YOUNG LAWYERS SECTION OF THE UTAH STATE BAR

BARRISTER

January-March 1987

WHAT EVERY ATTORNEY SHOULD KNOW ABOUT DOMESTIC LAW

Commissioner Sandra N. Peuler

Commissioner Peuler

Commissioner Sandra N. Peuler gave the following address, as edited for the Barrister, *at a recent Utah Young Lawyers Brown Bag luncheon. According to Commissioner Peuler, every lawyer should be familiar with basic principles of Utah domestic law. Before being appointed court commissioner, a position Commissioner Peuler has held for over four years, she worked as a deputy Salt Lake County attorney and was in private law practice.*

I would like to discuss a few basic principles of domestic law. These principles are often overlooked, sometimes even by lawyers who practice in the area. However, at the outset, let me point out an excellent resource in this area, the Legal Services Manual. The Legal Services Manual outlines the substantive and procedural aspects of Utah domestic law, with citations to relevant Utah cases, and is available from Utah Legal Services.

DRAFTING PLEADINGS

Divorce pleadings should be drafted carefully, because so many divorce actions become default proceedings. Only if an attorney is almost certain that the divorce will be contested should the attorney proceed otherwise. In this regard, several specific areas deserve particular attention:

First, when drafting divorce pleadings, be specific concerning requests for child support, alimony, allocation of debts, custody and visitation. For instance, if an attorney in a default hearing has only requested reasonable support and reasonable allocation of debts, a judge typically will ask the attorney to redraft the pleadings, to be more specific, before considering the matter. The reason is notice—absent more specificity, the defaulting party will not have proper notice of the possible results of a default judgment.

Second, an attorney should be careful to properly allege the basis for personal jurisdiction. If the defendant resides out of state and is not served while physically present in the state of Utah, then the attorney will need to allege a basis for personal jurisdiction under Utah's long-arm statute. The Utah long-arm statute provides for jurisdiction if the client had matrimonial domicile within Utah at the time the cause of action arose, or if the cause of action leading to the divorce occurred in Utah. If either of those elements exist, the attorney will need to plead them.

Personal jurisdiction is required to obtain certain orders against a defendant for the payment of child support or alimony. Without personal jurisdiction, only certain judgments are available: (a) divorce; (b) division of property located within the state of Utah; and (c) possibly, custody. I say possibly custody because some judges will not consider custody issues in such a default proceeding. Most judges will, however, if the child resides within the state of Utah. Furthermore, if grounds for custody exist under the Uniform Child Custody Jurisdiction Act, an attorney, of course, should plead those grounds.

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INSIDE: **LAWYER SATISFACTION SURVEY AND MATERNITY LEAVE POLICIES IN SALT LAKE CITY LAW FIRMS.**

CALENDAR OF EVENTS (1987)

APRIL	
1-17	Eighth Annual Utah Mock Trial Competition (Elimination Rounds and Exhibition Rounds to follow)
25	Bob Miller Memorial Law Day Run (9:00 a.m., "This is the Place" Monument)
27	Law Week Commences (through May 2)
27-30	Law Week Lecture Series (6:30 p.m., Salt Lake Public Library, Main Branch)
MAY	
1	Law Day
1	Law Week Lecture Series (noon, Salt Lake Public Library, Main Branch)
1	YLS Office Nominations Due
1	Liberty Bell Awards Luncheon (Westin Hotel Utah)
1-2	Law Day Information Fair (Crossroads Plaza)
6	YLS Executive Council Meeting (noon, Utah State Bar Office)
16-23	National Mock Trial Competition (Washington, D.C.)
JUNE	
3	YLS Executive Council Meeting (noon, Utah State Bar Office)
JULY	
15-18	Annual Meeting of the Utah State Bar (Park City, Utah)

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TYPES OF MARITAL TERMINATION

Three types of decrees involving marital termination generally are recognized: (a) divorce; (b) separate maintenance; and (c) annulment. Understanding the statutory difference between the three is important, because that understanding enables the attorney to determine what will be best for the client.

As a practical matter, a decree of separate maintenance is often not beneficial, since many clients eventually want to remarry, and separate maintenance does not provide for that eventuality. If remarriage is likely, the attorney should advise the client to seek a divorce initially rather than separate maintenance.

Nonetheless, separate maintenance may be advisable for couples who may not want to live together anymore, but who do not expect to remarry. Other couples may object to divorce on religious grounds, or expect to lose insurance benefits in the event of a divorce. As a result, a decree of separate maintenance might be the best relief available.

Another possible type of relief is an annulment. An annulment, as distinct from a decree of separate maintenance, allows the client to remarry. Thus, an annulment might be appropriate relief for a client who does not desire a divorce for religious or other reasons.

However, attorneys should be aware that many annulment requests are not granted. In some cases, the judge may feel there are insufficient grounds for an annulment. Accordingly, it is good practice to plead divorce in the alternative.

An example of the need for alternative pleading arose recently. A plaintiff pleaded for an annulment on the basis that the defendant had promised before marriage he would treat her well, treat her kindly and be nice to her. The plaintiff further alleged that the defendant had broken the alleged promises. The plaintiff also pleaded that she had been induced to marry based on those promises and, therefore, she wanted an annulment. However, such allegations will not support an annulment. Consequently, if the plaintiff had not pleaded in the alternative for a divorce, she would have had to redraft the complaint to request a divorce.

With respect to the division of property, an annulment and a divorce are very similar. In either case, the court can deal with the division of property. Also, though a legal stigma used to exist for children of an annulled marriage, that stigma no longer exists. Rather, such children are deemed legitimate and the court can consider child support, visitation, and similar matters in the context of an annulment, just as in a divorce proceeding.

OTHER PLEADING REQUIREMENTS AND PRACTICE SUGGESTIONS

Two other statutory requirements must be recognized in order to properly plead a client's cause. First, an order to withhold and deliver must be entered by the court every time a child support order is entered. Accordingly, if a client has children, the complaint should pray for an order to withhold and deliver. The judges will require such a prayer as notice to the other party.

Second, the statute requires the court to allocate medical and dental costs if there are minor children involved in the marriage. Again, then, the complaint should set forth some proposal as to how to handle those costs and whether there is medical or dental insurance.

Third, though frequently ignored as a consideration, attorneys should recognize their clients are entitled to one-half of any pension or profit-sharing plan that has been accumulated by either party during a marriage. Such an asset is a marital asset and, like any other marital asset, should be dealt with in any marital dispute. Even if a pension or profit-sharing plan has not yet vested, the interest is still considered a marital asset. A case in point is *Woodward v. Woodward*, 656 P.2d 431 (Utah 1982). *Woodward* concluded not only that pension plans are a marital asset, but that if the present value of a pension plan could be determined and sufficient marital assets were available to offset an award, then the asset could be divided now. For example, if the pension has a current value of $10,000, the non-employed spouse would be entitled to one-

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half of that, or $5,000. Typically, that much cash is not available to either spouse, so, if possible, the $5,000 would be credited against other marital assets.

Fourth, and finally, one asset that has been the subject of much recent controversy is an educational degree. The Utah Supreme Court appears not to have ruled on whether an educational degree is a marital asset. In the Third District Court, judges apparently do not ordinarily look upon an educational degree as a marital asset. Nonetheless, the judges may deal with that issue by awarding rehabilitative alimony, so as to afford an opportunity to the spouse who has not yet received adequate education or career training to receive such education or training.

PROCEDURAL MATTERS

There are several Utah domestic law procedural matters attorneys should recognize. For instance, as court commissioner, I cannot sign a temporary restraining order in a divorce action—such orders must be signed by the judge assigned to the case.

Further, as a general rule, Third District judges will not determine child custody solely on the basis of an ex parte order, such as a temporary restraining order. Consequently, if an attorney's temporary restraining order includes an award of custody to the client, the judge may not sign the order. As a practical matter, then, if an attorney is concerned a spouse may skip town with the children, the attorney should request that the judge restrain that spouse from removing the children from Utah or from the jurisdiction of the court until the hearing. If there is concern about the safety of the children, the attorney probably should contact Protective Services or involve the Juvenile Court. In making such determinations, attorneys should consult with the client to determine what is absolutely necessary, and should remember that the hearing will take place in no more than 10 days.

MAKING PROFFERS

Ordinarily, all domestic matters are set for hearing on my calendar. My job is then to make a recommendation to the court based upon proffer of counsel. In order to do so properly, affidavits setting forth the client's position are required prior to the hearing.

My reason for handling these matters by way of proffer and affidavit is that I deal with a large volume of cases that otherwise would occupy judges' time. On my law and motion calendar there may be 10 to 35 cases set for any one afternoon. Consequently, I simply do not have time to deal with all of the cases in any other manner. Therefore, by proffer and affidavit, I at least can give some careful consideration to each case. In this connection, attorneys also should provide courtesy copies of affidavits and any related documents to me prior to the hearing, so I can become somewhat familiar with the matter.

CUSTODY SUGGESTIONS

With respect to custody disputes, one case worthy of note is *Hutchinson v. Hutchinson*, 649 P.2d 38 (Utah 1982). That case lists several factors courts consider in determining child custody. In seeking an award of temporary or permanent child custody, an attorney should deal with the factors outlined in *Hutchinson* and advise me of their pertinence to the subject dispute.

In this area, at least in the Third District, joint custody is still the exception rather than the rule. However, if an attorney has a case where joint custody might be feasible, the attorney should be careful to specify how the client plans to deal with child custody. For instance, the attorney should specify where the children will reside, the length of each residency and who makes decisions concerning the children's education, medical needs, and so forth. Obviously, joint custody will work only if the spouses get along well and are able to make joint decisions. Even where the joint custody has been stipulated to, most judges will scrutinize the arrangement very closely in an attempt to prevent future problems. So attorneys should consider the matter carefully before presenting a joint custody proposal to a judge.

In formulating a joint custody arrangement, the attorney also should consider long range plans with the client. For example, joint custody that provides for alternating six months' custody for each spouse may make sense when the child is very young. However, when the child starts school, the arrangement may begin to break down, especially if both parents do not continue to live in the same general area. Obviously, there may be other considerations not presented here.

VISITATION SUGGESTIONS

Courts generally do not limit visitation rights. In fact, most courts try to be as liberal as possible in allowing the children access to both parents. It is unusual for the court to restrict or supervise visitation permanently. Some restriction may be necessary for a limited period, but only in particular cases. Clients, then, should be advised to be realistic concerning visitation rights.

MORE ON THE ROLE OF THE COURT COMMISSIONER

As Court Commissioner, my role is to hear all domestic law proceedings initially, except for trials, before involving a judge. Virtually the only exception is when the parties get the judge's consent to hear the proceeding. However, I have neither the authority nor the inclination to allow parties to bypass the initial Court Commissioner review. Consequently, if a case may merit the immediate attention of a judge instead of the Court Commissioner, the attorney should contact the judge directly, together with opposing counsel (if there is one). A judge may consent to an initial hearing if a client who resides out of state must be present for the hearing and both counsel believe the Court Commissioner will be unable to resolve the matter.

In this connection, if a client feels that the Court Commissioner's recommendation is unfair, unreasonable, or incorrect, then the attorney has 10 days from the date of the recommendation to file written objections and ask for a hearing with the judge. Although the rehearing is technically "de novo," some

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judges require the party seeking to overturn the Court Commissioner's recommendation to demonstrate error in the recommendation.

CONCLUSION

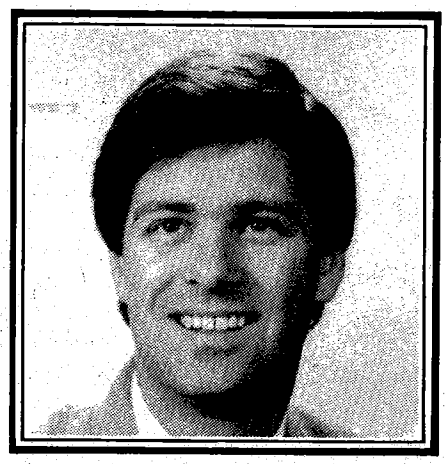
Almost everyone agrees that the courtroom is not always the best forum for resolving domestic disputes, as the court system too often falls short of providing the relief litigants feel is necessary. However, because the court is the ultimate arbiter in divorce cases, good practice demands that an attorney be conversant in the substantive areas and procedural aspects of domestic law. Whether an attorney handles only one divorce case or thousands in a lifetime of practice, the good practitioner who remains knowledgeable in those areas will be able to guide the client through the domestic process, so that the best possible result is achieved.

FROM THE EDITOR'S DESK

The *Barrister* is published by the Young Lawyers Section of the Utah State Bar. Contributions to the *Barrister* are invited, but the editors reserve the right to select the material and advertisements to be published. Please make submissions to Editor-in-Chief Guy P. Kroesche, Van Cott, Bagley, Cornwall & McCarthy, Box 45340, Salt Lake City, Utah 84145.

The response to the *Barrister* has been encouraging. We appreciate reader comments and suggestions. The *Barrister* is designed to bring you news of young lawyers' activities in Utah and to provide a forum for issues that concern young lawyers.

Guy P. Kroesche
Editor-in-Chief



PRESIDENT'S REPORT

Paul M. Durham

Are you satisfied with the practice of law? Recent national surveys show a relatively high percentage of young lawyers are dissatisfied with their professional lives. Satisfaction, of course, is a relative term. As applied to the individual's daily law practice, the satisfaction level probably fluctuates greatly from day to day (and hour to hour). Young lawyers, though, as a group, appear to experience more overall "dissatisfaction" than other lawyers. (The good news is that young lawyers eventually age out of this category.)

If you are like me, you have heard a hundred reasons for "dissatisfaction" among young lawyers in the practice, including:

1. The disillusion upon discovering that the practice is not always what the lawyer thought it would be (*i.e.*, a way to really help people, a means of changing the world, a road to riches, or a world of clearly defined rights and wrongs).

2. The conflict, complexity and pressures inherent in many areas of the practice (especially for those young lawyers who specialize in very complex cases involving very little money for clients with very limited resources to pay legal fees).

3. The frustration caused by the lack of experience in the face of a seemingly unending parade of novel legal problems.

4. The toll on family and other personal relationships caused by the consuming passions of "the jealous mistress."

5. The anxiety caused by having to keep 20 balls flying in the air at once.

6. The heavy weight of responsibility.

7. The tarnished image of the lawyer.

8. The inability to win every time.

9. The politics of a firm or department.

10. The inability of "the law" or "the legal system" to adequately solve certain kinds of problems.

11. The delivery of quality legal services being hindered by keeping and billing time, and collecting legal fees.

The practice of law can and should be a satisfying endeavor. One of the themes running through this issue of the *Barrister* is lawyer satisfaction/dissatisfaction. Often we trudge along the same road without looking up to see that, with a few adjustments, we can derive much greater satisfaction from our journey. Sometimes just thinking about it is enough to adjust our attitude—other times more concrete action is necessary. At any rate, I hope you will find some ideas in this issue to improve your own personal satisfaction level with the practice of law. Are we having any fun yet?

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Utah State Bar
(1986-1987)
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LEGISLATIVE NEWS

SUMMARY OF MAJOR 1987 UTAH LEGISLATION

Robin L. Riggs

For 45 days in the dead of winter, Utah legislators struggled with shrinking state revenues, a growing school-age population, and vigorous protests from citizens wanting to have taxes cut while expecting increases in government services such as road repair, ease of court backlogs, and quality education. In the end, 259 bills and 53 resolutions were passed, and lawmakers raised taxes by $151 million. The major legislation enacted is summarized as follows:

REVENUE AND TAXATION

The Utah Legislature revised the income tax system by tying the personal exemptions and standard deductions to the new 1986 Tax Reform levels, with an add-back of 25 percent of the personal exemption, lowering the retirement income deduction, eliminating the deduction for federal income tax paid, and modifying state withholding procedures to more accurately reflect taxable income. The bill generally applies to taxable years beginning January 1, 1987.

Tax increases include an 11 cent per pack increase in the cigarette tax (effective April 27, 1987), a 5 cent per gallon increase in motor and special fuel taxes (effective April 1, 1987), and a ½ percent increase in state sales tax (effective March 31, 1987).

Corporations will now be required to make state corporate income tax payments on an installment basis, in accordance with federal law. In addition, the property tax exemption for farm equipment and machinery was implemented by providing a definition of "farm equipment and machinery."

EDUCATION

School districts, under risk of losing some state funding, now will be required to use their facilities more efficiently by providing year-round schools and expanding student capacity. There was also a 1 percent cutback in the budget for public education.

The Utah Technical Colleges were renamed "Salt Lake Community College" and "Utah Valley Community College," with accompanying changes in curriculum, degrees awarded (short of a full bachelor's degree), and transferability of credits.

BUSINESS

Corporations will be allowed to limit personal liability of directors by amending articles of incorporation, providing any and all limitations are approved by a majority of the corporation's shareholders. In addition, a drug and alcohol testing procedure for private employers was passed.

HEALTH

The Department of Health generally is prohibited from making state rules more stringent than federal regulations with respect to radiation control, water pollution control, safe drinking water, air conservation, and solid and hazardous waste, unless the corresponding federal regulations do not protect the public health and environment. Further, counties are no longer required to provide medical care for the indigent.

STATE AND LOCAL AFFAIRS

Every activity of government is now defined as a "governmental function" for purposes of government immunity, with some exceptions. A comprehensive and uniform Administrative Procedures Act was passed providing procedures for hearings, discovery, intervention, default, stays, temporary remedies, appeals, appellate review, emergency orders, and declaration orders. Primary elections were moved back to September, and open voting in state conventions will be allowed.

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Legislative News

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CRIMINAL AND DIVORCE

Persons convicted of illegal drug activity will be required to forfeit real property to the state if such property is used in or gained from the activity.

Expungement of criminal records will not be allowed for capital felonies, first degree felonies, second degree forcible felonies, multiple felony convictions, or if there was a previous expungement. Further restitution procedures were clarified, and a "Victims' Bill of Rights" was implemented.

For further information, contact the Office of Legislative Research and General Counsel, 436 State Capitol, Salt Lake City, Utah 84114, or call 533-5481.

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WORTH NOTING

MATERNITY LEAVE POLICIES IN SALT LAKE CITY LAW FIRMS

Sue Vogel

The *Barrister* surveyed 24 Salt Lake City law firms to determine whether they have maternity leave policies. Sixteen firms responded. Of those 16, 7 have policies or proposed policies. The remaining firms have no policies either because the issue has never arisen or because maternity leave has been dealt with on a case-by-case basis. The policies set forth below apply to normal childbirth without complications. Most firms appear to be flexible with respect to recovery from caesarean sections or any medical complications of childbirth.

Callister, Duncan & Nebeker: (Unwritten) Up to 3 months off without pay. (Does not apply to adoptions or to men.)

Jones, Waldo, Holbrook & McDonough: (Unwritten) Associates: Six weeks leave during which attorney is credited with 75 percent of "target billable hours." Result is normal pay for first 4 weeks then pay for next 3½ months is reduced by approximately 10 percent. (This is a disability policy which presumes 6 weeks disability for childbirth.) Does not apply to adoptions. Partners: Negotiated.

Nielsen & Senior: (Unwritten) Partners: One month leave, during which time attorney is credited with 1 month of "budget" (billed and collected)—thus, 1 month at full pay. (No policy yet for associates.)

Parsons, Behle & Latimer: (Unwritten) Associates: Three months off, 6 weeks of it with pay. Partners: Three months off at full "base pay" (bonus affected). This is a flexible policy—a "starting point."

Prince, Yeates & Geldzahler: (Unwritten) Six weeks off, pay to be negotiated.

Van Cott, Bagley, Cornwall & McCarthy: (Proposed Policy) Three months off at full pay with option of another 3 months off without pay. (This is a disability policy that presumes 3 months disability for childbirth.)

Watkiss & Campbell: (Written) Associates: One month at full pay for associates who have been at the firm for 2 years; 2 months for associates who have been with the firm for 3 years; and 3 months for associates who have been with the firm 4 years or longer. Partners: Three months at full pay.

In general, the policies described above do not apply to paternity leave or adoptions, allow additional time if medically necessary, and may be extended with accrued vacation time.

It appears that one reason few Salt Lake City firms have maternity leave policies is that so few attorneys have a need for such policies. In Utah, approximately 8 percent of attorneys are women, whereas nationwide, the figure is 16 percent. Many of the Salt Lake attorneys who have taken leave have negotiated it on an individual basis. What these attorneys have received on an individual basis is usually not representative of any policy, but reflects only their individual circumstances, including the length of time they have been at their firms, their value to the firms and their own financial needs. For example, several attorneys in Salt Lake have requested shorter periods of paid leave in order to be allowed extended periods of unpaid leave, such as 6 months.

In bigger cities, many law firms do have policies. A study of California firms done by the Santa Clara Bar Association showed that 72 percent of the private firms responding offered 6 weeks or more paid maternity leave for lawyers (at full salary).

A 1984 survey done for the Women Lawyers Association of Los Angeles showed that of 22 firms in the Los Angeles area, 5 gave 4 weeks, 3 gave 6 weeks, 5 gave 8 weeks, 1 gave 10 weeks and 6 gave 12 weeks at full pay.

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Worth Noting

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A survey of 49 firms nationwide done in 1984 by the ABA Young Lawyers Division showed that 23 firms "presumed" paid pregnancy disability leave of 6 weeks to 6 months. Twenty of these firms provided for 8, 10 or 12 weeks of leave at full pay. Most of these firms allowed the attorney to take vacation time in addition to such periods of paid leave. Some firms required 6 months to 2 years of service before paid maternity leave could be taken.

Sue Vogel

DISCOVERY PROCEDURES

Sue Vogel

The various rules of state and federal district courts governing the service and filing of interrogatories, requests for production and requests for admission and the responses thereto are difficult to keep straight. The following is a summary of the rules for federal court and the state district courts. The summary should be framed and placed in a suitable location in your office and by your secretary's desk.

FEDERAL DISTRICT COURT:
Local Rule 9(k):

Attorney Propounding Discovery

File original Certificate of Service or Affidavit of Service only.

Attorney Responding to Discovery

File original responses which repeat each interrogatory or request. (Have a certificate of service at the end of the document, but not as a separate pleading.)

THIRD DISTRICT COURT:
Local Rule 3:

Attorney Propounding Discovery

Retain your original interrogatories or requests with an original "proof of service" (*i.e.*, a certificate that is part of the document).

File an original Certificate of Service with the court (a separate pleading).

Send copies of discovery and of the separate Certificate of Service to all other counsel.

Attorney Responding to Discovery

Serve original responses upon the party who propounded interrogatories or requests.

File original Certificate of Service (separate pleading) with the court.

Serve copies of responses and Certificate of Service upon all other counsel.

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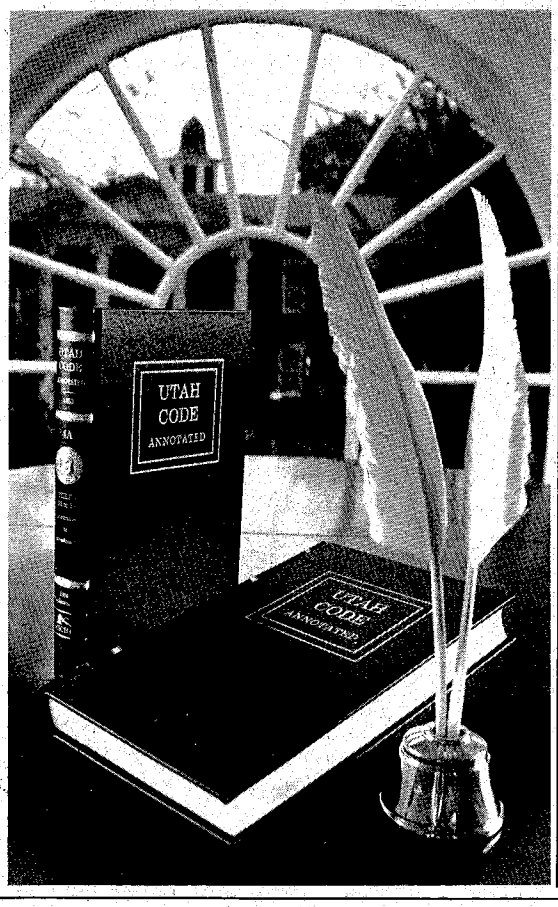

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Worth Noting

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Comment: The "proof of service" at the end of the document seems superfluous in light of the Certificate of Service going to the court and to all other counsel. The rule can be read, however, to *not* require the Certificate of Service to be served on parties. If this is so, the "proof of service" would have a purpose. The rule requires that the party serve "original responses made under oath." This is not entirely correct. Only responses to interrogatories need be made under oath. Responses to requests for production of documents or for admissions need not be. Rule 3 does not mention the responding party filing a Certificate of Service with the court, but it must be done.

Note: Because the discovery is not filed with the court, you must attach relevant portions of it to motions to compel, and you must file discovery responses with the court at the time of trial if you intend to use them.

FOURTH DISTRICT COURT:
Administrative Order 21 (1/2/87):

Same as Third District

Note: The Fourth District rule does not refer to responses "made under oath," as does the Third District rule. See comments to the Third District rule with respect to the purpose of the "proof of service" and with respect to motions to compel and trial use of discovery responses.

ALL OTHER STATE
DISTRICT COURTS:

Attorney Propounding Discovery

File original with court (with certificate of service at end as part of same pleading). Serve copies upon all other counsel.

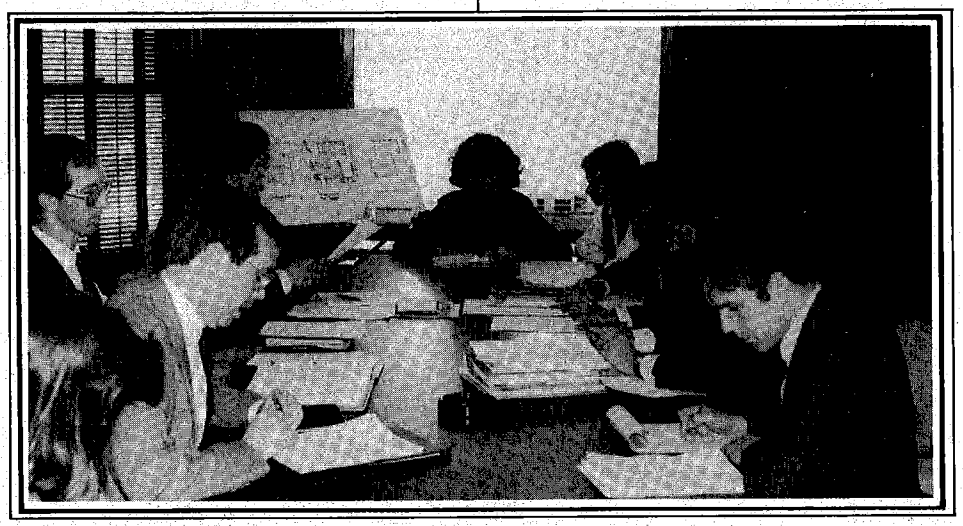
Attorney Responding to Discovery

File original with court (with proof of service at end as part of same pleading). Serve copies upon all other counsel.

LAW & JUSTICE CENTER TELETHON

The Young Lawyers Section fund-raising effort for the Utah State Bar Law & Justice Center is winding down. Initial reports indicate that over 1,600 attorneys were contacted for their support. The fund-raising effort should generate significant funds for the Center. Further, the response shows that Utah young lawyers, in large part, are willing to support Utah State Bar activities. All who participated in and contributed to the fund-raising effort should be congratulated.

A full report on the number of contributors and the amount of money pledged to the Law & Justice Center was given at the Young Lawyers Section Executive Council Meeting the first week of April. That report will be published in the next issue of the *Barrister*.



Young Lawyers Section Executive Council discusses Law and Justice Center.

ANNOUNCEMENTS & EVENTS

UPCOMING YLS ELECTIONS— NOMINATIONS DUE BY MAY 1, 1987

Soon the Young Lawyers Section will conduct its annual elections for a new president-elect, secretary and treasurer. Any member of the section is eligible to run—that is, any member of the Utah State Bar who will be younger than 36 on June 30, 1987, or has been practicing law for 5 years or less. (A candidate must be younger than 35 as of June 30, 1987, or must have been practicing law for less than 4 years to run for President-Elect.)

Nominations for any office must be made in writing and signed by three other Utah young lawyers in good standing. A one-page statement containing biographical information, qualifications, and platform must be included with the nomination. These statements will be mailed to all Utah young lawyers with election ballots. (Due to space limitations, the present leadership of the Young Lawyers Section reserves the right to edit platform statements.)

Nominations must be submitted to Stuart W. Hinckley, 236 State Capitol, Salt Lake City, Utah 84144, no later than May 1, 1987.

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Announcements & Events

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YOUNG LAWYERS SECTION NEEDS VOLUNTEERS FOR LAW DAY ACTIVITIES

The Law Day Committee of the Young Lawyers Section has organized several community education activities for Law Week, scheduled for April 27 through May 2, 1987. The committee-sponsored activities will include the Law Day Information Fair, also referred to as Meet-A-Lawyer. The Information Fair will be held in the Crossroads Plaza. Law Week activities also will include a five-part public library lecture series. The Information Fair and Lecture Series are designed to increase the public's awareness and appreciation of their rights, obligations and opportunities under the legal system. In addition, the Information Fair and Lecture Series provide an opportunity for Utah young lawyers to give meaningful service to the public and enhance the public image of the bar and judiciary.

The Information Fair will be held May 1 and 2, 1987 at the Crossroads Plaza. The five-part Library Lecture Series will begin Monday, April 27 and run through Friday, May 1, 1987. Lecture times will be 6:30 p.m. to 8:00 p.m. Monday through Thursday, and noon to 1:30 p.m. on Friday.

The Young Lawyers Section needs attorneys to help organize and staff the Information Fair and to participate in the Lecture Series. Lawyers with experience in landlord/tenant, criminal or domestic relations law are particularly needed for the Information Fair. However, Utah young lawyers with experience in all practice areas also are needed. For more information or to sign up, contact any of the members of the Law Day Committee: Michael N. Zundel, 532-7700; Tad Draper, 521-3680; or Harry Caston, 359-4457.

THE FIFTH BOB MILLER MEMORIAL LAW DAY RUN

On Saturday morning, April 25, the 1987 edition of the Bob Miller Memorial Law Day Run will be held. The popular five-kilometer run creates a friendly, though genuinely competitive, battle between Utah lawyers. Watch for registration forms in the Utah Bar Letter. Plan now to participate.

Non-runners can participate by helping to administer the run, and those volunteering will receive free T-shirts. For more information, please call Chris Fuller 322-9164 or Wes Harris 363-3300.

NOMINATIONS SOUGHT FOR LIBERTY BELL AWARD

The Young Lawyers Section will present its annual Liberty Bell Award at the Law Day Luncheon to be held May 1, 1987. The award recognizes a non-lawyer in Utah who has made a significant contribution to the community, which contribution serves to strengthen the effectiveness of the American system of justice. The Liberty Bell Award recognizes individuals for service in the following areas:

1. Promoting a better understanding of the Constitution and the Bill of Rights;
2. Encouraging a greater respect for law in the courts;
3. Stimulating a deeper sense of individual responsibility, encouraging citizens to recognize their duties as well as their rights;
4. Contributing to the effective functioning of our government; and
5. Fostering a better understanding and appreciation of our laws.

Nominations for the Liberty Bell Award should contain the following information: the nominee's name, address and telephone number; employment, membership in organizations (civic, governmental, or other, with details of special recognition and offices held, if any); information with respect to the nominee's accomplishments in one or more of the five categories listed above, along with other relevant biographical information; supporting documentation, including copies of any newspaper articles, publications, or other printed material regarding the nominee; and the name, address and telephone number of the person nominating the individual for the award. All applications must be submitted no later than April 23, 1987 to: Enid Greene, P.O. Box 45385, Salt Lake City, Utah 84145-0385.

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LAWYER SATISFACTION SURVEY

David R. Black

"The hours are too long." "Too much responsibility without guidance." "Not enough responsibility." "Unreasonable demands by senior partners." "Unreasonable demands by clients." These are just some of the complaints from young lawyers throughout the state. Behind closed office doors in virtually every practice an anxious young lawyer has uttered a similar sentiment.

Young lawyers face the stress caused by the nature of law practice, whether it be closing a complex deal, the approach of a trial, or the demands of clients regarding the new tax laws. Coping with these stresses is often difficult. How, then, when the goal is simply to make it through another day, can one consider a career path? How can one make a stressful, demanding job into a satisfying, fulfilling profession? How indeed? Evaluating one's career could be done much more easily if one could be momentarily distanced from the day-to-day grind. By stepping back for an objective look at the pros and cons of the practice of law, perhaps some of the above concerns could be addressed.

But how can the young lawyer most effectively accomplish this feat, and take another, more informed, look at the practice of law? For assistance in this regard, the *Barrister* turned to experienced members of the Utah State Bar for some helpful advice and insights. Who better could respond to the questions of young lawyer satisfaction than those who have been there before? Accordingly, the *Barrister* thought that timely comments from more seasoned professionals would assist the lawyer relatively new to the practice of law, by providing practice pointers or helping the young lawyer keep life and law in perspective.

THE SURVEY

Questionnaires were mailed to 60 Utah lawyers. Each lawyer was asked to complete (anonymously, if desired) the following sentence:

> My first few years of practice would have been more eventful, productive and, perhaps, satisfying, if I had only known. . .

The *Barrister* editors intentionally posed a broad question in hopes of allowing the attorneys a chance to respond in unrestricted ways. In this way, the responses could address practice pointers and advocacy skills, as well as consider mental health tips. Interestingly, though, most responses centered on the quest for personal satisfaction. And, most respondents did not care to remain anonymous, which seems to indicate a willingness to guide young lawyers and, perhaps, improve the quality of law practice generally. As such, most responding lawyers apparently are concerned about their obligation to educate and provide assistance to young lawyers.

(The *Barrister* would like to thank all those who took the time to respond to the questionnaire.)

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COMMENTARY

CASES IN POINT

Joel G. Momberger

It has oft been said that the lawyer's tools are words (it has also been said that lawyers could do with a few less tools. . .). In celebration of the richness and variety of the creative use of language, I offer you the following excerpt from an actual pleading:

> COMES NOW, Plaintiff, AE groto AE Gylde at Necessitous, who beseeches the, Justiciarius Banoi, to come let us reason together, ad aggregate mentium, ad Barram, because, Nihil quod est contra ratioen est licitum, ad a Justitia (quasia a quadam fonte), omnia jura emanant in perpetuity.
>
> Your Plaintiff, hereby, ad ostenendum, his, action bonae fide, ad volumtatem domini, Respectfully submits his MEMORANDUM, before this Court, ad ostendendum, that this Court does not have Jurisdiction, ad adaudiendum et determinandum, any part of this Case while Plaintiff is Appealing, any and all Negitive rulings, as well as the Courts failure to rule in the Plaintiff's Case, under the Court of Appeals Jurisdiction and their Ancillary Jurisdiction, the Plaintiff will also show that this Court and the Defendants are in Violations of a (sic) Appellate Court Protective Order.

While not purely legal in nature, one of the great quotes of the 20th century is ascribed to Ma Furgensun, who became governor of Texas after her husband was impeached in the 1940s. When asked whether Hispanic children should be permitted to use Spanish books in school, Ma is purported to have said, "If the English was good enough for Jesus Christ, it's good enough for the people of Texas."

Finally, many thanks to James R. Taylor, who suggested the following excerpt from *State of Utah v. Dodge*, 425 P.2d 781 (Utah 1967):

> Appellant's last complaint relates the ordering by the Trial Judge that the sentence in this case commenced to run upon the expiration of his sentence for being a habitual criminal. He says that since he may serve a life sentence for that crime, it is not proper to have him serve an extra five years for perjury.
>
> We agree that if he serves a life sentence on the first charge, it would probably create quite a stink to keep him incarcerated for another five years, but it seems that he should not be the one to complain about that.

Any contributions or suggestions for this column would be gratefully and graciously acknowledged and appreciated by the author, Joel G. Momberger, Van Cott, Bagley, Cornwall & McCarthy, 50 South Main, Suite 1600, Salt Lake City, Utah 84144.

Lawyer Satisfaction Survey

(continued from page 10)

—The following comments best represent the responses aimed toward personal satisfaction:

That practice would get so much easier and better. Not easier and better in the sense of less work, pressure or responsibility—because I think that may actually increase—but easier and better in the sense that the rewards are no longer just survival but one of satisfaction, accomplishment and contribution.

Barbara K. Polich (Parsons, Behle & Latimer)

How *creative* good lawyering is and should be. I spent too much time being concerned about learning "the right way" to solve problems before becoming aware that the problem-solving process was amenable to numerous approaches, styles, etc.—a lesson which greatly enhanced my freedom and incentive to use the skills I'd acquired.

Christine M. Durham (Justice, Utah Supreme Court)

—Several attorneys provided some comforting advice to the overly sensitive young lawyers:

That patience is an exalted virtue and establishing oneself as a lawyer takes time.

Ralph R. Mabey (LeBoeuf, Lamb, Leiby & Macrae)

Most unfavorable outcomes are a result of inescapable facts and controlling law rather than deficiencies in one's advocacy skills.

Gregory K. Orme (Judge, Utah Court of Appeals)

(1) How to better organize and manage my time; (2) how to not lose sight of the "big picture" in a case and get bogged down in details; and (3) not to be so afraid of losing a motion or a trial.

Randy L. Dryer (Parsons, Behle & Latimer)

That litigation is a very demanding area of the law and not for every lawyer.

Denis R. Morrill (Prince, Yeates & Geldzahler)

—The following responses were in the nature of advice about the day-to-day practice of law.

Of the need to use as resource materials pleading and practice forms and other practice manuals. There is also a need to stay current in office equipment and procedure and to recognize one's limitations, that is, do not take on cases that you are not competent to handle. Finally, some cases are losers, and one needs to be upfront with the client and yourself in hopes of winning a losing battle.

Hans Q. Chamberlain (Chamberlain & Higbee)

How important professional courtesy is. Salt Lake is still a small enough city that one's reputation as a "competent, professional lawyer" is infinitely more valuable than a reputation as an "uncompromising hard-ball artist." It has taken me some time to learn that there is little to be gained, both in terms of my own professional development *and* in terms of day-to-day service to clients, by taking consistently unreasonable positions when it comes to dealing with other attorneys. Let the *other* guy throw the first spitball—*then* you can respond in kind.

Thomas B. Green (Kimball, Parr, Crockett & Waddoups)

That my services are valuable to my clients. Therefore, I should not take a case without an adequate retainer or continue working for a client who refuses to pay. Also, my clients' problems are not my problems. I am not responsible for problems I did not create. Therefore, I can do my job, which is to assist clients with their problems, without having the anxiety level of a client who is in the midst of a divorce or bankruptcy, or criminal prosecution, etc.

Anonymous

That my clients were entitled to know, and desired to know, how much my services were going to cost them. My failure to give them a clear understanding at the outset was a constant source of misunderstanding and unhappiness.

B.L. Dart (Dart, Adamson & Parken)

—Finally, a couple of responses should be kept in mind as one looks forward to a career in law:

That the public service commitment of every lawyer begins on the day of taking the oath, not after a practice has been established.

Governor Scott M. Matheson (Parsons, Behle & Latimer)

Actually, my first few years of practice were highly satisfactory, challenging and often exciting. Later years—after first 20—have raised questions about earlier choices. Failed to anticipate overcrowding and technical changes in nature of legal practice. Not unhappy, *just* reflective.

Earl D. Tanner (Tanner, Bowen & Tanner)

—Brent Giauque of Van Cott, Bagley, Cornwall & McCarthy probably summed it up best when he reminded the young lawyers:

That (1) there is no perfect job and the practice of law is, like most jobs, made up of a few great days, a few horrible days, and a lot of regular days, and (2) it is up to the individual to find satisfaction in what he or she does and to be happy in doing it.

The insights provided by these attorneys, then, can only assist junior members of the bar to find professional and personal satisfaction. Absent, perhaps, are helpful tips on how young attorneys can best handle the stress and time pressures of this demanding profession. This may necessitate a follow-up question to the "older" members of the bar. However, the editors wish to encourage all attorneys who have made some effort to come to grips with their job to feel free to comment. In this way, the young lawyers section of the bar may make its biggest contribution to the lives and practices of the Utah young lawyers. With advance sheets, continuing legal education seminars, the video and audio practice tapes available from the bar, and the tips available in the various Utah Bar newsletters, the young lawyer has many avenues in which to improve his or her legal talents. What may be needed in the future are tips on self-satisfaction rather than technical advice on the practice of law.

EDITOR'S COLUMN

Can lawyers, especially young lawyers, realistically expect job satisfaction? Lawyering, after all, is difficult work under the best of circumstances.

The responses to the lawyer satisfaction survey in this issue of the *Barrister* offer some useful insight in this regard and point to certain of the factors that enhance, and those that detract from, job satisfaction.

Young lawyers face many obstacles. The textbook training of law school hardly equips the new lawyer with the skills necessary to be effective. The neophyte requires experience, and learning by experience is never easy. Judge Anderson's speech on client development, printed in the last issue of the *Barrister*, highlights the fact that developing clients is a long-term process that is most likely to bear fruit as the lawyer matures and gains experience and contacts. The difficulty of new lawyers attracting clients is epitomized in the conventional wisdom, "Hire a young doctor and an old lawyer."

Notwithstanding the pressures and difficulties inherent in the practice of law, I believe it *is* realistic for lawyers, including young lawyers, to expect and achieve job satisfaction. Here are a few reasons why:

1. *Practicing law is rarely boring.* Boredom often is cited as a major source of job dissatisfaction. One reason many of us attended law school was that we viewed the legal profession as a way to earn a good living in an atmosphere of intellectual challenge and diversity. While this challenge and diversity is necessarily accompanied by pressure, that pressure must be considered preferable to the staleness and stagnation that attend the routine and the ordinary.

2. *Lawyers are well compensated.* Although every lawyer would like to make more money, on any realistic scale, attorneys are well paid. Lawyers are able to charge substantial hourly rates for legal services. Granted, billing and collection for legal services are unpleasant. However, such procedures are inherent in any business and are not unique to the legal profession.

3. *Lawyers have considerable flexibility in selecting a career path.* Legal training prepares attorneys well to pursue a variety of options, including practicing in a private law firm (large or small); becoming a sole practitioner; becoming a prosecutor or a judge; working for the government; teaching at a law school or other institution; acting as inside counsel to a company; and pursuing business interests unrelated to the law. Many of these choices individually offer considerable variety. Moreover, attorneys can switch among these choices virtually at any time in their career.

4. *The working conditions are pleasant.* Lawyers perform their tasks in comfortable offices, generally with the assistance of secretaries, paralegals and powerful word and data processors. Do you ever wonder what it was like to practice law without word processors, copying machines and overnight mail?

Dissatisfaction with the practice of law may result from unrealistic expectations. The young lawyer who expects to attract numerous clients and to be capable of meeting their every legal need will not be satisfied. Satisfaction, however, is the rightful expectation of the young lawyer who appreciates the limitations of inexperience and the legal system and strives to make the most (and best) of the situation.

William D. Holyoak
Associate Editor

Young Lawyers Section of the Utah State Bar

BARRISTER