday Night Bar

Utah Legal Services and the Utah State Bar wish to thank these volunteers for accepting a pro bono case or helping at a clinic in April and May 2011. Call C. Sue Crismon at (801) 924-3376 or Karolina Abuzyarova (801) 297-7027 to volunteer.

The Pro Bono Honor Roll in the May/June issue of the *Utah Bar Journal* incorrectly indicated that the listed attorneys had volunteered during December 2010 and January 2011. Their service actually occurred during February and March of 2011.

Utah Bar Foundation

The Utah Bar Foundation Welcomes Two New Board Members

Walter A. Romney, Jr.
from the firm of Clyde Snow

Hugh Cawthorne,
Attorney & Counselor at Law

They join current Utah Bar Foundation Board Members – President: Ed Munson from Jones Waldo, Vice President: Gus Chin from Wasatch Advocates, Secretary/Treasurer: Lois Baar from Holland and Hart, General Member: Sharrieff Shah from Siegfried and Jensen, General member: Barbara Melendez from Kirton & McConkie.

Attorney Discipline

UTAH STATE BAR ETHICS HOTLINE

Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four hour workday period a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

ADMONITION

On May 18, 2011, 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 8.4(b) (Misconduct) and 8.4(a) (Misconduct).

In summary:

An attorney was involved in a domestic violence incident and was charged with Aggravated Assault (Domestic Violence) a third degree felony. The attorney admitted to committing the assault – an act of unlawful violence or force – that caused substantial bodily injury to a spouse. The attorney pled "no contest" to an Assault (Domestic Violence) a class A misdemeanor. The plea was to be held in abeyance for twenty-four months based upon completion of certain conditions.

PUBLIC REPRIMAND

On January 27, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against T. Christian Burridge for violation of Rules 1.5(a) (Fees), 1.8(a) (Conflict of Interest: Current Clients: Specific Rules), 1.15(d) (Safekeeping Property), 1.15(e) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

In connection with the representation of a client in a contingency fee matter, firm attorneys who had previously worked on the case waived attorney fees. Due to the waiver, Mr. Burridge could not accept any fees. Mr. Burridge demanded and accepted fees which were unreasonable under a fee waiver. Mr. Burridge failed to give notice in writing of independent counsel, failed to outline the settlement in writing in a manner understandable to the client and did not obtain informed consent, in writing, of the client. The third option of arbitration was not sufficiently explained. Mr. Burridge failed to promptly deliver and distribute undisputed funds to client prior to beginning settlement negotiations on the fee dispute. This created an unfair and coercive atmosphere in which the complainant felt compelled to agree to Mr. Burridge's two proposed settlement options without an opportunity to consider the third option. These violations were negligent. There was injury, but of unknown extent.

Aggravating factors:

Selfish motive; refusal to acknowledge misconduct; vulnerability of victim; and failure to rectify.

Thank You

by Angelina Tsu

Today I attended my three-year-old cousin, Sophie's, dance recital at the Rose Wagner Performing Arts Center. When the stage lit up and it was Sophie's turn to dance, she just stood there. At first, it seemed like Sophie was just confused by the lights; but soon Sophie began to cry and it quickly became apparent that it was more than a lighting issue. Before the routine ended, Sophie was a sobbing heap of three-year-old girl sitting on the floor. My heart went out to her and I started to laugh. I am embarrassed to say that I laughed so hard I cried.

I didn't laugh because I found anything humorous about Sophie's situation. I laughed because over the past year, I have felt like the lawyer equivalent of a sobbing heap of little girl on at least three occasions – all related to my duties as the Young Lawyers Division President. I hope I handled myself better than my three-year-old cousin, but to be honest I'm not sure I always did. Fortunately for me, the people around me didn't just sit around laughing. I'd like to take this opportunity to personally thank those around me first for not laughing at me and second for helping and participating in the Young Lawyers Division.

Over the past year, the YLD has provided legal services to thousands of people in underserved communities through Serving our Seniors, Wills for Heroes and Tuesday Night Bar. These programs would not be possible without your generous support. As many of you know, there were times when we did not have the volunteers needed to complete a scheduled project. During these times, we reached out to you for help. The response was overwhelming. Lawyers from across the state volunteered their time and talent to provide the legal services necessary to make these programs a success. Thank you to everyone who participated in Tuesday Night Bar, Serving our Seniors, and Wills for Heroes.

This year, the YLD made it a priority to expand member services by offering monthly networking and CLE opportunities to its membership. Over the past year, the YLD has hosted events in which we networked with the Young Accountants, the Young Finance Professionals, senior lawyers, and other young lawyers. There are countless personal benefits to networking. I believe the biggest benefit to us all is a more civil and professional bar. I truly believe that our legal community is more civil when lawyers know and genuinely care for each other. I hope the YLD networking events have afforded you the opportunity to make new friends and to strengthen relationships with old ones. Like all of our service projects, these events are successful because you take the time to attend.

As lawyers, I believe it is our duty and our honor to improve our profession and our community. The members of the YLD have risen to this challenge. As a fellow young lawyer, I understand the many constraints on your time. I am grateful that you have chosen to support the YLD. Thank you. We all owe a special debt of gratitude to the YLD Executive Board. Without their efforts none of the projects completed this year would have been possible. Thank you to all of the members of the YLD Executive Board. We also owe a special thank you to the Bar Commission for their support. Without exception, they are true friends and supporters of the YLD and of each of you. Their leadership and courage during these difficult economic times is nothing short of amazing. Thanks to everyone for participating in and contributing to an incredible year for the YLD. I'm sure that with your continued support, next year will be even better.

ANGELINA TSU is an attorney in the legal department of Zions Bancorporation and president of the Young Lawyers' Division.

Paralegal of the Year

Congratulations to Patty Allred, Paralegal of the Year for the year 2011-2012. Patty Allred had several nominations. Each expressing her qualities, abilities and attributes to the legal community.

Patty has had nearly three decades of paralegal experience in the legal profession. She has achieved a degree in Paralegal Studies from Utah Technical College, a Bachelor of Science in Psychology and subsequently will be soon receiving a Masters in Criminal Justice and Homeland Security from University of Phoenix. She has been a member of the Utah and National Paralegal organizations over her long career. She is currently working as a Paralegal for Jones, Waldo Holbrook & McDonough.

Patty's character has been unanimously described with three simple words: Guide, Mentor and Friend. One of the best examples of Patty's descriptive words is her willingness to mentor the paralegals that are planning on taking the CLA or CP exam. This exam is a nationwide, full two-day test, requiring a great deal of knowledge and skill. She volunteers her time to help teach and prepare these people prior to taking the test, then volunteers two days of her time to administer the test here in the Salt Lake City area. By her donating her time for this cause, it makes it possible for the paralegals in this area to take the exam here in Utah. Otherwise, they would have to travel out of state in order to take the exam.

One of her former students and colleague remarked, "she reaches out to every Paralegal she meets." Another colleague affirmed that Patty has vigorously worked to establish the definition of "Paralegal" by always striving to raise the bar for paralegals in the Utah legal community.

Others have remarked "She is a strong proponent of paralegals and promotes the paralegal profession with those both inside and outside of the legal community."

Important Notes and Upcoming Events for Paralegals

As paralegals in the State of Utah, we take great pride in our profession. The paralegal's primary role is to assist attorneys with the delivery of low cost and professional legal services to the public. In addition, paralegals are committed to assisting the Bar in furthering its purposes and missions and to assist with the Bar's goal of providing affordable access to the justice system for the citizens of this state.

As a reminder, ***paralegals must be under the ultimate and direct supervision of an attorney.*** WE do NOT PRACTICE LAW.

As always, there are a variety of activities and committees the Paralegals are involved in throughout the year. We are very involved within our local communities, seeking out new opportunities for our members to pull together and serve others. We are proud to work hand-in-hand with the Young Lawyers Division (YLD) serving as notaries and witnesses with the rapidly expanding Wills for Heroes and Serving Our Seniors programs. We work very hard making hats and gathering food and clothing for the homeless each year. We assist the YLD in their Cinderella project, gathering gently used prom dresses to be given to young ladies that otherwise may not be able to attend their prom. The paralegals are currently working with several different formal wear providers, convincing them that they should donate their older and maybe slightly abused tuxedos to us, in an effort to create the "Cinder-fella" project to help ensure more dates and dancing partners are available to attend the proms as well.

We continue to collect used printer cartridges, recycling them.

The monies are directly donated to the schools that have been selected, in an effort to help assist them with school programs, purchasing additional supplies and field trips throughout the year. *The more cartridges we collect, the more schools we can assist.*

Our Continuing Legal Education Committee is hard at work coordinating outstanding CLE opportunities to help us in the legal field maintain the highest standards of professionalism. The Brown Bags are held once a month, are usually free, and are open to anyone who needs legal CLE.

"[P]aralegals are committed to assisting the Bar in furthering its purposes and missions and to assist with the Bar's goal of providing affordable access to the justice system for the citizens of this state."

In addition, paralegals are committed to assisting the Bar in furthering its purposes and mission and to assist with the Bar's goal of providing affordable access to justice to the citizens of this state.

Last fall, a Memorial Scholarship Fund was created in memory of Heather Finch, the Chair for the Paralegal Division, this current year. The Scholarship Fund was created with the help of Nate Alder, our Committee members and Utah Valley University in an effort to assist future paralegals with their paralegal studies. We would like to thank all those who have contributed to this scholarship fund. We hope to continue to see it grow.

Thank you for your support and remember to "Pay it Forward" it counts!

CLE Calendar

DATES	EVENTS (Seminar location: Utah Law & Justice Center, unless otherwise indicated.)	CLE HRS.
07/20/11	**Effective Use of Voice – Tips and Techniques for Lawyers.** 4:00 – 7:00 pm. Robert B. Sykes, Esq. and John F. Fay, Esq., Program Co-Chairs. Special Guests: Chief Justice Christine M. Durham, Ingo R. Titze, Ph.D. $90 advanced registration, $110 at the door. Sponsored by the Utah State Bar.	3 hrs. (types TBD)
07/20/11	**OPC Ethics School.** 9:00 am – 3:45 pm. $175 before 07/08/11, $200 after. This seminar is designed to answer questions and confront issues regarding some of the most common practical problems that the office of Professional Conduct assists attorneys with on a daily basis. Learn about: • How to avoid Complaints • How to set up a trust account • Your Duty to clients • Law office management • Professionalism & Civility • Avoiding conflicts of interest • How to effectively respond to complaints	6 hrs. including 1 hr. Profess.

For more information or to register for a CLE visit: **www.utahbar.org/cle**

Classified Ads

RATES & DEADLINES

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

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

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

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

NOTICE

Notice: Looking for attorney who may have done estate planning for Richard John, Deceased. If so, please call (801) 334-6068.

FOR SALE

PRACTICE FOR SALE. Take advantage of reciprocity with Oregon. Established, highly successful practice for sale in Bend, Oregon with focus on litigation, business, real estate, personal injury, criminal, etc. High gross/net income. Owner willing to work for and/or train buyer(s) or new lawyer/buyer(s) for extended period. Owner terms available. Please direct inquiries to John at PO Box 1992, Bend, Oregon 97709 and I will call you back promptly.

2 FREE MONTHS – Grow your client base. Increase your referrals and leads with a LegalMatch account. LegalMatch is affiliated with the Utah State Bar. The contract covers Southern Utah primarily. I'll pay your first two months if you take over the contract. Call Jeff @ 435-602-0127 or email: jowens@atlasmediation.com.

WANTED

Selling your practice? Retiring or just slowing down? Estate Planning, Elder Law, Personal Injury, Business Law, Real Estate, Title & Escrow. Call or email attorney Ben E. Connor, (800) 679-6709, Ben@ConnorLegal.com.

OFFICE SPACE / SHARING

Office share in Bountiful, next to the courthouse. Large attorney office, conference room, secretary, copier, fax, waiting area, free parking. Call Victoria Cramer at (801) 299-9999 or vcramer@qwestoffice.net to discuss the terms.

Two Office Suite Available in Class A Downtown Highrise. Two large attorney offices (17' x 20' corner office and 13' x 17' office, both with great views) and a secretarial/administrator station (approx. 1,000 sf total) available in Eagle Gate Tower. Single offices also available. This space was just recently remodeled and built out. Possible sharing arrangement with existing law firm also available for receptionist, waiting area, conference rooms, break room, copy and fax center, etc. Parking arrangements also available. Call Darryl at (801) 366-6063 or djlee@woodjenkinslaw.com.

OFFICE SHARING SPACE AVAILABLE: We are seeking an attorney who would like to occupy a very large and beautiful office located in the Creekside Office Plaza at 4764 South 900 East. The Creekside Office Plaza is centrally located and easy to access. There are several other lawyers and a CPA firm currently occupying the building. Rent includes: receptionist, fax/copier/scanner, conference room, covered parking, kitchen, and other common areas. Rent may vary depending on the terms. Please call Michelle at (801) 685-0552.

Professional office sharing space located within friendly modern law firm. The office is steps away from District/Justice Court, City Buildings and Tracks. Covenant FREE parking right outside the door. Office amenities may include furnishings, receptionist, Notary services, high speed wireless internet, fax/copier/scanner, and much more. Price is flexible and optional month to month or long term agreement available. If you are interested and would like more information please contact Calvin or Melissa at (801) 676-0863.

Perfect Court Access Location. Seven office suite in the Salt Lake Stock and Mining Exchange Building, 39 Exchange Place, full service with reception/secretarial area and individual restrooms. Ideal for a 4 or 5 person firm. Also available one large main floor office 16' X 28' full service. Unsurpassed tenant parking with free client parking next to building. Contact Richard or Michele (801) 534-0909 or richard@tjblawyers.com.

OFFICE SUBLEASE: Office space sublease in downtown Salt Lake law firm available immediately. Space consists of one to three attorney offices and one to two paralegal/secretary work stations, along with covered parking, on-site fitness center, storage, receptionist services, shared kitchen, and scheduled use of conference room. Use of copier, fax, and other services on monthly billing basis. Direct inquiries to 801-971-3542.

OFFICE SPACE/SHARING: Two office spaces available in downtown building in a sharing situation with family law and business law attorneys. Close to Matheson and Federal Courthouse. Includes use of conference room, copier, supplies, receptionist, runner and phones. Secretary services available at cost. Rent and overhead is approximately $1,600 a month. Please call Robyn at (801) 532-6300 if interested.

PRIME OFFICE SPACE: Downtown law firm has office space available. Two to three offices available. Offices include large windows, receptionist, access to fax machine, copier, conference rooms, law library, kitchen, and storage. Free parking, professional atmosphere, clean building, and secure access. Contact Carolee Kirk at 364-1100 or at ckirk@wklawpc.com.

POSITIONS AVAILABLE

Durham Jones & Pinegar, AV rated 75+ attorney law firm is seeking for its SL office an associate with 3-4 years of sophisticated corporate, M&A, and/or securities experience with a national or large regional law firm. Experience required in due diligence, drafting and negotiating transaction documents and legal opinions, entity formation, and coordinating document flow execution. Experience in commercial lending transactions, drafting securities offering documents, venture capital and private equity transactions, complex M&A transactions, and tax (especially federal), and deal structuring a plus. Outstanding analytical, writing, and negotiation skills imperative. Top 10% and/or Law Review preferred. Submit resume to resumes@djplaw.com.

Mid-sized Law Firm in Salt Lake City is accepting applications for lateral, partner-level attorneys with an established book of business in the following areas: environmental/natural resources law, real estate transactions, and commercial litigation. The firm has an excellent downtown location, a collegial work environment, and an excellent benefit package. Please send resumes to Confidential Box #5, Attn: Christine Critchley, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111 or by e-mail ccritchley@utahbar.org.

Serious litigation firm in Logan seeking a self-motivated associate attorney with at least 2-3 years experience in complex civil litigation/personal injury litigation. Please submit your resume to Shaun L Peck at 399 N. Main Street, Suite 300, Logan, Utah 84321, or by Email at speck@peckhadfield.com (no calls please).

LLM IN INTERNATIONAL PRACTICE – LLM from Lazarski University, Warsaw, Poland, and Center for International Legal Studies, Salzburg, Austria. Three two-week sessions over three years. See www.cils.org/Lazarski.htm. Contact CILS, Matzenkopfgasse 19, Salzburg 5020, Austria, email cils@cils.org, US fax (509) 356-0077, US tel (970) 460-1232.

Mid-sized AV-Rated law firm in Salt Lake City is looking to expand its market and practice areas and seeks attorneys with established practices. This firm will consider individuals or group of lawyers. Outstanding work environment and benefits. Very nice downtown office space with covered parking and a fitness center in the building. Send inquiries to Confidential Box #17, Attn: Christine Critchley, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111, or by e-mail ccritchley@utahbar.org.

VISITING PROFESSORSHIPS – Short-term pro bono teaching appointments for lawyers with 20+ years' experience Eastern Europe and former Soviet Republics. See www.cils3.net. Contact CILS, Matzenkopfgasse 19, Salzburg 5020, Austria, email professorships@cils.org, US fax 1 (509) 356 -0077.

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Lawyer Beats Banks | Protects Homeowners. Real Estate Attorney Walter Keane files Quiet Title to void trust deeds and protect homeowners in crisis. Quoted in *NY Times, Deseret News* and *Salt Lake Tribune*. 801-990-4422. http://www.waltertkeane.com http://www.sltrib.com/sltrib/news/51006287-78/mers-property-mortgage-loan.html.csp

Fiduciary Litigation; Will and Trust Contests; Estate Planning Malpractice and Ethics: Consultant and expert witness. Charles M. Bennett, 257 E. 200 S., Suite 800, Salt Lake City, UT 84111; (801) 578-3525. Fellow, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

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

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Certificate of Compliance

Modified CLE Requirements 2010 - 2011

Recent Supreme Court rule revisions conform MCLE and the Utah State Bar's licensing periods to run concurrently. Even year compliance attorneys' cycle began January 1, 2009 and will end June 30, 2010. Odd year compliance attorneys' cycle began January 1, 2010 and will end June 30, 2011.

UTAH STATE BOARD OF CONTINUING LEGAL EDUCATION

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

For Years __2010_ through __2011__

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Date of Activity	Sponsor Name/ Program Title	Activity Type	Regular Hours	Ethics Hours	Professionalism & Civility	Total Hours
		Total Hours				

1. Active Status Lawyers – Lawyers on active status who are complying in 2010 and 2011 are required to complete a minimum of 18 hours of Utah approved CLE, including a minimum of two hours of accredited ethics. One of the ethics hours shall be in the area of professionalism and civility. Please visit www.utahmcle.org for a complete explanation of the rule change and breakdown of the requirements.

2. New Lawyers Admitted in May 2009 - New lawyers admitted in May 2009 under the Bar's full exam need to complete the following requirements during their first reporting period by June 30, 2011:

- Attend one New Lawyer Ethics Seminar which is offered bi-annually by the Bar. This requirement can be waived if the lawyer resides out-of-state.
- Complete the NLTP Program during first year of admission to the bar unless NLTP exemption applies.
- Complete 12 hours of Utah approved CLE.

3. House Counsel – House Counsel Lawyers must file with the MCLE Board by July 31 of each year a Certificate of Compliance from the jurisdiction where House Counsel maintains an active license establishing that he or she has completed the hours of continuing legal education required of active attorneys in the jurisdiction where House Counsel is licensed.

EXPLANATION OF TYPE OF ACTIVITY

Rule 14-413. MCLE credit for qualified audio and video presentations; computer interactive telephonic programs; writing; lecturing; teaching; live attendance.

1. **Self-Study CLE**
   No more than nine hours of credit may be obtained through qualified audio/video presentations, computer interactive telephonic programs; writing; lecturing and teaching credit. Please visit www.utahmcle.org for a complete explanation of Rule 14-413 (a), (b), (c) and (d).

2. **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. **A minimum of nine (9) hours must be obtained through attendance at live continuing legal education programs 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 July 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 June 30 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.

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 Regulation may be viewed at www.utahmcle.org or http://www.utahbar.org/mcle/.

DATE:_____ Signature: _____

Make checks payable to: ***Utah State Board of Continuing Legal Education*** in the amount of ***$15*** or complete credit card information below. There will be a $20 charge for returned checks.

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