

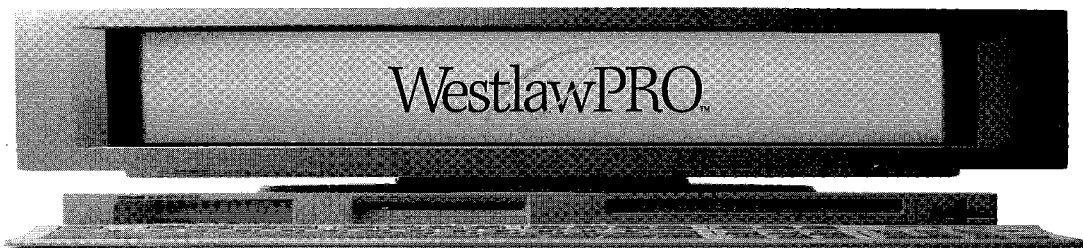
Utah Bar Journal

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A Call For Action

by James C. Jenkins

This month the Utah legislature convenes for its 1999 session. During the 45 days of the general session, many legal and political issues will be debated, and several new laws will be enacted. The Utah State Bar has historically taken an active interest in the Legislature's functions. Without attempting to address all of the important matters which likely may be presented in this year's session, I think one controversy ought to be addressed here because of the significant impact it may have, both philosophically and practically, upon our profession and our judicial system.

In July, the Utah Supreme Court ruled that the membership of the Utah Judicial Conduct Commission, a constitutionally mandated agency under Article VIII, violated the separation of powers clause of Article V, because the legislature has been appointing four members of the legislature to the Conduct Commission. (See *In Re Young*, File No. 970032¹)

Some members of the Legislature quickly responded to the Court's opinion by questioning the constitutionality of the entire Commission as well as suggesting a multitude of remedies, including election of judges, periodic judicial retention and reconfirmation proceedings, and implementation of impeachment proceedings against judges. Everyone should agree that judicial accountability is as important as judicial independence, but there must be a workable balance found to accommodate both objectives. This controversy ought not to be a battle between the judicial and legislative branches of government, but rather an opportunity for the branches to cooperatively resolve disparity and enhance our government's ability to insure that an adequate measure of judicial independence will assure impartial judgments while holding judges, as public officers, accountable to proper standards of judicial decorum and behavior.

The Judicial Conduct Commission exists to police the conduct of Utah's judges. I know from personal experience of the high level of dedication provided by each member of the Conduct Commission to fulfill their constitutional mandate. Despite the

ruling of unconstitutionality by the Supreme Court, having members of the Legislature on the Conduct Commission had significant benefits. Legislators provided a unique and important perspective to cases under consideration. They also contributed to the public's and the Legislature's confidence in the Commission and its operations, much of which is mandatorily conducted in confidential proceedings. Having legislative members also facilitated budgetary confidence in the needs and expenses of the Commission.

Now that it is clear that the legislative branch cannot, under present constitutional language, appoint nor have membership on the Conduct Commission, a solution is in order. I suggest that the solution ought to be balanced, rational, and legally consistent with the beneficial objectives of the constitutionally mandated creation of the Conduct Commission. Shortly after the *Young* decision, the Conduct Commission responsibly, in a public meeting, prepared a draft proposal for corrective legislation. The proposed bill has legislative support and sponsorship². It proposes that the composition of the Conduct Commission include four persons who are not judges, lawyers, or legislators, who are appointed to the Conduct Commission by the Governor after considering a list of nominees from the Legislature. The remaining membership will be composed, as is presently the case, of three members of the Board of Bar Commissioners, two public members of different political affiliation appointed by the Governor, and one judge and one alternate judge selected by the non-judicial members of the Conduct Commission. The bill also proposes that the Conduct Commission make a report of its activities at least annually to the Legislature.

I urge the support and adoption of this, or a similar bill, as a responsible stop-gap or housekeeping resolution to the present controversy. However, I also suggest that the Legislature consider a constitutional amendment which will specifically provide for the composition of the Judicial Conduct Commission to address both the need

