

# Utah Bar<sup>®</sup> JOURNAL



Volume 24 No. 3  
May/June 2011



EISENBERG & GILCHRIST



## CHOOSE THE LAW FIRM LAWYERS CHOOSE

Some of our 2010 successes include:

- \$5.2 million verdict for product liability case
- \$1.4 million settlement for product liability case
- \$1.3 million settlement for auto case
- \$1.0 million settlement for auto case
- \$900,000 settlement for workplace accident
- \$800,000 settlement for medical malpractice case
- \$600,000 settlement for motorcycle accident

More than 300 lawyers have referred injured clients to Eisenberg & Gilchrist because they know we get top results.

We approach every case as a serious piece of litigation, whether it is worth \$100,000 or \$10 million.

Call us if you have a new injury case or want to bring our experience to a pending case.

INNOVATIVE SOLUTIONS TO YOUR COMPLEX INJURY AND COMMERCIAL CASES.

900 PARKSIDE TOWER • 215 SOUTH STATE STREET • SALT LAKE CITY, UTAH 84111  
TEL. 801-366-9100 • TOLL-FREE: 877-850-3030 • [WWW.EISENBERGANDGILCHRIST.COM](http://WWW.EISENBERGANDGILCHRIST.COM)  
FOUNDING PARTNERS ARE JEFFREY D. EISENBERG & ROBERT G. GILCHRIST

# Table of Contents

## Views From the Bench:

What Do Jurors Say? by Judge Dale A. Kimball	8
---	---

---

## Utah Law Developments:

<i>Ewing v. Department of Transportation:</i> When the Savings Statute Provides No Safety by David C. Castleberry	12
---	----

---

## Articles:

A Business School Model for Presenting Your Case by Richard A. Kaplan	14
--	----

---

## Focus on Ethics & Civility:

Confessions of a Facebook Sleuth by Keith A. Call	18
--	----

---

The Power of Law: How One Law Student Is a Force for Good in Utah's Human Trafficking Cases by Janise K. Macanas	20
--	----

---

## Book Review:

The Dark Side of <i>The Bluebook</i> by Cathy Roberts	22
--	----

---

State Bar News	24
----------------	----

---

## Young Lawyer Division:

Patching Another Hole in the Fabric of Society – Serving Our Seniors by Tyler L. Buswell	39
---	----

---

CLE Calendar	41
--------------	----

---

Classified Ads	42
----------------	----

---

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

Statements or opinions expressed by contributors are those of the authors and are not necessarily those of the *Utah Bar Journal* or the Utah State Bar. Publication of advertisements is not to be considered an endorsement of the product or service advertised.

Copyright © 2011 by the Utah State Bar. All rights reserved.

## Cover Art

*Lambert Lake in the High Uintabs Wilderness*, by first-time contributor, David Mack, Salt Lake City, 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](mailto:rromrell@regence.com). If non-digital photographs are sent, please include a pre-addressed, stamped envelope for return of the photo, and write your name and address on the back of the photo.

## Interested in writing an article for the Bar Journal?

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



## You told us there are currently 127 unnecessary steps from email to research.

Lexis® for Microsoft® Office. Focus on delivering work for your clients, not switching between programs. Now, when you're creating a Word document or working in Outlook®, you can pull content directly from Lexis® with intuitive simplicity. We've teamed with Microsoft® to bring this innovation to our customers' existing work flow processes. It's just one example of intuitive tools created for legal minds, by legal minds. Another LexisNexis® innovation that enables better outcomes.



**LexisNexis®**

For more information, go to [www.lexisnexis.com/office](http://www.lexisnexis.com/office)

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Microsoft and Outlook are registered trademarks of Microsoft Corporation. Copyright 2010 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

**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.*

### ***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.

## **The Utah Bar Journal**

### **Published by The Utah State Bar**

645 South 200 East • Salt Lake City, Utah 84111 • Telephone (801) 531-9077 • [www.utahbar.org](http://www.utahbar.org)

### ***Bar Journal* Editorial Board**

**Editor**  
William D. Holyoak

**Managing Editor**  
Todd Zagorec

**Art/Design Editor**  
Randall L. Romrell

**Articles Editors**  
Alisha Giles  
Aaron C. Garrett  
Lee Killian

**Departments Editor**  
Catherine E. Roberts

**Utah Law  
Developments Editor**  
David C. Castleberry

**Judicial Advisor**  
Judge Gregory K. Orme

**Copy Editors**  
John P. Ball  
Hal Armstrong

**Young Lawyer Representative**  
William M. Fontenot

**Paralegal Representative**  
Steven A. Morley

**Bar Staff Liaison**  
Christine Critchley

**Advertising/Design Coordinator**  
Laniece Roberts

# Become a Mentor



**Teach them what you  
wish you'd known when  
you were in their shoes**



**[www.utahbar.org/nltp](http://www.utahbar.org/nltp)**

### *What Do Jurors Say?*

by Judge Dale A. Kimball

**M**ost litigators, particularly those handling civil cases, do not try many cases – at least I did not when I was in practice. I do not think that my experience was atypical. Some civil cases are dismissed on Motions to Dismiss. Some civil cases are ended by the granting of Motions for Summary Judgment. Many cases are settled. Still others are tried to the Court in a bench trial or to an arbitrator or arbitrators, which process is now in many respects akin to a bench trial. Occasionally, of course, lawyers try cases in front of juries. However, compare the frequency of lawyers trying jury cases with the experience of a trial judge. Judges have much more experience with juries and jurors than most lawyers. Looking back now over somewhere between 150-200 jury trials as a Judge, I can claim some expertise on the views of jurors.

It has been my practice, along with interested members of my staff, to talk to jurors shortly after a verdict has been received. The experience of serving is still fresh in the minds of jurors. Most express forthrightly their views on the process, including what they appreciate and what they do not appreciate.

Not surprisingly, most prospective jurors are not happy about being summoned. Most jurors are not happy when selected for the actual jury. However, jurors soon realize how important the process is and how central they are to it. Jurors take their service very seriously, realizing that much is at stake. Jurors expect that the judge, the lawyers, and all involved will take a trial seriously. I recall a case where a second-chair lawyer was overly flippant and jocular. After the trial, several jurors suggested that the lawyer needed to learn that this is serious business. They found his behavior disrespectful to the Court, the other party, and the other party's lawyer. In fact, the jury asked if the Court could convey to the other party's lawyer – who had lost – how much they appreciated her professionalism. Some humor is, of course, appropriate and some juries have commented favorably on witnesses and attorneys who use it properly. But if the behavior suggests to jurors that the process of a trial is being undertaken

lightly, they will not appreciate it.

Jurors almost uniformly express appreciation at the conclusion of a trial for what they have learned and how serious a matter it is to try and to decide cases. They feel educated, informed, and now knowledgeable about something that was previously a mystery to them. At the end of a case, jurors realize why I told them at the beginning that our legal system could not properly work without them.

Jurors do not like to feel that their time is being wasted. Jurors may be smarter than you believe they are. They really do not need to have points hammered home more than once or twice. Jurors do not appreciate the same question being asked several different times in different ways. In one trial, a juror mentioned that an attorney cross-examining an expert witness spent so much time on questions regarding the expert's compensation that the juror then assumed there was no substantive basis for attacking the expert's opinion. The attorney did in fact have substantive attacks to the expert's opinion, but the juror had either tuned out by then or began to sympathize too much with the expert to recognize them.

Jurors can generally tell when a lawyer is not prepared or does not seem to care about the case or the client. Jurors expect that lawyers will have their papers and exhibits in order and will know what it is that they want to ask witnesses. They can tell if preparation has been less than thorough. Jurors expect lawyers and the court to be prepared and organized. Prepared and organized lawyers

*JUDGE DALE A. KIMBALL is a United States District Court judge for the District of Utah. He was appointed by President Clinton in 1997. He assumed senior status in November 2009.*



tend to get to the point and tend not to waste time.

Jurors expect lawyers not to groan, slouch, frown, or make faces when things happen during the trial that the lawyer might not like. Jurors say they expect lawyers to stand when making objections or addressing the Court. Jurors expect lawyers to demonstrate respect for the system, for the Court, for opposing counsel, and for them. Jurors occasionally complain that they cannot hear a lawyer's questions or arguments. It is never a good idea for a lawyer to get too far away from the microphone and, if a lawyer strays from a microphone, he or she must speak clearly and with sufficient volume so that all can hear.

Jurors appreciate zealous advocacy. They expect that lawyers will represent their clients to the fullest extent. On several occasions, jurors have asked us to tell criminal defense lawyers that they did a wonderful job even though their clients were convicted. On some other occasions, jurors have noted that it appears that a lawyer or lawyers just did not care about their clients, leaving the impression that the lawyer's representation had been less than adequate.

Jurors understand that a trial involves contested issues and occasionally much potential emotion. However, they do not appreciate unnecessary conflict. They do not like it when lawyers argue directly with each other. They also do not appreciate too much drama from lawyers in the courtroom. They are sympathetic to witnesses whom they believe have been subject to overbearing or overly contentious cross-examination. All of the above suggests that lawyers should try to remain relatively calm, not shout too much, and not try to bully witnesses. This does not mean, of course, the lawyers should avoid pointing out discrepancies in witnesses' testimony or discrepancies between testimony and documents. What is suggested is that lawyers' points should be made in as reasonable and calm a manner as possible.

Jurors treasure honesty. They like lawyers who do not try to hide or slide by weaknesses or inconsistencies in a case or in testimony. In one case, a juror stated that defense counsel's honesty in admitting that his client was not a good man showed respect for the juror's intelligence. Jurors understand the necessity of minimizing and explaining problems but do not appreciate when lawyers pretend that problems and inconsistencies do not exist. We have



**MAGLEBY | GREENWOOD** PC  
ATTORNEYS AT LAW

*is pleased to announce that*

**Eric K. Schnibbe**

and

**Christopher M. Von Maack**

have become partners with the firm.

Mr. Schnibbe and Mr. Von Maack are trial lawyers focusing on complex commercial litigation, including business and intellectual property disputes and civil appeals.

The firm represents clients at the trial and appellate levels in all types of civil and complex commercial litigation matters, including intellectual property, trademark, business torts, unfair competition and trade secrets, construction, real estate and contract cases.

**170 South Main Street, Suite 850  
Salt Lake City, Utah 84101  
Telephone: 801.359.9000  
Facsimile: 801.359.9011  
[www.mgpclaw.com](http://www.mgpclaw.com)**

**Geoffrey K. Biehn, Esq.**  
[biehn@mgpcclaw.com](mailto:biehn@mgpcclaw.com)

**Christine T. Greenwood, Esq.**  
[greenwood@mgpcclaw.com](mailto:greenwood@mgpcclaw.com)

**James E. Magleby, Esq.**  
[magleby@mgpcclaw.com](mailto:magleby@mgpcclaw.com)

**Jason A. McNeill, Esq.**  
[mcneill@mgpcclaw.com](mailto:mcneill@mgpcclaw.com)

**Jennifer F. Parrish, Esq.**  
[parrish@mgpcclaw.com](mailto:parrish@mgpcclaw.com)

**Eric K. Schnibbe, Esq.**  
[schnibbe@mgpcclaw.com](mailto:schnibbe@mgpcclaw.com)

**Peggy A. Tomsic, Esq.**  
[tomsic@mgpcclaw.com](mailto:tomsic@mgpcclaw.com)

**Christopher M. Von Maack, Esq.**  
[vonmaack@mgpcclaw.com](mailto:vonmaack@mgpcclaw.com)

heard many comments about this.

Early on, we received occasional complaints about jury instructions. They were, apparently, sometimes difficult to understand and confusing. Now we receive many compliments from jurors regarding jury instructions. Many have stated that having the jury instructions made everything in the case fall into place. Somehow lawyers and my staff and I have, over the years, managed to make jury instructions clearer, less confusing and actually, apparently, very useful and helpful. I am not sure how this has happened but I'm grateful that it has. Thank you for your part in that process and let me encourage you to continue in your efforts to make jury instructions "juror friendly." Perhaps jurors have become increasingly intelligent over the years.

Jurors love to hear the whole story. I realize that sometimes I have prevented that because of evidentiary rulings. However, insofar as possible, you should try to put on sufficient evidence that the story and the narrative make sense and are as complete as possible. I have seen a product liability trial where a party sought to exclude evidence of three other accidents involving the product. I agreed to exclude it, and then learned in talking to the jury that the excluded evidence would have actually helped the party's case.

Computer Forensics | Electronic Discovery | Expert Testimony

Do you need a  
**computer expert**  
on your case?



**Aptegra can:**

- Make a forensic copy
- Search files and emails
- Analyze chat, web, registry
- Present a lucid report



801.930.0339      WWW.APTEGRA.COM

Don't Miss Aptegra at the Summer Convention in San Diego.

Without any evidence about other accidents, the jury had assumed that there had probably been hundreds of other accidents.

In that connection, jurors do not like to sense that they are being excluded when they are in the courtroom. Try to keep side-bars to a minimum and do not object to questions when it really is not necessary. Objections tend to indicate to the jury that there is other evidence of which they are not aware. Appropriate objections should, of course, still be made.

Jurors love to complain about the food, the chairs, the excessive number of breaks, the insufficient number of breaks, the parking, and the weather. Jurors do, however, appreciate court staff. A lot of this is outside of your control. But to the extent that you can have witnesses ready to go and reduce the length and number of breaks, you should try to do so.

In my early days on the bench, I was somewhat concerned about jurors "getting it right." Now, after thirteen plus years of experience, I can say that I have only disagreed with a jury verdict on two occasions. There was one civil case where the plaintiff was no-caused and one criminal case where the defendant was found not guilty, and in both cases, I would have reached a different conclusion. In my experience, jurors carefully listen to the evidence, pay attention to the arguments, take seriously the instructions, and, in my view, almost always "get it right."

However, in civil cases where jurors have found a defendant liable, I am almost consistently surprised at what I consider to be relatively small damages verdicts. I don't know exactly why this is the case. Many have opined that because our federal district pulls from the entire state and federal juries must be unanimous, it leads to smaller damage awards. In talking to jurors, I've merely sensed that a typical Utah juror wants a plaintiff to be compensated for injury but that he or she should not receive a windfall just because something bad or unfortunate happened to him or her. Jurors have made comments that they just want to "set things straight." It might be that plaintiffs in our federal district would do better with the judge in terms of damages.

All juries, however, want to know if I agree with the outcome. They look for validation. My sense is that they do this because they realize they are new to the legal process, but they have done the best they could. It is almost always easy for me to give the validation they seek. After my years on the bench, I can say without hesitation that the jury system, and Utah juries in particular, work.

WE DELIVER BIG RESULTS FOR OUR CLIENTS.



CHOOSE MEDICAL MALPRACTICE ATTORNEYS WHO GET THE JOB DONE RIGHT. We've got the experience and resources to win medical malpractice cases smaller firms can't handle. Our advantage: we understand the medicine. Our team of experts is ready and able to take on complex cases.

CALL NOW TO MAKE US A PART OF YOUR TEAM.

Norman J. Younker | John D. Ray | Christian D. Austin

**[www.patientinjury.com](http://www.patientinjury.com)**

**(801) 323-2200**

(888) 249-4711

215 South State Street, Suite 1200

Salt Lake City, UT 84111-2323



# Ewing v. Department of Transportation: *When the Savings Statute Provides No Safety*

by David C. Castleberry

The statute of limitations is a deadline no attorney wants to miss. Not only does missing the statute of limitations destroy a client's ability to seek redress in a lawsuit, it also exposes an attorney to a claim for legal malpractice.

Legal malpractice is often difficult to prove. A plaintiff suing a lawyer for malpractice must establish that a mistake by the attorney not only fell below the standard of care but that the mistake caused the plaintiff's damages. *See Borghetti v. Sys. & Computer Tech, Inc.*, 2008 UT 77, ¶ 16, 199 P.3d 907 ("The lack of damages or absence of direct causation of damages by the alleged malpractice is fatal to any legal malpractice claim."). With so many variables affecting a lawsuit, a plaintiff often faces an uphill battle proving that a certain action or inaction was the reason the plaintiff's claim for relief failed. When the statute of limitations is missed, however, a plaintiff can clear with greater ease the hurdles of causation and damages in a legal malpractice action.

The "savings statute" can provide relief to an attorney concerned about the statute of limitations by extending the statute of limitations for one year if a case is dismissed on nonsubstantive grounds. Utah Code Section 78B-2-111, Utah's savings statute, provides in part:

If any action is timely filed and . . . the plaintiff fails in the action or upon a cause of action otherwise than upon the merits, and the time limited either by law or contract for commencing the action has expired, the plaintiff . . . may commence a new action within one year after the . . . failure.

*"[T]he savings statute does not apply in every case where a lawsuit is dismissed 'otherwise than upon the merits.'"*

Utah Code Ann. § 78B-2-111(1) (2008). While the savings statute can create a safe haven for attorneys concerned about the statute of limitations, a case recently decided by the Utah Court of Appeals, *Ewing v. Dept. of Transp.*, 2010 UT App 158, 235 P.3d 776, holds that the savings statute does not apply in every case where a lawsuit is dismissed "otherwise than upon the merits." The timing of the expiration of the original statute of limitations affects

whether the savings statute extends the statute of limitations for one year. *See id.* ¶ 7.

In *Ewing*, a seventeen-year-old young woman, Rayn Ewing, was driving eastbound on I-80 in Parley's Canyon when she was hit by a driver driving westbound

who had lost control of her car. *See id.* ¶ 2. Eventually, Rayn died from her injuries, and her family decided to bring a claim against the Utah Department of Transportation (UDOT) alleging that the accident occurred because no barrier in the center median prevented the car from crossing into Rayn's lane of travel. *See id.*

The Ewings filed a notice of claim under the Utah Governmental Immunity Act naming UDOT as a defendant on December 11, 2007. *See id.* ¶ 3. UDOT did not respond to the claim within sixty days, which effectively denied the Ewings' claim. *See id.* The Ewings then filed their lawsuit in the Summit County district court on June 10, 2008, well within the one-year period mandated

DAVID C. CASTLEBERRY is a partner with the law firm of Manning Curtis Bradshaw & Bednar LLC where his practice is focused on business and commercial litigation, employment law, and health care law.



by the Utah Governmental Immunity Act. *See id.* (citing Utah Code Ann. § 63G-7-403(2)(b) (requiring that claimant begin an action against a governmental entity within one year after the denial period has expired)).

In response to the complaint, UDOT moved to dismiss the claim for improper venue. *See id.* “On September 4, 2008, on the stipulation of the parties, the district court dismissed the Ewings’ complaint without prejudice.” *Id.* On February 12, 2009, the Ewings filed their lawsuit in the Salt Lake County district court. *See id.* ¶ 4. In response to the re-filed complaint, UDOT moved for summary judgment, arguing that the statute of limitations for filing a claim against it had expired three days previously on February 9, 2009, “one year from the deemed denial of the Ewings’ notice of claim.” *Id.*

The Ewings filed an opposition memorandum to UDOT’s motion for summary judgment, and argued that the savings statute allowed them one year from the September 4 dismissal to recommence the action. *See id.* “UDOT countered that the original statute of limitations had not yet expired when the Ewings’ complaint was dismissed and the Ewings claims therefore did not fall within the scope of the savings statute.” *See id.* (citing Utah Code Ann. § 78B-2-111(1)). The trial court agreed with UDOT, and dismissed the Ewings’ lawsuit. *See id.* The Ewings appealed the trial court’s decision. *See id.*

On appeal, the *Ewing* court affirmed the trial court’s dismissal of the case. *See id.* ¶ 8. According to an analysis of the savings

statute’s plain language by the Utah Court of Appeals, the savings statute can preserve a claim brought by a plaintiff only if three requirements are satisfied: “(1) the original complaint must have been filed within the statute of limitations; (2) it must have failed on nonsubstantive grounds; and (3) the applicable statute of limitations must have expired.” *See id.* ¶ 7. The *Ewing* court explained that the savings statute’s plain language and its prior precedent compelled this result. *See id.* ¶¶ 8-12 (citing *Hansen v. Dep’t of Fin. Insts.*, 858 P.2d 184, 187 (Utah Ct. App. 1993) (holding that because the statute of limitations expired over a month after the lawsuit was dismissed on nonsubstantive grounds, the savings statute did not apply)).

The unwary litigator may step into the “malpractice trap” outlined in the holding of the *Ewing* case. A plaintiff’s ability to file another lawsuit under the savings statute depends on whether the original statute of limitations has expired when the case is dismissed. For example, if the statute of limitations on a claim is set to expire on May 22, 2011, and a case is dismissed for nonsubstantive grounds on May 21, 2011, the plaintiff must re-file the lawsuit the next day to avoid having the claim barred by the statute of limitations. On the other hand, under the holding of *Ewing*, if the statute of limitations is set to expire on May 22, 2011, and the suit is dismissed for nonsubstantive grounds on May 23, 2011, the plaintiff then has an entire year to bring timely another suit under the savings statute. While these disparate results may seem arbitrary, careful attorneys should consider the holding of *Ewing* whenever a case is dismissed for some reason other than the merits to ensure that the client’s claims are preserved.

## Building Resolution | Construction & Commercial Mediators



Robert F. Babcock



Kent B. Scott



Adam T. Mow, AIA

PANEL MEDIATORS FOR

American Arbitration Association • Federal Courts  
Utah Court Roster • Utah Dispute Resolution

**BABCOCK  
SCOTT &  
BABCOCK**

A PROFESSIONAL CORPORATION  
ATTORNEYS & COUNSELORS AT LAW

**SERVING THE CONSTRUCTION INDUSTRY**

Washington Federal Plaza • 505 E. 200 S., Suite 300 • SLC, UT 84102 • (801) 531-7000 • [www.babcockscott.com](http://www.babcockscott.com)

## *A Business School Model for Presenting Your Case*

by Richard A. Kaplan

I often recall a business school (“B” school) class years ago when a visiting industrial psychologist spoke to us about taking Rorschach tests. The idea was to prepare us for interviews. That was when the then “Personnel” departments of major corporations had begun to rely heavily on psychological testing to evaluate job candidates, and we were almost certain to be asked to blviate on ink blots and to take the Minnesota Multiphasic Personality Inventory (MMPI) and other standardized tests intended to predict job performance and personality.

The psychologist asked for a volunteer. While the rest of us fidgeted, looking down to avoid eye contact, one of my classmates rose to the occasion and confidently said, “I’ll do it.” Ned came down to the well of the amphitheater classroom, took a seat, looked at the blotches on the paper the psychologist placed before him, and proceeded to hold the class of about 100 spellbound for close to forty-five minutes while he expounded on what the images revealed to his fertile mind.

When Ned said he was done, the psychologist paused to shake his head in apparent disbelief and then told us he’d never before witnessed so perfect and profound a Rorschach response and counseled us to remember what Ned had done and to emulate it. He explained essentially this: Ned told a rich and coherent story that centered on the large ink blot and tied in all of the smaller ink blots on the periphery of the image. In so doing he demonstrated that he’s a person who sees both the “big picture” and the detail and is able to perceive how each informs the other.

My premise is that just about every lawsuit should be developed and presented precisely this way. And that holds true of the lawsuit as a whole and every stage of it – whether you are interviewing a client or witness, drafting a complaint or answer, preparing or responding to a motion, arguing to a judge, creating demonstratives, conducting voir dire, making an opening statement, deciding how to sequence your witnesses and present their testimony, planning cross examinations, preparing jury instructions, delivering closing argument or any other stage I have missed. From day

one, you begin to develop your “big picture” through the prism that trial experience teaches.<sup>1</sup> Throughout the lawsuit, you keep firmly in mind your “big picture” and the entire body of detailed evidence you are marshalling to support, or sell it.

After all, if you can’t put it together like Ned did, or, at a minimum provide the fact finders enough of a footing to get there themselves, who will? Your audience starts cold and needs the footing a “big picture” framework provides, both to develop a general response to your position and to develop a willingness to see the details as supportive of your point of view.

### **Competing Narratives**

The two sides to a lawsuit may present very similar, substantially overlapping accounts of the evidence that differ only with respect to the one thing or few things that really matter. Or they may offer diametrically opposed, or competing “big pictures.” Take a criminal case, for example. The prosecutor’s job is of course to prove what they say happened beyond a reasonable doubt, and the defense lawyer’s job is to show that the prosecutor didn’t prove the crime. Thus, for the prosecutor, broadly speaking, the big picture is that the evidence proves the defendant committed the crime and is guilty as charged. But for the defense lawyer, the big picture may be merely that the prosecutor’s big picture doesn’t hold up under scrutiny and that as a result the defendant must be acquitted. Put differently, the defense lawyer doesn’t have to prove what happened and may not try. The defense lawyer may just argue that at the end of the day what happened isn’t clear enough to warrant conviction. To use a metaphor, the

*RICHARD KAPLAN is a partner in the firm of Anderson & Karrenberg. He is a trial lawyer and practices civil and particularly commercial litigation. He also serves as an arbitrator of commercial cases for the American Arbitration Association.*



defense lawyer's big picture may simply be this: "It was the prosecutor's job to turn on the lights, and it's still dark in here. Therefore, you must acquit."

Civil cases are different. The two sides are likely to present affirmative competing narratives about the critical events – two very different stories about what happened. Invariably, and probably irrespective of technical issues such as burden of proof, the narrative that is more persuasive carries the day. Why is that? Quite simply, from our earliest days we love to hear good stories and the good ones make an impression. Moreover, people these days seem to be beset with skepticism about most everything and to thirst for things they can believe in.<sup>2</sup> Judges and jurors are people and they're giving you their time. Jurors in particular will hold it against you and your client if you don't provide a believable narrative and are more likely to reward you and your client if you do.

### Two Complementary Ways of Thinking

Having attended both graduate business school and law school, I was fortunate to be exposed to professors who were terrific practitioners of the "case method" of instruction. Both business

school and law school professors use "cases" as a pedagogical medium for involving the class in a participative discussion about a real life circumstance.

But that similarity ought not to prevent understanding just how different the "B" school and law school approaches are. The former, generally speaking, is encompassing, expansive and creative.<sup>3</sup> The latter, generally speaking, is analytical, reductionist, and creative.<sup>4</sup> That simplistic generalization is not meant to be judgmental. To my law school friends, I apologize if it sounds that way. In my experience, the two ways of thinking are both invaluable and go together like lemon and lime. In fact, on reflection, I'd say my "B" school classmate Ned used both of them to "ace" the Rorschach test.

### The Architecture of Your Case

Sometimes the "big picture" jumps out at you from the moment you first hear about the case. Your client may be a gifted story teller and you know from the moment the client starts talking why they should win. Why that's the fair and right outcome. A particular document may be so powerfully incriminating or

## Why has MWSBF Financed So Many Law Offices?



### We Think Attorneys are a Pretty Good Investment.

You've done what it takes to build a thriving law practice, but why work so hard just to put money into someone else's pocket by leasing space? Now's a good time to join dozens of other attorneys in purchasing your own building for a low monthly payment, as little as 10% down, and a low fixed interest rate through an SBA 504 Loan from Utah's #1 small business lender, Mountain West Small Business Finance.

#### WITH AN SBA 504 LOAN:

- Purchase land and/or building
- Construct a new facility
- Purchase equipment
- Renovate or remodel existing facilities

801.474.3232

[www.mwsbf.com](http://www.mwsbf.com)

*Call Mountain West Small Business Finance today to find out why an SBA 504 loan can be a great investment for you!*



**Mountain West**  
Small Business Finance

GROWING SMALL BUSINESSES, JOBS, COMMUNITIES

revealing that it dictates your overarching theme. As such, you may use its contents as a guide throughout your examinations of opposing parties and witnesses in depositions and your own at trial. Or you may just be so quick and have such good instincts that from the beginning you kind of know the basic contours of the story and where you need to go to substantiate it.

Other times the only way you can get to a big picture you are comfortable presenting to a court or jury is to suspend judgment about the overall meaning or appeal of the claims or defenses and immerse yourself in the “small stuff”-- the details of fact and law. Then you build from the ground up. Regardless of how you do it, the point is the same – you’ve got to develop a narrative that rings true or, quite simply, you’ll lose.

Where do you find the big picture? Let’s start with the relatively easy part: the law. One of my law partners, Tom Karrenberg, is a highly successful civil trial lawyer here in Salt Lake City. The basic method that he uses himself and teaches his colleagues to use in preparing lawsuits begins with an outline of the elements of each cause of action or defense you need to prove. The elements together comprise the big picture of each claim and individually provide a framework for assembling the facts. Working “upward” from that Tom constructs or refines the overall or overarching theme or concept of the case.

For Ned, the work was similar. The large ink blots were the major elements of the story he told. The smaller blotches filled in the details. Integrating both enabled him to enrich the story with both bold strokes and detail.

As to the facts, sometimes the big picture is right in front of you; other times it will require you to roll up your sleeves and dig in, document by document, witness by witness. Let’s take one example where it’s right in front of you and, surprisingly, sometimes overlooked. In a contract case, as often as not, the contract itself contains the narrative you are looking for. It’s the ultimate result of the parties’ negotiations and, as such, it tells a story. For example, it tells you what risks the parties were concerned about, how those risks were allocated, how the parties protected themselves against those risks, what assurances each side was willing to give to the other, and on and on. Pretty much everything you need.

### Details

I don’t know whether the “devil” resides in the details of anybody else’s cases, but I’ve certainly encountered him in the

details of mine. The reason is simple: However compelling your case may seem, there will be facts you uncover that range from bad to awful or from awful to worse. It is certainly good news when you expose them rather than vice versa – when they expose you. The bad news is that having found them you need to deal with them. And you need to do that without allowing them to undermine the “big picture” you’ve drawn and are trying to sell.

Dealing with “bad facts” is one of the greatest challenges facing the skilled litigator or trial lawyer. And there is no “one size fits all” approach to the problem. The only point I want to emphasize here is that it is essential to find a place for your bad facts in the larger narrative of your case. They are part of the real life story, every one of which contains “the good, the bad and the ugly,” just like the smaller, more confusing, even confounding ink blots are parts of the Rorschach test that it is best to address. Your bad facts may require a “mini-narrative” of their own. For example, “yes, I wouldn’t ask you to believe that except for this . . .” Sometimes, as unlikely as it may seem, facts that look bad at first may prove not so bad at the end of the day.

On that point, let me close with another personal anecdote. Years ago I served as an Assistant United States Attorney for the District of Columbia. I began my trial experience with drug and gun cases. In my first gun trial, two defendants were charged with carrying (under the car seat between them) a loaded pistol and with possession of the ammunition in the gun. The arresting officer explained, among other things, how he preserves the chain of custody when he seizes contraband. He said he put the gun in one property envelope, the bullets in another, dated and initialed both of them and handed them to the property clerk for safekeeping. The property envelope containing the gun and the gun itself went in just fine. I then showed him the envelope containing the bullets and asked him: “Do you recognize this?” He paused, literally for about thirty seconds, and each second for me was an eternity. Finally he said essentially this: “This is a property envelope. The initials on it are mine. But that’s not my handwriting. Someone else put my initials on there. Maybe I forgot and the property clerk did it for me. But that’s not normally how it works.” The judge then sustained the defense lawyer’s objection to the introduction of the envelope and, of course, the bullets it contained. As you can imagine, I thought to myself: “That’s just great. What a way to start.” In fact, not having a lot of perspective at that time, I felt like I’d been hit by a truck. Later, both defendants, young black men, took the stand, and both testified that the white officer had stopped them for no reason, that they’d exchanged words, and that the officer

planted the loaded gun under the seat.

The next day I had to do my closing before the predominantly black jury. I don't know how exactly this happened – whether I got help beforehand or not. What I do recall vividly, though, is saying this to the jury, as most of them nodded their heads:

How do you know you can believe Officer Smith, that he's telling the truth about finding the loaded gun under the seat right between the two defendants? Well, remember that moment? [I smiled gently and took a deep breath.] Those long, long moments – when Officer Smith stared at the initials on that property envelope? And he told you, as embarrassing as it was to him at the time, that's not my handwriting? That's how you know he's a person who tells the truth.

Bottom line, the defendants were both convicted not just of carrying the same pistol but also of possessing the ammunition, even though it wasn't received in evidence.

### Conclusion

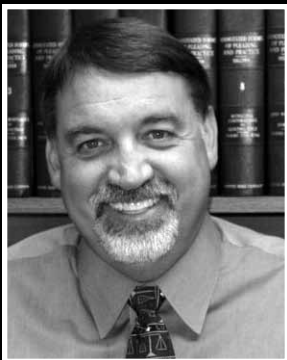
The Rorschach metaphor was helpful to me in illustrating how words – story telling – can integrate the forest and the trees – as of course the forest and trees are one and the same as we experience them directly in real life. Since hearing my classmate Ned deliver that bravado performance, I've tried to incorporate his approach in any presentation of any kind I've ever had to

make. As to lawsuits in particular, I'll swear by that approach. I believe it is that unified narrative – tying together the larger picture and the detail, good, bad, and ugly – that separates the powerful from the weak case.

The same analysis applies to the anecdote about the property envelope. That became not just a part of the story but probably the most profound part of the story. The big picture I needed to convey was that the arresting officer was telling the truth about everything he said. An unexpected glitch afforded a glimpse of character and, in so doing, carried the day.

1. For example, the trial lawyer asks themselves questions like these: How does what I'm hearing or seeing fit in? Does it ring true or false? Will it have to be explained or explained away? How? By whom?
2. I understand this is sometimes described as the "post-modern" condition, a consequence of the supposed demise or philosophical dismantling of the "great narratives" – religion, capitalism, etc. – that filled the need of people to believe in something. A discussion of how "post-modern" philosophers talk about human experience or whether they're correct is beyond the scope of this paper and beyond my ken in any event. Regardless of that diversion, if you merely assume jurors want to believe one side or the other, a story that hangs together for them obviously helps more than one that doesn't.
3. For example, the business person at the center of the "B" school case needs to understand the entire dynamic of the situation in order to get that person's arms around it and solve the problem or move the organization forward.
4. For example, the law student needs to dissect the case to understand what its procedural posture is and how that bears on both the issue presented and the holding. And as to how the court reached the decision it did, the student needs to analyze and differentiate the precedents to understand why this particular group of cases is distinguishable and this group is not.

### Announcement: Back in Solo Practice!



**Over 22 Years  
of Experience!**

## UDAY LAW OFFICE

### RICHARD G. UDAY CRIMINAL DEFENSE ATTORNEY

- Appeals
- Sex Crimes
- Internet Crimes
- Aggravated Felonies
- DUI & Drug Crimes
- Misdemeanors

Se Habla Español

Trolley Corners Center • 515 South 700 East, Suite 3-E  
Salt Lake City, UT 84102 • (801) 579-0600  
rich@udaylaw.com • [www.UdayLaw.com](http://www.UdayLaw.com)

## Confessions of a Facebook Sleuth

by Keith A. Call

I'm an admitted Facebook sleuth. I have a Facebook profile, but you won't learn much about me there. You won't see a profile picture. You won't find my high school graduation date. And you definitely won't learn anything about my favorite movie, novel or junk food. I'm on Facebook for one reason and one reason only: to spy on my teenage daughter.

But many of you are really into friending, linking, posting, blogging and tweeting, and any lawyer who is not using the web for professional development and other law-related purposes is missing out on a tremendous resource. Here are some tips to help keep you out of ethical dilemmas online.

### **Don't forget the rules related to lawyer advertising.**

This warning has special application to your firm website and any other site where your professional profile is posted. Your postings should conform to Rule 7.1 (communications about legal services), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and 4.1(a) (truthfulness in statements to others). You may provide truthful and accurate information, but avoid overstating your qualifications and omissions that would make your online profile misleading. Be wary of proclaiming expertise in a way that could hurt you in a legal malpractice case.

### **Keep confidences – don't let your guard down.**

A lawyer has a solemn duty to maintain client confidences. This duty may extend far beyond information your client communicates to you "in confidence." Some authorities suggest it extends to all information relating to the representation, including information in the public record. Be extremely careful about posting client "hypothetical" stories, and never disclose information that would

enable someone to discover the identity of the "hypothetical" client. It is also a good idea to get your client's permission before identifying your clients online, such as in a "representative clients" section of your website.

### **Unless it's your teenage son or daughter, be careful about sleuthing.**

Most lawyers now know social networking sites are potential treasure troves of information regarding opposing parties,

witnesses or even jurors. Be careful not to violate Rule 4.2(a)'s prohibition against ex parte communications with represented parties. Do not attempt to find information to help your case by posing as a "friend" of adverse parties or witnesses,

or by having someone else do it for you. For example, a Philadelphia Ethics Opinion found it would be unethical for a lawyer to engage a third party to "friend" an adverse witness on Facebook or MySpace.<sup>1</sup>

### **Do not form an attorney-client relationship by mistake.**

Many sites allow users to post questions and allow other users to provide answers. Be very cautious about giving any legal advice, including free advice, over the Internet. Many cases hold that the existence of an attorney-client relationship can be

*"It would be a disaster to provide free legal advice over the Internet only to find yourself on the wrong end of a lawsuit for the favor."*

*KEITH A. CALL is a shareholder at Snow, Christensen & Martineau. His practice includes professional liability defense, IP and technology litigation, and general commercial litigation.*



subjective, based in part on the client's reasonable expectations. It would be a disaster to casually provide free legal advice over the Internet only to find yourself on the wrong end of a lawsuit for the favor. In a similar vein, do not assume legal advice or answers provided by others on the Internet can substitute for your own research.

### Keep your head.

Many Facebook users seem to believe common sense and personal privacy have no place on the Internet. Don't fall into that trap. Never post in anger. Avoid expressing opinions about judges, opposing parties, other lawyers or witnesses. Use extreme caution when expressing opinions about anyone. Some old-school wisdom still applies:

A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do

likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his [or her] position in society, even minor violations of the law by a lawyer may tend to lessen public confidence in the legal profession. . . . To lawyers especially, respect for the law should be more than a platitude.

Model Code of Professional Responsibility, EC 1-5 (1983).

Keep in mind that you relinquish control of everything you post. Even if your college friends might get a kick out of what you post, a client, judge, or your mother may not!

1. The Philadelphia Bar Association, Professional Guidance Committee, Op. 2009-02 (March 2009), available at [http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Opinion\\_2009-2.pdf](http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Opinion_2009-2.pdf).

# CASEMAKER 2.2<sup>TM</sup>

the most valued member benefit

## New to Casemaker 2.2:

- Separates newly passed statutes which have not yet been added to the Utah Code into a separate book in the library called "Session Laws."
- A new All Jurisdictions button added to the top of the search results page now allows you to re-run your current search in any other jurisdiction, with just two clicks of your mouse.
- Code Archive – This link will take you to a listing of each year that a code was revised. Click on that year and you are taken to the section of code written as it was implemented that legislative session.

## Benefits:

- Easy to Use
- Accessible 24/7
- Cost effective Legal Research
- Free for Utah Bar members
- Access to other State and Federal libraries

Utah State Bar

Visit [www.utahbar.org](http://www.utahbar.org) to learn more.

# *The Power of Law: How One Law Student Is a Force for Good in Utah's Human Trafficking Cases*

by Janise K. Macanas

It's a good thing that Vivianne Elizabeth Api Mbaku was a track and field athlete at West High School, eight years ago here in Salt Lake City, Utah. Nowadays, Vivianne, a second year law student at the S. J. Quinney College of Law, is an energetic and enthusiastic volunteer in the migrant worker division of the Utah Legal Services, clerk at the law firm of Richards Brandt Miller Nelson, and currently serves as President of the S. J. Quinney Minority Law Caucus. Always searching for ways to broaden her involvement in programs that serve racial and ethnic communities, this twenty-three year-old law student from Layton travels to Panama, Costa Rica, and Oaxaca, Mexico to volunteer for organizations that help her stay connected to the Latin American community she has grown to love and passionately contribute to even while she is busy pursuing her higher education.

*"This experience gave me a new perspective on not only the legal issues facing trafficking, but the human toll it takes. It only strengthened my knowledge that the law has the power to literally change lives for the better."*

As the child of an African immigrant, Vivianne explains that she has always had a unique perspective of the world and sensitivity to the inequalities within. For that reason, Vivianne jumped at the unique opportunity this past summer to volunteer at Utah Legal Services, where Vivianne worked primarily on human trafficking cases. Vivianne, who has a dual Bachelor of Arts Degree in Politics and Latin American Studies from Scripps College, California and is fluent in Spanish, explains that she was in daily contact with recent immigrants and those that had been illegally trafficked into Utah, most of whom were from Latin America.

One might ask, "in Utah?" and "how did these human trafficking victims get here?" Vivianne explains that most of the victims were brought here under the impression that they would be

better able to financially support their families than in their native countries. Unfortunately, these victims would be exploited and then left to their own resources.

While these stories may sound horrific, Vivianne found empowerment and a sense of contribution by assisting the victims to obtain work permits and visas and to help improve their living conditions. She also drafted memoranda and

researched legal topics that included criminal defense, torts, and family law so that she could assist victims who were applying for visas. "This experience gave me a new perspective on not only the legal issues facing trafficking, but the human toll that it takes," Vivianne says. "It only strengthened my knowledge that the law has the power to literally

change lives for the better."

Always one to keep herself active and busy year-round while pursuing her law degree, this past year Vivianne worked as a law clerk for Richards Brandt Miller Nelson and has been involved in law projects that touch all areas of the law including criminal defense and property law. In the summer of 2009, Vivianne was a project supervisor for AMIGOS de las Americas-

*JANISE K. MACANAS is an Assistant Attorney General in the Utah Attorney General's Office. She also serves as Secretary of the Utah Minority Bar Association.*



Chitre, in rural Panama, helping high school students finish community development projects.

In her capacity as President of the Minority Law Caucus, Vivianne also hopes to establish a service project to encourage minority undergraduates to consider law as a career, highlighting the opportunities for social justice and the need for diversity in the law throughout the state of Utah.

In honor and celebration of Vivianne's genuine commitment to racial and ethnic minority communities, she was recognized this past October by the Utah Minority Bar Association and the Utah

Minority Bar Foundation and awarded the prestigious \$1500 Wayne L. Black Memorial Scholarship sponsored in part by the generosity of Dunn & Dunn, P.C.

Coach Ronnie Stubbs, Vivianne's West High School teacher from eight years ago, continues to follow her legal related endeavors and enjoys getting updates about her accomplishments. "I do not know of anyone who would be more worthy of this scholarship. As I have followed the personal and academic success of Vivianne I have been truly impressed by the level of professionalism that she has exhibited in all of her personal and professional activities."

### ***Board Members Sought for The Utah Minority Bar Foundation ("UMBF")***

UMBF is seeking interested parties – Bar Membership not a pre-requisite – to serve on its Board of Trustees. If you are interested in learning more, please contact Chrystal Mancuso-Smith, UMBF President at [slc.attorney@gmail.com](mailto:slc.attorney@gmail.com) or at (801) 906-9916.



Vial Fotheringham is your full-service homeowners association law center, providing education, representation, and litigation on behalf of associations. We are committed to proactive assistance by offering comprehensive education, training, and answers to HOA questions, in order to help associations navigate community life.

**VIALFOTHERINGHAM<sub>LLP</sub>**  
**LAWYERS**

Free HOA educational courses available! Visit: [utahHOA.law.com](http://utahHOA.law.com) Join us on Twitter, Facebook, LinkedIn, Blogspot, call 801 355 9594

# *The Dark Side of The Bluebook*

by Cathy Roberts

Usually a book reviewer reads a book from cover to cover, even if it's bad. This is a review of a review of a book that I guarantee I will never read entirely.

As law students learn, *The Bluebook* is an essential reference book for legal citation. Its prestigious sponsors (the Harvard, Yale, Columbia, and Pennsylvania law reviews), its heft, and its “first mover” advantage in its field, have made it the repository of the correct way of referencing every source of knowledge a lawyer might need since 1926. But I suspect there are numerous dust-covered copies of *The Bluebook* staring at attorneys from the shelf with cold disdain, as mine does, knowing that without its help we will misplace a period, use a period instead of a comma, or, heaven forbid, italicize rather than underline. Now, there is a new edition: *The Bluebook: A Uniform System of Citation* 107 (19th ed. 2010). The 16th edition was long, at 255 pages. The 19th edition is over 500 pages long.

The practice of law consists of learning lots of rules, many of which appear mindlessly complex. When the interpretation of these rules relies on an even more mindlessly complex code by which we verify the source of the idiotic rule, we have made the elevation of form over function into an art.

Richard Posner, judge of the Seventh Circuit Court of Appeals, sees the dark side of the growth of the Bluebook since the 16th edition, which he reviewed in 1986, in *Goodbye to the Bluebook*, 53 UNIVERSITY OF CHICAGO LAW REVIEW 1343 (1986). In *The Bluebook Blues*, 120 YALE L. J. 850 (2011), Posner compares its “monstrous growth” to that of cancer: the 19th edition of the book is almost twice the size of the 16th.

Back when the 16th edition was relatively svelte, Posner recommended it go on a diet. It ignored him like a defiant spouse, and kept creeping out of bed in the middle of the night, tiptoeing to the fridge and gorging on maritime law, intellectual property law, and digital licensing law, eventually packing on 256 pages.

This growth, according to Posner, has been driven by “grim capitalistic logic.” If *The Bluebook* is the first mover and leader in its field, he argues, it must grow and develop more rules to stay necessary to the legal community. He also contends that the growth in size and complexity reflects the “reflex desire of every profession to convince the laity of the inscrutable rigor of its methods.” Get over yourselves, lawyers, he advises. Doctors use “genuinely professional methods to diagnose and treat disease,” while legal reasoning lacks scientific rigor, and requires careful reading, rhetoric and common sense.

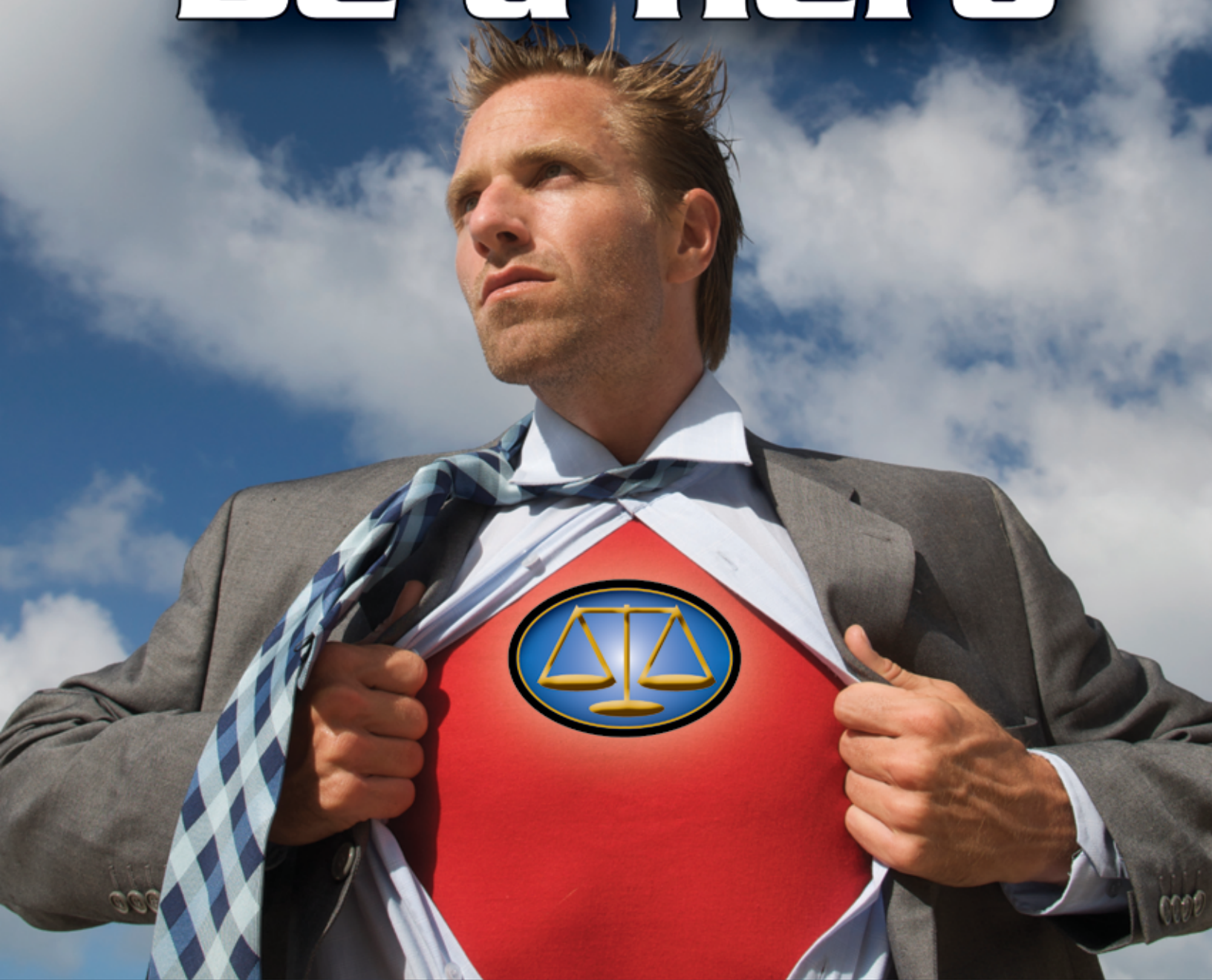
Many attorneys depend on law student interns or recent law graduates to use correct citations, directing them to *The Bluebook*. (If I have a citation question, I simply use other appellate opinions in my jurisdiction as a guide to citation.) Posner points out that even West has no standard method of citation. He bemoans *The Bluebook's* obsession with abbreviations which convey no meaning to the reader. Having given up on the possibility that the Bluebook will follow his recommendations of self-restraint, he and his clerks developed his own manual of rules, which is one-hundredth the size of the Bluebook. An example of that manual is an appendix to his article. (Time will tell if Posner will publish his own blue book and sell it at a competitive price, thus creating an exciting war in the legal reference field.)

Posner's article is a serious critique and well worth reading. Still, his observations are often wryly humorous, an adjective rarely applied to the discussion of something as arcane and bone-dry as uniform citation.

*CATHY ROBERTS is a felony trial attorney with the drug team of the Salt Lake Legal Defenders Association. She is also a Utah Bar Journal editor.*



# Be a Hero



Take on a Pro Bono case  
and change a life

801-297-7027 • [probono@utahbar.org](mailto:probono@utahbar.org)

## ***President-Elect and Bar Commission Election Results***

Congratulations to **Lori Nelson** on her election as President-elect of the Bar. Lori will serve as President-Elect for the 2011-2012 year and then become President for for 2012-2013. Congratulations also go to **Herm Olsen** who ran unopposed in the 1st Division, and to **Dickson Burton**, **Eve Furse**, and **Rob Rice** on their elections as Commissioners in the Third Division. Special thanks as well to **Christian Clinger** and **John Johnson** for their willingness to serve the profession and for their honorable campaigns.



*Lori Nelson  
President-Elect*



*Herm Olsen  
First Division*



*Dickson Burton  
Third Division*



*Eve Furse  
Third Division*



*Rob Rice  
Third Division*



## LAWYER ASSISTANCE PROGRAMS

### FREE SERVICES AND COUNSELING TO UTAH BAR MEMBERS & FAMILIES

*Services have been paid for by the Utah State Bar and are a benefit to all bar members & families.*



(801)579-0404 • (800)530-8743  
[www.lawyershelpinglawyers.org](http://www.lawyershelpinglawyers.org)

#### HOW WE HELP:

- ◆ Personalized 1-on1 Communication
- ◆ Assistance with Cases During Extenuating Circumstance
- ◆ Referrals to Experienced Treatment Providers
- ◆ Confidential Mentoring Provided by Experienced Attorneys
- ◆ Monthly Support Group Meetings (*Visit our Website*)
- ◆ Other Areas...



**BLOMQUIST HALE**  
LAWYER ASSISTANCE PROGRAM (LAP)  
Salt Lake City:(801) 262-9619  
Ogden:(801) 392-6833  
Orem:(801) 225-9222  
Brigham City:(435) 723-1610  
Logan(435) 752-3241  
Other Locations (800) 926-9619  
[www.blomquisthale.com](http://www.blomquisthale.com)

#### HOW WE HELP:

- ◆ We are Licensed Therapists & Counselors
- ◆ Help With Marriage & Struggles With Children
- ◆ Stress, Anxiety & Depression
- ◆ Financial Difficulties
- ◆ Alcohol/Drug & Other Addictions
- ◆ Wellness and Workshops (*Visit our Website*)
- ◆ Other Areas...





RAY QUINNEY & NEBEKER  
ATTORNEYS AT LAW

# INSIGHT

With more than 35 years of trial experience, a former US Attorney for the District of Utah, and years of experience in Washington DC, the attorneys of RQ&N's White Collar Criminal Defense Practice Group bring unmatched depth to the most complex white collar matters.



Pictured L to R: Loren E. Weiss, Matthew R. Lewis, Mica McKinney, Brett L. Tolman

RAY QUINNEY & NEBEKER

[www.rqn.com](http://www.rqn.com)

36 South State Street, Suite 1400 • Salt Lake City, Utah 84111 • 801.532.1500  
86 North University Avenue, Suite 430 • Provo, Utah 84601 • 801.342.2400

## Supreme Court Seeks Attorneys to Serve on Advisory Rule Committees

The Utah Supreme Court is seeking applicants to fill potential vacancies on the following advisory rule committees:

Advisory Committee on the Rules of Appellate Procedure

Advisory Committee on the Rules of Criminal Procedure

Advisory Committee on the Rules of Evidence

Advisory Committee on the Rules of Juvenile Procedure

Advisory Committee on the Rules of Professional Conduct

Appointments are for a four year term. Any interested attorney should submit a resume and a letter addressing qualifications to Diane Abegglen, Appellate Court Administrator, Utah Supreme Court, P. O. Box 140210, Salt Lake City, UT 84114-0210 or to the e-mail address [diane@email.utcourts.gov](mailto:diane@email.utcourts.gov). Applications must be received no later than June 3, 2011.

## Auctions Appraisals Consulting

Erkelens & Olson Auctioneers has been the standing court appointed auction company for over 30 years. Our attention to detail and quality is unparalleled. We respond to all situations in a timely and efficient manner preserving assets for creditors and trustees.

Utah's Largest Real Estate Auctioneer

Erkelens &  
**Olson Auctioneers**

*3 Generations Strong!*

Rob Olson  
Auctioneer, CAGA appraiser

**801-355-6655**  
[www.salesandauction.com](http://www.salesandauction.com)

## Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during the March 17, 2011 Commission meeting held at the Dixie Convention Center in St. George, Utah.

1. The Bar Commission approved an allocation for a media campaign proposed by Love Communications, which will include appropriate coverage in the Logan and Southern Utah areas and be at the direction of the Executive Committee following additional input from the Commission.
2. The Bar Commission nominated Alain Balmanno, Gary Ferguson, and Chrystal Mancuso-Smith to the Utah Division of Occupational and Professional Licensing for service on the Deception Detection Examiners Board.
3. The Bar Commission agreed to contribute and be a co-sponsor of the Woman Lawyers of Utah project honoring the First one-Hundred Woman Lawyers in Utah and the "Women Trailblazers in the Law" presentation.
4. The Bar Commission approved payments proposed by the Client Security Fund Committee.
5. The Bar Commission agreed to have Hudson Printing print the *Bar Journal* and to change paper weight from 100 pound gloss covers with 80 pound gloss pages to 80 pound gloss covers with 60 pound gloss pages.
6. The Bar Commission approved the Minutes of the January 28, 2011 Commission Meeting via Consent Agenda.
7. In Executive Session the Commission took action on a matter of pending litigation.

Bar Commissioners agreed to continue efforts on the following items:

8. The Executive Committee will communicate with Love Communications on the direction received from commissioners on the content of radio messages and the necessary radio coverage in Logan and Southern Utah; will get additional feedback from commissioners and then proceed to implement the public education plan with Love according to the approved budget.
9. The Survey Committee will submit a report at the April Commission Meeting proposing the content of the next annual survey of Bar membership.

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

## ***Mandatory Online Licensing***

The annual Bar licensing renewal process will begin June 1, 2011 and will be done only on-line. Sealed cards will be mailed the last week of May to your address of record. ***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.*** (Update your address information now at <http://www.myutahbar.org>).

The cards will include a login and password to access the renewal form and will outline the steps to re-license. Renewing your license online is simple and efficient, taking only about 5 minutes. With the online system you will be able to verify and update your unique licensure information, join Sections and specialty bars, answer a few questions, and pay all fees.

**No separate licensing form will be sent in the mail.** You will be asked to certify that you are the licensee identified

in this renewal system. Therefore, this process should only be completed by the individual licensee – not by a secretary, office manager, or other representative. Upon completion of the renewal process, you will be shown 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 you receive your renewal sticker, via the U.S. postal service. If you do not receive your license in a timely manner, call (801) 531-9077.

We are increasing the use of technology to improve communications and save time and resources. Utah Supreme Court Rule 14-507 requires lawyers to provide their current e-mail address to the Bar. If you need to update your email address of record, please contact [onlineservices@utahbar.org](mailto:onlineservices@utahbar.org). If you do not have an e-mail address or do not use e-mail, you may receive a printed licensing form by contacting [licensing@utahbar.org](mailto:licensing@utahbar.org).

**Experienced Advocacy  
for Denied Insurance Claims**

*Pre-Existing Conditions • COBRA • Rescission • Coordination of Benefits • HIPAA • Preferred Provider Disputes • Timely Filing Issues • Experimental & Investigational • Silent PPOs • Medical Necessity • ERISA • Coding Errors • Non-Eligible Charges • Failure to Pre-Authorize • Denial of Claims • Explanation of Benefits • Subrogation • Prompt Payment Statute • Contractual Penalties • Unfair Denial of Claims • Insurance Policy Issues • Claims Act Issues • Custodial & Maintenance Exclusions • Usual & Customary Charges • Inaccurate Insurance Verification • Dual Diagnoses • Residential Treatment Center Exclusions • Conversion • Pre-Existing Conditions • COBRA • Rescission • Coordination*

## **THE LAW FIRM OF BRIAN S. KING**

*we speak insurance*

**Phone: 801-532-1739 • Toll Free: 866-372-2322 • [www.erisa-claims.com](http://www.erisa-claims.com)**

**Life Insurance Claims • Medical Insurance Claims • Disability Insurance Claims**

## ***Pro Bono Honor Roll***

Aaron Tarin – Immigration Clinic  
 Aaron Tillmann – Debtors Clinic  
 Adam Stevens – Tuesday Night Bar  
 Adam Wahlquist – Tuesday Night Bar  
 Ali Chaudhry – Domestic Case  
 Amy Morgan – Tooele Clinic  
 April Hollingsworth – Rainbow Law Clinic  
 Artemis Vamianakis – Tuesday Night Bar  
 Austin Riter – Tuesday Night Bar  
 Barney Saunders – Park City Clinic  
 Brent Hall – Family Law Clinic  
 Brian W. Steffensen – Debtor's Clinic  
 Brigman Harman – Tuesday Night Bar  
 Bryan Sidwell – Tuesday Night Bar  
 Bryce Pettey – Tuesday Night Bar  
 Candice Pitcher – Rainbow Law Clinic  
 Carolyn Morrow – Housing Cases  
 Casey Jones – Tuesday Night Bar  
 Charles Carlston – Service Member Attorney Volunteer  
 Chaudhry Ali – Habeas Corpus Case  
 Cheylenn Hayman – Tuesday Night Bar  
 Chris Preston – Street Law Clinic  
 Chris Wangsgard – Service Member Attorney Volunteer  
 Chris Wharton – Rainbow Law Clinic  
 Christina Micken – Tuesday Night Bar  
 Christopher Stout – Tuesday Night Bar  
 Clemens Landau – Tuesday Night Bar  
 Cortland Andrews – Tuesday Night Bar  
 Craig Smith – Street Law Clinic  
 Darren Levitt – Tuesday Night Bar  
 David Pearce – Tuesday Night Bar  
 Dixie Jackson – Family Law Clinic  
 Doug Farr – Tuesday Night Bar  
 Elizabeth Conley – Senior Center Legal Clinic  
 Emilie E. Lewis – Guadalupe Clinic  
 Emily Moench – Tribal Case  
 Eric Singleton – Bankruptcy Case  
 Erin Middleton – Tuesday Night Bar  
 Esperanza Granados – Immigration Clinic

Francisco Roman – Immigration Clinic  
 Frank Slaugh – Debtor's Clinic  
 Garth Heiner – Guadalupe Clinic  
 Glen Davies – Tuesday Night Bar  
 Greg Ferbrache – Family Law Clinic  
 Harry McCoy II – Senior Center Legal Clinic  
 Heather Tanana – Street Law Clinic, American Indian Clinic  
 Huy Vu – Family Law Clinic  
 James Bergstedt – Street Law Clinic  
 James Burton – Tuesday Night Bar  
 James Lavelle – Tuesday Night Bar  
 James Spendlove – Contract Case  
 Jana Tibbitts – Family Law Clinic  
 Jane Semmel – Senior Center Legal Clinic  
 Jared Inouye – Domestic Case  
 Jason Grant – Family Law Clinic  
 Jason Kane – Bankruptcy Hotline  
 Jay Kessler – Senior Center Legal Clinic  
 Jeannine Timothy – Senior Center Legal Clinic  
 Jennifer Bogart – Service Member Attorney Volunteer  
 Jennifer Bogart – Family Law Clinic, Street Law Clinic  
 Jennifer Ha – Debtors Clinic  
 Jennifer Lee – Legal Assistance to Military  
 Jerald Engstrom – Bankruptcy Case  
 Jess Cheney – Tuesday Night Bar  
 Jessica Andrew – Service Member Attorney Volunteer  
 Jessica McAuliffe – Senior Center Legal Clinic, Legal Assistance to Military  
 Jill Crane – Domestic Cases  
 Jim Baker – Senior Center Legal Clinic  
 Joe Caudell – Immigration Clinic  
 John Zidow – Tuesday Night Bar  
 Jonathan Benson – Immigration Clinic  
 Jory Trease – Debtor's Clinic  
 Joshua Chandler – Tuesday Night Bar  
 Karen Allen – Roosevelt Legal Clinic  
 Kathie Brown Roberts – Senior Center Legal Clinic

Kelly Latimer – Tuesday Night Bar  
 Kristie Parker – Service Member Attorney Volunteer  
 Kyle Hoskins – Domestic Cases  
 Landon Allred – Tuesday Night Bar  
 Langdon Fisher – Family Law Clinic  
 Lara Swensen – Tuesday Night Bar  
 Larry Jenkins – Domestic Case  
 Laura Pressley – Tuesday Night Bar  
 Lauren Scholnick – Guadalupe Clinic  
 Laurie Hart – Senior Center Legal Clinic  
 Lawrence Peterson – Consumer Case  
 Leslie Orgera – Tuesday Night Bar  
 Leslie Schaar – Rainbow Law Clinic  
 Linda F. Smith – Family Law Clinic  
 Loretta G. LeBar – Service Member Attorney Volunteer  
 Louise Knauer – Family Law Clinic  
 Maria Saenz – Immigration Clinic  
 Marie Bramwell – Domestic Case  
 Marji Hanson – Debtor's Clinic  
 Matthew Ball – Tuesday Night Bar  
 Matthew Jensen – Street Law Clinic  
 Matthew Orme – Tuesday Night Bar  
 Megan DePaulis – Tuesday Night Bar  
 Megan Houdeshel – Tuesday Night Bar  
 Melanie Clark – Senior Center Legal Clinic  
 Melanie Reif – Housing Cases  
 Michael A. Jensen – Senior Center Legal Clinic  
 Michael Black – Tuesday Night Bar  
 Michael Deamer – Estate Case  
 Michael Gehret – Tuesday Night Bar  
 Michael Palumbo – Tuesday Night Bar  
 Michael Reason – Domestic Case  
 Michael Thomas – Tuesday Night Bar  
 Morgan Wilcox – Family Law Clinic  
 Morris Haggerty – Tuesday Night Bar  
 Nathan Miller – Senior Center Legal Clinic  
 Nicholle Beringer – Bankruptcy Hotline  
 Nick Angelides – Senior Case

Orson West – Domestic Case  
 Patrick Johnson – Tuesday Night Bar  
 Paul Amann – Tuesday Night Bar  
 Phillip S. Ferguson – Senior Center Legal Clinic  
 Rachel Otto – Street Law Clinic  
 Reef Pace – Debtor's Clinic  
 Richard Medsker – Bankruptcy Case  
 Robert Brown – Tuesday Night Bar  
 Robyn Wicks – Tuesday Night Bar  
 Roy Schank – Bankruptcy Hotline  
 Russell Yaune – Family Law Clinic, Debtor's Clinic  
 Samantha Siegel – Tuesday Night Bar  
 Saul Speirs – Tuesday Night Bar  
 Scott Thorpe – Bankruptcy Hotline  
 Scott Thorpe – Senior Center Legal Clinic  
 Scott Trujillo – Habeas Corpus Case

Scott Trujillo – Farmington Clinic  
 Sharon Bertelsen – Senior Center Legal Clinic  
 Shauna O'Neil – Family Law Clinic, Bankruptcy Hotline  
 Shawn Foster – Immigration Clinic  
 Sheleigh Harding – Family Law Clinic  
 Shellie Flett – Bankruptcy Hotline  
 Silvia Pena-Chacon – American Indian Clinic  
 Stephen Knowlton – Family Law Clinic  
 Steve Stewart – Street Law Clinic  
 Steven Burton – Tuesday Night Bar  
 Steven Walkenhorst – Tuesday Night Bar  
 Stewart Ralphs – Family Law Clinic  
 Susan Griffith – Family Justice Center  
 Tadd Dietz – Street Law Clinic  
 Ted Cundick – Street law Clinic  
 Ted Godfrey – Bankruptcy Case

Terrell R. Lee – Senior Center Legal Clinic  
 Thomas Mecham – Senior Center Legal Clinic  
 Tiffany Smith – Tuesday Night Bar  
 Tim Considine – Tuesday Night Bar  
 Timothy Dance – Tuesday Night Bar  
 Timothy G. Williams – Senior Center Legal Clinic  
 Todd Anderson – Domestic Case  
 Todd Olsen – Family Law Clinic  
 Tony Williams – Volunteer at Utah Legal Services  
 Tracey M. Watson – Family Law Clinic  
 Trent Nelson – Family Law Clinic  
 Victor Perri – Debtor's Clinic  
 Vinh Ly – Domestic Case  
 Virginia Sudbury – Rainbow Law Clinic  
 William Morrison – Bankruptcy Case

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 December 2010 and January 2011. Call Karolina Abuzyarova (801) 297-7027 or C. Sue Crismon at (801) 924-3376 to volunteer.

## BTJD is pleased to announce its newest partners:

Litigation  
 Real Estate  
 Commercial Finance  
 Corporate  
 Tax  
 Estate Planning  
 Advertising  
 Trademark  
 Startup  
 M&A

Efficient Expertise.

**BTJD**  
 BENNETT • TUELLER JOHNSON & DEERE

Daniel K. Brough James K. Tracy  
 New Partner Joined as Partner



Litigation



Litigation

J. Reed Rawson Nate Ashcraft  
 New Partner New Partner



Business



Litigation

btjd.com | 801.438.2000  
 Salt Lake City & Alpine  
 Text "LAW" to 62626 for contact details

## Utah State Bar 2011 Spring Convention Award Winners

During the Utah State Bar's 2011 "Spring Convention in St. George" the following awards were presented:



**LAUREN I. SCHOLNICK**  
**Dorothy Merrill Brothers Award**  
*For the Advancement of Women  
 in the Legal Profession*



**NATHAN D. ALDER**  
**Raymond S. Uno Award**  
*For the Advancement of Minorities  
 in the Legal Profession*

### Supreme Court Seeks Attorneys to Serve on Advisory Committee on Professionalism

The Utah Supreme Court is seeking applicants to fill potential vacancies on its Advisory Committee on Professionalism. Appointments are for a four year term. Any interested attorney should submit a resume and a letter addressing qualifications to Diane Abegglen, Appellate Court Administrator, Utah Supreme Court, P. O. Box 140210, Salt Lake City, UT 84114-0210 or to the e-mail address [diane@email.utcourts.gov](mailto:diane@email.utcourts.gov). Applications must be received no later than June 3, 2011.

### Board Members Sought for The Utah Minority Bar Foundation ("UMBF")

UMBF is seeking interested parties – Bar Membership not a pre-requisite – to serve on its Board of Trustees. If you are interested in learning more, please contact Chrystal Mancuso-Smith, UMBF President at [slc.attorney@gmail.com](mailto:slc.attorney@gmail.com) or at (801)906-9916.

The Utah Minority Bar Foundation was designated as a 501(c)(3) non-profit corporation as of October 5, 2009. UMBF is intended to service as the charitable branch of UMBA, an organization of Utah lawyers committed to promoting diversity and addressing issues that impact racial and ethnic minorities, especially within the legal community, founded in 1991.

The goals of the Foundation (depending upon available funds) are to 1) provide scholarships to law students; 2) provide grants to local non-profits; 3) encourage, promote, and assist individuals traditionally under-represented in the legal profession to seek careers and advancements therein; and 4) promoting social welfare by educating the legal community on issues relevant to the minority and socio-economically depressed members of the community at large in a nonpartisan manner. For example, the Foundation is heavily involved with putting on the UMBA Annual Student Scholarship and Awards Banquet (*Save the Date: October 21, 2011, Little America*).



is pleased to announce that

**KYLE L. SHOOP, Esq.**  
 Associate

has joined the Firm in our Utah Office.

102 S. Tejon Street, Suite 500  
 Colorado Springs, CO 80903  
 Phone: (719) 520-1421  
 Fax: (719) 633-3387

650 S. Cherry Street, Suite 600  
 Denver, CO 80246  
 Phone: (303) 757-0003  
 Fax: (303) 757-0004

17 East 200 North, Suite 203  
 Provo, Utah 84606  
 Phone: (801) 225-7955  
 Fax: (801) 373-9077

[WWW.DEWHIRSTDOLVEN.COM](http://WWW.DEWHIRSTDOLVEN.COM)

## 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](mailto:adminasst@utahbar.org) by Friday, September 9, 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](http://www.utahbar.org/members/awards_recipients.html)

## Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 2011 and ends June 30, 2012. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its June 3, 2011 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, is available for inspection and comment at [www.utahbar.org](http://www.utahbar.org).

Please contact John Baldwin at the Bar Office with your questions or comments.

Telephone: (801) 531-9077

Email: [jbaldwin@utahbar.org](mailto:jbaldwin@utahbar.org)

**Utah Bar Journal archives are available at [www.utahbarjournal.com](http://www.utahbarjournal.com)**

## Elder Law Month

May is National Elder Law Month. In commemoration, we invite you to fulfill your pro bono commitment by volunteering with the Senior Center Legal Clinics (SCLC), a program of the Elder Law Section and the Utah State Bar Pro Bono Department. Volunteer attorneys meet with senior citizens at senior citizen centers. Volunteers meet one-on-one with six clients for twenty-minute consultations, over a two-hour period. The goal is not to provide in-depth legal advice, but to determine whether the individual has a legal problem and then to identify potential legal services to address the problem. The volunteers do not need to have specialized knowledge of the legal issues affecting senior citizens. Time commitment is controlled by the volunteer, which is based on the number of clinics they attend.

For information on volunteering for the SCLC, please contact Joyce Maughan, Elder Law Section Pro Bono Committee Chair [maughanlaw@xmission.com](mailto:maughanlaw@xmission.com) (801) 359-5900; or Karolina Abuzyarova, Pro Bono Office of the Utah State Bar, [probono@utahbar.org](mailto:probono@utahbar.org).

## Experienced Mediation Specialist

### E. Gary Smith, Mediator

- On Utah Court-Approved Roster
- Member, Collaborative Family Lawyers of UT
- Specializing in domestic mediation
- Volunteer mediator for sitting judges
- Judge pro-tem, family law courts, Los Angeles
- Over 30 years litigation experience
- Certified Family Law Specialist, CA
- Member, Utah and California Bars



**Smith, Smith  
& Blonska, LLP**

Offices in Utah and California

801-489-3344 • [GaryS@smithandsmith-law.com](mailto:GaryS@smithandsmith-law.com)

## ***Bar Thank You and Welcome to New Admittees***

New admittees will be welcomed into the Utah State Bar in a ceremony at the Salt Palace Convention Center on May 18, 2011. Many attorneys volunteered their time to review the Bar exam questions and grade the exams. The Bar greatly appreciates the contribution made by these individuals who assisted with the February 2011 Bar exam. A sincere thank you goes to the following:

Kenneth Ashton	T. Mickell Jimenez Rowe	Stephen Quesenberry
Mark Astling	David Jeffs	Kenneth Reich
P. Bruce Badger	William Jennings	Katherine Reymann
Bart J. Bailey	Craig Johnson	Peter (Rocky) Rognlie
Brent Bartholomew	Lloyd Jones	Maybell Romero
James Bergstedt	M. Kevin Jones	Stephanie Saperstein
Karla Block	Lee Killian	Elizabeth Schulte
Anneliese Booher	Ben Kotter	Thomas Seiler
Sara Bouley	Clemens Landau	John Sheaffer, Jr.
John Bowen	Joanna Landau	Leslie Slaugh
Tiffany Brown	Derek Langton	Terry Spencer
Jonathan Cavender	Susan Lawrence	Craig Stanger
Gary Chrystler	Tanya Lewis	Joseph Stultz
Jane Clark	Michael Lichfield	W. Kevin Tanner
Steven Clayton	Patrick Lindsay	Benjamin Thomas
Stephen Edwards	Michael Lowe	Steve Tingey
Lonnie Eliason	Nathan Lyon	Ann Tolley
William Fontenot	Terrie McIntosh	John Treu
Michael Ford	Elisabeth McOmber	J. Kelly Walker
Robert Freeman	Douglas Monson	Jason Wilcox
Michael Garrett	Nathan Morris	Travis Wilson
Damon Georgelas	Jamie Nopper	Judith Wolferts
Marina C. Gianoulis	Jonathon Parry	James Wood
Alisha Giles	Rachel Peirce	Michelle Young
David Heinhold	Briant Platt	John Zidow
	Chad Platt	



## UTAH DISPUTE RESOLUTION

is offering Valuable Training  
for Lawyers, Paralegals, & other Legal Staff.

- Basic Mediation Training [June 8, 9, 10, 13, 14]
- Basic Mediation Refresher [August 23]
- Resolving Conflict in the Workplace [October 25-26]
- Managing Employee Conflict [October 27]
- Domestic Mediation Training
  - 32-Hour Seminar [November 3, 4, 7, 8]
  - 40-Hour Seminar [November 2, 3, 4, 7, 8]
- Domestic Refresher Workshop [August 24]

Unless otherwise noted, workshops will take place at the Law & Justice Center [645 South 200 East in Salt Lake City].

Find detailed information at:

[www.utahdisputeresolution.org](http://www.utahdisputeresolution.org)  
[801] 532-4841

## Notice of Legislative Rebate

Bar policies and procedures provide that any member may receive a proportionate dues rebate for legislative related expenditures by notifying the Executive Director:

John C. Baldwin  
645 South 200 East  
Salt Lake City, UT 84111

## 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](http://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](mailto:skuhre@utahbar.org) or (801) 297-7035.

## Notice of Ethics & Discipline Committee Vacancies

The Utah Supreme Court is seeking interested volunteers to fill vacancies on the Ethics & Discipline Committee of the Utah Supreme Court. The Ethics & Discipline Committee is divided into four panels, which hear all informal complaints charging unethical or unprofessional conduct against members of the Bar and determine whether or not informal disciplinary action should result from the complaint or whether a formal complaint should be filed in district court against the respondent attorney. Appointments to the Ethics & Discipline Committee are made by the Utah Supreme Court.

Please send a resume, no later than June 1, 2011, to:

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

KIRTON &  
McCONKIE  
ATTORNEYS AT LAW

*Representing Patent  
Owners in  
Enforcement Proceedings*

Jim Belshe

[www.kmclaw.com](http://www.kmclaw.com) | 801.328.3600

*Women Lawyers of Utah, the Utah State Bar,  
the S.J. Quinney College of Law and the J. Reuben Clark Law School*

*Request the pleasure of your company at a dinner honoring  
the First One Hundred Women Attorneys admitted to the Utah State Bar*

Thursday, May 26, 2011 at 6:30 p.m.  
The Grand America Hotel  
555 South Main Street • Salt Lake City, Utah

**Honored Guests Include:**

The First One Hundred Women Attorneys in Utah  
Utah Supreme Court Chief Justice Christine M. Durham  
Retired Utah Supreme Court Justice, Elder Dallin H. Oaks  
Utah State Bar President Robert L. Jeffs  
Dean Hiram E. Chodosh, University of Utah S.J. Quinney College of Law  
Dean Kif Augustine-Adams, Brigham Young University J. Reuben Clark Law School

During the evening, the 2011 collaborative work-in-progress,  
*Women Trailblazers in the Law*, will be premiered

Please R.S.V.P. on or before May 11, 2011

1 Hour CLE, pending approval

---

I accept the invitation to attend the May 26th Dinner honoring the First One Hundred Women Attorneys at the Grand America Hotel. Enclosed is \$75 for each dinner or \$600 to reserve a table of eight.

Please reserve for me \_\_\_\_\_ place(s) for dinner or \_\_\_\_\_ table of eight. Amount enclosed \$ \_\_\_\_\_

Name of reserving party \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Checks made payable to Women Lawyers of Utah should be mailed, so as to be received before May 11, 2011, to:

Ballard Spahr LLP  
c/o Lori Ivory, Dinner Honoring Women Trailblazers in the Law  
One Utah Center, Suite 800  
201 South Main Street  
Salt Lake City, UT 84111-2221

Reservations shall be made in the order in which acceptances are received. Early reservations are advisable. If you have any questions, contact Lori Ivory at [ivoryl@ballardspahr.com](mailto:ivoryl@ballardspahr.com) or 801-531-3083.

## 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](http://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](http://www.utahbar.org/rules_ops_pols/index_of_opinions.html).

### 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 Ned P. Siegfried 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(d) (Safekeeping Property), 5.1(c) (Responsibilities of Partners, Managers, and Supervisory Lawyers), 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, associates with Mr. Siegfried's firm waived attorney fees. Due to the waiver, Mr. Siegfried could not accept any fees. Eventually, another associate received an arbitration award in the case that was higher than the firm's original value assessment of the case. After the firm received the award funds, Mr. Siegfried's associate renegotiated the attorney's fees in the case. Mr. Siegfried demanded and accepted fees which were unreasonable under a fee waiver. Mr. Siegfried 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. A third option of arbitration was not sufficiently explained. Mr. Siegfried failed to promptly deliver and distribute undisputed funds to the 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. Siegfried's two proposed settlement options without an opportunity to consider the third option. Mr. Siegfried is responsible for the violations committed by his associate because he supervised or directed all of the actions taken in this case. 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 the consequences of the misconduct involved.

### SUSPENSION/PROBATION

On November 23, 2010, the Honorable John Paul Kennedy, Third District Court entered an Order of Discipline: Suspension for three years, all three years stayed and probation imposed against Clayne I. Corey, including full restitution, for violation

## BAR-RELATED® TITLE INSURANCE

PRESERVING THE ATTORNEY'S ROLE  
IN REAL ESTATE TRANSACTIONS

Attorneys Title Guaranty Fund, Inc. (the Fund) is Utah's only bar-related® title insurance company. The Fund's mission is to preserve and advance the attorney's role in real estate transactions by offering title insurance underwriting services exclusively to qualified members of the Utah State Bar.

Whether you are an attorney looking to offer title insurance as a supplement to your law practice or to open your own title insurance agency, the Fund offers the professional training and accessible local support necessary to help you make your business thrive.



ATTORNEYS  
TITLE  
GUARANTY  
FUND, INC.

Attorneys Title Guaranty Fund, Inc.  
Utah Law & Justice Center

645 South 200 East, Suite 203 • Salt Lake City, UT 84111

FOR INFORMATION & A NEW AGENT PACKET CALL (801) 328-8229

of Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The OPC has appealed the sanction to the Utah Supreme Court.

*In summary:*

In 1999, a client retained Corey & Lund to represent her in a personal injury action. The client signed a fee agreement with Corey & Lund. The fee agreement allowed for a contingent fee of 33.3% of the settlement, unless the case went to trial. The case settled prior to trial. In 2000, the client accepted a settlement offer of \$122,500. On February 25, 2000, Mr. Corey spoke with the insurance adjuster. A settlement check in the amount of \$122,500 made out to the client and to her attorney, Clayne I. Corey was issued on February 25, 2000. On February 29, 2000, \$124,803.60 was deposited into Mr. Corey's operating account. This amount included the client's settlement funds. Mr. Corey was the signator on this operating account and had control over the account. Mr. Corey knew early on that the client's settlement funds went into his operating account. Mr. Corey failed to deposit the client's settlement funds into a client trust account. Mr. Corey knew that checks were being written against the funds in the operating account. The account balance for the operating account went from \$128,916.14 at the end of February, 2000 to \$2,909.12 at the end of June, 2000. The client did not authorize her settlement funds to be used by Mr. Corey for any purpose. She did not authorize or sign the Trust documents prepared by Mr. Corey and did not authorize or sign the Promissory Note prepared by Mr. Corey.

The client thought that the money was in Mr. Corey's trust account for safekeeping and agreed to receive \$500 payments each month for a period of time. The client received twenty-one payments of \$500. The client eventually decided that she wanted to receive the bulk of her settlement funds. The client requested a return of her file, the return of the remaining settlement money, and an accounting of her settlement. Mr. Corey failed to return his client's file. Mr. Corey failed to return unearned excess funds to

his client. Mr. Corey failed to properly account for the settlement funds. Although the case settled in early 2000 Mr. Corey did not pay the majority of the lien holders until December 2000 leaving the client exposed for those bills. Mr. Corey failed to handle the third party claims in a timely way. Mr. Corey failed to protect funds belonging to his client.

*Aggravating factors:*

Prior discipline, pattern of carelessness relating to the safekeeping of client funds, substantial experience in the practice of law, and no good faith effort to make restitution.

*Mitigating factors:*

Medical problems, absence of dishonest or selfish motive, and remorse.

## **SUSPENSION/PROBATION**

On February 4, 2011, the Honorable L.A. Dever, Third District Court entered an Order of Discipline: Suspension for three years with all but 181 days stayed and probation imposed against Jonathon W. Grimes for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The OPC has appealed the sanction to the Utah Supreme Court.

*In summary:*

Mr. Grimes was hired to represent a client in a discrimination case. The client paid Mr. Grimes a retainer while he worked at a law firm. The retainer was placed in the law firm's trust account. Mr. Grimes left the law firm and took his client's file and case with him. Mr. Grimes was given a check from the law firm with a notation that it was the remainder of the client's retainer. Mr. Grimes knew that there was a substantial amount of money left on the retainer given by the client, possibly in excess of the check given to him by the law firm. Mr. Grimes deposited the check in his own account and spent it. Mr. Grimes



**“Like” the *Utah Bar Journal* on Facebook!**

failed to communicate with his client for almost a year. The client left numerous messages for Mr. Grimes and eventually talked to Mr. Grimes's secretary about the case. The client mailed Mr. Grimes a letter requesting information about the case; Mr. Grimes did not respond. The client sent Mr. Grimes a certified letter, the certified letter was later returned to the client. The client continued trying to communicate with Mr. Grimes via telephone and fax, but was unsuccessful in getting a response. Because Mr. Grimes failed to pursue the case, the case was dismissed. Mr. Grimes did not inform his client that the case had been dismissed. Mr. Grimes failed to return the unearned portion of the retainer even though the client repeatedly asked for the money to be returned. The client sent a letter to Mr. Grimes asking for an accounting of his retainer and requesting the unused portion to be sent to his new attorney.

Mr. Grimes was not honest about receiving the check with the client's name on it and was not honest with his client about where the money was. He also accused his former boss of keeping the money.

*Aggravating factors:*

Selfish or dishonest motive and refusal to acknowledge the wrongful nature of the misconduct either to the client or to the disciplinary authority.

*Mitigating factors:*

Absence of prior discipline, inexperience in the practice of law, personal and emotional problems, good character or reputation, and interim reform.

## Parr Brown is pleased to announce...

### Kenneth B. Tillou has been named President of the firm

Mr. Tillou specializes in income taxation, employee benefits and executive compensation. He is a graduate of Washington & Lee University, where he received his J.D., summa cum laude, *Order of the Coif*, and served as Editor-In-Chief of the *Law Review*.



### and four attorneys have been named shareholders



**BREANNE FORS** is a member of the firm's commercial litigation group where she assists clients in litigating contract disputes, non-compete and non-solicitation agreements, trade secrets, eminent domain and defamation cases. Ms. Fors earned her J.D., *Order of the Coif*, from Brigham Young University's J. Reuben Clark Law School.



**MATTHEW TENNEY** is a member of the business and finance law practice group with an emphasis on business organization and structuring, aircraft acquisition and financing, mergers and acquisitions and securities law. Mr. Tenney received his J.D. from Brigham Young University, magna cum laude, *Order of the Coif*.



**ROBYN L. WICKS** is a member of the firm's commercial litigation group where she assists clients with contract disputes and commercial litigation in both state and federal courts. She also assists clients in helping to resolve contract and commercial disputes prior to litigation and through alternative dispute resolution processes and strategies. Ms. Wicks received her J.D. from the University of Utah.



**RITA M. CORNISH** is a member of the firm's commercial litigation group with a focus on construction litigation and toxic tort defense. Ms. Cornish received her J.D. from the University of Utah with Highest Honors, *Order of the Coif*. An active alumna of the S.J. Quinney College of Law, she currently serves on the Board of Trustees and as the President-Elect for the Young Alumni Association.

**PARR BROWN  
GEE & LOVELESS**

ATTORNEYS AT LAW

185 South State Street, Suite 800 | Salt Lake City, Utah 84111  
801.532.7840 | [www.parrbrown.com](http://www.parrbrown.com)

# **Ethics Hotline**

**(801) 531-9110**



**Fast, free, informal ethics  
advice from the Bar.**

**Monday – Friday  
8:00 am – 5:00 pm**

For more information about the Bar's Ethics Hotline, please visit  
**[www.utahbar.org/opc/opc\\_ethics\\_hotline.html](http://www.utahbar.org/opc/opc_ethics_hotline.html)**

## *Patching Another Hole in the Fabric of Society – Serving Our Seniors*

*by Tyler L. Buswell*

Attorney and author Anne C. Weisberg wrote, “We all participate in weaving the social fabric; we should therefore all participate in patching the fabric when it develops holes.”

I have a great aunt who suffered a stroke over twenty years ago and has been disabled ever since, unable to utilize much of the right side of her body. She is now in her sixties. Given her disabilities and advancing age, she requires a great deal of physical assistance because she is unable to perform even simple daily functions.



*Photo Credit: Trent Nelson, The Salt Lake Tribune.*

About a year ago, she was temporarily incapacitated by a severe illness. Even though she has been disabled for a number of years, the illness was traumatizing. She immediately realized that, in addition to her physical needs, she was in desperate need of legal assistance to ensure that her wishes were carried out at the most critical times. In particular, she sought assurance that she could determine who would be responsible to make her financial and medical decisions in the event she became incapacitated again and how her end-of-life decisions would be handled. Thankfully for my great aunt, there are multiple attorneys in our family who were able to help her with these basic planning issues.

However, my great aunt is not the norm. The majority of senior citizens in the United States have not conducted any basic estate

planning. In fact, the American Bar Association stated that “[a]pproximately half of our senior citizens have neither a living will nor have discussed end-of-life decisions” with their family. Many senior citizens do not know where to get estate

planning help or they are simply unable to afford the related legal services.

In an effort to patch this hole in society’s fabric, the Young Lawyers Division teamed up with the Elder Law Section to organize the “Serving Our Seniors” service project. This new program provides pro bono legal services for

low-income senior citizens in Utah. The ultimate goal of Serving Our Seniors is to prepare basic estate planning documents in an effort to protect this exposed and generally unrepresented population. More specifically, the Serving Our Seniors program: (i) trains volunteer YLD members to prepare certain estate planning documents and provide relevant advice, (ii) locates low-income senior citizens in need of such services, and

*TYLER BUSWELL is a real estate attorney with Kirton & McConkie. He serves as a member of the YLD Board and is a Co-Chair of the Serving Our Seniors Committee.*



(iii) provides a location and structure for volunteer YLD members to prepare a General Durable Power of Attorney over Assets and Utah Advanced Health Care Directive for these low-income seniors and give related legal counsel.

YLD sponsored the inaugural Serving Our Seniors event on February 26th for residents of St. Mark's Tower in Salt Lake City. "The event was a huge success," said Serving Our Seniors Co-Chair Wendy Petersen. She continued, "In just a few hours we helped create Powers of Attorney and Health Care Directives for sixteen seniors. It was a wonderful start for a program that will undoubtedly help numerous Utah senior citizens for years to come."



Similar to other successful service projects in the Utah State Bar, the Serving Our Seniors kick-off event flourished because so many people were willing to volunteer their time and energy in pursuit of a worthy cause. Serving Our Seniors Co-Chair Sarah Spencer was highly impressed by the outpouring of volunteers that wanted to participate. Spencer noted, "Even though it was our inaugural event, we had so many YLD members who wanted to volunteer we ultimately had to turn away some people and requested that they assist at a future time. That's always a great problem to have, though."

In the end, fourteen YLD members and four members of the Paralegal division volunteered on February 26th. Additionally, behind the scenes, President of the Elder Law Section, Eric Barnes, and estate planning practitioners, Deacon Haymond and Alex Pearson provided invaluable expertise regarding the estate documents and elder law issues. Barnes and Pearson also conducted the one-hour training for YLD volunteers and were on hand to help answer complex issues raised by the senior citizens at St. Mark's. The Utah State Bar's Webmaster, Lincoln Mead, also spent a great deal of time providing technical support for Serving Our Seniors.

YLD is committed to helping patch holes in the fabric of society. We recognize that Serving Our Seniors is just one instance where attorneys can use their specific training and skills to help those in need. Currently, YLD has scheduled one Serving Our Seniors event every quarter. YLD welcomes all volunteers interested in helping with Serving Our Seniors, Wills for Heroes, or any other YLD service projects. For information on all upcoming events, please see the YLD website.

**YOUNG LAWYERS DIVISION (YLD)** – All members of the Utah State Bar in good standing under thirty-six years of age and members who have been admitted to their first state bar for less than five years, regardless of age, are automatically members of the Young Lawyers Division. For more information on YLD, or the events listed below, visit [www.utahyounglawyers.org](http://www.utahyounglawyers.org) or contact Angelina Tsu, YLD President, at [Angelina.Tsu@zionsbancorp.com](mailto:Angelina.Tsu@zionsbancorp.com).

DATES	EVENTS (Seminar location: Utah Law & Justice Center, unless otherwise indicated.)	CLE HRS.
05/06–05/07	<b>Annual Securities Law Workshop.</b> 8:00 am – 1:00 pm. Las Vegas Hilton. Sponsored by the Utah State Bar Securities Law Section. Section members: \$175, others \$250. For room reservations call 1-800-635-7711 and reference group code: sgusbss.	7 hrs. including 1hr. Ethics
05/10/11	<b>Mentor Training and Orientation.</b> 12:30 – 3:00 pm. <b>**THIS EVENT IS ONLY OPEN TO UTAH SUPREME COURT APPROVED MENTORS.**</b> FREE.	2 Ethics
05/12–05/13	<b>Southern Utah Federal Law Symposium.</b> 7:30 am – 1:30 pm. Thursday Location – Tuacahn Center for the Arts, Ivins, Utah. Friday location – Marriott Courtyard, St. George. Golf at Coral Canyon Golf Course 2:00 pm. Tuacahn Center for the Arts 8:00 pm for Comedian Sinbad. Members of SUBA, the Litigation Section, or FBA – \$150 (includes reception, breakfast, lunch, and one year FBA CLE with golf, or \$105 (includes reception, breakfast, lunch, and golf. CLE alone – \$80 ( includes reception, breakfast, and lunch). For those who are not members of SUBA, the Litigation Section, or the FBA: CLE with golf – \$250, CLE alone – \$200.	up to 5.5 hrs. including 1 hr. civility/ profess.
05/13/11	<b>Annual Family Law Section Seminar.</b> 7:30 am – 4:30 pm (approx.) Downtown Marriott, 75 South West Temple. \$175 for current Family Law and Dispute Resolution Section members. \$250 for others. \$5 for hotel parking. Special Guest Speaker: Joan Kelly, Ph.D. whose research, clinical, and teaching career has focused on research in children's adjustment to divorce, custody and access issues, divorce mediation, applications of child development research to custody and access decision-making, and parenting coordination.	7 hrs.
05/13/11	<b>8th Annual Utah Elder Law, Estate Planning, and Medicaid Planning 2011.</b> 8:15 am – 4:15 pm. \$269 in advance, \$299 at the door. Includes seminar fee & course manual, continental breakfast, refreshment break, and lunch. \$99 for materials only. Topics include: "Estate Tax Provisions of the Tax Relief Act of 2010 – What You Must Know" with Gregg D. Stephenson, Ray Quinney & Nebeker. "Creative Planning Approaches in a Changeable Environment" with Robert B. Fleming, Fleming & Curti, PLC. "Problems & Solutions – Proposed Changes to Utah's Guardianship and Conservatorship Provisions," a panel presentation moderated by Thomas A. Mecham, Kirton & McConkie. "2011 Utah Elder Law & Medicaid Planning Update" with Calvin C. Curtis, Attorney at Law. "Selected Views From the Bench" with Robert K. Hilder, Presiding Judge, Third District Court. "Nuts & Bolts of Special Needs Trusts" with Stephen W. Dale, The Dale Law Firm.	6 hrs. and 1hr. Ethics
05/16/11	<b>Spring Corporate Counsel Seminar.</b>	TBA
05/19/11	<b>Getting What you Want: Persuading Judges, Plea Bargaining, and Negotiating Skills.</b> 4:30 – 7:45 pm. \$90 for active, under three and/or UACDL members. \$110 others. Presenters include: Judge Deno Himonas; Jeff Hall, Criminal Division Chief, Salt Lake County District Attorney's Office; Monte Sleight, Defense Attorney.	3 hrs.
05/19/11	<b>Annual Real Property Seminar.</b> 8:15 am – 1:30 pm. \$80 for section members, \$130 for others. Topics include: "Ethics" with Bruce Maak, Parr Brown Gee & Loveless. "Legislative Update" with Paxton Guymon, Miller Gymon, P.C. "Case Law Updates" – Utah Court of Appeals with Judge Gregory K. Orme and Supreme Court with Professor David Thomas.	4 hrs. including 1 hr. Ethics
05/20/11	<b>Annual Collection Law Section Seminar.</b> 8:00 am – 1:30 pm. \$20 for Collection Law Section Members; \$120 for others. Lunch included. Topics include: "Views From the Bench" with Hon. Thomas Kay. "Professional Ethics: Facing Bar Complaints and FDCPA Litigation" with John Snow. "Collection Law Update" with William Mark. "Confirming and Defending Arbitration Awards" with Greg Constantino.	4 hrs. includes 1 hr. Ethics & 1 hr. profess./civility
06/16–06/17	<b>Dabney on Utah Workers Compensation – A Seminar to Jump-Start Your Utah Workers Compensation Practice for New &amp; Experienced Attorneys.</b> 8:00 am – 5:00 pm. Utah Attorneys 10+ years practice: \$1500, Utah Attorneys 5+ years practice: \$1200, Utah Attorneys 5 or fewer years of practice: \$900. Lecture, discussion and Q&A.	14 hrs.
07/06–07/09	<b>2011 Summer Convention in San Diego.</b> Visit <a href="http://www.utahbar.org/cle/summerconvention/">www.utahbar.org/cle/summerconvention/</a> for the latest information and a link to the hotel reservation site.	Up to 13 hrs.

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

## 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.

## 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](mailto:Ben@ConnorLegal.com).

## OFFICE SPACE / SHARING

**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](mailto:djlee@woodjenkinslaw.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 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.

**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](mailto:richard@tjblawyers.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](mailto:resumes@djplaw.com).

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

**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](mailto:ccritchley@utahbar.org).

**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](http://www.cils.org/Lazarski.htm). Contact CILS, Matzenkopfgasse 19, Salzburg 5020, Austria, email [cils@cils.org](mailto:cils@cils.org), US fax (509) 356-0077, US tel (970) 460-1232.

## SERVICES

**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.

## Professional Investigations

[www.datatracepi.com](http://www.datatracepi.com)

- Video Surveillance
- Asset Searches
- Background Checks
- Skip Tracing / Locates
- Witness Statements
- Litigation Support
- Online Ordering
- Statewide & Nationwide

**Scott L. Heinecke**  
*Private Investigator*  
A trusted name since 1983

SLC: (801) 253-2400  
Toll Free: 800-748-5335  
Fax: (801) 253-2478

e-mail: [scott@datatracepi.com](mailto:scott@datatracepi.com)

**DataTrace Investigative Services**

*Utah State P.I. Agency Lic. #100008*

**CHILD SEXUAL ABUSE – SPECIALIZED SERVICES.** Court Testimony: interviewer bias, ineffective questioning procedures, leading or missing statement evidence, effects of poor standards. Consulting: assess for false, fabricated, misleading information/allegations; assist in relevant motions; determine reliability/validity, relevance of charges; evaluate state's expert for admissibility. Meets all Rimmasch/Daubert standards. B.M. Giffen, Psy.D. Evidence Specialist (801) 485-4011.

### Language – CTC Chinese Translations & Consulting

Mandarin and Cantonese and other Asian languages. We have on staff highly qualified interpreters and translators in all civil and legal work. We interpret and/or translate all documents including: depositions, consultations, conferences, hearings, insurance documents, medical records, patent records, etc. with traditional and simplified Chinese. Tel: (801) 573-3317, Fax: (801) 942-1810, e-mail: [eyctrans@hotmail.com](mailto:eyctrans@hotmail.com).

# **DIRECTORY OF BAR COMMISSIONERS AND STAFF**

## **BAR COMMISSIONERS**

<b>Robert L. Jeffs</b> <i>President</i> (801) 373-8848	<b>Mary Kay Griffin, CPA</b> Public Member (801) 364-9300	<b>Thomas W. Seiler</b> 4th Division Representative (801) 375-1920	<b>*Angelina Tsu</b> Young Lawyers Division Representative (801) 844-7689
<b>Rodney G. Snow</b> <i>President-Elect</i> (801) 322-2516	<b>Curtis Jensen</b> 5th Division Representative (435) 628-3688	<b>E. Russell Vetter</b> 3rd Division Representative (801) 535-7633	<b>*Hiram Chodosh</b> Dean, S.J. Quinney College of Law, University of Utah (801) 581-6571
<b>Steven Burt, AIA</b> Public Member (801) 542-8090	<b>Felshaw King</b> 2nd Division Representative (801) 543-2288	<b>*Ex Officio</b>	<b>*James R. Rasband</b> Dean, J. Reuben Clark Law School, Brigham Young University (801) 422-6383
<b>H. Dickson Burton</b> 3rd Division Representative (801) 532-1922	<b>John R. Lund</b> 3rd Division Representative (801) 521-9000	<b>*Stephen W. Owens</b> Immediate Past President (801) 983-9800	<b>*Carma J. Harper</b> Paralegal Division Representative (801) 323-2029
<b>Su Chon</b> 3rd Division Representative (801) 530-6391	<b>Lori W. Nelson</b> 3rd Division Representative (801) 521-3200	<b>*Charlotte L. Miller</b> State Delegate to ABA (801) 483-8218	<b>*S. Grace Acosta</b> Minority Bar Association Representative (801) 521-6677
<b>Christian W. Clinger</b> 3rd Division Representative (801) 273-3902	<b>Herm Olsen</b> 1st Division Representative (435) 752-2610	<b>*Margaret D. Plane</b> ABA Delegate (801) 535-7788	<b>*M. Peggy Hunt</b> Women Lawyers Representative (801) 933-3760
<b>James D. Gilson</b> 3rd Division Representative (801) 530-7325		<b>*Lawrence E. Stevens</b> ABA Delegate (801) 532-1234	

## **UTAH STATE BAR STAFF**

<b>EXECUTIVE OFFICES</b> John C. Baldwin <i>Executive Director</i> (801) 297-7028  Richard M. Dibblee <i>Assistant Executive Director</i> (801) 297-7029  Christy J. Abad <i>Executive Secretary</i> (801) 297-7031  Katherine A. Fox <i>General Counsel</i> (801) 297-7047  Nancy Rosecrans <i>General Counsel Assistant</i> (801) 297-7057  Ronna Leyba <i>Building Coordinator</i> (801) 297-7030	<b>BAR PROGRAMS</b> Christine Critchley <i>Bar Journal, Fee Dispute Resolution, Fund for Client Protection</i> (801) 297-7022  <b>CONTINUING LEGAL EDUCATION &amp; MEMBER SERVICES</b> Connie Howard <i>Director, Group Services</i> (801) 297-7033 E-mail: choward@utahbar.org  Marion Eldredge <i>CLE Assistant, Member Services</i> (801) 297-7036 E-mail: benefits@utahbar.org  Megan Facer <i>CLE Assistant, Section Support, Tuesday Night Bar</i> (801) 297-7032  <b>NEW LAWYER TRAINING PROGRAM</b> Tracy Gruber (801) 297-7026  <b>CONSUMER ASSISTANCE COORDINATOR</b> Jeannine Timothy <i>Consumer Assistance Director</i> (801) 297-7056  <b>FINANCE &amp; LICENSING DEPARTMENT</b> Jeffrey S. Einfeldt, CPA <i>Financial Administrator</i> (801) 297-7020  Diana Gough <i>Financial Assistant</i> (801) 297-7021	<b>PRO BONO DEPARTMENT</b> Karolina Abuzyarova <i>Pro Bono Coordinator</i> (801) 297-7049  <b>TECHNOLOGY DEPARTMENT</b> Lincoln Mead <i>Information Systems Manager</i> (801) 297-7050  Brandon Sturm <i>Web Content Coordinator</i> (801) 297-7051  <b>OFFICE OF PROFESSIONAL CONDUCT</b> (801) 531-9110 Fax: (801) 531-9912 E-mail: opc@utahbar.org  Billy L. Walker <i>Senior Counsel</i> (801) 297-7039  Diane Akiyama <i>Assistant Counsel</i> (801) 297-7038  Adam C. Bevis <i>Assistant Counsel</i> (801) 297-7042  Sharadee Fleming <i>Assistant Counsel</i> (801) 297-7040  Barbara Townsend <i>Assistant Counsel</i> (801) 297-7041  Margaret Wakeham <i>Assistant Counsel</i> (801) 297-7054	Ingrid Westphal Kelson <i>Paralegal</i> (801) 297-7044  Alisa Webb <i>Paralegal</i> (801) 297-7043  Jonathan Laguna <i>Intake Clerk</i> (801) 297-7048  Mimi Brown <i>Counsel Assistant</i> (801) 297-7045  Lisa Straley <i>File Clerk</i>  <b>SUPREME COURT MCLE BOARD</b> Sydnie W. Kuhre <i>MCLE Administrator</i> (801) 297-7035  Ryan Rapier <i>MCLE Assistant</i> (801) 297-7034  <b>OTHER TELEPHONE NUMBERS &amp; INFORMATION</b> Edith DeCow <i>Receptionist</i> (801) 531-9077  Fax: (801) 531-0660  Website: <a href="http://www.utahbar.org">www.utahbar.org</a>
---	--	--	--



## 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](http://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](http://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.

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

Billing Address: \_\_\_\_\_ Zip Code \_\_\_\_\_

Card Type: ☐ AMX ☐ MC ☐ VISA

Account # \_\_\_\_\_ Expiration Date:(e.g. 01/07) \_\_\_\_\_

Name on Card: \_\_\_\_\_

Cardholder Signature \_\_\_\_\_

# The Search is Over!



You CAN Find Comprehensive Liability Insurance AND Competitive Prices

To successfully navigate the complex issues of Professional Liability (“Malpractice”) insurance you need the guidance of an insurance professional. You won’t find a better offer than a free, no obligation analysis of your malpractice insurance needs from the professionals at Marsh U.S. Consumer, a service of Seabury & Smith, Inc. You know our name, but you may not know that we offer one of the most comprehensive policies in Utah, *at affordable rates*. Give the Utah State Bar sponsored Professional Liability Program a try. Call or visit our website today!

[www.personal-plans.com/utahbar](http://www.personal-plans.com/utahbar)

**Denise Forsman, Client Executive**  
**(801) 533-3675 (office)**  
**1-800-574-7444 (toll-free)**

Administered by:  
**MARSH**

A member benefit of:



50899, 50900, 50901, 50902, 50903 © Seabury & Smith, Inc. 2011  
d/b/a in CA Seabury & Smith Insurance Program Management  
CA Ins. Lic. #0633005. AR Ins. Lic. #245544

Underwritten by Liberty Insurance Underwriters Inc., a member company of Liberty Mutual Group. Liberty is rated A (Excellent) by A.M. Best Company. Liberty Insurance Underwriter Inc., 55 Water Street, New York, New York 10041. May not be available in all states. Pending underwriting approval.



## LEARN FROM THE PROS

### SIX SESSIONS ON PREPARING A PLAINTIFF'S PERSONAL INJURY CASE FROM START TO FINISH

- Each Session Limited to 20 Participants
  - Sign Up for All or Part of the Sessions
  - "Round Table" Discussions of Your Own Cases
  - Tuition of \$20.00 per Session Donated to Utah Association for Justice
  - Time: 4:30 to 6:30; 2 hours CLE credit/session
  - Call Eisenberg & Gilchrist to Register
- APRIL 20: How to Evaluate a Personal Injury Case
  - MAY 18: Developing a Discovery Plan and Taking Depositions
  - JUNE 22: Maximizing the Value of your Case
  - JULY 20: Medical Malpractice 101
  - AUGUST 24: Product Liability 101
  - SEPTEMBER 21: Getting Ready for Trial

**EISENBERG & GILCHRIST**

808 PARKSIDE TOWER • 255 SOUTH STATE STREET • SALT LAKE CITY, UTAH 84111  
TEL: 801-366-9100 TOLL-FREE: 877-850-3030