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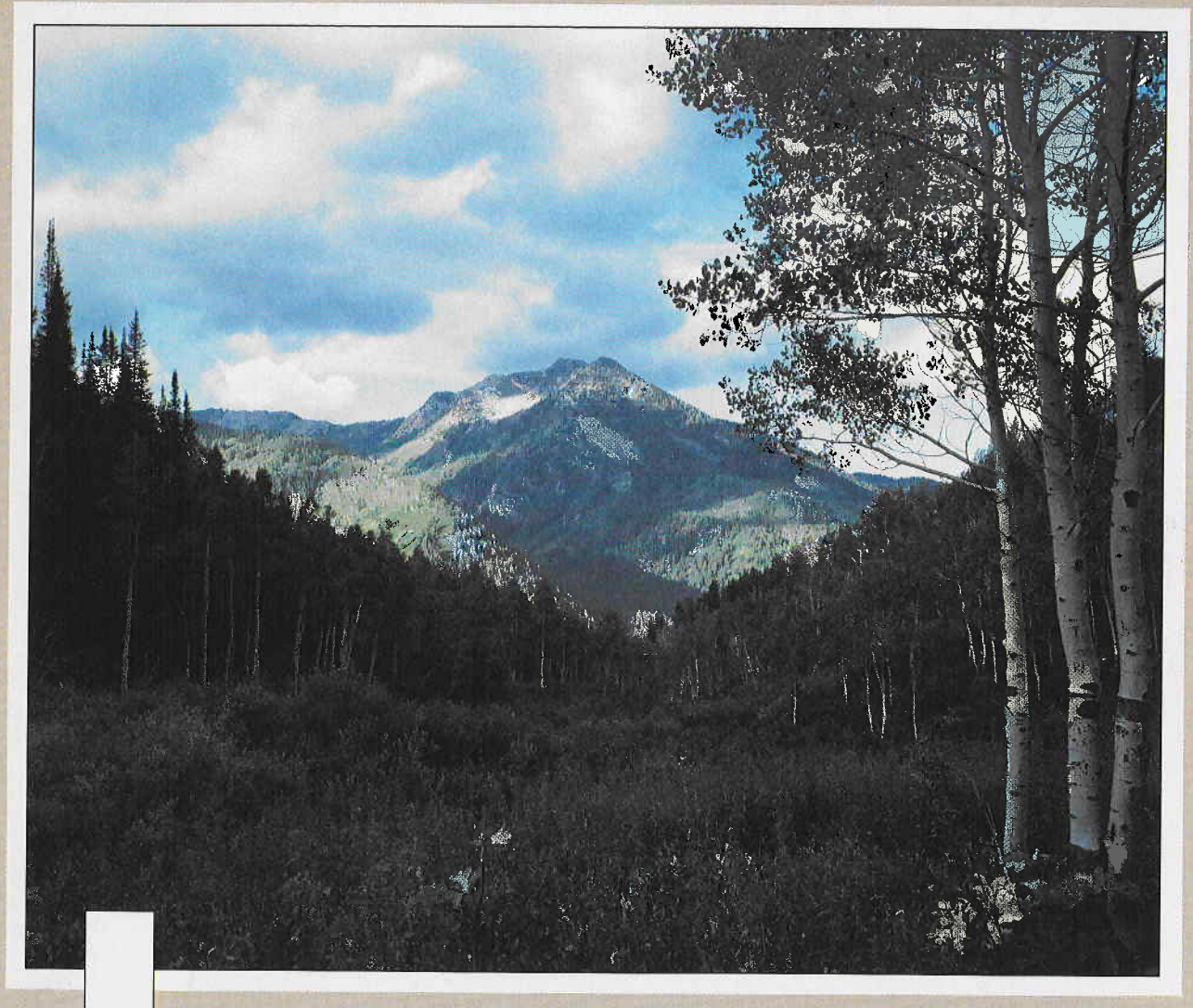

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COVER: Big Cottonwood Canyon, Utah, by Harry Caston of McKay, Burton & Thurman.

Members of the Utah Bar who are interested in having their color slides or other art form published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle Gate Tower, Salt Lake City, UT 84111, 532-5200.

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The Law and Justice Center

By Hon. Pamela T. Greenwood

Far be it for me to shun controversy. Therefore, I will use this forum to bring Bar members up to date on activities of the Law and Justice Center. The building is owned jointly by the Utah State Bar and the Utah Law and Justice Center, Inc., as tenants in common, with equal, undivided interests. The Bar utilizes 26 percent of the building space for its operations. The remaining space is designated as meeting rooms, tenant space, common areas and unfinished areas. The unfinished portion of the building is in the "garden level" or basement, and is now used primarily for storage of Bar records. Our tenants include the Utah Bar Foundation, the American Arbitration Association, Utah Law Related Education, Attorneys' Title Guaranty, and the Mandatory Continuing Legal Education Board.

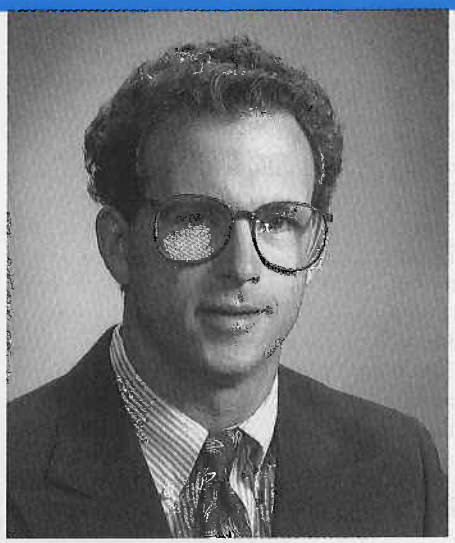
Last summer, the Law and Justice Center commissioned a study by KPMG Peat Marwick on use of the building. They made several recommendations, including adjustment of room rental rates and providing a tiered rate structure to differentiate among Bar-related, non-profit, and commercial users. We made those adjustments a few months ago. The study also recommended more intensive marketing of rental space in the building and upgrading of some of the auxiliary services offered. Because of the cost of finishing out the garden level, the study recommended waiting until a tenant is committed to make those improvements. They suggested perhaps offering storage space for attorneys during the interim. In addition, the study recommended adding artwork and other aesthetic improvements, which, of course, cannot be done at the present time.

Meeting space in the building is used by a very divergent cross section of lawyers and the public. During the six months between July 1, 1990, and December 31, 1990, 336 meetings were held in the building, 54 percent Bar-related and 46 percent non-Bar-related. Gross revenue from room rentals was $48,670.91 for that period of time. We now conduct both Bar examinations in the building, greatly reducing the amount formerly spent on hotel or other rented space. Other Bar-related use of the building consists of committee and section meetings, Bar Commission meetings, continuing legal education offerings, and disciplinary meetings, depositions and hearings. The building has also been the situs for law firm retreats, depositions, arbitrations, judiciary meetings, and court administration meetings. Educational groups, accounting firms, and various non-profit organizations have also used the building. Reports from users are generally most favorable. The lobby areas on the first and second floor are used for receptions, breakout groups and activities such as the Tuesday Night Bar. The building is apparently filling a need not otherwise or equally met.

Judge Stephen Anderson, former Bar president, currently serving with the Tenth Circuit Court of Appeals, appeared recently before the Supreme Court Task Force and spoke about the genesis of the Law and Justice Center. At risk of misstating what he said, I will try to summarize some of his observations. Judge Anderson recalled that just prior to his becoming president, Bar leaders realized that the Bar's quarters would not be adequate for the future, given space needs for Bar staff and Bar functions. They could project the growth in the number of Utah lawyers based on historical data and enrollment at the two Utah law schools. They also observed incursions into traditional areas of law practice by other professions. This had occurred in the field of title work, now being done in real estate offices, financial planning services, and other areas. It was felt that further alternatives to lawyer services were inevitable, particularly in the broad field of alternative dispute resolution methodologies. The Bar leadership

believed that the Bar should be at the forefront of change, not reluctantly acquiescing to reality after the fact. Also, the Bar had a strong traditional commitment to providing legal services to those most in need but without resources. Thus, the notion of a building to provide not only space for the usual types of Bar activities with anticipated growth, but also a building to foster "reduction of the burden of the judicial system by providing education of arbitrators and others similarly engaged, or to be engaged, and by providing space for the resolution of disputes through various means, such as arbitration, conciliation and mediation". The Center was also dedicated to assist in providing legal services to the poor and disadvantaged; to promote ethics, integrity and courtesy in the legal and judicial education; and to promote legal and judicial education and systemic improvements. Remember, also, that much, perhaps most, of the cost associated with the eleemosynary portion of the building was borne by non-lawyer donors.

We have occupied the building for only about two and one-half years. It has begun to realize its potential, but still has a long way to go. We need to clarify and perhaps alter the legal relationship between the Center and the Bar; fine-tune policies concerning the building's use; and develop and implement a marketing strategy so that the Center is used to its full potential and priced at levels so that the building is financially self-sufficient while still adhering to its stated purposes and goals. In the long term, I am confident the building will provide quarters for Bar operations and also be a valuable asset to the l
egal and judicial system in Utah, as well as to the community in which we all live. As lawyers, judges, and "officers of the court", we have responsibilities which transcend our day-to-day business activities and the Center will contribute to our ability to fulfill those responsibilities whether or not we as individuals choose to take part.



Growth of the Profession and Some of the Consequences to Bar Associations

By Paul T. Moxley

We all are receiving a barrage of evidence about how our profession is undergoing substantial changes. A recent report of the ABA Commission on Professionalism registers the concern that increasing competitive pressure may interfere with a fundamental tenet of professionalism: placement of client interests ahead of those of the lawyer. A decline in the economic health of law practice is evidenced by a 160 percent increase in average per-attorney overhead in private law firms according to results of a survey of law firm, economics conducted by Altman & Weil. Consequently, average partner income is not increasing. Overhead will probably continue to rise, escalating the squeeze on profits.

At the same time, over the last 15 years, the number of lawyers has approximately doubled in the United States. According to a recent *Utah Holiday* article, the number of lawyers has increased by approximately 160 percent in Utah during the same time period. In the United States, we have 5 percent of the world population, but we have 50 percent of the lawyers in the world. The result is an increasing oversupply of lawyers. The marketplace combined with judicial "deregulation" of the profession, occasioned by decisions of the Supreme Court in the mid-1970s, has generated, at least, these effects:

- Rapid growth and consolidation of law firms through merger.
- Price competition.
- Internalization of the corporate legal function, resulting in increased client sophistication.
- Increased marketing by law firms.
- Business failure of firms and lawyers.
- Law firms have developed more internal conflicts that many partners and associates demand a larger piece of the pie than their older partners.
- The trend toward a heavy infrastructure in each law firm to conduct its business operations.
- Loss of professionalism.

The list of perceived effects could easily go on. However, what do these changes have to do with our bar associations?

It has been suggested that the challenges confronting law firms are turning lawyers' non-billable time away from professional organizations. Each lawyer has only so much time and energy that can be divided among the lawyer's office, clients and his/her professional organizations. As the time commitments for office management and for firm business increase, the time available for the associations decreases. It must be recognized, too, that with the increase in overhead and the decrease in income, lawyers are working longer hours. On top of that, the hours are probably more difficult because of the increase in competitiveness in the business. For whatever reasons, some lawyers believe clients prefer the "Doberman Pincher type lawyer or Rambo lawyer" which just results in some work being much more difficult than it used to be because of the increase in this sort of practice.

To meet these challenges, law firms and lawyers are changing their habits. Lawyers are expending many hours on self-analysis, client development, market research, and stricter administrative procedures. Committee work within firms is increasing geometrically. Partnership meetings and retreats can now consume days or weekends instead of hours. Again, simple arithmetic tells us that the shifting of hours from bar association activities to firm activities will have a chilling impact on the bar's most valuable resource, its volunteer lawyers.

Even before this oversupply and in better times, we have suffered from bad press. For example:

There was a society of men among us, bred up from their youth in the art of proving, by words multiplied for the purpose, that white is black and black is white, according as they are paid.

—Jonathan Swift, *Gulliver's Travels*

I know you lawyers can, with ease, twist words and meaning as you please; that language, by your skill made pliant, will bend to favor every client, that 'tis the fee directs the sense, to make out either side's pretense, when you peruse the clearest case, you see it with a double face, for skepticism is your profession; you hold there's doubt in all expression.

—John Gay, *Fables*

They have no lawyers among them, for they consider them as a sort of people whose profession it is to disguise matters.

—Sir Thomas More, *Utopia*

In law, what plea so tainted and corrupt but, being seasoned with a gracious voice, obscures the show of evil?

—William Shakespeare, *The Merchant of Venice*

A jury consists of 12 persons chosen to decide who has the better lawyer.

—Robert Frost

Some men are heterosexual, and some are bisexual, and some men don't think about sex at all . . . they become lawyers.

—Woody Allen

Much of this bad press, criticism of lawyers and erosion of professionalism comes as a surprise to many of us who were raised watching Perry Mason unravel a mystery on television or to those who became lawyers because they wanted to make positive social changes through the law or those of us who went into the profession to make a living while contributing to society in a positive fashion. What we got instead was a profession which is facing challenges beyond our prior bad press that require novel solutions. The bar associations cannot solve the problems of law firms because lawyers will unlikely share how they are marketing for clients or otherwise competing for the same client mix. Yet, the law firms and lawyers must work creatively at solving the puzzle that has resulted these past 15 years.

We lawyers need now to meet with one another in non-adversarial settings to discuss common problems and goals. The increase in the number of lawyers will continue and the pressures and challenges will multiply. One pressing dilemma is the fact that many people cannot now afford to engage in litigation because of the expense associated with the process. Obviously, we lawyers must solve this problem or we may lose our profession as we know it. The jury is still out on whether the increased competition has been good or bad for society. Regardless of the verdict, it is dramatic and it must be recognized by our BAR. We must recognize where we are and find solutions that will permit us to become stronger because of it.

Now is not the time for lawyers to withdraw from collective efforts through their bar associations to solve our practice problems because that approach is shortsighted, and may result in a tragic loss for us all.

Soldiers' and Sailors' Civil Relief Act: A Legal Shield for Military Personnel

By Kevin R. Anderson, J.D., and David K. Armstrong, J.D., CPA

Due to the recent mobilization of military personnel for Operation Desert Shield and Operation Desert Storm, there has been increased interest in the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. app.§§501-591) (hereinafter the "Act"). This interest has come not only from military personnel but also from lenders, landlords, lessors and other creditors who may be affected by the Act. The purpose of this article is to review some of the pertinent provisions of the Act and its application to military personnel and their creditors. This article also includes a discussion of the amendments to the Act recently passed by the House of Representatives.[1]

INTRODUCTION

The Act is intended to further the interests of the national defense by temporarily suspending the enforcement of certain civil liabilities of persons in active military service, thereby enabling such persons to devote their entire energies to the defense needs of the nation.[2] The Act is to be liberally construed to protect those who leave their personal affairs to serve in the nation's defense.[3] Service persons who incur financial obligations prior to entering military service, based on their earning capacity as a civilian, should not be prejudiced when they are called to active duty. While the Act does not relieve a service person's responsibility to repay debts, it does recognize that a call to active duty may reduce the service person's ability to keep current on such debts.

In general, a service person, whose ability to repay obligations is materially affected by a call to active duty, is entitled to a reduction of interest accrual, a stay against certain civil proceedings and actions, and a possible suspension of payments.

DAVID K. ARMSTRONG, J.D., CPA, is an attorney with the law firm of Allen Nelson Hardy & Evans. He received his J.D. degree, cum laude, from the J. Reuben Clark Law School, Brigham Young University, in 1988. He received his bachelor's degree and master's of accounting degree (tax emphasis) in 1981, also from Brigham Young University. During his third year at law school, he served as editor in chief of BYU Journal of Public Law. *Prior to law school, he worked for the accounting firm of Arthur Young & Company in Houston, Texas. He is currently serving on the Executive Committee of the Tax Section of the Utah State Bar.*

KEVIN R. ANDERSON is an associate with Allen Nelson Hardy & Evans. He graduated cum laude from J. Reuben Clark Law School, Brigham Young University, in 1985. After graduating from law school, he clerked for the Hon. David N. Naugle, United States Bankruptcy Judge, Central District of California. Mr. Anderson has served on numerous committees for the Young Lawyers Section, and is currently serving as the secretary/treasurer for the Bankruptcy Section of the Bar. Mr. Anderson's practice is concentrated in the areas of bankruptcy and commercial law.

TEMPORARY STAY OF JUDICIAL ACTIONS

The 1991 Amendments create a temporary stay of "any judicial action or proceeding." Upon application by a qualified service person or his or her representative, the court shall enter such a stay which remains in effect "until a date after June 30, 1991." A qualified service person is one on active duty and who is serving outside the state in which the court having jurisdiction over the action or proceeding is located.

SECTION 511: PERSONS PROTECTED BY THE ACT

The Act applies to all persons on active duty in the National Guard, Reserves, Army, Navy, Marine Corps, Air Force,[4] or Coast Guard. The Act also applies to persons in training prior to induction into military service,[5] officers of the Public Health Service detailed for duty with the military service, and persons ordered to report for

induction.[6] Certain provisions of the Act are made applicable to a service person's dependents[7] and to those secondarily liable on debts.[8]

The provisions of the Act take effect on the date the service person begins active duty and terminate on the date of the service person's release. Enlisted reservists receive protection as soon as they receive orders to report.[9]

SECTION 517: WAIVER OF PROTECTION UNDER THE ACT

A service person may waive the Act's protection by modifying or terminating contracts or by allowing a creditor to repossess or sell its collateral. The waiver must be made pursuant to a written agreement that is executed by the service person after the call to active duty.

SECTION 518: PROHIBITION AGAINST DISCRIMINATORY ACTIONS

The 1991 Amendments add §518 which provides that a stay, postponement or suspension made pursuant to the Act shall not, without regard to other considerations, serve as the basis for the following actions against the protected person:

(a) A determination by a lender that such person is unable to pay his or her obligations in accordance with their stated terms.
(b) A denial or revocation of credit.
(c) A change in the terms of an existing credit arrangement.
(d) A refusal to grant credit to such person in substantially the amount or on substantially the terms originally requested.
(e) The creation of an adverse credit report relating to such person.
(f) A refusal to insure such person.

SECTION 520: DEFAULT JUDGMENTS

Most attorneys are familiar with §520 which requires the filing of an affidavit stating that the defendant is not protected by the Act before seeking a default judgment. If the default judgment is entered during the period of active duty or 30 days thereafter, it can be set aside by a motion made within 90 days after termination of active duty providing the service person has a meritorious or legal defense to the action. However, this Section does not impair any right, title or interest acquired by a bona fide purchaser under the default judgment.[10]

SECTION 521: STAY OF CIVIL PROCEEDINGS

If the service person is involved in a civil proceeding during active duty, or within 60 days thereafter, either as a plaintiff or defendant, the civil action may be stayed by the court, *sua sponte*, or by motion of the service person, unless it appears that the service person's ability to defend or prosecute the action is "not materially affected by reason of his [or her] military service."

SECTION 522: STAY OF FINES AND PENALTIES

When an action on a contract is stayed by any provision of the Act, the accrual of fines and penalties is likewise stayed. Furthermore, if the service person fails to perform any obligation during the period of active duty which results in the imposition of a fine or penalty, a court may discharge such liability if it appears that the military service materially impaired the service person's ability to perform.

SECTION 523: STAY OF EXECUTION OF JUDGMENTS

During active duty or within 60 days thereafter, a court, *sua sponte*, or on the motion of the service person, may stay the execution of any judgment entered against the service person and vacate or stay any attachment or garnishment of the service person's property.

SECTION 524: DURATION OF STAYS

A stay of any action under the Act remains in effect for the period of military service plus three months thereafter, unless the Act or a court provides for a different period.

SECTION 525: TOLLING OF STATUTE OF LIMITATIONS

The period of active duty is excluded in calculating a statute of limitation as to any action belonging to or existing against the service person, including any statutory right of redemption.[11] The tolling is absolute and applies to actions before any adjudicative body; however, it does not apply to any period of limitation under the rules and regulations of the Internal Revenue Service.[12] It is irrelevant that the service person was not prejudiced as a result of the call to active duty.[13]

SECTION 526: 6 PERCENT INTEREST CAP

This Section has the greatest impact on both service persons and lenders because it establishes a 6 percent per annum interest cap during the period of active duty for any obligation incurred prior to the call to active duty. The interest cap applies to the service person's co-obligors but not to the separate financial obligations of the service person's dependents.

The contract rate of interest can be reinstated pursuant to a written agreement by the service person[14] or on the creditor's application to a court that the ability of the service person to pay the contract rate "is not materially affected by reason of such service." The court has discretion to "make such order as in its opinion may be just."

Interest includes "service charges, renewal charges, fees or any other charges (except bona fide insurance) in respect of such obligation or liability." For closed-end obligations incurred prior to the call to active duty, any and all charges, except insurance, that exceed the 6 percent cap are prohibited. For open-ended lines of credit, the issue is not so clear. A fee or charge relating to a new advance made after the call to active duty is probably not subject to the interest cap. However, fees or charges relating to a balance that existed prior to the call to active duty are probably included in the 6 percent interest cap. Charges for bona fide insurance and tax escrow accounts are not subject to the interest cap.

The interest cap applies only to obligations incurred prior to the date of the service person's call to active duty; obligations incurred after this date accrue interest at the contract rate. Therefore, the interest cap does not apply to new advances made after the call to active duty under a credit card, a home equity line of credit, or other open-ended credit program. In order to ascertain the exact date of the call to active duty, lenders should request a copy of the service person's military orders.

Commencing on the date of active duty, the lender is required to write off any impressible charges and to reamortize payments based on an interest rate of 6 percent per annum. While notice of the reduced payment amount is not required, it should still be sent to the service person in order to avoid confusion. On the date the service person is released from active duty, the contract interest rate is reinstated, and payments are once again reamortized at the higher rate. On an open-ended line of credit, written notice of increased payments must be sent to the service person at least 15 days prior to the date of the change.[15]

It is the position of the Department of Defense that lenders may not maintain the original payment amount and simply reduce the number of payments. Furthermore, lenders may not subsequently recapture lost interest.

SECTION 530: EVICTIONS

A landlord must first obtain court approval before an eviction can be made

against the service person's spouse, children or other dependents during the period of active duty with respect to any premises where the rent does not exceed $1,200 per month.[16] This Section applies only to premises occupied "chiefly for dwelling purposes."

When a landlord makes an application for eviction under this Section, the court has discretion to stay the eviction action for up to three months unless the tenant's ability to pay rent is not materially affected by the service person's call to active duty. The three-month period allows the tenant time to find a new residence with lower rental payments.

A landlord who willfully fails to comply with this Section may be fined as provided in Title 18, United States Code, or imprisoned for not more than one year.

SECTION 531: INSTALLMENT SALES CONTRACTS

Absent court approval, a vendor under an installment sales contract regarding real or personal property is prohibited from terminating the contract or repossessing the property for non-payment[17] or any other breach of the contract occurring prior to or during the period of military service.

At the hearing to repossess property, the court has discretion to order the creditor to refund all payments as a condition to terminating the contract and repossessing the property.[18] The court also has the discretion to impose a stay against the creditor unless the debtor's ability to comply with the contract was not materially affected by the call to active duty. The court also has broad powers to stay all payments, require partial payments, or to fashion such other relief as is fair and equitable. This Section, however, does not prevent a voluntary return of property.[19]

SECTION 532: FORECLOSURE AND TRUST DEED SALES

The Act protects a service person on active duty from a foreclosure or trustee's sale if (1) the obligation is secured by a mortgage, trust deed, or other security in the nature of a mortgage; (2) the real property was owned by the service person prior to the call to active duty; (3) the debt was incurred prior to the call to active duty; and (4) the property is owned by the service person at the time of the foreclosure or trustee's sale.

The protection afforded by this Section continues during the period of active duty plus three months thereafter. A creditor may petition the court for relief from this Section; however, the court has discretion to grant a stay or other relief similar to that allowed under Section 531.

A creditor who willfully violates this Section may be fined as provided in Title 18, United States Code, or imprisoned for not more than one year.

SECTION 533: RESOLUTION OF STAYED PROCEEDINGS

If a proceeding to foreclose a mortgage, take possession of personal property, or terminate a contract has been stayed, the court may appoint three independent appraisers to value the property and to order the creditor to pay such amount as is just to the service person, or his or her dependents, before lifting the stay and allowing the creditor to repossess the property.

SECTION 534: TERMINATION OF LEASE BY LESSEE

A lease on property occupied for dwelling, professional, business or agricultural purposes which is executed by a service person prior to the call to active duty may be terminated by giving the landlord written notice. On leases requiring monthly payments, the termination is effective 30 days after the next rental payment comes due. On all other leases, the termination is effective at the end of the month following the month in which the notice was given. Any pre-paid rent must be refunded to the lessee. The landlord is probably prohibited from asserting a claim for damages against the service person arising from the termination.[20]

A landlord violating this Section may be fined under Title 18, United States Code, or may be imprisoned for not more than one year.

SECTION 535: LIFE INSURANCE POLICIES AND STORAGE LIENS

The assignee of an insurance policy on the life of a service person which was assigned prior to the call to active duty may not exercise any rights under the assignment. This prohibition remains in effect during the period of military service plus one year. The prohibition is lifted on the death of the insured or when premiums are due and unpaid.[21] It can also be lifted by a written waiver from the insured or by an application to a court.

This Section also stays any action to foreclose on a storage lien. The stay remains in effect during the period of military service plus three months. The stay may be lifted by application to a court, and the court has discretion to fashion appropriate relief.

A person violating this Section may be fined under Title 18, United States Code, or may be imprisoned for not more than one year.

SECTION 536: EXTENSION OF BENEFITS TO DEPENDENTS

The protection afforded under §530 through §536 are specifically made applicable to the service person's dependents. The term "dependent" is not defined in the Act, but it has been interpreted to mean "one who looks to another for support and maintenance for the reasonable necessities of life."[22]

SECTION 560: REAL AND PERSONAL PROPERTY TAXES

No sale of personal property or real property owned and occupied by a service person on active duty shall be made to enforce the collection of real or personal property taxes, except upon leave of court. The court, in its discretion, may stay such proceeding or sale until six months after the termination of military service.

SECTION 573: INCOME TAXES

This Section provides that the collection of income taxes from a service person shall be deferred until six months after termination of military service if such person's ability to pay the taxes is materially impaired by the military service. No penalty or interest will accrue due to the deferral.

In addition to the benefits set forth in this Section, additional legislation[23] was passed in January of this year which gives added tax relief to military personnel serving in the Persian Gulf. This legislation provides that military pay received by enlisted personnel serving in the Persian Gulf will be exempt from tax. For officers, income up to $500 per month will be exempt. Military personnel (both officers and enlisted personnel) serving in the Persian Gulf will not have to file income tax returns until 180 days after their departure from the combat zone. All interest and penalties incurred during this period will be waived, and no collection or examination action will be taken by the Internal Revenue Service. If military personnel are killed while serving in a combat zone, their tax liability for the year of death and the prior year will be waived.

SECTION 590: PETITION FOR STAY OF ALL LIABILITIES

Section 590 provides that service persons at any time during military service or six months thereafter may apply to a court

for relief from any liability incurred prior to entering military service or any tax or assessment accruing either before or during military service. Unless the service person's ability to perform "has not been materially affected by reason of his (or her) military service," the court may stay the payment of principal and interest on any obligation, including those arising under a mortgage, trust deed, real estate contract, or tax assessment. The stay automatically extends the pay-off date of the obligation by the amount of time spent in the military service. The practical effect of this protection is illustrated by the following examples:

Example 1:

Stay of Mortgage Payments

GI Josephine has 10 years of payments remaining on her home when she is called to active duty for two years. Prior to shipping out, Josephine petitions the court for a stay of her monthly mortgage payments. The court enters a stay of all principal and interest payments during the two years of Josephine's military service.[24] After her discharge from active duty, Josephine will have 10 years to pay the two years of arrearages. This period is determined by adding the time of military service (two years) to the time remaining on the obligation on the date of discharge from active duty (eight years). The stay only applies to the arrearage, and the remaining eight years of payments must be made in a timely manner. The lender would amortize the two years of arrearages[25] over the 10 years remaining on the obligation as a result of the extension and then add that amount to the regular monthly payments.

Example 2:

Stay of Tax Liabilities

GI Josephine owes $500 in state income tax when she is called to active duty for two years. Prior to shipping out, Josephine petitions the court for a stay of an enforcement of the tax liability. The court grants the stay, giving Josephine two years after her discharge to satisfy the tax liability. After discharge, the tax liability accrues interest at the rate provided by state law. Josephine satisfies the liability by making equal periodic installments over the two-year period following her discharge from military service.

If a court grants such a stay, any fine or penalty that would otherwise accrue during the period of military service is likewise stayed.

SECTION 702: PROFESSIONAL MALPRACTICE LIABILITY PROTECTION

Section 702 of the Act was added by the 1991 Amendments and specifically applies to medical doctors and other professionals ordered to active duty (other than for training) after July 31, 1990.

It provides that a doctor (or other professional) may suspend, by written notice to the insurance carrier, any professional malpractice insurance coverage during the period of active duty. During such suspension, the doctor will not be required to pay insurance premiums. At the doctor's election, the insurance carrier shall either refund amounts previously paid for coverage during the suspension period or apply such amounts against premiums becoming due upon reinstatement of the insurance policy. The insurance carrier will not be liable for any claim occurring during the time the policy suspended.

Upon release from active duty, the doctor will have 30 days to notify the insurance carrier that the policy should be reinstated. The insurance carrier must then reinstate the policy. No premium increase will be allowed at that time except to the extent of any general premium increase charged by the insurance carrier to similarly covered professionals during the period of suspension.

Any civil malpractice action against a professional whose insurance coverage has been suspended shall be stayed until the end of the period of the suspension if:

(a) The action was commenced during such period.

(b) The action is based on an act or omission occurring before the suspension became effective.

(c) The action is a type that would otherwise be covered by the professional's malpractice insurance.

If an action is stayed under this Section, it shall be deemed to have been filed on the date the insurance is reinstated. The suspension period shall be excluded for computation of any statute of limitation period.

SECTION 703: HEALTH INSURANCE REINSTATEMENT UPON REEMPLOYMENT

This Section is also a new addition resulting from the 1991 Amendments. It provides that, upon termination of active duty, a service person shall be entitled to reinstate any health insurance which was in effect prior to the commencement of active duty. No exclusion or waiting period may be imposed relating to any medical condition of the service person, or his or her dependents, in connection with such reinstatement if:

(a) The condition arose before or during the person's military service.

(b) An exclusion or waiting period would not have been imposed for the condition during a period of coverage resulting from participation by such person in the insurance.

(c) The condition of such person is not a disability incurred or aggravated in the line of duty.

CONCLUSION

The Act was established to temporarily limit financial obligations and provide needed relief for military personnel who, as a result of being called to active duty, have an impaired ability to respond to financial duties and responsibilities. This Act, therefore, has far-reaching consequences not only to military personnel but also to those who lend, lease or otherwise do business with such individuals.

[1] 'Soldiers' and Sailors' Civil Relief Amendments Act of 1991 (hereinafter the "1991 Amendments")—H.R. 555 passed by the House of Representatives on January 29, 1991. According to the office of the Senate Veterans' Affairs Committee, the 1991 Amendments are expected to be signed into law by mid-March 1991.

[2] 50 U.S.C. App. §510.

[3] *Boone v. Lightner, N.C.*, 320 U.S. 809 (1943).

[4] Until the 1991 Amendments, the Act did not specifically refer to service persons in the Air Force.

[5] *Matter of Aber*, 40 N.Y.S.2d 48 (1942).

[6] 50 U.S.C. App. §516.

[7] 50 U.S.C. App. §536.

[8] 50 U.S.C. App. §513.

[9] 50 U.S.C. App. §516.

[10] 50 U.S.C. App. §520(4).

[11] *Ill. Nat'l Bank v. Gwinn*, 61 N.E.2d 249 (Ill. 1945) (statutory redemption period of extended by period of active military service).

[12] 50 U.S.C. App. §527.

[13] *Syzemore v. Sacramento County*, 127 Cal.Rptr. 741 (176).

[14] 50 U.S.C. App. §517.

[15] [Truth-in-Lending Regulations (Revised Regulation Z)], §226.9(c).

[16] The 1991 Amendments increased this amount from $150 to $1,200 regarding actions for eviction or distress commenced after July 31, 1990. However, if the 1991 Amendments are not signed into law, at least one court has held that the $150 rent limit, which was established in 1966, must be adjusted upward for inflation. *Balconi v. Dvascas*, 507 N.Y.S.2d 788 (1986) (monthly rent of $430 in 1986 was equal to $150 in terms of 1966 dollars).

[17] *Hanson v. Crown Toyota Motors, Inc.*, 572 P.2d 380 (Utah 1977) (if an action under §531 requires a showing of inability to pay, it is only in those instances where repossession is an issue in the pending litigation).

[18] *Bowling v. Stark*, 268 So.2d 201 (Fla. 1972).

[19] *Cox v. McGregor*, 47 N.W.2d 87 (Mich. 1951) (prohibition against rescission and termination does not apply where no payment or deposit was ever made by a debtor).

[20] *State Realty v. Greenfield*, 181 N.Y.S. 511 (1920) (landlord could not recover damages for difference in rental payments after reletting property).

[21] Before taking any action involving a life insurance policy, counsel should review 50 U.S.C. App. §§540-548 which also provide certain protection to service persons on their life insurance policies. In general, these Sections prohibit the termination of qualifying life insurance policies not exceeding $10,000, and the federal government guarantees the payment of premiums. However, a detailed discussion of these Sections is beyond the scope of this article.

[22] *Patrikes v. J.C.H. Service Stations*, 41 N.Y.S.2d 158 (1943).

[23] H.R. 4 signed into law by President Bush on January 31, 1991, and Executive Order dated January 21, 1991.

[24] Interest accrual is limited to 6 percent per annum pursuant to 50 U.S.C. App. §526.

[25] The amortization of the arrearage amount after discharge would be calculated using the contract rate of interest which is reinstated upon the service person's discharge from active duty. *See*, 50 U.S.C. App. §526.

Utah Limited Liability Company Act

By McKay Marsden and Steven W. Bennett

This session of the Utah State Legislature enacted the Utah Limited Liability Company Act (the "ULLCA"). This legislation was introduced by Representative John L. Valentine and was drafted primarily by Holme Roberts & Owen, in cooperation with Peter Van Alstyne, director of the Division of Corporations and Commercial Code, and the Utah Legislative Research and General Counsel's Office. The ULLCA was signed by Governor Bangerter on March 18, 1991.

GENERAL EXPLANATION

A limited liability company ("LLC") is a new form of business entity that combines the operational flexibility and tax status of a general partnership with the limited liability protections traditionally associated with limited partnerships and corporations. An LLC has far greater operational flexibility than either a subchapter C corporation, a subchapter S corporation, or a limited partnership. For example, an LLC is not required to hold annual meetings or to comply with the many operational restrictions imposed upon corporations. Moreover, the restrictions on the number and types of shareholders applicable to a subchapter S corporation do not apply to the owners of an LLC (the "members"). The members of an LLC may also participate in management to a greater extent than limited partners.

An LLC differes from a general partnership inasmuch as its members are not personally liable for the obligations of the LLC. It also differs from a limited partnership in that no member is jointly and severally liable for obligations of the LLC, unlike the general partner in a limited partnership. An LLC is subject, however, to disclosure, record-keeping and reporting requirements that do not apply to a general partnership.

McKAY MARSDEN received his Juris Doctorate degree from Brigham Young University. He is a partner with the law firm of Holme Roberts & Owen and is currently serving as the chairman of the Tax Section of the Utah State Bar.

STEVEN W. BENNETT received his Juris Doctorate degree from Brigham Young University. Mr. Bennett is an attorney with the law firm of Holme Roberts & Owen.

TAX TREATMENT AND HISTORY OF LLCs

The first limited liability company legislation was enacted in Wyoming in 1977. Florida enacted similar legislation in 1982. Neither act was widely used prior to 1988, however, because of the uncertainty regarding the federal tax treatment of LLCs. From 1977 to 1987, the IRS refused to issue letter rulings on LLCs. This meant that during this period no LLC could be certain whether it would be treated as a corporation or as a partnership for federal income tax purposes.

In 1988, the IRS indicated that it would issue rulings on the tax treatment of LLCs. In Revenue Ruling 88-76, 1988-2 C.B. 360, the IRS ruled that a Wyoming LLC would be treated as a partnership for federal tax purposes. The 1988 ruling was based on a finding that a Wyoming LLC did not have a majority of four specified corporate attributes.

These corporate attributes, as set forth in Treas. Reg. §301 7701- 2 (1983), are as follows: centralized management; limited liability; free transferability of interest; and continuity of existence. The IRS determined that the Wyoming LLC has the first two corporate attributes, but lacks the latter two. This ruling affirmed the IRS' long-standing position that an entity having two or less of the four specified corporate attributes will be treated as a partnership for federal income tax purposes.

Partnership tax treatment is advantageous because the earnings of a partnership are treated as the earnings of its partners. No separate tax is imposed on the partnership entity. In contrast, the earnings of a corporation are taxed at the entity level; any dividends which are distributed to the shareholders are also taxable to the shareholders. Thus, the distributed earnings of a corporation are taxed twice, while the earnings of a partnership are only taxed once. Like a partnership, the earnings of the LLC are taxed only once.

RECENT EXPANSION IN OTHER STATES

Subsequent to Revenue Ruling 88-76, many more LLCs have been organized in Wyoming and in Florida. The Revenue Ruling has also increased the level of LLC activity in the legislatures of other states. In 1990, three states enacted limited liability company legislation. Colorado and Kansas provided that LLCs may be organized under the laws of those states. Indiana enacted legislation that recognizes foreign LLCs and provides for their registration.

More recently, limited liability company legislation has been introduced in Michigan, Virginia, Ohio, Maryland and Puerto Rico. Limited liability company acts are also being drafted in Arizona, California, Delaware, Illinois, and New York. Legal commentators have begun to publish articles on the trend toward LLCs as a choice of business entity. Two ABA subcommittees on LLCs have been organized. This proliferation of interest in limited liability company acts led to the drafting of the ULLCA.

ADVANTAGES OF UTAH LLCs

The ULLCA has many advantages over the limited liability company act of other states. The ULLCA has more specific and detailed disclosure, record-keeping and re-

porting requirements. The ULLCA allows special allocations of LLC profits and assets, and specifies the conditions under which the members and managers may bind an LLC.

The ULLCA also allows multistate entities to be members of an LLC and authorizes the formation of an LLC to render professional services. A professional LLC is subject to the same ethical and professional restrictions that are found in the Utah Professional Corporations Act. The ULLCA provides greater protections for the public by establishing and providing a procedure for the resignation and replacement of registered agents. Finally, the ULLCA allows contributions to capital in the form of cash, property and services rendered, including a binding obligation to contribute cash or property, or to perform services. Because of these advantages, the ULLCA should serve as a model in the future for other states contemplating limited liability company legislation.

NEED FOR RULING

Notwithstanding the existence of the letter rulings in Wyoming and Florida and the conformity of the ULLCA to the relevant tax sensitive provisions of the statutes in those states, the tax treatment of a Utah LLC is not yet certain. A letter ruling regarding the tax treatment of a Utah LLC will be requested in the immediate future, and it is anticipated that a favorable letter ruling will be received later this year. Until that time, there is a risk that a Utah LLC may be treated as a corporation for tax purposes. Only after a letter ruling has been issued will the partnership tax treatment of a Utah LLC be assured.

The enactment of the ULLCA creates an atmosphere in Utah that should encourage development of new businesses. Moreover, because the Utah legislature enacted this pro-business legislation, it sent a signal that Utah is a favorable place to do business. Persons wishing to obtain additional information regarding the ULLCA may contact one of the authors of this article at Holme Roberts & Owen, (801) 521-5800; the sponsor, Representative John L. Valentine, at Howard, Lewis & Peterson, (801) 373-6345; or Peter Van Alstyne, Director of the Division of Corporations and Commercial Code, (801) 530-4849.

Commission Highlights

During its regularly scheduled meeting of February 15, 1991, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The minutes of the January 25, 1991, meeting were reviewed and minor changes were made.
2. President Greenwood reported on the ABA Mid-Year meeting that was held in Seattle and indicated that she talked about Bar integration with Presidents and Executive Directors from other Bar Associations.
3. President Greenwood requested that Commissioners Moxley and Morton review the Utah State Bar rebate policy in light of *Keller* and make recommendations for any needed changes or other action necessitated by *Keller*. She also informed the Commission of the upcoming Task Force meeting agenda.
4. James B. Lee, Chairman of the Legislative Affairs Committee, distributed a legislative report to the Commission and reviewed the status of bills that the Commission voted on during the January 25 meeting. Mr. Lee then reviewed various bills requiring action by the Commission.
5. The Commission voted to allow John Nielsen, legislative representative, to monitor HB 171—Informed Jurors, and keep the Commission informed.
6. The Commission took no position on HB 181 which included raising the small claims limit from $1,000 to $5,000.
7. The Commission voted to support HB 207—Anti-Trust Revolving Fund Amendments.
8. The Commission voted to support HB 436—Court Reorganization.
9. The Commission voted to oppose HB 439—Attorney's Fees, and suggested that it be sent for further study.
10. The Commission voted to oppose SB 48—Eliminating Monetary Threshold for Personal Injury Protection.
11. The Commission voted to support SB 175—Judicial Nominating Committee Amendments.
12. The Commission voted to oppose SB 144—Medical Malpractice Pre- Litigation Amendments.
13. The Commission voted to oppose SB 146—Rights of Victims of Crime.
14. The Commission voted to oppose SB 190—Appraiser Certification and suggest it be sent for further study.
15. The Commission agreed to help contact members of the Executive Appropriations Committee to express support for the Judicial Compensation proposals.
16. The Commission approved an applicant to sit for the February Bar exam, prior to completion of the character and fitness review, but not to be admitted to the Bar if he passes the exam until the review is completed favorably.
17. President Greenwood appointed Commissioners McKeachnie, Morton and Moxley as a panel to hear a grievance petition regarding a Character and Fitness Committee determination.
18. It was announced that Michele Roberts, current Admissions Administrator, has resigned and will be leaving on March 15, to take a higher paying job with a Salt Lake City law firm.
19. Mark Stevens and Al Van Leeuwen of Deloitte and Touche distributed and reviewed the 1990 fiscal year audit reports and management comments.
20. The Commission approved, with some changes, Ethics Advisory Opinion #107, which concluded that a lawyer aggrieved by the necessity of accepting an appointment to represent an indigent client is under obligation to the court to accept the appointment, but at the same time he or she diligently pursues the client's cause, should seek a review of the propriety of the trial judge's appointment.
21. Bar Counsel Trost reported on his research on incorporation of the Bar.
22. Mr. Trost informed the Commission that Toni Sutliff, Associate Bar Counsel, has resigned to take a higher paying position with the legal staff of Northwest Pipeline and instead of hiring a new attorney, he intended to hire two paralegals to work with the screening panels and provide other services.
23. President-Elect Davis informed the Commission that Utah Bank and Trust had slightly modified its previous offer to refinance the loan. The Commission discussed the new proposal and authorized President-Elect Davis to proceed with the new offer from Utah Bank and Trust.
24. A current cash flow projection sheet was distributed by John Baldwin and Paul Beard for the Commission's review and discussion.

A full text of the minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

CLAIM OF THE MONTH

Lawyers Professional Liability

Alleged Error and Omission

Insured attorney was allegedly involved in conflict of interest.

RESUME OF CLAIM

Insured represented plaintiff in personal injury claim arising out of an auto accident. A defense judgment for $60,000 was obtained against the other uninsured driver. Insured submitted uninsured motorist claim to plaintiff's first party carrier. The insured's firm received a great deal of business from this carrier. The insured recognized the potential conflict and wrote a letter to the carrier stating he would not take a position adverse to them and requesting they pay policy limits. The carrier argued they were not bound by the judgment and refused to pay. Insured then decreased the amount of settlement request, disclosing to auto carrier his desire to waive client's contingency fees. Eventually, client's claims against carrier became stalled. Client alleges the insured was coerced into agreeing to this settlement and that the auto carrier conspired to disallow recovery.

HOW CLAIM MAY HAVE BEEN AVOIDED

Insured should have inquired who client's first party carrier was. Both the client and the carrier should have been asked to consider waiving the potential conflict in writing. Had waiver been attained, insured should have been made referral. A better alternative would have been to refer the client to another attorney. The damage was compounded by writing letters to the carrier which gave the appearance he was not acting in his client's best interests.

"Claim of the Month" is furnished by Rollins Burdick Hunter of Utah, administrator of the Bar-sponsored Lawyers' Professional Liability Insurance Program.

Discipline Corner

ADMONITIONS

1. An attorney was admonished for violating Canon 5, DR 5-105(c) for failing to recognize the conflict of interest in representing a sole proprietor who subsequently incorporated and then representing the corporation against the original sole proprietor.

2. An attorney was admonished for violating Rules 1.2(a), 1.3 and 3.4(c) for failing to provide the Court with written motions and memoranda regarding alleged violations of his client's due process rights as requested by the client and as directed by the Court. In addition, the attorney failed to respond to the Office of Bar Counsel's investigation. The sanction was mitigated by the fact that the attorney was suffering from an undiagnosed and untreated medical condition at the time of the misconduct, which condition is now responding to treatment.

3. An attorney was admonished for violating Rules 1.4(a) and 8.1(b), by failing to respond to his client's repeated requests for information for a period of one and one half years and failing to file an Application for Hearing before the Industrial Commission after representing to his client that he would do so. The sanction was mitigated in that the attorney has sought and received assistance from the Lawyers Helping Lawyers Committee, and is currently undergoing therapy to resolve the difficulties which resulted in the discipline.

4. An attorney was admonished for violating Rules 1.1, 1.3 and 1.4, by failing to provide a proper Qualified Domestic Relations Order for a period in excess of one year, and failing to respond to his client's repeated requests for information.

5. An attorney was admonished for violating Rule 8.1(b), by failing to respond to the Office of Bar Counsel's investigation. The Screening Panel found the client's allegations of misconduct to be without merit. The Screening Panel voted an admonition, however, based solely on the attorney's failing to respond to specific requests for information by the Office of Bar Counsel.

PRIVATE REPRIMANDS

1. An attorney was privately reprimanded for violating Canon 6, DR 6-101(A)(3) of the Revised Rules of Professional Conduct of the Utah State Bar, by accepting a $500 retainer and agreeing to file a complaint and subsequently leaving the United States on a month-long vacation without having filed the complaint and thereafter leaving private practice and "assigning" the case to another attorney without first consulting the client.

2. An attorney was privately reprimanded for violating Canon 6, DR 6-101(A)(3) and DR 1-102(A)(4) of the Revised Rules of Professional Conduct of the Utah State Bar, and Rules 1.3, 1.4(a), 8.1(b) and 8.4(c) of the Rules of Professional Conduct of the Utah State Bar, by representing to his client that he had filed a Complaint in 1985 and subsequently stating on several occasions that the Complaint had been filed and the case was moving forward when in fact he had not filed the Complaint. In addition, the attorney failed to respond to repeated requests for information by the client regarding the status of the action. The attorney also failed to respond to the Office of Bar Counsel's investigation. In addition to the Private Reprimand, the Screening Panel recommended, and the attorney agreed to, a one-year period of probation and the imposition of a supervising attorney to recommend case management improvements. The sanction was mitigated by the attorney's severe financial difficulties and family problems during the pertinent time period.

3. An attorney was privately reprimanded for violating Canon 5, DR 5-105(B) of the Revised Rules of Professional Conduct of the Utah State Bar, by representing two parties in a tax issue involving the Department of Revenue and Taxation in the State of Idaho when the parties had opposing interests therein. Further, the attorney consulted with one of the parties and gave legal advice to that party regarding a separate lawsuit, knowing that his client was a potential defendant in that lawsuit.

4. An attorney was privately reprimanded for violating Rules 1.3 and 1.4(a) of the Rules of Professional Conduct of the Utah State Bar, by failing to inform his client that his divorce was not final until the Decree of Divorce was signed by the Judge and by failing to ensure that the Decree of Divorce was submitted to the Court in a timely manner. The Complainant believed that subsequent to the trial the divorce was complete. However, the opposing party failed to approve the Decree as to form and content and further negotiations ensued subsequent to the trial. The client relocated and was married prior to the execution of the Decree of Divorce. Further, the trial occurred on January 5, 1989, and the Decree of Divorce was not signed until August 11, 1989.

5. An attorney was privately reprimanded for violating Rules 1.3 and 1.4(a) of the Rules of Professional Conduct of the Utah State Bar, by failing to file the appropriate documents with the Court and failing to inform his client of the documents needed to perfect an appeal. The attorney filed a Notice of Appeal but failed to file an Affidavit of Impecuniosity and Withdrawal of Counsel so that his client could proceed pro se.

PUBLIC REPRIMAND

On February 22, 1991, Richard B. Johnson was publicly reprimanded for violating Rules 1.3 and 3.2 of the Rules of Professional Conduct of the Utah State Bar. Mr. Johnson agreed to represent his client pursuant to an employment dispute before an Administrative Law Judge in the Department of Employment Security. On April 20, 1989, Mr. Johnson's client received notice of a hearing to be held on May 3, 1989. Approximately one week prior to the scheduled hearing, the client contacted Mr. Johnson to request his assistance at the hearing. On the morning of May 3, 1989, Mr. Johnson contacted the Salt Lake City Appeal's Office and requested a continuance. He represented to the appeal's office that he had been contacted only that morning by his client regarding the representation and that he

would be unavailable for the hearing. Two subsequent hearings were also scheduled and then rescheduled. The hearing was finally set for July 28, 1989. The notice of the hearing was sent to the parties and their attorneys on July 11, 1989. On the date of the trial, Mr. Johnson failed to accompany his client to the hearing. The client indicated to the Administrative Law Judge that Mr. Johnson was involved in a trial and was unable to attend.

DISBARMENT

On February 22, 1991, James R. Hall was disbarred from the practice of law in the State of Utah. On December 18, 1986, Mr. Hall agreed to prepare a Last Will and Testament for his client. Mr. Hall prepared the Last Will and Testament; however, several minor changes were required. During the next three years, the client made numerous demands on Mr. Hall to complete the required changes. On several occasions, Mr. Hall represented to the client that he had made the required changes and that he would return the Will. Thereafter, Mr. Hall failed to return the Will. The sanction was aggravated in that Mr. Hall's conduct constitutes a pattern of misconduct. Mr. Hall was previously suspended from the practice of law based on his failure to complete and submit to the Court final documents regarding two separate divorces. The Court made repeated demands on Mr. Hall to finalize the matters that he was neglecting, but Mr. Hall failed to comply with these repeated demands. The Findings of Fact established that Mr. Hall's gross neglect had persisted for a period of at least 10 years. In a separate matter, Mr. Hall was suspended for a period of two months, the suspension to run concurrent with the previously mentioned suspension based on Mr. Hall's knowing representation to a client that he had filed a divorce Complaint when in fact he had not. Further, Mr. Hall failed to comply with the Order of Discipline in the previous matter by failing to notify his client that he had been suspended from the practice of law in March 1988, and continued to represent to his client that he could and would complete the Will. Mr. Hall's prior disciplinary history and pattern of gross neglect demonstrate a disdain for the discipline function of the Utah State Bar and lack of serious regard for his license to practice law. Further, Mr. Hall demonstrated a lack of serious regard for the legal profession by his failure to respond to his clients and failure to complete various causes leading to the complaints and failure to respond to the disciplinary process resulting in a Judgment by Default in each of the previously mentioned disciplinary cases.

SPECIAL INSTITUTE ON

Groundwater Contamination

The Legal and Technical Framework in the Rocky Mountain West

Salt Lake City, Utah May 2 and 3, 1991

The Rocky Mountain Mineral Law Foundation will be sponsoring a two-day Special Institute on Groundwater Contamination on May 2 and 3, 1991, in Salt Lake City, Utah.

Problems of groundwater contamination from a myriad of different sources increasingly have been brought to public attention and have fueled widespread concern. Many different industries, businesses, and governmental entities have found themselves, to their surprise, as owners or operators of polluted groundwater sites, with potential liability for polluting existing or future water supplies. Contamination caused by municipal landfills, underground storage of petroleum products, mine drainage, use of cyanide in mineral leaching processes, ore treatment, power generation, use of agricultural chemicals, and nuclear weapons production are only a few prominent examples of many types of groundwater pollution creating potential liability.

This Institute will address the legal and regulatory framework governing groundwater contamination and the engineering and scientific technology used to evaluate such problems, treat existing contamination, and prevent future pollution. The topics addressed at this Institute will be of interest to lawyers, engineers, landmen, technical personnel, managers, and others involved in evaluating existing groundwater contamination and prevention and remediation techniques. The program also will include discussions of both civil and criminal liability for groundwater contamination and economic evaluation of contaminated sites.

For additional information, contact the Foundation at (303) 321-8100.

Utah State Bar Concludes Successful Mid-Year Meeting

The Bar held its 1991 Mid-Year Meeting in Utah's Dixie, St. George. Under the direction of President Pamela T. Greenwood and Committee Chair David R. Hamilton, the Mid-Year Committee planned a very interesting and diverse program which provided eight hours of MCLE credit. Nearly all of the 400 registrants took full advantage of the excellent CLE. Anyone who did not receive a certificate for the CLE attended in St. George should contact Toby Brown at the Bar Office, 531-9077.

The agenda was packed with interesting programs, but still left plenty of time to enjoy tennis, golf, swimming and other recreational activities.

A special thanks to our sponsors who helped make the 1991 Mid-Year Meeting a success.

Jones, Waldo, Holbrook and McDonough
Michie Company
First Interstate Trust Division
Rollins Burdick Hunter of Utah, Inc.
Capitol Court Reporters
DataTrace Investigations—A Division of Heinecke and Associates, Inc.
Attorneys' Title Guaranty Fund, Inc.
Energy, Natural Resources and Environmental Law Section
Litigation Section
Littlefield and Peterson
Corporon and Williams
Dart, Adamson and Kasting
Gustin, Green, Stegall and Liapis
Legal Assistants Association of Utah
Utah Jazz
Sun Valley Company
Ducks Unlimited

We hope to see you all at the 1991 Annual Meeting in San Valley July 3-6!

Bob Miller Memorial Law Day Run

The 1991 Bob Miller Memorial Law Day Run is scheduled to commence Saturday morning, April 27, 1991. As always, the race will begin at the Pioneer Trail State Park "This is the Place" monument. The five-kilometer race will finish at the University of Utah College of Law parking lot. All law firms are encouraged to field teams and to enjoy the camaraderie of the race. Information about the race can be obtained from Charles Loyd at the Salt Lake Legal Defender Association, 532-5444.

UTAH STATE BAR

Ethics Advisory Opinion Committee

Opinion No. 108

ISSUE

May a Utah lawyer who is also a certified public accountant (CPA) include a CPA designation on his professional law-office letterhead?[1]

CONCLUSION

An attorney who is (1) licensed to practice in Utah and (2) a practicing certified public accountant by the Utah Department of Commerce may include a designation of his CPA and attorney status on his professional law-office letterhead.

DISCUSSION

There are many practicing attorneys in the United States who are also licensed as certified public accountants.[2] The law practice of these individuals is often oriented around accounting and related matters. Accordingly, some of these individuals wish to indicate on professional law-office stationery and business cards their status as certified public accountants.

Although formerly there were proscriptions of this practice, these constraints have largely been rendered invalid by the development of permissible attorney advertising under the First Amendment analysis of *Bates v. State Bar of Arizona*[3] and other cases[4] and by adoption of the current Rules of Professional Conduct for Utah lawyers.

Previously, Disciplinary Rule DR2-101(E), applicable to Utah attorneys, directly addressed and prohibited the practice:

> (A) lawyer who is engaged in both the practice of law and another profession shall not so indicate on his letterhead, office sign, professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.[5]

Arguably, the provision might not have stood a commercial free-speech test under various U.S. Supreme Court cases that have defined the scope of such rights. But the question is now moot in Utah, because the current Utah Rules of Professional Conduct (RPC), effective January 1, 1988, contains no such provision.

Section 7 of the RPC, entitled "Information About Legal Services," addresses the limitations on communications by attorneys to provide information about their practice and services. Although primarily oriented toward advertising, Rules 7.1-7.5 provide general guidelines for related communications, including letterhead information. Contrary to former DR2-102(E), there is no direct discussion of non-legal professional designations.[6] Rather, the foundational guideline is: "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."[7]

To the extent that the lawyer *is* a licensed CPA, it is not a per se violation of the RPC to so designate this fact on the law-office letterhead. The official comment to Rule 7.2, although primarily directed at more standard advertising, sanctions the "public dissemination of information concerning . . . the kinds of services a lawyer will undertake."[8] If the lawyer's legal services are oriented around accounting and related matters, the letterhead designation as a CPA may assist in defining the type of practice the lawyer carries on. The general applicability of §7, and Rule 7.2 in particular, appear to be applicable to attorney letterhead as well as "advertising," as generally considered in a media context.

Another part of the same comment to Rule 7.2 indicates that the lawyer may advertise his foreign language ability. Not entirely tongue-in-cheek, one might view this as applying directly to the "CPAese" spoken by certified public accountants. More fundamentally, however, the CPA letterhead designation falls into the category of communications that indicates the type of services the lawyer is competent to provide.

Further, in an age of continued expansion of fields and subfields of legal endeavor, the public should be well served by supplemental information about the "kind of services the lawyer will undertake," *so long as the representations are truthful and not misleading.*

This latter point provides the only significant caveat to the attorney-CPA on this issue: It might be construed as misleading, as that term is used in the RPC, if the CPA designation is used when the person does not satisfy the currency requirements for public accountancy, required by the Utah Department of Commerce's Division of Occupational and Professional Licensing. However, in Utah, a person is a "certified public accountant" only when "currently licensed to practice public accountancy or who has been granted a certificate as a certified public accountant under prior law or this chapter (58-26)."[9] In addition, Utah Code Ann. §58- 26-4(1) sets forth licensure requirements, and §58-26-7 provides for continuing professional education in order to retain licensure and to be entitled to the designation "CPA." Thus, under current Utah law (with minor exceptions), a CPA is required to maintain some level of currency—at least through continuing education. It is, therefore, sufficient to condition this advisory opinion on the attorney-CPA's satisfaction of the legal requirements to hold himself out as a CPA under Utah law.

Recent advisory opinions in New Jersey and Mississippi have addressed the attorney-CPA question in the context of the current Rules of Professional Conduct and reached the same conclusion on this issue. New Jersey has directly addressed this question:

> The committee holds that the inclusion on a lawyer's letterhead of the designation "CPA" is no longer per se violative of the rules governing the professional conduct of attorneys, provided that the designation is accurate and not misleading. Further, there is no reason why *(sic)* the designation cannot be used in directory listings to the same extent as on letterheads.[10]

This opinion was rendered under the same Rule 7 provisions found in the Utah RPC.

In a similar holding regarding medical doctors, the Mississippi State Bar has declared that a lawyer-physician may use the designations M.D. and J.D. after his name, as well as his medical specialty, on business cards, stationery and announcements.[11]

Although not legally dispositive, it is also noteworthy that the Board of Directors of the American Association of Attorney-Certified Public Accountants has adopted a resolution that states, in part:

> The (ABA Code of Professional Ethics) does not prohibit the simultaneous practice of accounting and law by a member licensed in both professions. Either a single or separate letterhead may be used, provided the information with respect to the CPA designation complies with (American Institute of CPAs) Rule (of Conduct) 502. If a single letterhead is used, the accounting or legal capacity in which the member is functioning should be delineated either on the letterhead or in the body of the letter.[12]

One final observation that is not a direct condition on the use of the CPA designation on a legal letterhead, but bears con-

sideration: An attorney who performs a dual function must be alert to exercise appropriate measures in protecting the attorney-client privilege and the ability to invoke the attorney work-product doctrine to avoid disclosure of certain communications.13 A letter drawn on attorney-CPA letterhead could strengthen an adverse party's claim that these protections are not available because the attorney-CPA was not acting in the role of attorney, but rather as the client's CPA.

SUMMARY

Under the current Utah Rules of Professional Conduct, a licensed attorney who is also a licensed, practicing CPA may include the designation of CPA on business cards, letterheads and directory listings.

[1] This Advisory Opinion is issued pursuant to a specific request regarding CPA-attorneys. The principles and conclusions discussed in this opinion are applicable as well to other regulated or licensed professions, the concurrent practice of which is relevant to the attorney's law practice.
[2] So many, in fact, that they have a national organization: American Association of Attorney-Certified Public Accountants (AAA-CPA).
[3] 433 U.S. 350 (1977).
[4] *See, e.g., Shapero v. Kentucky Bar Assoc.*, 486 U.S. 466 (1988).
[5] Various state bar associations, as well as the American Bar Association, previously issued advisory opinions finding the practice to be improper—often on the basis of the proscription of "self laudation." *See, e.g.*, ABA Informal Ethics Op. C-445 (June 1961), ABA Formal Ethics Op. 321 (March 1, 1969), ABA Formal Ethics Op. 328 (June 1972).
[6] Although Rule 7.5 is entitled "Firm Names and Letterheads," it does not address the second-profession issue.
[7] Utah Rules of Professional Conduct (for Lawyers) Rule 7.1 (1988).
[8] *Id.* 7.2 comment.
[9] Utah Code Ann §58-26-2(5) (Supp. 1990).
[10] N.J. Sup. Ct. Advisory Com. on Prof. Ethics, Op. 589 (July 24, 1986).
[11] Miss. Ethics Op. 139 (December 11, 1987). This opinion was also rendered under Rule 7.
[12] AAA-CPA Bd. of Dir. Resolution (June 30, 1989).
[13] A related point should also be noted: The attorney who practices law in connection with another profession will probably be held to the ethical standards of an attorney in both disciplines. See *Utah Ethics Advisory Opinion Comm., Op. 17 (November 28, 1973); Id.* Op. 5 (January 13, 1972).

AMENDED
NOTICE TO BAR MEMBERS

Third, Fourth and Fifth Divisions

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for three members from the Third Division, two three-year terms and one one-year term to fill the unexpired term of president Greenwood, one member from the Fourth Division for a three-year term and one member from the Fifth Division for a three- year term.

Applicants must be nominated by written petition of 10 or more members of the State Bar in good standing and residing in their respective Division. Nominating petitions maybe obtained from the Bar office on or after March 15 and completed petitions must be received no later than May 4. Ballots will be mailed on or about May 17 with balloting to be completed and ballots received by the Bar Office by 5:00 p.m. on June 19.

If you have any questions concerning this procedure, please contact John C. Baldwin at the Bar Office, 531-9077.

Supreme Court Seeks Attorneys

to Serve on Advisory Committees on Rules of Procedure and Evidence

Article VIII of the Utah Constitution gives the Supreme Court the authority to adopt rules of procedure and evidence for the courts of this State. To assist in its rule-making responsibilities, the Court has established the following advisory committees: Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Juvenile Procedure, Rules of Appellate Procedure and Rules of Evidence. The committees meet monthly to study, draft and recommend modifications to the rules. Regular attendance at committee meetings is critical to the work of the committees.

The Court is seeking qualified applicants to serve four-year terms on the above committees. Interested attorneys should submit a letter indicating the committee(s) they would like to serve on and outlining their qualifications to: Supreme Court Advisory Committee, c/o Administrative Office of the Courts, 230 S. 500 E., #300, Salt Lake City, UT 84102. Letters of interest must be received no later than May 15, 1991. Questions regarding committee service may be directed to Colin R. Winchester at (801) 533-6371.

Law Day Events to Culminate in Rotunda Celebration

The culmination of 1991's Law Day events will take place on Law Day, Wednesday, May 1, 1991, at 12:00 noon in the Capitol Rotunda. Everyone is invited to attend. The program will include a visit from a famous historical figure who will offer insights into the constitutional issues of his or her day. The winners of the Law Day competitions will also be announced. The following awards, among others, will be presented: the Scott M. Matheson Award, the mock Trial Competition Awards, the Law Day Essay Contest Award, the Liberty Bell Award and the Mentor and Judge for a Day Program Participation Awards. Refreshments will be served. The Law Day Awards presentation and historical dramatization are sponsored by the Utah State Bar Committee on Law Related Education and Law Day and by the Utah Attorney General's Office.

1991 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1991 Annual Meeting 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 nomination must be submitted in writing to Kelli Suitter, Bar Programs Administrator, 645 S. 200 E., Salt Lake City, UT 84111, no later than **Monday, April 15, 1991**. The award categories include:

1. Judge of the Year
2. Distinguished Lawyer of the Year
3. Distinguished Young Lawyer of the Year
4. Distinguished Section/Committee Award
5. Distinguished Non-Lawyer for Service to the Profession Award
6. Distinguished Pro Bono Lawyer/Law Firm of the Year

Sports Lawyers Association

Sports Lawyers in Utah, the Sports Lawyers Association located at 2017 Lathrop Avenue, Racine, WI 53405, (414) 632-4040, would like to send you information about our educational organization specifically for those with a common goal of the understanding, advancement and ethical practice of sports law.

CASE SUMMARIES

By Clark R. Nielsen

FINAL JUDGMENT, RULE 54(b); SERVICE OF PROCESS

In an action by plaintiff spouse to enforce portions of her divorce decree against defendant husband and his parents, a judgment against husband only is not final, absent a Rule 54(b) certification, until claims against the parents are also finally adjudicated. Considering husband's contention that service of summons was defective, the Utah Supreme Court also held that because a sheriff's return of service of process is presumptively correct and prima facie evidence of the facts stated therein, a defendant bears the burden of proof that service was improper. Because the defendant here failed to present evidence to support his claim that his place of abode differed from that of his parents, service of summons at his parents' home was valid.

Reed v. Reed, 154 Utah Adv. Rep. 6 (February 14, 1991) (C.J. Hall).

APPEAL BEFORE JUDGMENT

Similarly, under Federal Rules of Appellate Procedure, a notice of appeal filed after a "non-final decision" is an effective notice of appeal from the subsequent final judgment. According to Justice Marshall, a notice of appeal filed after announcement that the district court intended to grant summary judgment but before the entry of judgment was a timely, effective appeal from the final summary judgment. (Note that Fed. Rule 4 (a)(2) operates similarly to Utah R. App. P. 4(a)(2).)

Firstier Mortgage Co. v. Investors Mortgage Insurance Co., U.S. Supreme Ct., 59 U.S.L.W. 4070 (January 15, 1991) (J. Marshall).

HOLOGRAPHIC WILL

Although Utah's Uniform Probate Code minimizes the formalities of testamentary disposition, those requirements which the law does impose may not be minimized or ignored. The Utah Supreme Court affirmed the Court of Appeals conclusion that the proponent of an alleged holographic will failed to prove the decedent wrote his name with the intent to affix his signature to the instrument. Although three note cards in the decedent's handwriting contained his name and material provisions of a holographic will, the cards did not contain decedent's "signature . . . with the intent to authenticate" the writing as a will under Utah Code Ann. §68-3-12 (2) (r) (Supp. 1990). The instrument lacked sufficient indicia of completeness to justify an inference that decedent's name was intended to be his "signature." When evidence is not in dispute, resulting issues are questions of law which the appellate court reviews for correctness, according no deference to the lower court's ruling.

In Re Estate of Erickson, 154 Utah Adv. Rep. 9 (February 21, 1991) (J. Zimmerman).

STOP, SEARCH AND SEIZURE

The Utah Supreme Court reversed a court of appeals decision in *State v. Johnson*, 771 P.2d 326 (Utah Ct. App. 1989), holding that an automobile search exceeded the reasonable scope of the stop. Defendant was stopped for faulty brake lights. After extensive efforts and time spent, the officer learned that defendant, a passenger, was wanted on outstanding warrants. She was arrested, but not until after the officer had detained her and the vehicle longer than reasonably necessary to accomplish the purpose of the stop for faulty brakes. Later discovered drugs should have been suppressed by the trial court.

State v. Johnson, 153 Utah Adv. Rep. 8 (February 7, 1991) (J. Howe); *Compare State v. Steward*, 153 Utah Adv. 24 (Utah Ct. App., February 6, 1991) (J. Russon).

NEGLIGENCE— SCOPE OF EMPLOYMENT; INHERENT RISKS OF SKIING STATUTE, OPERATOR'S DUTY TO SKIERS

The question of whether an employee is acting within the scope of his employment when causing injury to another is generally a factual question for a jury when reasonable minds might differ as to reaching a determination. When evidence as to the employee's activities is so clearly within or without the scope of employment that reasonable minds cannot differ, the issue may be resolved as a matter of law. *See also Brinker v. S.L.Co.*, 771 P.2d 1053, 1056 (Utah 1989).

Whether an employee's conduct is within the scope of his employment depends upon whether: (a) the conduct is of a general kind the employee is employed to perform as opposed to a personal endeavor; (b) the conduct occurred within the ordinary hours and place of employment; and (c) the conduct is motivated in part by the purpose of serving the employer's interests. Applying these criteria to plaintiff's injury from a ski resort employee, the employee's actions on the ski slopes were not, as a matter of law, outside the scope of employment. The evidence was sufficient and conflicting to create a factual issue to each of the three questions and require submission to a jury.

The presence of evidence that the employee's skiing served "dual purposes" of a personal activity as well as serving his employers does not preclude a finding that the conduct is within the scope of employment. However, if the primary motivation is personal, an incidental or adjunctive benefit to the employer should not be deemed to be in the scope of employment. Because the jury could conclude that the employee continued to act for the resort's benefit and his deviation was insubstantial, the summary judgment was reversed and remanded for a jury decision. The record contained sufficient evidence for a jury to conclude that the employee, at the time of the accident causing plaintiff's injuries, acted within the scope of his employment. The court further declined to adopt respondeat superior approaches that focused upon the employer's foreseeability of the employee's conduct or upon a worker compensation test of acting while on the employer's premises.

The Utah court also held that Utah's Inherent Risk of Skiing Statute, Utah Code Ann. §§78-27-51 to -54 (Supp. 1986), does not insulate the ski area operator from all injuries caused by employee negligence. The statute's limitation on liability applies only to the extent those dangers incurred, under the facts of each case, are

"integral aspects" of skiing. The statute is designed to define the duty which operators owe to their patrons and "clarify" the application of "assumption of risk" principles to both skiers and ski area operators. For instance, comparative negligence analysis does not apply to operators.

Ski area operators have no duty to protect skiers from the inherent risks of skiing. The court attempts to generally categorize these inherent risks as (a) natural characteristics, e.g. mogul runs, powder, steep grades, fast surfaces; and (2) temporary hazards, such as weather and snow conditions and skiers who are reckless. The resort is not without duty to exercise ordinary care to protect skiers from the unnecessary hazards created by those who ski recklessly.

Clover v. Snowbird Ski Resort, No. 890070, 155 Utah Adv. Rep. (Utah, March 1, 1991) (J. Hall).

PUNITIVE DAMAGES

A punitive damage award of four times the amount of compensatory damages was affirmed by the U.S. Supreme Court. The insured, Haslip, sued her health insurer for fraud when she discovered its agent had pocketed her premiums and the insurer had terminated her coverage. The insurer's liability for its agent's acts did not violate due process and is factually supported by the record. More significantly, the assessment of punitive damages did not violate due process because every state has approved the common-law rules that existed long before the Fourteenth Amendment. However, unlimited jury or judicial discretion may result in extreme, unreasonable results unacceptable under the Fourteenth Amendment. A punitive award should be supported by objective criteria and obtained only after procedural safeguards:

1. The trial court's instructions placed reasonable constraints on the exercise of the jury's discretion.
2. The court held a post-verdict hearing to review the propriety and reasonableness of the punitive award.
3. The award was subject to appellate review.

Pacific Mutual Life Insur. Co. v. Haslip,—U.S.—,—S. Ct.—, 1991 W.L. 24587 (March 4, 1991) (Blackmum, J.; Scalia, J. and Kennedy, J. filed concurring opinions; O'Connor, J. filed a dissenting opinion.)

A Note of Thanks to Our Advertisers

The *Bar Journal* Editorial Board shares the membership's concern over the Bar's financial difficulties. A significant portion of the cost of printing the *Bar Journal* is underwritten by the revenues from our advertisers. We again extend them our sincere thanks for their patronage and urge our membership to continue using the services of those advertising in these pages.

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Utah's Trial Court Organization and Jurisdiction Act

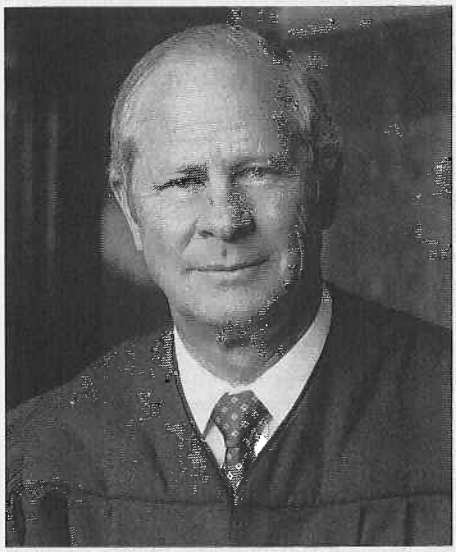
By: Hon. Gordon R. Hall, Chief Justice, Utah Supreme Court, Presiding Officer, Utah Judicial Council
Hon. John L. Valentine, Utah House of Representatives, Attorney at Law

INTRODUCTION

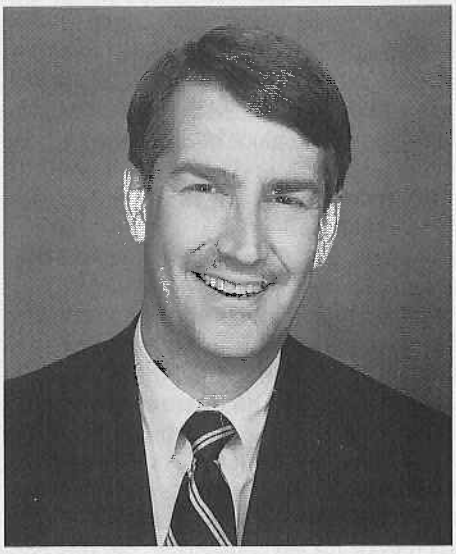
The Legislature's interest and participation in the issues facing the courts began in 1971 with the enactment of legislation establishing the Judicial Council as the governing authority for the judiciary. That interest and participation by the Legislature has continued through creation of the circuit court in 1978, amendment of the Judicial Article of the Utah Constitution in 1984, creation of the Court of Appeals in 1986, establishment of state responsibility for the district court in 1988, and numerous other pieces of legislation affecting the judiciary.

In the final decade of the twentieth century, the Legislature, the Governor, and the courts will continue to work closely together to ensure a strong, independent judiciary. This was demonstrated in 1989 and in 1990 when the Legislature directed the judiciary to evaluate its organizational and jurisdictional structure and make recommendations to the Legislature regarding the best means of allocating jurisdiction and organizing to meet future needs of the state.

As a result of this directive, the Judicial Council organized the effort to evaluate the entire judicial branch of government including some of its most basic assumptions. This effort took over two years and included the participation of every judge and administrator from every level of court. The Interim Judiciary Committee of the Legislature received and approved the report of the Judicial Council in October 1990. Between the committee hearing and the enactment of the legislation, representatives of the judiciary met with representatives of the bar, municipal and county government, prosecutors, law enforcement, and others to explain the provisions and impact of the bill and to make amendments to adequately address the issues raised by these groups. The legislation passed with overwhelming support in both houses of the Legislature.



CHIEF JUSTICE GORDON R. HALL was appointed to the Supreme Court in January 1977 by Gov. Scott M. Matheson. He was a judge in the Third District Court from 1969 until his appointment to the Supreme Court. Prior to this appointment to the bench, Chief Justice Hall was a town attorney for Wendover and Stockton, a city attorney for Grantsville and a Tooele County Attorney. He served as an attorney-advisor for the Tooele Army Depot from 1953 to 1958. Throughout his career he has been involved in the private practice of law in Tooele. He is the chairman of the Utah Judicial Council, past president of the Conference of Chief Justices and former chairman of the board of directors of the National Center for State Courts. He graduated from the University of Utah College of Law in 1951. He received the Judicial Council's Distinguished Jurist Award in 1988.



REPRESENTATIVE JOHN L. VALENTINE , 40, was born in California, and received his B.S. from Brigham Young University and his Juris Doctor Degree from the BYU Law School. He was first elected to the House in 1988, and in the '91-92 Legislature is the Vice-chair of the Revenue and Taxation and the Executive Appropriations Committees. He also serves on the Judiciary and Health Appropriations Committees. Rep. practices law in Provo, is a past commander of the Utah County Sheriff Search and Rescue, and serves on the Executive Board of the Utah National Parks Council of the Boys Scouts of America.

PRINCIPAL GOALS OF HB 436

The Legislature identified four principal concerns for the judiciary to address with the end of providing quality and timely justice at the best cost.

Eliminate proliferation of small courthouses.

Under current state law, the location of a circuit court defines the jurisdiction of the court. The jurisdiction of a primary circuit court is exclusive within the boundaries of the municipality in which it is located. Within that jurisdiction the judiciary is responsible for the courthouse. Generally, the circuit courthouses were built for the then city courts, are owned by the cities, and leased to the state. Frequently, municipal government, needing space for its own growth, will refuse to renew a lease upon its expiration. The judiciary and ultimately the Legislature and

the public are then faced with the cost of building a new courthouse, often for a single or two-judge court.

Such small courts are expensive to build and operate since much of the overhead of construction exists regardless of the size of the building. Small courts are counterproductive to the goal of public access to justice. Sometimes services cannot be provided or are significantly delayed when the resident judge or one of just two or three clerks are unavailable due to court hearings, vacation, illness, or other court related obligations.

HB 436 eliminates the concept of primary and secondary locations of the district and circuit courts. The location of the courts will be based on public need and access and cost efficiency. HB 436 permits any state operated court facility to be used for the conduct of any judicial business.

Reduce need for 26 additional judges.

The legislative fiscal analyst projects the need for 26 additional trial court judges by 1996 at a cost of $5.5 million. The basis for the growth in judgeships is in part due to the growth in the caseload of the courts. Increasing the number of judges because of an increase in workload is proper, but caseloads do not grow regularly at each court level. The same growth in the teen and pre-teen age groups affecting public education presses upon the resources of the juvenile court. As this population ages into the young adult years, criminal misdemeanors and felonies increase. As this population reaches ages 30 to 45, one can anticipate increased civil and domestic filings. Also, shifts in public policy issues lead to increased public debate and frequently new legislation and litigation.

The result is that the need for judges and other court resources in one court level, may shift to another court level in five to ten years. This shifting need may leave an excess capacity in one court and a substantial need for resources in another court, very often within the same geographic region. The current rigid organizational and jurisdictional separation interferes with the ability to shift resources.

The solution of HB 436 is to combine the district and circuit courts in districts 5, 6, 7, and 8 on January 1, 1992. The circuit judges of these districts will become district judges, eliminating all single-judge districts. The district court in these districts will have jurisdiction over any matter that is normally within the jurisdiction of the circuit court. Civil filing fees and misdemeanor fine distribution for those matters within the jurisdiction of the circuit court will, in these district courts, be the same as in circuit court.

The circuit and district courts of districts 1, 2, 3, and 4 will be combined between January 1, 1996 and July 1, 1998. In the interim, the Judicial Council will evaluate the need for judges and commissioners in these districts. As judicial vacancies occur, the Council will make a recommendation to the Governor and the Legislature to eliminate a judgeship, convert it to a commissioner position, or move the judgeship to another court level in that or another district.

In conjunction with consolidating circuit into district courts, HB 436 expands the use of commissioners similar to federal magistrates. Under the new legislation commissioners may perform the duties of a magistrate in preliminary matters in misdemeanor and felony prosecutions. In non- felony prosecutions, commissioners may accept pleas and, with the consent of the defendant, preside at a jury or non-jury trial. In non-felony prosecutions, the commissioner may enter the final judgment of the court which is appealable to the Court of Appeals.

This model of a unified adult trial court of general jurisdiction is based on the structure of the federal trial court system and the American Bar Association Standards Relating to Court Organization. It provides the flexibility necessary to meet the changing needs of the judiciary and reduces the 1996 need for additional trial court judges to less than eight.

Reduce concurrent jurisdiction; Eliminate influence of revenue on public policy decisions; Reduce proliferation of local ordinances.

Under current law, the circuit court and the justice court share jurisdiction over all non-felony offenses except class A misdemeanors, which are exclusively within the jurisdiction of the circuit court. The revenue distribution in the county justice court is entirely to the county. The revenue distribution in municipal justice court is entirely to the municipality for violation of local ordinances and one-half to the county and one-half to the city for violation of state law. The revenue distribution in circuit court is entirely to the state in class A misdemeanors. The revenue distribution in circuit court for other state misdemeanor offenses is entirely to the state if the court imposes a fine, but if the defendant forfeits bail, the revenue is distributed one-half to the state and one-half to the county. The revenue distribution in circuit court for violations of local ordinances is entirely to the state if the court imposes a fine, but if the defendant forfeits bail, the revenue is distributed one-half to the state and one-half to the city.

Overlapping jurisdiction of the circuit and justice courts and the current revenue distribution model directly affect critical public policy issues such as: whether to prosecute under state law or local ordinance; whether to charge an offense as a class A or class B misdemeanor; whether to establish a local justice court; and whether to prosecute an offense to trial. All parties were concerned that revenue might inappropriately influence decisions regarding those public policy issues.

The solution of HB 436 is simple. Under this legislation, fine revenue from misdemeanor, infraction, and ordinance violations will be distributed 50% to the general fund of the government supporting the court and 50% to the general fund of the government supporting the prosecution. This distribution occurs regardless of: whether the offense is prosecuted under state statute or local ordinance; the level at which the offense is prosecuted; the court in which the offense is prosecuted; or the method of disposition of the offense.

The problems created by concurrent jurisdiction are reduced but not entirely solved by HB 436. The circuit court continues to have exclusive jurisdiction over class A misdemeanors. The justice courts have exclusive jurisdiction over class C misdemeanors, infractions, and violations of ordinances. The circuit court and the justice court continue to share jurisdiction over class B misdemeanors. The scope of concurrent jurisdiction is further reduced by SB 151 which reclassifies all moving class B traffic offenses to class C and all non-moving offenses to infractions.

Two other features of HB 436 assist in ameliorating the effects of concurrent jurisdiction and separating revenue from public policy issues. First, city attorneys are given authority to prosecute misdemeanors occurring within the boundaries of their cities in the name of the state. Second, justice courts no longer have exclusive territorial jurisdiction over the subject matter jurisdiction shared with the circuit court.

These features of the bill will enable city and county attorneys to exercise discretion, based on the severity of the sentence and the likelihood of appeal, to prosecute violations of state law in the state courts even in those municipalities and counties where a justice court exists. Because state court judgments are appealed to either the Supreme Court or the Court

of Appeals for a review on the record while judgments of the justice court are given a trial de novo in a court of record, the waste of prosecutorial, defense, and court resources is avoided.

It is anticipated that these provisions of HB 436 will reduce the incentive of local government to enact and prosecute violations of local ordinances that merely parallel a state statute. Prior to HB 436, local government needed such ordinances to ensure a share of the fine revenue. The proliferation of such ordinances resulted in severe problems in criminal identification and the maintenance of the court's automated uniform bail schedule. With the progress of HB 436, local government should be able to limit the need for ordinances to those local public policy issues not governed by state law.

As stated, HB 436 does not entirely solve the difficult issue of concurrent jurisdiction. It does, however, establish a firm foundation on which to address this issue in the future.

Eliminate fees on fines.

In 1986, several then existing special fees assessed in addition to criminal fines were consolidated into a single 25% surcharge. Since then, six new special fees were established in addition to the surcharge.

These fees were established to fund special programs all of which serve a worthwhile purpose. However, the development of special fees is contrary to the implicit intent of the Legislature in consolidating all special fees 1986. The numerous fees cause confusion at sentencing for judge and defendant. Court clerks spend an inordinate amount of time tracking, collecting and distributing the fees. Agencies funded by the fees lobby both Legislature and court for priority in disbursement and for increases in fee amounts.

HB 436 again consolidates all existing fees into a single surcharge. This time the intent of the Legislature to avoid future fees is made explicit. The surcharge amount is 85% of the fine for felonies and class A and B misdemeanors. The surcharge amount is 35% on all other categories of offenses except non-moving traffic, which carries no surcharge. For many non-traffic misdemeanors, the amount paid under HB 436 will be nearly identical to the amount formerly paid. Common traffic amounts will increase between two and three dollars. Revenue generated by the surcharge will be distributed in a manner the goal of which is to hold financially harmless the agencies and programs formerly funded by the special fees.

OTHER PROVISIONS OF HB 436

Civil and small claims jurisdiction.

Effective January 1, 1992, HB 436 increases the civil jurisdiction of the circuit court to $20,000 and the amount recoverable in a small claims proceeding to $2,000.

Electronic recording of court hearings.

The bill allows the Judicial Council to establish by rule the means of maintaining the record of court proceedings either by the use of shorthand reporters or by electronic recording device.

Judicial retirement incentive.

HB 436 provides an incentive to judges who retire between October 1 and December 31, 1992. The purpose of the incentive is to collect during a relatively short period of time all of those judges who would otherwise retire over a more extended period of time. This will facilitate the task of the Judicial Council in evaluating the need for and recommending changes to judicial vacancies. The collection of retirements will also aid in the replacement process because the nominating commissions and the Governor will be able to evaluate larger groups of applicants.

Justice courts.

Currently, justice courts hear about 70% of all minor offenses including traffic, class C misdemeanors, and infractions. The bill confers exclusive jurisdiction to justice courts over violation of ordinances, infractions, and class C misdemeanors. The justice courts continue to have concurrent subject matter jurisdiction over class B misdemeanors, but they no longer have exclusive territorial jurisdiction.

The justice courts continue to have civil jurisdiction over small claims matters. The justice court must now be certified as competent to hear small claims cases, separate from the certification process for criminal cases.

Not later than July 1, 1991 the cities that are primary locations of municipal departments of the circuit court may opt to assume local responsibility for the jurisdiction of the justice courts or they may continue to use the circuit court for their criminal prosecutions. The goal of the legislation is that minor offenses and traffic cases will be prosecuted in the justice courts while more serious misdemeanors involving a greater likelihood of imprisonment or appeal will be prosecuted in the circuit court.

These cities may exercise their option by: establishing a justice court; using the county justice court; or establishing a justice court by interlocal agreement with the county or another city. The goal is to use interlocal agreements and cooperation among the cities and counties to avoid any proliferation of justice courts.

IMPLEMENTATION

As difficult as the process of study, debate, and drafting of HB 436 was, the process of implementation of its provisions will be even more difficult. For this reason, the Judicial Council has directed the establishment of both a statewide and eight districtwide implementation committees or teams. The teams will be comprised of judges, administrators and Bar representatives. The task of these teams will be to identify the issues raised by this challenging legislation and develop the rules and procedures for giving it effect.

CONCLUSION

In 1906 Dean Roscoe Pound stated that the primary causes of public dissatisfaction with the administration of justice were: "First, the multiplicity of courts; second, the preserving of concurrent jurisdiction; and third, the inherent waste of judicial power." HB 436 addresses these unenviable characteristics of the courts. It moves the courts to a streamlined model based on national standards. It allows the courts to more easily react to shifting caseloads and changing social problems. It provides the foundation from which to better address the issue of concurrent jurisdiction in the future. It increases flexibility by better using our jurists in conjunction with commissioners. It allows the courts to make the best and most rational use of expensive court facilities.

HB 436 does not answer all of the issues identified in the legislatively mandated study of the judiciary. In addition, the implementation itself will raise difficult issues not yet identified. The judiciary needs all participants in the court process to work through these issues and develop appropriate solutions for further legislative action.

The challenge presented by HB 436 will be an exciting time for the courts. We ask you, on behalf of the Legislature and the judiciary, to participate in the improvement of the administration of justice in Utah.

Law Week 1991: An Opportunity For Service

By James C. Hyde
Treasurer of the Young Lawyers Section

It's a familiar scene: your friends and relatives waiting for the perfect opportunity to needle you with their newest lawyer joke. They recount the anecdote with enthusiasm, hoping for your perturbed reaction. When I face this situation, most of my friends and relatives are disappointed when, instead of a reaction, I laugh and dilute their assault with my own favorite joke about the legal profession. Then I tell an even more trite story about their particular occupation. After our exchange of stories, I usually explain that every profession has, as noted columnist Jack Anderson said, "its prostitutes and martyrs," and that the legal profession, like their own, is no different.

Unfortunately, I think the old adage "truth in jest" applies. The public, as a whole, has a negative opinion about lawyers and the legal system. Our friends and relatives are simply projecting that negative opinion by sharing their infamous lawyer jokes with us. One way we can partially dispel that negative opinion is to give our time, knowledge and experience through public service and education programs.

Law Week 1991 and the activities associated with it present the perfect opportunity for you, as a young lawyer, and for all lawyers in the state to fulfill our most important duty to provide service and to educate the public about the legal system.

May 1 of every year is dedicated by presidential proclamation as National Law Day. It is a day for the nation to reflect upon the importance and significance of our country's legal system and the legal freedoms we enjoy. The theme for Law Week 1991 is "Freedom Has a Name: The Bill or Rights." In honor of the bicentennial of the Bill of Rights, this year's Law Week theme centers around the Bill of Rights and the privileges we enjoy because of it.

For many years, the Utah State Bar has expanded the Law Day celebration to include activities that occur throughout the month of April. Again this year, the Young Lawyers Section will sponsor and conduct Law Day Information Fairs throughout the state. On April 26 and 27, the state's young lawyers will set up information booths in Logan, Ogden, Salt Lake, Provo and St. George. At these booths, young lawyers will be available to discuss legal questions with people and will hand out a variety of legal-topic pamphlets.

In addition to the Law Day Fairs, the Law Related Education Committee of the Bar will conduct several other programs in celebration of Law Week. First, the committee will sponsor a Mock Trial Program in 70 of Utah's high schools and junior high schools. With the aid of a teacher-advisor and a legal advisor, teams from each school will prepare and deliver oral arguments on the First Amendment issue of a school's right to censor a school newspaper. Second, the committee will conduct a Mentor Program in which 19 law firms are matched with 19 Utah high schools. Representatives of the law firms will visit the high schools and give informative presentations about the legal system. Also, groups from each high school will visit the law firms for a day to see what the practice of law is really like. Third, the committee will conduct a Judge for a Day Program. A selected high school student will have the opportunity to spend a working day with a state circuit or district court judge and have firsthand experience with the judicial process. Finally, the committee will sponsor the Ninth Annual Bob Miller Memorial Law Day Run.

We need your help to make these programs successful. If you want to participate in the Law Day Information Fairs, you should contact Mark Bettilyon at 532-1234. If you want to participate in any of the activities sponsored by the Law Related Education Committee, contact Bryan Larson at 532-6200 or Kim Luhn at 532-6996. By participating, you will enhance the public's knowledge of our legal rights and of the virtues of our legal system. You will also be fulfilling in some measure your obligations to provide service to the public. Who knows, you may even hear a good lawyer joke you can add to your repertoire.

Law Day

The Young Lawyers Section will once again sponsor its annual Law Day Fair on May 3, 1991. We currently plan to sponsor Law Day Fairs in five cities: Logan, Ogden, Provo, Salt Lake and St. George. If you are interested in volunteering, please contact the attorney in your city chairing the Law Day activities. If you are interested in expanding Law Day activities to a community not listed, contact Mark Bettilyon at 532-1234.

CITY	CHAIR	TELEPHONE
Logan	*Greg N. Skabelund*	752-9437
Ogden	*Ted K. Godfrey*	394-5526
Provo	*Brent Bartholomew*	374-6766
SLC	*Mark M. Bettilyon*	532-1234
St. George	*Michael R. Shaw*	628-1627

Law Related Education

FOUNDATION FUNDS AT WORK

Law-related education has continued to grow and prosper in Utah schools and build additional partnerships with the legal community over the past years. This is due largely to the continued support of IOLTA funds and the Utah Bar Foundation.

Office for law-related education, located in the Law and Justice Center, provides programs and services to all of Utah's 40 school districts with support from the Utah State Office of Education. Programs offered by the project include: MENTOR/Mid-MENTOR—a partnership between law firms and high school classes; Conflict Manager—an alternative dispute resolution program for elementary and middle school students; Teaching Legal Concepts in Public Schools—a semester course and seminar cosponsored by the University College of Law with area high schools; Teaching About the Bill of Rights through Language Arts—a program co-funded by the U.S. Commission on the Bicentennial of the U.S. Constitution which provides children's literature to participating schools and teacher training on the Bill of Rights; the annual Mock Trial Competition for junior and senior high students which is also funded in part by the State Bar Committee on Law-Related Education and Law Day and the Albert and Elaine Borchard Foundation; Court Tours of Circuit Court and a variety of teacher training seminars and curriculum publications.

Programs and services in law-related education continue to grow despite curriculum squeezes and cutbacks in funding for education. The 1991 MENTOR/Mid-MENTOR involves 19 partnerships between Wasatch Front middle and senior high schools and law firms. Over 70 elementary schools have received training in conflict management. The program involves schools in Tooele, St. George, Price, Vernal, and Moab as well as Salt

Virginia Lee, Esq., speaker on Mock Trials at teacher training seminar on Bill of Rights.

Barry Gomberg, Esq., First Amendment address to educators.

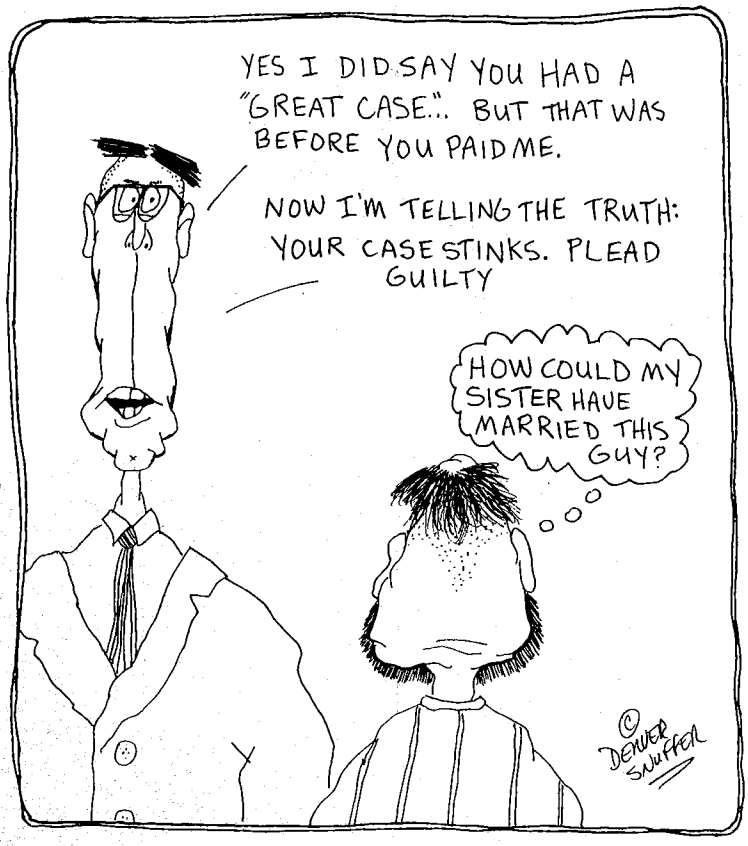
Utah Mock Trial Competition.

Lake County. Twenty-two schools throughout the state have received training and materials on the Constitution and Bill of Rights. Seventy-two schools participated in the 1990 Mock Trial Competition. All of these numbers have increased significantly from previous years.

Penrod Keith, Esq., Mentor Coordinator, LeBoeuf, Lamb, Leiby and MacRae High School/Law Firm Visit.

Law-Related Education Project Inc. has recently been granted 501C-3 status as a non-profit and charitable organization. The advisory board of Law-Related Education Project Inc. is chaired by Elizabeth Whitsett of Van Cott, Bagley, Cornwall, and McCarthy. Other members of the advisory board include: Barry Gomberg, Esq., Bonnie Mitchell, David Grow, Norma Matheson, Michael Keller, Esq., and Nancy Mathews.

During the coming year, LRE Inc. will work to secure more permanent funding for its expanding programs and work to secure greater partnerships with the State Office of Education and other public and private organizations. The Project wishes to thank the Bar Foundation for its continued support and financial assistance of citizenship education in the state of Utah.



Notice of Acceptance of Grant Applications

The Utah Bar Foundation is now accepting applications for grants. Grants are made for the following purposes:

1. To promote legal education and increase knowledge and awareness of the law in the community.
2. To assist in providing legal services to the disadvantaged.
3. To improve the administration of justice.
4. To serve other worthwhile law-related public purposes.

For grant application forms or additional information, contact Zoe Brown at 531-9077. All grant applications must be received by the Foundation before 5:00 p.m. May 31, 1991, at the Foundation's office at 645 S. 200 E., Salt Lake City, Utah 84111.

Notice of Election of Trustees

Notice is hereby given in accordance with the bylaws of the Utah Bar Foundation that an election of two trustees to the Board of Trustees of the Foundation will be held at the annual meeting of the Foundation to be held in conjunction with the 1991 Annual Meeting of the Utah State Bar in Sun Valley, Idaho. The two trustee positions which are up for election are David S. Kunz and Ellen M. Maycock. The term of the office is three years.

Nomination may be made by the general membership of the Foundation by submission of a written nominating petition identifying the nominee, who must be an attorney duly licensed to practice in Utah, and signed by not less than 25 attorneys who are also duly licensed to practice law in Utah. Petitions should be mailed to the Utah Bar Foundation, 645 S. 200 E., Salt Lake City, UT 84111, so as to be received on or before April 30, 1991. Copies of the form of nominating petition may be obtained by contacting Zoe Brown at the above address, (531-9077).

The election will be conducted by secret ballot which will be mailed to all members of the Foundation on or before May 28, 1991.

CLE CALENDAR

NOTE

The day is fast approaching when each Utah attorney will need to have their Mandatory CLE requirements met. As of April 15 (tax day), you will have 260 days left. As a reminder, the MCLE requirements are: 24 HOURS of credit, plus THREE hours in ETHICS over a two-year period. Questions regarding compliance should be directed to Sydnie Kuhre, Mandatory CLE Administrator, at 531-9077.

Also, the Bar and the CLE department would appreciate any comments you have on our CLE offerings. We want to make sure that we are doing all we can to help attorneys meet their requirements. So please feel free to submit any comments on present programs or programs you think we should add. Send these to Tobin Brown, CLE Department, 645 S. 200 E., Salt Lake City, UT 84111.

WHAT ARE YOUR CLIENT'S EMPLOYMENT PRACTICES?— A COMPLIANCE GUIDE SEMINAR

A live via satellite seminar. Federal and state labor, employment and workplace laws are constantly changing, and compliance with one area of law will not necessarily protect the employer from violation of another. Using the vehicle of an internal employment compliance audit, this program examines some of the problems and discusses how they may be avoided or minimized regardless of the size of the employer's work force or type of business.

CLE Credit: 6.5 hours
Date: April 9, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

THE CONTAMINATED PROPERTY TRANSACTION

A live via satellite seminar. This ABA seminar will alert the practitioner to the special legal problems which arise in the contaminated property transaction. A faculty of national and international experts will explore the typical problems that are encountered and will offer creative options.

CLE Credit: 4 hours
Date: April 11, 1991
Place: Utah Law and Justice Center
Fee: $140 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

ETHICAL CONSIDERATIONS IN INTERNATIONAL BUSINESS TRANSACTIONS

This two-hour program is being presented by the International Law Section of the Bar. The seminar will provide an overview of statutory and regulatory issues on ethics in international business transactions, perspectives from corporate counsel, and analysis of ethical perspectives from other jurisdictions likely to be encountered in international transactions. The program will conclude with a question and answer period.

CLE Credit: 2 hours in ETHICS
Date: April 12, 1991
Place: Utah Law and Justice Center
Fee: $30
Time: 12:00 to 2:00 p.m.

SIGNIFICANT DEVELOPMENTS IN FEDERAL PRACTICE AND PROCEDURE: 1990- 91 LEGISLATIVE AND RULE-MAKING CHANGES

A live via satellite seminar. This timely program covers the significant legislative and rule-making changes in the past few months that will have a marked impact on the handling of federal civil cases. Specifically, the Judicial Improvements Act of 1990 will be reviewed.

CLE Credit: 4 hours
Date: April 17, 1991
Place: Utah Law and Justice Center
Fee: $140 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

BANKRUPTCY SEMINAR

This month's bankruptcy seminar features Herschel Saperstein. Mr. Saperstein, a shareholder in the law firm of Watkiss & Saperstein, will be presenting on "Bankruptcy Litigation: Issues and Some Personal Observations." Watch for the postcard mailing on this program or call the Bar for more information.

CLE Credit: 2 hours
Date: April 18, 1991
Place: Utah Law and Justice Center
Fee: $30 (includes lunch)
Time: 12:00 to 2:00 p.m.

INDIAN, STATE AND LOCAL TAXATION OF THE MINERAL INDUSTRY IN UTAH

This seminar will examine state and local and Indian mineral taxation issues. Included in the discussions will be an overview of Utah property taxes and an update on the "AMAX" issue. Also, representatives from regional tribes will present on issues encountered within their jurisdictions. Strategies for limiting tax liability on these issues will be presented, too. The keynote luncheon speaker is Idaho Attorney General Larry EchoHawk.

CLE Credit: 8 hours
Date: April 19, 1991
Place: Doubletree Hotel, Salt Lake
Fee: $130
Time: 8:00 a.m. to 5:00 p.m.

TRANSFER OF WEALTH CONSIDERATIONS: IS ESTATE PLANNING STILL POSSIBLE?

A live via satellite seminar. Over the last 15 years there have been a multitude of tax acts and, most recently, the Revenue Reconciliation Act of 1990, all of which have impacted dramatically on the rules and options regarding the availability of estate planning. This program will focus on the myriad of estate, gift and generation skipping transfer tax changes enacted in recent years. The speakers will discuss tax planning options and techniques currently available.

CLE Credit: 6.5 hours
Date: April 23, 1991
Place: Utah Law and Justice Center
Fee: $175 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

WHAT TO WORRY ABOUT IN FORMING AND DISSOLVING A LAW PRACTICE PARTNERSHIP

A live via satellite seminar. How big does a firm have to be to attain "critical mass"? Is merger the best response to today's economic conditions? How can you obtain market penetration in new locations and specialties and achieve peak efficiency if not by merger? Five nationally known experts will answer these questions and many others in this important presentation. Participants will learn how to effect a successful merger, how to achieve management goals without merger, and what to do if it does not work out. Particular attention will be given to the special concerns of small and medium firms.

CLE Credit: 6.5 hours
Date: April 24, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

REAL PROPERTY SECTION'S ANNUAL SEMINAR

This half-day program will feature prominent local speakers on topics relevant to today's real property law issues. More information on this program will be provided later. Watch for mailings on it.

CLE Credit: 4 hours
Date: April 25, 1991
Place: Utah Law and Justice Center
Fee: $50
Time: 8:00 a.m. to 1:00 p.m.

CLE INSTITUTE FOR THE GENERAL PRACTITIONER

This day-and-a-half program is being cosponsored with Westminster College. Topics for this program are carefully chosen to address those areas of law which are most relevant to the general practitioner. The presenta-

tions are designed to provide practical and useful updates for the attorney who does not specialize in any one area of law. Also note that there are three ETHICS hours offered within this program.

CLE Credit: 12 hours (3 in ETHICS)
Date: April 26 and 27, 1991
Place: Westminster College
Fee: $190
Time: 26th, 12:30 to 5:25 p.m.; 27th, 9:00 a.m. to 4:40 p.m.

1991 PENSION PRACTICE UPDATE

A live via satellite seminar presented by the A.S.P.A.

CLE Credit: 4 hours
Date: May 2, 1991
Place: Utah Law and Justice Center
Fee: $135 (plus $6 MCLE fee)
Time: 10:00 a.m. to 2:00 p.m.

WINNING AT TRIAL— FEATURING JAMES McELHANEY

The Litigation Section is pleased to announce the return of James McElhaney to present this year on "Winning Before Trial." From recognizing a winning case and scheduling depositions through settlement techniques that emphasize the strength of your case— you will find James McElhaney's presentation entertaining and substantive. His "demonstration discussions" combine showing and telling so you understand why as well as how it is done. This program will give you a springboard of ideas, practical tools, and strategies to put you in a winning posture before trial ever starts.

Take this opportunity now to learn from one of the nation's premier trial advocacy lecturers.

CLE Credit: 7 hours
Date: May 3, 1991
Place: Marriott Hotel in Salt Lake
Fee: $150 ($140 for Litigation Section members)
Time: 8:00 a.m. to 5:00 p.m.

TAX AND ESTATE PLANNING FOR LIFESTYLES OF THE '90s

A live via satellite seminar. America's new lifestyles call for more creative, better informed estate planning. This seminar will help you in dealing with your clients' tax and estate planning issues as the variables for this change.

CLE Credit: 6.5 hours
Date: May 7, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

EQUIPMENT LEASING

A live via satellite seminar. This seminar is of benefit to practitioners who need an overview of the structure of leasing law, or want an understanding of the "new, improved" version of Article 2A of the Uniform Commercial Code.

CLE Credit: 6.5 hours
Date: May 14, 1991
Place: Utah Law and Justice Center
Fee: $165 (plus $9.75 MCLE fee)
Time: 8:00 a.m. to 3:00 p.m.

HAZARDOUS WASTE AND SUPERFUND 1991: THE LATEST DIRECTION AT EPA

A tape-delay presentation. This conference continues the successful annual ABA series covering up-to-date developments in EPA's hazardous waste programs. Key EPA and Justice Department officials discuss the latest legislative and regulatory developments, EPA enforcement policies and settlement strategies under RCRA and Superfund.

CLE Credit: 4 hours
Date: May 15, 1991
Place: Utah Law and Justice Center
Fee: $140
Time: 10:00 a.m. to 2:00 p.m.

ANNUAL FAMILY LAW SECTION SEMINAR

Date: May 17, 1991
Place: Utah Law and Justice Center

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: May 23, 1991
Place: Utah Law and Justice Center

FOURTH ANNUAL ROCKY MOUNTAIN TAX PLANNING CONFERENCE

Date: May 30 and 31, 1991
Place: Utah Law and Justice Center

ANNUAL SPRING PENSION LAW AND PRACTICE UPDATE

Date: June 5, 1991
Place: Utah Law and Justice Center

DOING BUSINESS WITH A TROUBLED COMPANY

Date: June 6, 1991
Place: Utah Law and Justice Center

THE BANKRUPTCY LAWYER: CROSSROADS OR CRISIS?

Date: June 11, 1991
Place: Utah Law and Justice Center

CLE REGISTRATION FORM

TITLE OF PROGRAM — FEE

1. _____ _____
2. _____ _____

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Total Due

Make all checks payable to the Utah State Bar/CLE

_____
Name — Phone

_____
Address — City, State, ZIP

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Bar Number — American Express/MasterCard/VISA — Exp. Date

_____
Signature

Please send in your registration with payment to: Utah State Bar, CLE Department, 645 S. 200 E., Salt Lake City, Utah 84111.

The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars through 1991. Watch for future mailings.

Registration and Cancellation Policies: Please register in advance. Those who register at the door are welcome but cannot always be guaranteed entrance or materials on the seminar day. If you cannot attend a seminar for which you have registered, please contact the Bar as far in advance as possible. No refunds will be made for live programs unless notification of cancellation is received at least 48 hours in advance.

NOTE: It is the responsibility of each attorney to maintain records of his or her attendance at seminars for purposes of the 2-year CLE reporting period required by the Utah Mandatory CLE Board.

CLASSIFIED ADS

For information regarding classified advertising, please contact Kelli Suitter at (801) 531-9095.

BOOKS FOR SALE

United States Court Reports, Lawyers Edition, 2nd Edition, complete and updated; and West's Federal Rules Decisions, complete and updated. Call (801) 486-5287 or 466-9613.

FOR SALE: Utah Code Annotated, current and updated. $450 or best offer. Call (801) 974-5645.

MUST SELL BY MAY 1: Entire Pacific Reporter from 1 P. to current advance sheet, Pacific Digests from entire American Law Reports and side volumes through 28 ALR 4th, 8th Dec. and 9th Dec. Part I Digests, Federal Rules Decisions, complete Public Utilities Reports. Contact Lee Warthen at (801) 581-6594.

BOOKS SOUGHT

WANT TO BUY: San Juan County Law Library is wanting to add a partial set of Federal Second to its Library. For more information, please contact Julie Wood at San Juan County Attorney's Office, (801) 587-2128.

OFFICE EQUIPMENT FOR SALE

WORD PROCESSORS: CPT Phoenix with graphics board and CPT 8135, both with J Level software, and one rotary V printer. Good condition. Price negotiable. Call (801) 864-2748, Delta, Utah.

OFFICE SPACE AVAILABLE

ATTRACTIVE OFFICE SPACE is available at prime downtown location, in the McIntyre Building at 68 S. Main Street. Single offices complete with reception service, conference room, telephone, FAX machine, copier, library and word processing available. For more information, please call (801) 531-8300.

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SMALL AV rated law firm engaged in business practice seeks one or two attorneys to share downtown office space. Preference is attorney specializing in bankruptcy or litigation. Reply to Utah State Bar, Box H, 645 S. 200 E., Salt Lake City, UT 84111.

OFFICE SHARING space for rent in beautiful, historic building in Ogden, Utah. Several offices available. For information, call (801) 621-1384.

OFFICE SHARING AVAILVBLE. All necessary office equipment in place. Referrals available in business, divorce, estate planning, consumer, products liablilty, and bankruptcy from attorney who has focused practice in two other areas. Call Joanna At Kelly Cardon & Associates, at (801) 627-1110 or (801) 328-1110 for more information.

SHARE OFFICE and phone with semi-retired attorney. $150 per month. Call (801) 364-4711 or 278-6603.

POSITIONS AVAILABLE

EXECUTIVE DIRECTOR: DNA-People's Legal Services, Inc. (DNA) in Window Rock, Arizona, is seeking an executive director. DNA is the largest Indian legal services program in the country, providing free legal services to 150,000 low-income people on and near the Navajo and Hopi reservations in Arizona, New Mexico and Utah. DNA was founded in 1967 and has a long record of effective advocacy in Indian and poverty law.
Qualifications: Five or more years legal, administrative or management experience, with some experience in staff supervision; demonstrable commitment to providing legal services to the poor, especially Native Americans; good communication skills; favorable references; and the ability to perform all job duties.
Prefer: State-licensed attorney with five or more years of experience in the practice of Indian or poverty law; familiarity with Native American culture and communities; fluency in relevant language; experience with federal program administration. Non- attorneys will be considered.
Responsibilities: Overall administration and management of DNA; raise funds and maintain relationships with funding sources, particularly the Legal Services Corporation, and ensure compliance with grant restrictions; assist Board of Directors in planning and policy-making, and develop administrative, reporting, and evaluation procedures; hire and supervise central administrative and management staff; oversee hiring and training of all other staff; provide effective leadership and work closely with staff, client communities, and other legal services providers to deliver the highest quality legal services; some litigation and litigation oversight.
Opening/Closing Date: The position will be open until filled.
Salary/Benefits: $50,000 to $60,000 d.o.e.; health insurance, pension.
Applications: Send resume, writing sample, and addresses and telephone numbers of three references to: Executive Director Search; ATTENTION: Catherine M. Van Maerssen; DNA-People's Legal Services, Inc.; P.O. Box 765; Tuba City, AZ 86045; (602) 283- 5265.
An equal opportunity/affirmative action employer. Preference to qualified Navajo and other Native American applicants.

DIRECTOR OF LITIGATION: DNA-People's Legal Services, Inc. (DNA) is seeking a Director of Litigation. DNA is the largest Indian legal services program in the country, providing free legal services to 150,000 low-income people on and near the Navajo and Hopi reservations in Arizona, New Mexico and Utah. DNA was founded in 1967 and has a long record of effective advocacy in Indian and poverty law.
Qualifications: Licensed attorney with five years of experience with extensive litigation experience in state and federal courts and a working knowledge of Indian law and other areas of law relevant to DNA clients. Strong writing and oral skills. Acceptable references. Must have the experience and ability to train and supervise attorneys.
Responsibilities: Recruits, trains and supervises attorneys and law clerks. General counsel to DNA concerning grant compliance and all other legal matters affecting DNA. Develops and implements attorney case management policy and procedures. Supervises three senior attorneys who directly assist staff case handlers. Oversees DNA litigation fund and libraries. Liaison with state and national support centers.
Salary/Benefits: $35,000 d.o.e.; health insurance, pension.
Opening/Closing Date: The position will be open until filled.
Applications: Send resume, writing sample, and addresses and telephone numbers of three references to: Director of Litigation Search; ATTENTION: Catherine M. Van Maerssen; DNA-People's Legal Services, Inc.; P.O. Box 765; Tuba City, AZ 86045; (602) 283- 5265.
An equal opportunity/affirmative action employer. Preference to qualified Navajo and other Native American applicants.

POSITIONS SOUGHT

ATTORNEY, five years, recently admitted to Utah Bar seeks appropriate position.

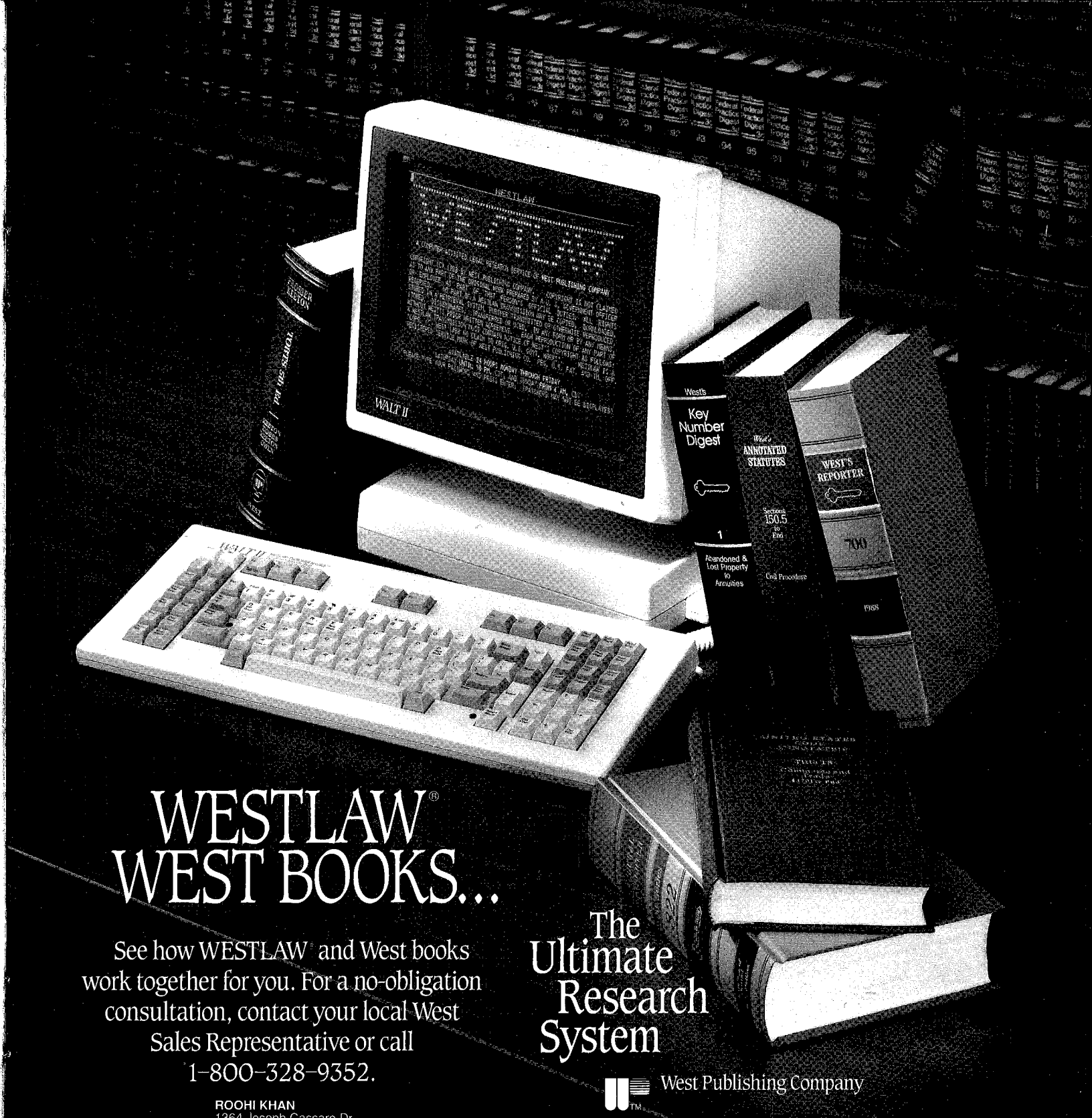
Has personally handled a number of jury and bench trials and has extensive deposition and motion practice experience.

Experienced in insurance defense/personal injury litigation including, among others, premises liability, products liability, motor vehicle, false imprisonment, assault and battery, animal, coverage question and worker's compensation cases. Has also handled media law, public interest and Indian law cases. Is willing to develop expertise in other areas of law.

Attorney is committed to producing high-quality work product and is committed to the highest ethical standards.

Reply to: Philip S. Lott, 507 Buenaway, Toppenish, WA 98948, (509) 865-4865.

Listing of Articles Published from 1988 to 1990



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