

UTAH BAR JOURNAL



**1992 - 1993
Annual Report
to the Utah Supreme Court
and the Bar Membership
SPECIAL EDITION**

TABLE OF CONTENTS

Introduction.....	1
Membership Profile	3
On-Going Programs and Services.....	4
Major Initiatives In The Past Year:	
A. Redefining the Relationship between the Judiciary and the Bar.....	5
B. Restructuring of Bar Discipline	6
C. Improving Communication with the Membership.....	6
Significant Policy Decisions.....	7
Finances	8
Office of Bar Counsel Report.....	9
Section Reports.....	11
Committee Reports.....	15
Newly Established Programs.....	20
Solo Practitioner/Small Firm Task Force	21
Futures Commission.....	22
Commission Appointments	22
Future Issues Facing the Bar.....	23

INTRODUCTION

July, 1993



Dear Colleagues:

On behalf of your Board of Bar Commissioners, I am pleased to present this 1992-93 Annual Report of the Activities of the Utah State Bar. This is the first Annual Report to be published in several years. While some may view this Report as nothing more than a self-serving public relations effort on the part of the Bar, it is in keeping with one of the commission's major focuses this past year -- improving communication by keeping you informed about how your dues monies are being spent and what activities are being undertaken by your elected Commissioners. I personally make no apologies for wanting lawyers and the public alike to know of the many excellent initiatives begun by the Bar this past year. I am very proud of what has been accomplished through the efforts of many, including the Bar Commission, the staff and various committee and section heads. The Report also serves as a reminder to the people of the State of Utah that lawyers are dedicated, productive and contributing members of our community.

This year, for the first time in recent history, the Bar Commission met together in an organized planning session to set goals and priorities for the upcoming year. During this two day session (one day of which involved a joint meeting with the Supreme Court) the Commission adopted a mission statement, authorized the creation of several special task forces, and established various objectives for the year. This planning session set the tone and the agenda for what turned out to be a very hectic twelve months. The results of those twelve months of activity are summarized in this Report. Please take the time to review the Report. I believe you will be pleased with how your dues have been spent and surprised at the vast amount of time and energy spent by hundreds of lawyers.

During the past year, your Board of Bar Commissioners was committed to acting as fiduciaries over your licensing dues. The Board has not only stayed within budget, but has made substantial principal prepayments to the mortgage on the Utah Law & Justice Center. As a result, the debt on the Center should be retired completely by 1995.

INTRODUCTION CONTINUED

In May of this year, the Utah Supreme Court, in a historic ruling, reaffirmed the need for a mandatory Bar to regulate and manage the legal profession in Utah. The Court reaffirmed the Bar's role of not only regulating admissions and discipline, but also in fostering legal education, public service, and professionalism. This year, more than ever before, the Court and Commission have worked together to further these objectives.

On a personal level, I have found my year as president to be energizing and invigorating. I tried to focus my attention on better communication -- soliciting your input, ideas and participation and letting you know in advance what the Bar is doing. I spent the first month of my presidency meeting with members of small firms and solo practitioners in an effort to learn of their unique needs. During my term I sent out eight special mailings to keep you informed of events regarding the Bar and Bench and to keep you involved in the Bar's decision making process. I reinstituted the practice of holding Commission meetings throughout the state and I personally visited every region in the state to meet with local Bar leaders and members. We published two special editions of the *Utah Bar Journal* to better assure that you were aware of the Commission's activities and understood how you could get involved. This year, more lawyers served on Bar committees than ever before in our history. In an age of increasing disaffection with institutions, your willingness to serve the profession and the public through the Bar is heartening, indeed.

A successful year, however measured, is obviously the result of the hard work of many. This past year was no exception. Your elected and ex-officio Commissioners have worked tirelessly, as have the Bar staff and the attorneys in the Office of Bar Counsel. James Lee, chair of the Futures Commission, Richard Burbidge, chair of the Task Force on Solo/Small Firm Practice and Din Whitney, chair of our ADR Committee, gave extraordinary service in their assignments. A special thanks goes to Executive Director John Baldwin. John not only had to deal with 10 "type A" Commissioners, but also with a President who had 1001 ideas, only one tenth of which conceivably could be started and finished during a one year term. Our organization is fortunate to have an individual of John's talents and dedication.

I leave the Bar in Jim Clegg's capable hands. I wish him wisdom, humor, vision, much good luck and renewal of our officers and directors liability policy. But most of all, I wish him understanding partners, because even though being Bar President is a volunteer job, it is an all consuming job. A job that is rewarding, however, and for which I am grateful to have had for a short -- yet long -- year.

Randy L. Dryer

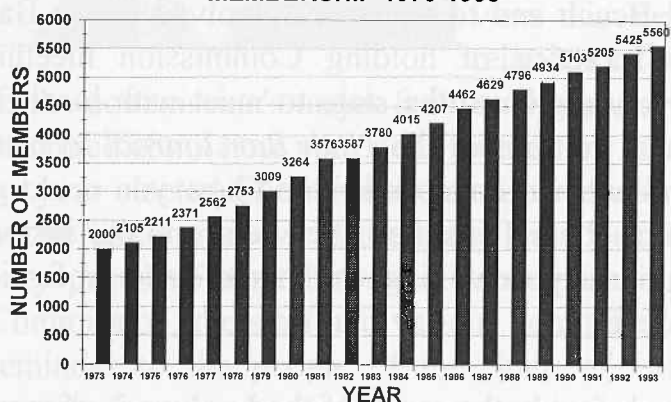
MEMBERSHIP PROFILE

Bar membership reached 5,560 total active and inactive lawyers in 1993. Percentage growth has been steady over the past twenty years, except for 1982 when there was only a small increase of licensed lawyers. Utah's overall population has shown similarly increasing trends, and the percentage of lawyers to total population has remained constant for the past seven years.

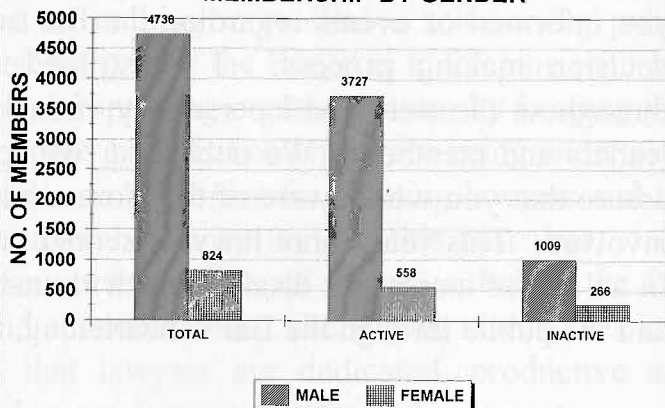
The following graphs break down the Bar membership by gender, age, region, years of practice and status. The average Bar member is still male, but more women are joining the profession. Most Bar members practice in the Salt Lake region, but numbers are growing elsewhere. The age category with the largest number of lawyers is now between 30 - 40 years of age and

the category with the largest number of lawyers by years of practice is between 10 - 20 years. The ratio of active to inactive lawyers remains constant at around 3.36 to 1. For a more detailed profile of the Utah State Bar, please see the Futures Commission Report, a copy of which may be obtained at the Utah Law and Justice Center.

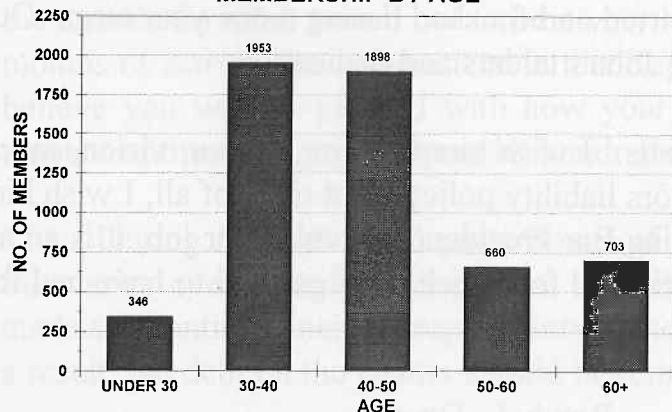
MEMBERSHIP 1973-1993



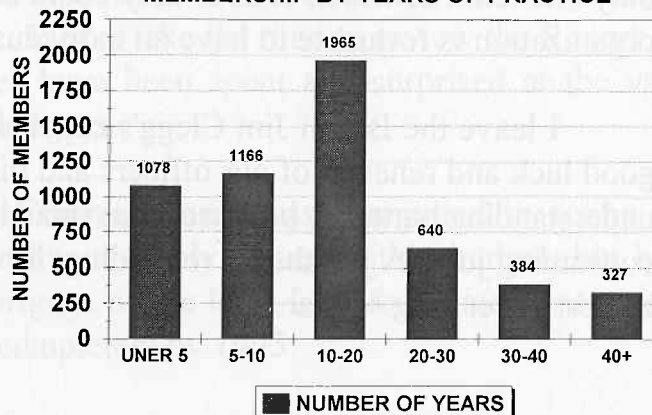
MEMBERSHIP BY GENDER



MEMBERSHIP BY AGE

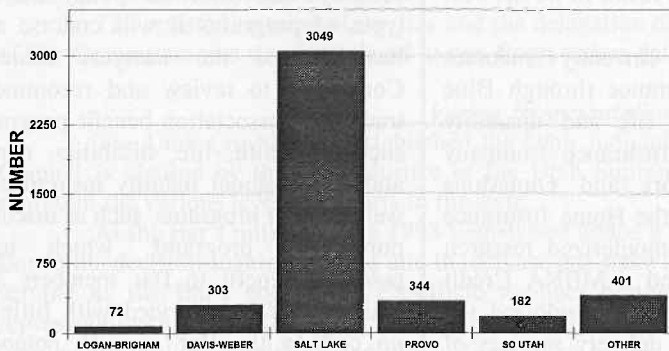


MEMBERSHIP BY YEARS OF PRACTICE

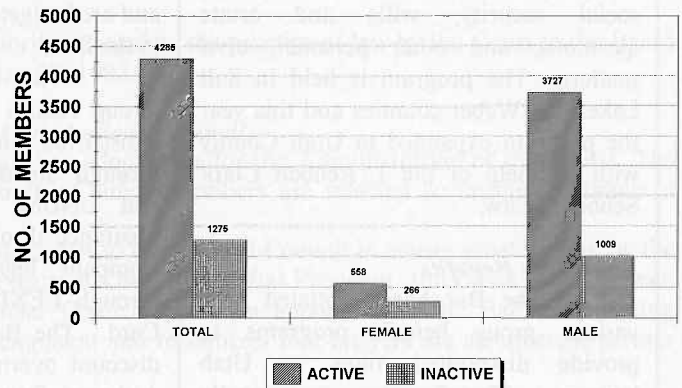


MEMBERSHIP PROFILE CONTINUED

ACTIVE MEMBERS BY REGION



MEMBERSHIP BY STATUS



ON-GOING PROGRAMS AND SERVICES

Lawyer Referral

There are approximately 260 attorneys on the lawyer referral service program. A person wishing to consult with a lawyer will telephone the Bar office through our local or toll-free line. That person will consult briefly with the Lawyer Referral Service administrator regarding the nature of the problem. A referral will be made to an attorney in the caller's geographic region. The client will then contact the attorney directly. The client would then pay \$15.00 to the attorney for the first initial 30 minute consultation. The attorneys send a copy of their declaration page of their insurance to verify coverage. There are approximately 75 calls per day and of those 75 calls 50 referrals are made which comes to a total of approximately 1,500 referrals a month. With such a small number of attorneys on referral, the attorneys are referred more often in some areas of practice than others.

Law & Justice Center

The Utah Law and Justice Center, Inc. began an aggressive marketing campaign to inform lawyers about the favorable room rental rates

and professional services and encouraged educational and charitable groups to utilize the services of the Center. The result was 57% utilization of the Center by members of the Bar as well as other professional, civic and community organizations. The Law and Justice Center saw a marked increase in Bar-related meetings including committees, sections and CLE seminars. Currently tenants include the American Arbitration Association, Attorneys' Title Guaranty Fund, Inc., Utah Law Related Education Project, Utah Bar Foundation, Utah MCLE and the Utah Trial Lawyers Association.

The Utah Law and Justice Center is owned jointly by the Utah Law and Justice Center, Inc. and the Bar. Each entity owns a fifty percent undivided tenancy in common interest.

The Utah Law and Justice Center, Inc. was created to organize and nurture legal-related educational, charitable and community services, and the Center was built to provide a gathering place for both the community and the Bar. The Utah Supreme Court has directed the Bar to provide financial assistance to the corporation and assure the continuation of these activities.

The Law and Justice Center Corporation has agreed to transfer its interest in the building to the Bar on an installment basis according to an annual payment schedule which credits the Bar for all the financial assistance the Bar provides to the corporation to assure that the corporation can continue its charitable activities.

Each annual installment will consist of amounts already allocated towards these charitable activities, and the sale will be completed within approximately seven years with no actual cash changing hands. The transfer will assure greater operational savings and the Bar has committed to carry on the charitable and educational activities for which the corporation was created.

Tuesday Night Bar

The Tuesday Night Bar is held every Tuesday night from 4:30 p.m. until 7:00 p.m. The program began in October of 1988. Individuals needing legal assistance call the Bar office to make an appointment to meet with a volunteer attorney for a thirty-minute consultation. During the 1992-1993 year over 100 different volunteer

ON-GOING PROGRAMS AND SERVICES

attorneys assisted over 1,400 individuals with legal problems including divorce, child custody, bankruptcy, consumer complaints, landlord-tenant disputes, social security, wills and estate questions, and other personal, civil matters. The program is held in Salt Lake and Weber counties and this year the program expanded to Utah County with the help of the J. Reuben Clark School of Law.

Bar Group Benefits

The Bar has negotiated with various group benefit programs to provide discounted rates to Utah lawyers. The Bar has traditionally endorsed discount programs including health, malpractice, disability and term

life insurance, credit cards, rental cars, office equipment and computerized legal research. These programs are administered with little staff support and are budgeted to result in no net cost to the Bar.

The Bar currently endorses Group Health Insurance through Blue Cross/Blue Shield, life and disability through Standard Insurance Company and UNUM, Errors and Omissions Insurance through the Home Insurance Company, legal computerized research through LEXIS, and a MBNA Credit Card. The Bar has also endorsed the discount overnight delivery services of Airborne Express and group discount travel services through Vantage Travel Services. We soon will offer a discount

program for tickets to Disneyland and Disneyworld and related merchandise through Walt Disney's Magic Kingdom Club. The Bar Commission has also recently reaffirmed its policy on the types of programs it will endorse and has directed the Lawyers Benefits Committee to review and recommend traditional association benefit programs such as health, life, disability, dental and professional liability insurance as well as other programs, such as discount purchasing programs, which have potential benefit to Bar members and which could be provided with little or no cost to the Bar or with potential revenue to the Bar which is disclosed generally to Bar members.

MAJOR INITIATIVES IN 1992-93

A. Redefining the Relationship between the Judiciary and the Bar

In the summer of 1992, the Bar Commission met with all five members of the Utah Supreme Court in a day-long session to discuss Bar management and improve communications. At the top of that day's agenda were discussions regarding how the Bar and the Judiciary could increase their communications and improve the administration of justice. The retreat began the process of major initiatives, beginning with the review of the sixty-one year old rules for integration & management of the Utah State Bar and its specific provisions regarding the mission of the Bar and the Court's delegation of management duties of the Bar Commission.

Mission of the Bar

The issue of clarifying the Court's role in regulating the profession and the scope of their grant of authority to the Bar had been raised by Grant Thornton's management audit in 1990 and discussed by the special Task Force on the Management and Regulation of the Practice of Law. After several months of discussion, the Court and the Bar Commission agreed to restate the Bar's mission as including, but not limited to the following:

- (a) To advance the administration of justice according to law;
- (b) To aid the Courts in carrying on the administration of justice;
- (c) To regulate the admission of persons seeking to practice law;
- (d) To regulate and to discipline persons practicing law;
- (e) To foster and to maintain integrity, competence and public service among those practicing law;
- (f) To represent the Bar before legislative, administrative and judicial bodies;
- (g) To prevent the unauthorized practice of law;
- (h) To promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means;
- (i) To provide service to the public, to the judicial system and to members of the Bar;
- (j) To educate the public about the rule of law and their responsibilities under the law; and
- (k) To assist members of the Bar in improving the quality and efficiency of their practice.

Grant of Authority to the Bar

The Court eventually decided to add two voting non-lawyers to the Commission, and redefined its grant of authority to the Board of Bar Commissioners by indicating that "the Board is granted and may exercise all powers necessary and proper to carry out the duties and responsibilities of the Utah State Bar and the purposes of these rules and shall have all authority which is not specifically reserved to the Court."

MAJOR INITIATIVES IN 1992-93 CONTINUED

The Court specifically reserved the authority to: (1) approve Bar admission and licensure fees; (2) approve all rules and regulations formulated by the Board for admissions, professional conduct, client security fund, fee arbitration, procedures of discipline, legislative activities, unauthorized practice of law, and bar examination review and appeals; (3) review all appeals from the findings of the Board on formal disciplinary matters; and (4) establish appropriate rules and regulations governing mandatory continuing legal education.

The restated mission of the Bar and the delegation of authority to regulate the practice of law by the Court to the Board of Bar Commissioners was formalized in two Court orders dated May 28, 1993.

Voting Representation on Utah Judicial Council

The Utah Constitution established the Utah Judicial Council to adopt rules for the Administration of the Courts. The Council is chaired by the Chief Justice of the Utah Supreme Court. Council members are selected according to statute to represent the various levels of Courts in the state.

At the Bar's initiation, the 1993 Legislature added a voting lawyer to the Judicial Council to assure greater input by the Bar in the decision-making process and to increase our stake in the decisions made. Past Bar President, Jim Davis, who has been serving as the Bar's non-voting Ex-officio member of the Judicial Council has been appointed as the Bar's new voting representative for a full three year term. This is a significant development and recognizes that lawyers are an inherent partner with judges in the administration of the justice system.

Bench Survey of the Bar

Utah's 73 state trial judges and 14 federal court judges were asked to anonymously evaluate those lawyers who appear before them in a series of 39 questions. The questions probed the judge's observations of lawyers attitudes, ethics, behavior and substantive knowledge of the law. The survey attempted to determine, among other things (a) whether there is any significant difference between civil and criminal trial practitioners, (b) whether the trial lawyer of today is any different than the trial lawyer of 5 years ago, and (c) whether lawyer conduct and competency varies from district to district. Almost 80% of all judges responded to the survey with an impressive 90% participation of state district court judges. Survey results are available in the February 1993 issue of the *Utah Bar Journal*, pages 6 and 7. This was the first time, to our knowledge, that the judiciary was systematically surveyed about lawyer conduct. All in all, the overwhelming majority of Utah trial lawyers do not fit the negative stereotype portrayed in the press today, at least not as far as Utah's judges are concerned. Utah lawyers are generally regarded by the judiciary as ethical, well prepared and generally behaving as well today as they did five years ago.

B. Restructuring of Bar Discipline

In 1989 the ABA appointed a commission on the Evaluation of Disciplinary Enforcement ("McKay Commission") to study how effective the bar has been in achieving the three stated goals of lawyer discipline, namely, protecting the public, promoting the standards of professional conduct and promoting the administration of justice. The appearance of a conflict of interest inherent in the self regulation of the Bar has been repeatedly raised by the public. To overcome this appearance of the "fox guarding the hen house", the Commission's very first recommendation was that "Regulation of lawyer conduct must be exercised by the judiciary and not the organized bar." About this same time, the Utah Supreme Court appointed the Supreme Court Advisory Committee on Discipline with similar goals.

The Utah Committee has responded to this recommendation with two rule changes. First, the Bar Commission will no longer review cases prior to the Supreme Court and second, the district courts will be the trial court to hear the most serious disciplinary cases rather than the present hearing panels. The removal of the Bar Commission as an intermediate appellate body will expedite the procedure and answer, in part, the public charge of "too self regulated" as well as the perception by some members of the Bar of favoritism toward the Office of Bar Counsel in as much as the Commission hires Bar Counsel. The use of the district courts is based, in part, on perception, but also is grounded in (1) professionalism, (2) scheduling, and (3) efficiency.

C. Improving Communications with the Membership

The Bar Commission has focused this past year on getting feedback from lawyers regarding their concerns with Bar activities and initiatives. The Commission then implemented several activities to assure communication with lawyers regarding what the Bar was doing.

Bar President, Randy Dryer, spent the month of August meeting with solo practitioners and members of small firms to listen and learn about their particular needs and problems. During the year, eight special mailings were sent to all members to keep everyone informed of events regarding the bar and bench, and to keep members involved in the Bar's decision-making process.

The Bar published two special editions of the *Utah Bar Journal* to assure that lawyers were aware of Bar activities. The Commission also got back "on the circuit" by reinstating its former practice of holding its monthly meetings around the state. The Commission traveled to Ogden, Vernal, St. George and Price to hold Commission meetings and to meet with the local Bar associations. Randy Dryer also traveled the state on his own to meet with lawyers, local media, civic and regional community leaders in their own venue.

SIGNIFICANT POLICY DECISIONS

At the Beginning of July 1992, the Board of Bar Commissioners articulated its mission as "to represent lawyers in Utah; and to serve the public and the profession by promoting justice, professional excellence and respect for the law." The Commission met at least one full day each month to administer the Bar programs and consider emerging issues of governance and law practice related trends. The following is a partial listing of significant policy decisions made by the Commission this fiscal year:

- Created an ex-officio membership on the Bar Commission for a representative from the Minority bar Association.
- Proposed legislation and successfully lobbied to give voting rights to the Bar's representative on the Judicial Council.
- Retire Mortgage of the Utah Law & Justice Center as soon as economically feasible. During fiscal year 92-93, a total of \$320,000.00 in additional principle payments were made.
- Established the Law and Technology Standing Committee.
- Declined to extend voting privileges to ex-officio members of the Bar Commission.
- Authorized an unlawful practice of law injunctive action against a public adjusters group.
- Requested the MCLE Board to encourage private CLE providers to provide group discounts to small groups of solo practitioners or other attorneys registering together.
- Financially supported the development of the Utah Dispute Resolution Mediation project.
- Adopted an official mission statement: "To represent lawyers in Utah and to serve the public and the profession by promoting justice, professional excellence and respect for the law."
- Authorized the formation of the Constitutional Law Section.
- Endorsed, with modifications, the Proposed Rules of Discipline of the Supreme Court's Committee on Discipline.
- Requested the MCLE Board to (a) permit the CLE credit hours obtained in the fourth quarter reporting period in excess of the MCLE requirement be carried over to the next reporting period, (b) examine the issue of self-study for CLE credit, and (c) explore the issue of providing CLE credit to law professors, state and federal legislators and others.
- Adopted a Continuing Legal Education Professionalism Policy affirming the Bar's policy of fostering and promoting professionalism by mandating that unless unique circumstances require otherwise, all Bar CLE seminars include a professionalism component. That policy was also proposed to the MCLE Board for their consideration as a policy.
- Approved changes to the Rules for Integration relating to the relationship between the Bar and the Supreme Court which would appropriately clarify roles and responsibilities.
- Charged the ADR Committee with undertaking a statewide educational and evaluation program of ADR and making specific policy, legislative and programmatic recommendations to the Commission.
- Passed a resolution encouraging strict enforcement by the Judicial Council of decision-making time standards, encouraging the Judicial Council to make case processing standards aspirational for self-improvement and requesting the Judicial Council to study the implementation of mandatory scheduling conferences 120 days after the filing of a civil action complaint.
- Hired a third Disciplinary Counsel.
- Requested the Fee Arbitration Committee to propose a rule for Board approval which would expand the Fee Arbitration Committee's jurisdiction to include arbitrations between attorneys.
- Authorized the purchase of the Utah Law and Justice Center, Inc.'s 50% joint tenancy interest in the Utah Law & Justice Center on an installment basis which would require no cash outlay other than the required financial support already being undertaken.
- Authorized the Bar staff to upgrade the membership database to include CLE hours tracking and quarterly printout on Bar members *Bar Journal* mailing labels.
- Encouraged State-wide use of recycled paper in court filings.

George Nelson Award

This year we were fortunate to recognize and honor George L. Nelson of Romney, Nelson & Cassity for his seventy years of practice and membership with the Utah State Bar. Mr. Nelson was admitted to practice law in the state of Utah on October 20, 1922. Mr. Nelson was honored at a brief ceremony at the January 21, 1993 Bar Commission meeting. He has a reputation for hard work, a sense of humor and enthusiasm and he is still active in the practice of law, going into his office everyday. We were delighted to honor his accomplishments and hope that others will be joining his ranks in the future.

FINANCES

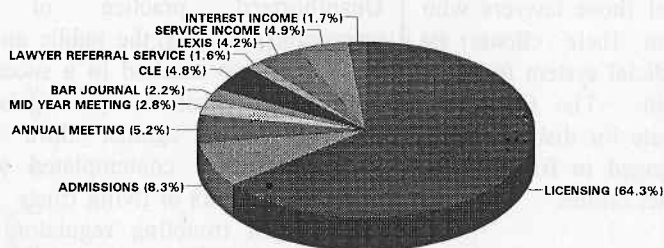
The Bar has enjoyed good financial health this year due to the availability of accurate and timely financial information, careful budgeting and conservative spending. Expenditures were kept within budget. No new debts were incurred and the Bar paid \$425,154 to mortgage principal including paying \$320,000 in additional principal prepayments. As of June 30, 1993, the mortgage balance is

\$574,343.

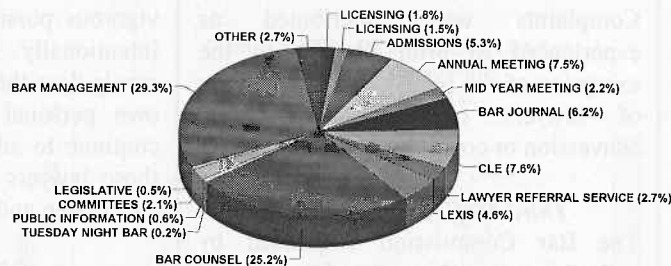
Section funds continue to be maintained in a separate bank account which is segregated from Bar operational funds. Bar staff focused on providing more time and help to support committees, sections, beneficial on-going projects and newly-created projects, but no new staff was added. Monthly financial reports were prepared soon after each month's end, and were

reviewed in detail monthly by the Executive Director, the Bar's Financial Administrator and CPA, the Bar Commission's Budget and Finance Committee, Executive Committee and the Bar Commission. Each decision to provide a service was considered after full study was given to direct and indirect economic impact.

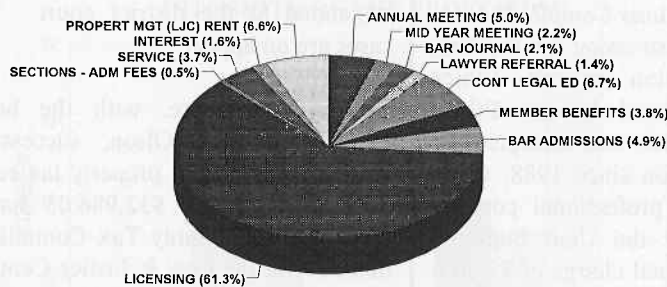
PROJECTED 1992-93 REVENUES*



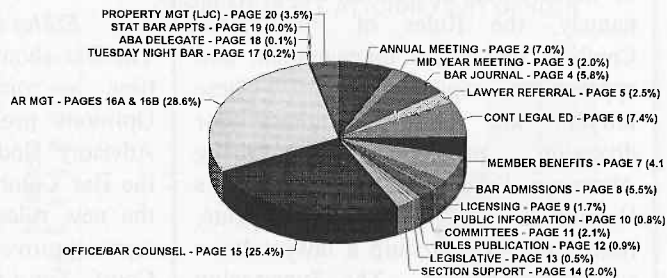
PROJECTED 1992-93 EXPENSES*



1993-94 BUDGETED REVENUES



1993-94 BUDGETED EXPENSES



*Figures are actual through May, projected through June.

OFFICE OF BAR COUNSEL REPORT

The OBC functions as both the chief disciplinary office to enforce the Rules of Professional Conduct as well as general counsel to the Bar. In its capacity as the chief disciplinary office FY '92-'93 was noteworthy in that the office experienced the greatest growth in written verified complaints in its history. Receiving over 3500 office contacts (by letter, telephone, or walk-in) and referring almost 2500 to other agencies, lawyer referral or dismissing as unmeritorious, a staggering 1007 written authenticated complaints remained that on the surface alleged a rule violation warranting investigation. This was an astonishing increase of 45% compared to FY '91-'92.

Complaints were distributed as experienced in prior years with the exception of the increase in the number of lawyers charged with fraud, conversion or conviction of crimes.

Third Staff Attorney Hired

The Bar Commission responded by authorizing Bar Counsel to hire another staff attorney in July of 1992 and it was at this time that Gary Ferrero joined the staff.

Diversion Not Discipline

Having been either directly or indirectly involved with over 3000 cases, Bar Counsel has developed a philosophy of discipline based upon the distinction between the uninformed lawyer and the malevolent lawyer. The former seem to be uninformed in one of three areas, namely, the Rules of Professional Conduct, law office management, and appropriate coping skills. These lawyers are good candidates for diversion programs (Supervising Attorneys, Ethics School and Lawyers Helping Lawyers) designed to educate, train, and further equip a lawyer for a successful practice. The Supervising Attorney's Panel was formed in this fiscal year to provide a pool of practitioners that were willing to closely supervise the professional and office management skills of attorneys' ordered to some period of probation. The Utah

State Bar Ethics School was patterned after the highly successful ethics schools in California, Florida and Virginia. The purpose of the Ethics School is to immerse generally less experienced lawyers in an intense six hour workshop that instructs not only in avoidance of common errors but also discusses and provides materials in substance abuse, stress management, and office practice tips together with providing relevant forms and a resource bank. The intention is to intervene at an early stage and prevent a wayward attorney from engaging in more serious misconduct. The first class is scheduled for June 25, 1993.

Contrasted with this approach is the vigorous pursuit of those lawyers who intentionally harm their clients or manipulate the judicial system for their own personal gain. The OBC will continue to advocate for disbarment of those lawyers engaged in fraud, theft, conversion and other crimes.

OBC Automated

From an internal operational perspective, the most significant achievement has been the total automation of the office. All employees now have networked 386 computers that allow for the sharing of word processing tasks, location and retrieval of documents, access to the membership data base, and most importantly, an internal data base that can provide real time status of every case.

Ethics Opinions Compiled

The Bar should also enjoy for the first time a compilation of all Ethics Opinions promulgated by the Ethics Advisory Committee and accepted by the Bar Commission since 1988, when the new rules of professional conduct were approved by the Utah Supreme Court. For a nominal charge of \$7.00 a subscriber can be kept current of prospective opinions.

General Counsel duties can be divided between regulatory and non-regulatory tasks. Regulatory duties consist of

admission cases and the unauthorized practice of law. Challenges by unsuccessful Bar Applicants continue to mount. Most notably a case was tried in 1992 which resulted in the Utah Supreme Court waiving the requirement that all applicants be graduates of ABA approved law schools. Subsequent to this ruling the office consulted with the Admissions Committee and then drafted a new rule providing access by foreign educated applicants but only if educated in an English common law jurisdiction and with the additional requirement of 24 credit hours at an ABA approved law school. This rule is presently pending before the Utah Supreme Court.

UPL Cases Grow

Unauthorized practice of law complaints, filed by the public and the judiciary, have resulted in a successful prosecution against paralegals, a pending action against third party adjusters and a contemplated action against purveyors of living trusts. This is the most troubling regulatory task since the office and the UPL Committee simply lack the resources to investigate and file suits where appropriate.

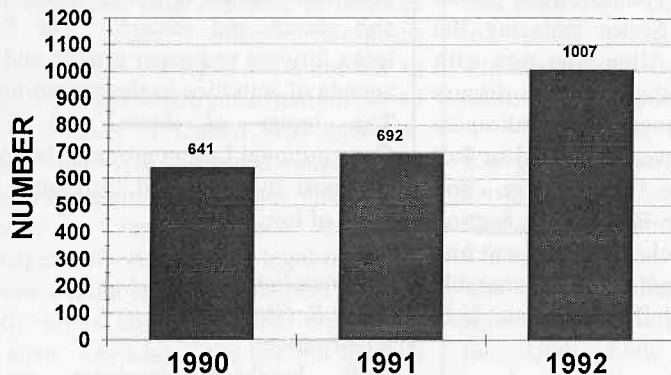
Pending Suits Against Bar

In terms of pending lawsuits against the Bar or the Bar Commission, as of May 1, 1993, there remain only 3 cases open compared to 10 as of July 1, 1992. All of the cases were successfully defended except for the award to the Bar of attorneys fees in Barnard v. USB, 890904670 which was vacated and remanded to the district court. Two cases are on appeal.

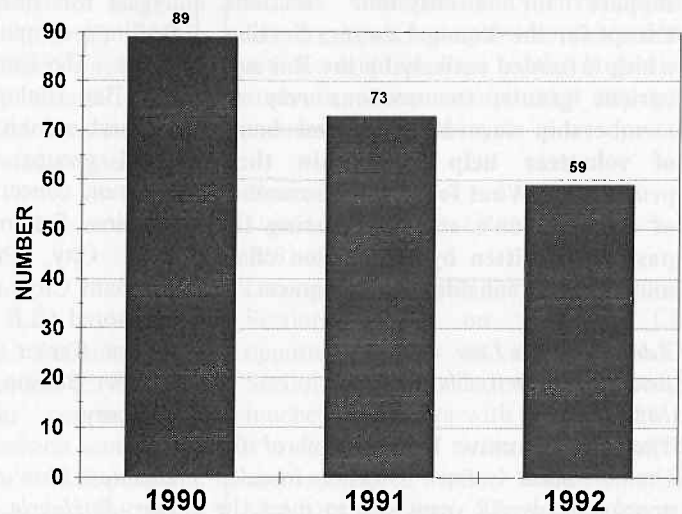
Finally, the Office, with the heroic efforts of Bruce Olson, successfully advocated for a real property tax rebate in the amount of \$32,986.05 having convinced the County Tax Commission that 25% of the Law & Justice Center is devoted to charitable and educational purposes.

OFFICE OF BAR COUNSEL REPORT CONTINUED

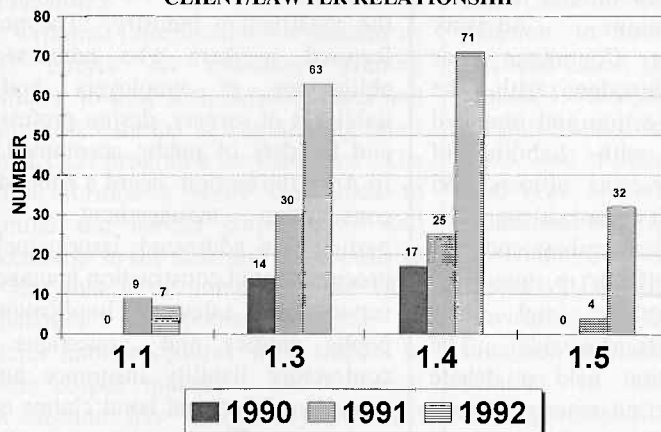
WRITTEN COMPLAINTS RECEIVED



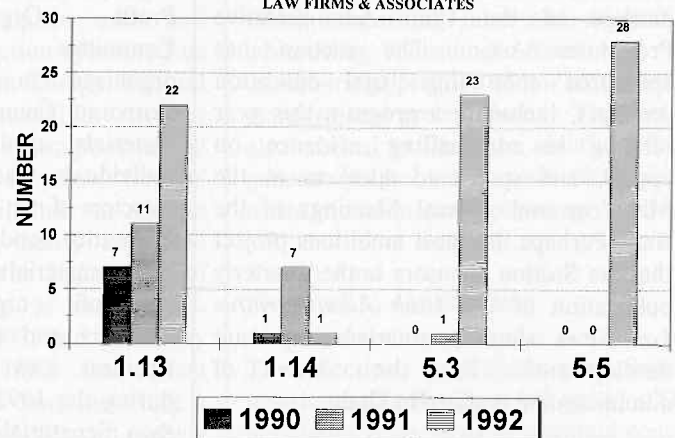
FORMAL COMPLAINTS VOTED BY SCREENING PANEL



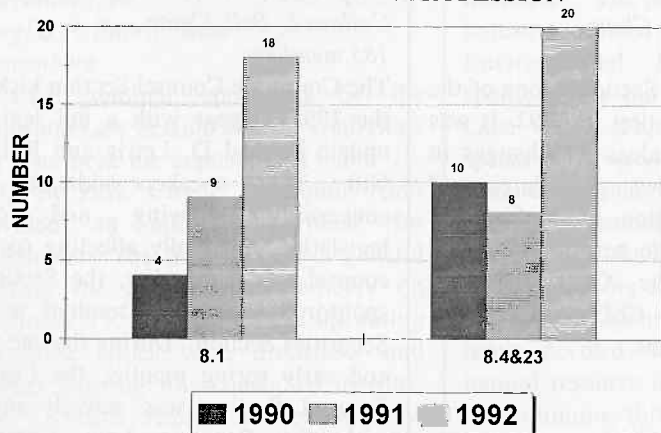
**COMPLAINTS - MEN-RULES 1.1-1.5
CLIENT/LAWYER RELATIONSHIP**



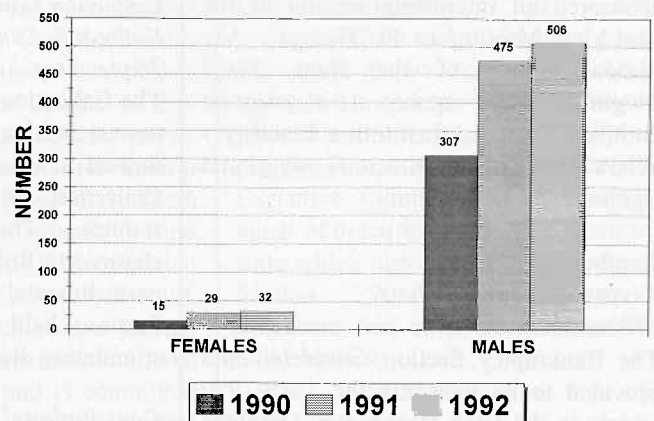
**COMPLAINTS - MEN-RULES 1.13-5.5
CLIENT/LAWYER RELATIONSHIP
LAW FIRMS & ASSOCIATES**



**COMPLAINTS-MEN - RULES 8.1, 8.4 & 23
INTEGRITY OF THE PROFESSION**



COMPLAINTS ALL ATTORNEYS-BY GENDER



SECTION REPORTS

The Bar provides administrative support for twenty-four sections. Except for the Young Lawyers Section, which is funded entirely by the Bar and various grants, the sections rely on membership dues and countless hours of volunteer help to sustain their programs. What follows is a summary of each section's activities during the past year written by the section chair and edited in consideration of space.

Administrative Law

Brian W. Burnett, Chair

135 members

The Administrative Law Section of the Utah State Bar was founded approximately six years ago to meet the needs of practitioners who focus in the administrative law area. The section has been active in legislative matters, including activity associated with the passage of the Utah Administrative Procedures Act. The section has sponsored continuing legal education seminars, including a program this year relating to marshalling evidence on appeal, and sponsored speakers at the Mid-Year and Annual Meetings of the Bar. Perhaps the most ambitious project that the Section sponsors is the quarterly publication of the *Utah Administrative Law News* which summarizes important developments in the area of administrative practice in Utah.

Banking and Finance

Jeffrey M. Jones, Chair

136 members

The Banking and Finance Section sponsored an interesting session at the Mid-Year Meeting in St. George. Vic Simon, Editor of the *Bank Thrift Litigation News* spoke at a program entitled "Financial Institution Liability - Who's Next: Officer/Director/Lawyer/ and Bystander."

Bankruptcy

Kevin R. Anderson, Chair

219 members

The Bankruptcy Section completed and provided to its members the 1986-1990 update to the Utah Bankruptcy Opinions Digest. The update included copies of significant, unpublished opinions by the

Utah Bankruptcy Court. The text of the Digest was offered on a floppy disk to facilitate computerized word searches of topics. The Section sponsored the Bench and Bar Dialogue Series featuring the Honorable John H. Allen who met with small groups of the bar to discuss common concerns regarding bankruptcy practice. Seminars were also held in Salt Lake City, Provo, St. George and Brigham City. The Bankruptcy Section sponsored CLE lunches at the Law and Justice Center including the Honorable Dee V. Benson and David Jordan, U.S. Attorney.

Business Law

Gary R. Henrie, Chair

233 members

A major project of the Business Law Section for the past year involved the organization and functioning of the Non-Profit Organizations Advisory Committee. This Committee was organized in conjunction with the Corporate Counsel Section and prepared materials dealing with liability of individuals who serve as officers and directors of non-profit organizations. The committee conducted a seminar and will make materials available to interested non-profit organizations and their directors and officers statewide. The Business Law Section held a debate during the 1992 election season between then Senatorial candidates Bob Bennett and Wayne Owens. The candidates addressed the topic of business issues currently facing the state and the nation.

Collection Law

Kathryn S. Denholm, Chair

36 members

The Collection Law Section is one of the newest Sections, starting in 1992. It was formed to consider ideas for changes in Collection Law rules, procedures and statutes. The Section is working on changes to Rule 64 to permit continuous garnishments. The Collection Law Section held one CLE and several stimulating discussions.

Constitutional Law

Kathryn D. Kendell, Chair

13 members

The Constitutional Law Section is also closing its charter year. The Section sponsored CLE programs dealing with prisoners' rights, religious liberty issues and search and seizure. The Section looks forward to greater growth and a full agenda of activities in the upcoming year. The issues of State and Federal Constitutional Law continue to be some of the most dynamic and intriguing of all areas of law.

Construction Law

Clark B. Fetzer, Chair

92 members

CLE luncheon seminars on the Americans With Disabilities Act and construction management were highlights of the Section's activities this past year. In October the Section met for a two-hour program on the Americans With Disabilities Act and its implications for the construction industry. The program featured speakers who addressed the obligations of employers and the liabilities of owners, design professionals and builders of public accommodations. In April the section heard a panel discuss construction management. Panel participants addressed issues including procurement of construction management, services and sales tax implications for public entities and questions about contractors' liability insurance and the recovery of lien and bond claims on CM projects. The section sponsored a construction law breakout session at the Annual Meeting and began a book on Utah construction law.

Corporate Counsel

Colleen L. Bell, Chair

185 members

The Corporate Counsel Section kicked off the 1992-93 year with a fall legislative update by Ted D. Lewis and Ruland J. Gill. Those speakers addressed issues concerning lobbying and current legislation potentially affecting corporate counsel. In November, the Section co-sponsored a breakfast seminar with the Securities Section. During the late winter and early spring months, the Corporate Counsel Section was actively involved with the Business Law Section in

SECTION REPORTS CONTINUED

initiating and sponsoring the Non-Profit Organization Advisory Council. This Council consists of 21 members of the Utah State Bar with expertise in areas of the law that affect non-profit organizations. On April 15, a number of these attorneys made presentations to 40 representatives of United Way agencies. Topics that were discussed ranged from legal entanglements, director and officer liability to tax, insurance and risk management. A packet of legal materials is now available for distribution to non-profit organizations located throughout the state. On May 6 the Section held its annual CLE seminar featuring John Tate, former counsel to Sam Walton, as its keynote speaker.

Criminal Law

Jerry Mooney, Chair

126 members

The Criminal Law Section has focused its CLE efforts on one-hour evening seminars to deal with current issues and to provide a means of augmenting other formal CLE programs for members. The Section formed a study committee to examine the habeas corpus laws and proceedings in the state and to propose to the Bar that it recommend to the Utah Legislature appropriate changes in policies and procedures with respect to habeas corpus matters. The Criminal Law Section has additionally provided presentations to other legislative and judicial committees to provide input on matters of interest to criminal practitioners.

Education Law

Douglas F. Bates, Chair

46 members

A CLE seminar sponsored by the Education Law Section and the Utah State Bar was held on September 11 and 12, 1992 in Park City. Autumn Aloft provided an added enjoyment for registrants. The Section held a general meeting for all Section members on December 11, 1992 in which upcoming legislative issues were discussed, and another meeting was conducted in May. The Eleventh Annual Education Law Seminar sponsored by the Utah Public

Education Foundation in cooperation with the Education Law Section of the Utah State Bar was held on April 26, 1993 in Salt Lake City. The seminar was directed to school principals, school district administrators, education law attorneys, and other education-related entities.

Energy, Natural Resources & Environmental Law

David Tundermann, Chair

216 members

The Energy, Natural Resources and Environmental Law Section (ENREL) of the Utah State Bar continued to emphasize informal luncheon seminars as the core of the section's CLE program. ENREL sponsored approximately twelve seminars from October 1992 through June 1993 ranging across a wide variety of environmental, mining, public lands, water and oil and gas law topics. In addition to these frequent and well attended CLEs, the Section sponsored its annual 1993 Update on Energy, Natural Resource and Environmental Law in May 1993, and a water law program at the Mid-Year Meeting in St. George. Additional highlights include an address by Diane C. Nielsen, newly appointed Executive Director of the Department of Environmental Quality at an ENREL luncheon in March, 1993, and a half-day seminar in May, 1993 on recent developments in water law, including a keynote speech by Ted Stewart, newly appointed Executive Director of the Department of Natural Resources. In addition to its active CLE schedule, the ENREL Section inaugurated two new initiatives. The Section joined a speakers bureau organized by the Utah Society for Environmental Education, a project sponsored by the Junior League of Salt Lake City. This group solicits public speakers on environmental and natural resource topics of interest to citizen groups, secondary schools and universities. In addition, in cooperation with the editors of the *Utah Bar Journal*, the ENREL Section published a journal issue devoted to environmental and natural resource topics and is committed to continuing this project on an annual basis. In summary, the ENREL Section

has expanded its core CLE programs for natural resource and environmental lawyers, and now provides professional articles and speakers to the larger bar, students, educators and other interested members of the public.

Estate Planning

David J. Castleton, Chair

218 members

During the past year the Estate Planning Section focused on providing CLE opportunities for its members. The Section has provided seven successful luncheon meetings with presentations on a wide variety of estate planning topics, and sponsored a panel discussion at the Mid-Year Meeting. The section has also been reviewing changes to the Uniform Probate Code that have been adopted since Utah adopted the Uniform Probate Code in 1975. The Section is studying issues concerning false and misleading advertising, consumer fraud and the unauthorized practice of law in the estate planning and probate arena. The Section also worked to help the elderly and the general public better understand wills, trusts and other estate planning vehicles.

Family Law

Frederick N. Green, Chair

185 members

The Section published the Section newsletter for the first full year. This newsletter is an effort to maintain contact with the Section membership and is designed to increase professionalism and competency among family law practitioners. The Section held monthly CLE luncheons to address professionalism and professional courtesy, alternative dispute resolution techniques, legislative updates, and matters of particular interest to family law practitioners. A sub-committee of the Executive Committee is addressing the needs of practitioners in other areas of the state which may need assistance from the Section. We anticipate taking CLE luncheons and other activities outside of Salt Lake City.

SECTION REPORTS CONTINUED

Franchise Law

James G. Swensen, Chair

19 members

The Franchise Section was formed to provide legal practitioners representing franchise clients, both franchisers and franchisees, a forum for the exchange of information and ideas. The Section encourages informal interaction of its members and has sponsored luncheon meetings which consider relevant topics in addition to providing CLE credit to those attending. The law affecting the franchise relationship is expected to expand as franchising plays an increasing role in the delivery of consumer goods and services. In 1991, a committee of the Utah State Legislature considered a proposed franchise registration statute. Federal franchise legislation proposed before Congress in 1992 consists of two bills, the Federal Franchise Disclosures and Consumer Protection Act and the Federal Fair Franchise Practices Act.

Government Law

Richard S. Fox, President

91 members

The primary purpose of the Government Law Section is to provide continuing legal education focusing on issues that are relevant to government law practice. The Section has sponsored or co-sponsored luncheon meetings and a highly successful annual conference. The monthly luncheon meetings have involved presentations by judges, the Attorney General, the U.S. Attorney and a variety of specialists. One of the most interesting and informative luncheon meetings featured the Salt Lake City Prosecuting Attorney, a police officer and an advocate for the homeless. The subject was constitutional rights of the homeless and others who are referred to as "street people." The centerpiece of the CLE effort of the Section was the annual State and Local Government Conference held in March at the Seven Peaks Resort Hotel in Provo which was co-sponsored by the J. Reuben Clark Law School. The conference attracted approximately 300 registrants.

Intellectual Property Law

Todd E. Zenger, Chair

85 members

The bulk of the Section's activities this past year have been in the form of CLE luncheon seminars. In October, the section sponsored a luncheon seminar featuring a presentation on Reissue and Reexamination practice by Vaughan North. In December, the Section was addressed by Laurits R. Christensen, Ph.D., consulting services. Dr. Christensen discussed his role in the *Polaroid v. Kodak* damages trial. Simon Belcher of the Leeds, England office of Urquhart-Dykes & Lord addressed the section in March. His presentation focused on the absolute novelty requirement of foreign practice. On May 19th, John W.L. Ogilvie discussed substantial similarity in software copyright infringement cases.

International Law

Howard C. Young, Chair

51 members

The International Law Section continued its practice of meeting every 8 to 10 weeks for lunch and a presentation on a topic of interest to the international practitioner. This year's topics have included export licensing, the North American Free Trade Agreement, the Foreign Corrupt Practices Act, and selecting and maintaining international distributors and sales agents. The Section also co-sponsored a seminar on doing business in the European community.

Labor and Employment Law

W. Mark Gavre, Chair

115 members

The Labor and Employment Section sponsored Sharon Rennert, staff attorney for the United States Equal Employment Opportunity Commission, who spoke regarding her agency's views on and implementation of the Americans With Disabilities Act. Members also met with the then new Director of the Utah Anti-Discrimination Division, Karen Okabi, regarding her agency's enforcement of the state anti-discrimination statute, and the Section held a CLE luncheon with Justice

Christine Durham of the Utah Supreme Court who spoke on recent developments in Utah employment law.

Litigation

William B. Bohling, Chair

591 members

The Section established four subcommittees to focus on special projects. The Model Utah Jury Instruction (MUJI) Subcommittee which was responsible for completing the revisions for the first edition. MUJI has been submitted to the state's Board of District Court Judges, which has passed a resolution adopting the instructions for use in all of the state's district courts effective later this year. The Program Subcommittee was responsible for the November program titled, "An Evening With The Third District Court", two programs at the Mid-Year Meeting and a three-hour program at the Annual Meeting. The Access to Legal Services Subcommittee has been exploring means of providing the public greater access to legal services with a primary focus on persons whose incomes are above the poverty level, but below the level that normally seek legal services. The Section will allocate all profits obtained from the sale of the MUJI to fund the Access to Legal Services program. The Trial Advocacy Training Seminar Subcommittee has worked to develop a trial advocacy seminar under the direction of the National Institute of Trial Advocacy. The section has also provided a grant to the University of Utah's Moot Court Program. The Litigation Section was awarded the Distinguished Section of the Year Award at the 1993 Annual Meeting.

Military Law

Kevan F. Smith, Chair

33 members

Although there is not a distinction between "military" law and "regular" law, the Military Law Section has focused on areas of the law which monopolize the efforts of government attorneys and military judge advocates. Those areas include: procurement law and regulations, particularly relevant to

SECTION REPORTS CONTINUED

contracting with the national government; the Federal Tort Claims Act; Federal labor law and policy; international law (Status of Forces Agreements); and the statutes, regulations, and procedures used in enforcement of the Uniform Code of Military Justice. The Section made a presentation on procurement law and regulation at the Mid-Year Meeting and the Section met on a bi-monthly basis, with a summer recess. The Section heard from a member who had been activated and deployed to Germany as part of Desert Storm. Active duty military lawyers stationed at Hill AFB presented an update on the status and trends in military justice and we also heard from a Marine Captain who pilots an aircraft as part of the Navy's Blue Angel demonstration team.

Real Property

Gregory S. Bell, Chair

311 members

The Annual Real Property Section Seminar held May 27, 1992, included presentations on "Recent Developments in Utah Real Property Case Law," "Practical Tips on Legal Writing" and "Insuring Commercial Real Estate". Real Property Section Luncheons held throughout the year have included the following topics: "Americans With Disabilities Act of 1990", "Habitability and Fit Premises", "What Lawyers Should Know About Real Estate Appraisals", "Business Transactions With Clients", "State Trust Lands - A Matter of Trust", "A Utah Economic Forecast: Trends in the Real Estate Market", "Deeds in Lieu of Foreclosure", "What Every Real Estate Attorney Should Know About Income Tax", and "What Every Lawyer Should Know About Estate Planning". The Section also presented "What the General Practitioner Should Know About Real Estate" at the Mid-Year Meeting.

Securities

Constance B. White, Chair

135 members

The Securities Section held several breakfast meetings during the year. These were informal, non-CLE events. Speakers included: the head of private

capital markets for Dain Bosworth in Minneapolis; the attorney in charge of the Salt Lake Branch Office of the Securities and Exchange Commission; candidates for Utah Attorney General; and, along with the Banking and Finance and Corporate Counsel Sections, SEC Chairman Richard Breeden. The Section's 15th Annual Securities Practice Workshop was in Jackson, Wyoming this year. One of the program's highlights was a presentation on the currently-in-progress nationwide electronic filing system for securities issuers. Finally, the section's officers sponsored a first-ever Christmas Social, at a local art gallery.

Tax

David D. Jeffs, Chair

197 members

The Tax Section has sponsored monthly luncheons on a wide range of topics from effective year end tax planning to the tax consequences of the ownership and cleanup of environmentally contaminated properties. The Tax Section co-sponsored the Sixth Annual Rocky Mountain Tax Planning Institute which included a wide variety of tax topics from recent developments in federal and state taxation to taking your client's company abroad. The Tax Section participated in a presentation at the Mid-Year Meeting on practicing before the State Tax Commission and will make a presentation at the annual meeting. The Section has supported legislative amendments to provide a fair adjudicatory process in state tax litigation and has taken initial steps to improve the communication with the State Tax Commission. The section has also participated in the regional liaison meetings with the IRS.

Young Lawyers Division

Keith A. Kelly, President

1,283 members

The Utah Young Lawyers Section is recognized nationally as a hard working group of lawyers who have been innovative and creative in developing successful programs. The Section sponsored the following committee activities:

The Community Services Committee has given lectures on drug/substance abuse to many high schools, as well as assisted with the Sub-for-Santa program.

The Diversity in the Legal Profession Committee focused on a spouse-abuse informational videotape, which is currently in production.

The Law Day Committee was responsible for Law Day activities like the Law Day Fairs, held in shopping malls in Logan, St. George, Provo, Ogden and Salt Lake City.

The Law Related Education Committee put on the "People's Law Seminar", a six-week course on various practical aspects of the law that is a part of the Salt Lake Adult Education program and the "Law School for Non-Lawyers" program which is a lecture series on the law being held at various libraries in Utah. The committee provides a high school guest lecture program, which provides attorney-volunteers as guest lecturers in Utah high schools from Ogden to Provo and distributed its pamphlet entitled "On Your Own" to high school graduating seniors.

The Membership Support Network Committee has sponsored a mock interview program and career fair for Utah law students and a series of outstanding brown bag luncheons.

The Needs of Children Committee has developed and distributed throughout the state pamphlets entitled "Reporting Child Abuse," for Utah teachers and Utah day-care providers. The committee also is distributing public service announcements dealing with the shaken baby syndrome. In addition, the Committee, in association with the Salt Lake Chapter of the Big Brothers/Big Sisters organization sponsored a "Group Activity Program" with a Salt Lake Golden Eagles hockey night for children. The Committee has also sponsored dinners for parents and children at the Ronald McDonald House, a resource for out-of-town parents whose children are hospitalized.

SECTION REPORTS CONTINUED

The HIV Legal Issues Committee has been recognized nationally by the Young Lawyers Division of the ABA. It sponsored a town hall meeting addressing legal issues facing persons with HIV. The Committee has also assembled a panel of volunteers to fill the legal needs of people who are HIV positive.

The Needs of the Elderly Committee has developed and recently distributed throughout the state a legal information videotape series discussing legal issues facing senior citizens and began a series of presentations to senior citizen's centers using the videotapes.

The New Lawyer Continuing Education Committee has produced and staffed the

CLE program for new lawyers in Utah.

The Pro Bono Committee staffs the Tuesday Night Bar program at the Law & Justice Center. The committee has also engaged in fund raising programs for Salt Lake Legal Aid and Utah Legal Services, such as the Run, Hit, Cheat and Steal softball tournament which raises a significant amount of funds for Salt Lake Legal Aid and Utah Legal Services.

The Bar Journal Committee has been responsible for the Barrister segment in the *Utah Bar Journal*, along with press releases and publicity for special events and projects.

The Rape Crisis Committee has been

working with the Salt Lake Rape Crisis Center to obtain donations for sweat suits and other clothing to be worn home by rape victims after their clothing is taken into evidence during the course of a hospital Code R examination. In addition, the Committee has prepared legal-information pamphlets for rape victims. The pamphlets have been placed inside every distributed sweat suit. The pamphlets are also being distributed through various community organizations.

The Consumer Credit Counseling Committee has provided legal information and assistance to people with consumer debt problems.

COMMITTEE REPORTS

This year, more lawyers than ever before in the Bar's history served on one or more of the 28 committees. Over 620 lawyers responded to our request for committee assignments. For the first time, appointments were for a specific term, better assuring both continuity and a continual source of new faces. What follows is a summary of each committee's activities during the past year written by the committee chair and edited in consideration of space.

Advertising

Ronald G. Schiess, Chair

13 members

The Advertising Committee continued its charge of keeping abreast of trends in lawyer advertising.

Admissions Committee

Elliot J. Williams, Chair

6 members

The Admissions Committee consists of the Chairs of the Bar Examiners Committee, and Character and Fitness Committee, the deans from the University of Utah and BYU law schools, the Bar Admissions Administrator and a Bar Commission Liaison. The Committee

met several times during the past year at the request of the Bar Commission to discuss: transferability of scores; administration of essay examinations under special circumstances; requirements for foreign law school graduates; and admission on motion and reciprocity. The changes were approved by the Supreme Court to disallow most MBE transferring and clarify examination requirements in December.

Alternative Dispute Resolution

Hardin A. Whitney, Chair

49 members

The ADR Committee has divided its work into three sub-committees. The first sub-committee is drafting a proposed bill on court-annexed ADR in conjunction with the State Court Administrator's Office. The bill is in its final drafting state and is being circulated for reaction from Bar members. The second subcommittee is drafting a code of ethics for ADR providers. The third subcommittee has been developing qualifications of ADR providers. We presented a one hour CLE breakout session at the Mid-Year Meeting and a two hour session at the Annual Meeting.

Annual Meeting

Charlotte L. Miller, Chair

24 members

The 1993 Annual Meeting of the Utah State Bar provided 14 hours of CLE credit which included over 35 various breakout sessions, speeches by retiring U.S. Supreme Court Justice Byron White, Professor Charles Ogletree and James Brosnahan. Also included was a very interesting panel discussion on the selection of Supreme Court Justices which featured Kristine Strachan as the moderator and included Professor Michael Gerhardt, Senator Orrin Hatch, Sandy Gilmour of NBC News and William Ide of the American Bar Association. We also had an exciting volleyball tournament, family carnival and a Hemingway Lecture among other fun activities.

Bar Examiners

Curtis C. Nessel, Chair

45 members

The Bar Examiners Committee prepared and graded essay questions for the two bar examinations. 225 applicants, including eighteen attorney applicants, took the July 1992 examination. The pass rate for the examination was 90.7%. The

COMMITTEE REPORTS CONTINUED

February 1993 examination was administered to 112 applicants. The pass rate for that examination was 85.7%. As the table below demonstrates, since the institution of the new format, increasing numbers of applicants are taking the bar examination and the pass rate has increased significantly.

Bar Examiner Review

Elliot J. Williams, Chair

23 members

The Bar Examiner Review Committee consists of 23 members, all lawyers who have been practicing in excess of ten years. This Committee reviewed the Multistate Essay Examination and the state-prepared essay examination questions given at the two Bar examinations. The review insured that the essay examination was fair, accurate and consistent with both federal and local laws, and an appropriate length. The Bar Examination consists of 6 MEE questions and 6 state prepared questions. The Bar Examiner Review Committee reviews 15 content areas that could be given on each Bar examination.

Bar Journal

Calvin E. Thorpe, Chair

33 members

The Bar Journal Committee continued to publish a well organized, insightful, and

authoritative legal publication. The Journal is published monthly, except for July and August of each year. Among the new sections introduced recently and apparently well received is "Judicial Profiles" containing brief biographical sketches and profiles of various members of the Utah State and Tenth Circuit Judiciary. Another new feature which has also been well received is a "Book Review" section where books with at least some relationship to the law are reviewed on a monthly or bimonthly basis. Article submission for publication has increased dramatically over the past year and now an ongoing inventory of articles is maintained.

Character and Fitness

Thomas T. Billings, Chair

18 members

The Character and Fitness Committee investigated all admission applications to determine each applicant's moral character and fitness to practice law and then makes recommendation to the Board of Bar Commissioners on each application. The Committee reviewed 337 applicant files during the past year and 12 informal hearings were scheduled and held. Two of the applicants were denied admission by the Character and Fitness Committee.

Continuing Legal Education

A. Robert Thorup, Chair

25 members

The CLE Committee met regularly during the year and spent considerable time researching and reviewing several important issues confronting the Bar in connection with its CLE activities. Issues studied and discussed, included the granting of MCLE credit to law school faculty and legislators, the role of the CLE Committee as an oversight body for CLE sponsored by the Bar, the role of Sections in providing CLE and the right of a Section to utilize the Bar's presumptive provider status while keeping a part of any seminar revenues. The need for both more broad-based and advanced CLE courses was also studied, and the first of a planned series of "XX Law for Non-XX Lawyers" was organized and sponsored by the Committee in May 1993 with "Securities Law for the Non-Securities Lawyer." Future programs planned by the committee are in the areas of tax law, litigation, patents and trademarks and environmental law. Toward the end of the year, the Committee also explored options for long distance communications systems to enable live seminars to be broadcast in an interactive mode to outlying areas of the State. Finally, a topic that generated a great deal of study and interest at the Committee meetings was whether the Bar should get out of the seminar business altogether, and focus rather on producing written CLE materials.

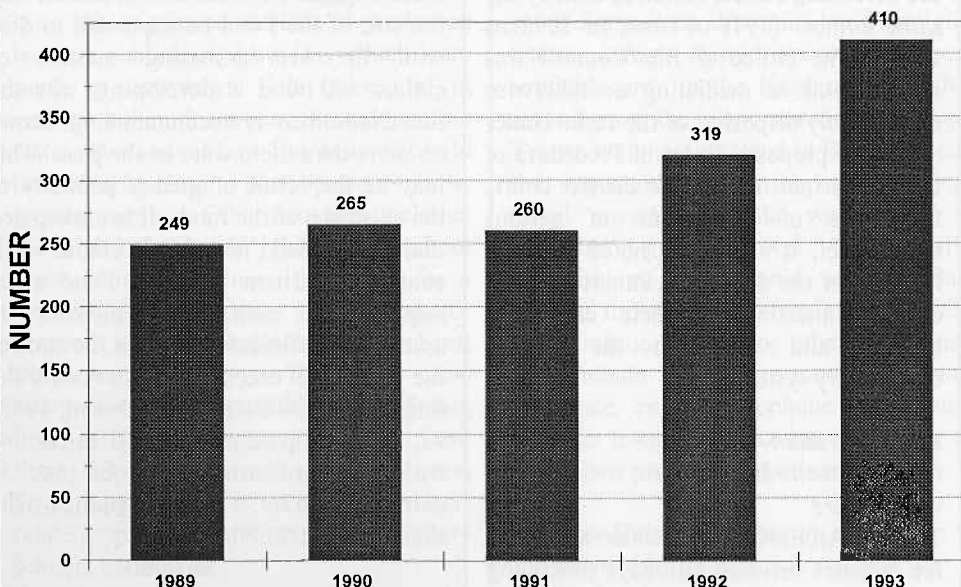
Courts and Judges

William B. Bohling, Chair

44 members

At the request of the Court Administrator's Office, the Courts and Judges Committee supplemented its 1990 report on lawyer compensation in the Salt Lake Metropolitan area for the use of the Citizen's Committee on Judicial Compensation. The Judicial Council's Standing Committee on Judicial Performance Evaluation, and Judge David Young discussed the Time Processing Standards promulgated in Rule 3-111 of the Code of Judicial Administration. After extensive discussion, the Committee authorized the chair and the vice chair of

BAR EXAM APPLICANTS



COMMITTEE REPORTS CONTINUED

the Judge Management Subcommittee to write to the Commission, recommending against the use of Time Processing Standards as a criteria for certifying judges for retention election. Court Reorganization and the merits of creating a criminal division in the Third District were also given extensive attention. The Local Rule Subcommittee has polled the Bar and the clerks of all of the state's judicial districts to identify all unpublished local rules that have crept into the different districts.

Delivery of Legal Services

Brian J. Namba, Chair

21 members

The Delivery of Legal Services Committee recommended that the Utah Delegation to the national ABA Convention support the motion to amend Rule 6.1 to create the aspirational goal that every lawyer devote at least 50 hours of pro bono public services each year. The Committee also recommended that the Bar commission hire a full time staff member to oversee the development of a legal services program, which would be modeled after the successful programs developed in several other states, for Utah's low income population and recommended a source of partial funding for the staff position that would have reduced costs to Bar members during the first year of the program. After considerable debate the Commission failed to implement either recommendation. The Committee is currently seeking the support and cooperation of other individual lawyers, sections and committees to promote an improved legal system that would meet the needs of Utah's low to middle income population.

Ethics Advisory Opinion

Leslie P. Francis, Co-Chair

Gary G. Sackett, Co-Chair

26 members

The Ethics Advisory Opinion Committee prepared advisory opinions on questions of legal ethics at the request of members of the Bar regarding disputed or unclear sections of the Utah Rules of Professional Conduct. The Committee undertook to compile all opinions that have been issued

since the Utah Supreme Court adopted the Utah Rules of Professional Conduct, effective January 1, 1988, as a replacement for the old Code of Professional Responsibility. WestLaw (West Publishing Co.) has agreed to include these opinions within the next several months. LegaSearch, a company that markets a broad collection of Utah law on CD-ROM has agreed to include the ethics opinions in the near future. The Michie Company, a Mead Data Central affiliate that also markets Utah law on CD-ROM, has indicated a desire to include the opinions in 1994, but has not yet made a firm commitment. A loose-leaf ethics opinion service is now available for a modest fee. The Bar offices will administer this service, so that hard copies of post-1987 ethics opinions can be readily obtained.

Ethics and Discipline

Dale A. Kimball, Chair

48 members

The Ethics and Discipline Committee is divided into four Screening Panels which met every Thursday afternoon and evening to investigate the facts giving rise to ethical complaints against members of the Bar. On July 1, 1992 fifteen (15) members were newly appointed to the Committee and two new chairs of the Screening Panels took over the reigns of their respective panels. In 1992, Notice of Complaints increased 43% although the Screening Panels reviewed exactly the same number (197) of cases in 1992 as 1991. The Office of Bar Counsel was instrumental in mediating or otherwise alternatively disposing of the rest. Under the newly proposed Rules of Procedure of Discipline that utilizes the district courts for trials of allegations of serious misconduct, it should be noted that the function of the Screening Panels will not change, attesting to their efficiency, fairness and value to the overall disciplinary system.

Fee Arbitration

Gary E. Doctorman, Chair

47 members

The Fee Arbitration Committee arbitrated fee disputes between attorneys practicing in the state of Utah and their clients.

Arbitration panels consist of a lawyer, a judge, and a non-lawyer. In the three quarters between July 1, 1992 and March 31, 1993, we have received 29 petitions. We conducted 21 arbitration hearings, have had two cases settle and presently have seven cases in process. Of the 21 cases in which a hearing has been held, seven cases provided relief to the petitioners and 11 cases were decided in favor of the respondents, and three cases are presently awaiting decisions. 114 requests have been received for fee arbitration and the Committee has processed 48 petitions from July 1, 1992 to March 31, 1993. Of those petitions, 29 have been resolved. There are still 19 petitions to be resolved. 67 petitions were received between July 1, 1991 and June 30, 1992. Of those petitions, 50 of them were resolved between July 1, 1992 and March 31, 1993.

Fund for Client Protection (f/k/a Client Security Fund)

David R. Hamilton, Chair

22 members

The Fund for Client Protection Committee met every quarter to consider approximately 15 claims per session. One recent session required two separate panels to be convened to hear approximately 30 claims during the day. Claims of "unearned" fees predominate, ranging from a few hundred dollars to \$25,000.00. The committee recently made suggestion to the Bar President that the size of the Fund be expanded to deal with the ever-increasing number of claims. A trend is developing, whereby the Committee is recommending denial on more than there were in the past. This may be the result of greater publicity of the existence of the fund. It is anticipated that the trend for more claims will continue. Client Security Fund rules require that each active member be assessed a sufficient amount at the start of the year not in excess of \$10 to restore the fund balance to \$100,000. During 1992-93, the Fund paid out \$42,061 in claims; with interest earned, the balance is currently \$57,939 and requires the assessment of \$9.80.

COMMITTEE REPORTS CONTINUED

Law Practice Management

Lynn Davies, Chair

13 members

The Law Practice Management Committee has undertaken a survey of law firms and solo practitioners regarding their use of technology, such as computers, computer software, telecommunications systems, and other law firm equipment. The survey is currently being developed and will be sent in July. The Committee will compile results and report/publish its findings in early fall, 1993. The Committee has also begun to prepare a series of articles on law practice management, with emphasis on issues of particular note to Utah attorneys. The Committee may arrange for the separate publication of some of these articles; those articles may also be available ultimately in compiled or manual form. The Committee's goal in these two projects, as well as its other activities, is to provide specific information to Utah attorneys for their use in better and more profitably managing their firms and practices.

Law Related Education and Law Day Committee

Gordon K. Jensen, Co-Chair

Robert H. Rees, Co-Chair

24 members

This year our committee has tried to raise the general public's awareness of Law Day and to begin to make Law Day more of a widespread celebration of the rule of law. We originated the idea of producing banners publicizing Law Day which were hung in downtown Salt Lake and at various other locations throughout the state. The annual Law Day Fair was held to encourage more participation by the general public. Other activities included the high school and junior high school mock trial competition, the judge for a day program, the mentor and mid-mentor program, conflict resolution, and the Scott Matheson award. This year the committee was responsible for updating Practical Law in Utah. This is the Utah State Supplement to the national text Street Law, which is used to teach law-related topics to students in the secondary schools nationwide.

Lawyer Benefits

Randon W. Wilson, Chair

10 members

The objectives of our Committee were revised early in the year and are as follows: "To receive, staff and recommend to the Commission for approval traditional association benefit programs such as health, life, disability, dental and professional liability insurance; and other programs such as discount purchasing programs: a) which have potential benefit to members; and b) which can be provided with little or no cost to the Bar or with potential revenue to the Bar provided such revenue is disclosed generally to the Bar membership." The Bar continues to maintain a strong and improving health and accident insurance program underwritten by Blue Cross/Blue Shield of Utah. Our professional liability insurance program handled by Rollins Hudig Hall and underwritten by the Home Insurance Company is in its seventh year with only modest increases in rates. Our disability insurance program offers a choice of policies with discounts ranging up to 25% for individual lawyers. More and more of our Bar members are opting to acquire disability insurance under the Bar endorsed program. The Bar commission, upon recommendation from our Committee, endorsed two new programs during the past year. The first is a discount program with Airborne Express which will provide sole practitioners and small firms deep discounts on overnight letters which have heretofore been available only to the larger firms. The second program is sponsored by Vantage Travel, which will extend to Bar members the opportunity to participate in group travel anywhere in the world with a reputable group travel firm with commissions being paid to the Bar without increasing the cost of the travel. We continue to monitor other programs, to include life insurance, dental insurance, cellular telephone rates, long distance telephone discount programs, a collections program and others.

Lawyers Helping Lawyers

J. Steven Mikita, Chair

15 members

The Lawyers Helping Lawyers Committee continued its mission of counseling and supporting attorneys who are impaired by alcoholism, substance abuse or clinical depression. Plans for a 24 hour HELP LINE are being finalized.

Legal/Health Care

Penny S. Brooke, Co-Chair

Maureen L. Cleary, Co-Chair

25 members

The Legal/Health Care Committee revised the Interprofessional Code in collaboration with the Utah Medical Association. The Code was introduced and distributed at a Conference on May 26, 1993. The three-hour conference focused on ethical issues faced by physicians and attorneys jointly. The Committee is also preparing to review physician standards of care proposed by a statewide Committee chaired by Robert Hueffner. Our feedback has been sought regarding legal implications of such standards.

Legislative Affairs

David R. Bird, Chair

53 members

The Legislative Affairs Committee monitored proposed state legislation concerning the courts of Utah, procedure and evidence, the administration of justice, the practice of law and matters of substantive law on which the collective expertise of lawyers has special relevance and/or which may affect an individual's ability to access legal services or the legal system. The Committee met nine times, including six weekly meetings, during the 1993 legislative session. With the invaluable assistance of the Bar's legislative representative, John T. Nielsen, the Committee examined over 750 bills and resolutions introduced during 1993. The Committee conducted formal presentations, debates and votes on dozens of bills. We made recommendations to the Bar Commission on many important issues, including judicial salaries, small claims court jurisdiction limits, medical malpractice prelitigation amendments, court operations and judicial council membership, and payment of attorneys' fees in civil lawsuits.

COMMITTEE REPORTS CONTINUED

Mid-Year Meeting

Earl Jay Peck, Chair

10 members

The Mid-Year Meeting was a resounding success. We received a record 468 registrants. We also received numerous positive comments regarding the program which was highlighted by speeches from J. Phil Carleton and Keith Evans. The Mid-Year Meeting provided 8.5 hours of CLE credit and offered over 17 different sessions as well as fun sporting events and activities.

Needs of Children

Sharon N. Kishner, Co-Chair

Denise Olsen, Co-Chair

37 members

The Needs of Children Committee met on a monthly basis and coordinated with Utah Children on a publication and sponsored several continuing legal education programs. Roz McGee, Executive Director of Utah Children, contacted us in September, 1992, regarding a possible publication project. Utah Children had obtained copies of a New Jersey publication which focussed on the rights of children. Ms. McGee contacted the editors of the publication, who gave her permission to use it as a prototype for a Utah Publication. The Committee agreed to support the publication and members agreed to volunteer for an advisory board to oversee the publication's progress, and would author and/or edit chapters for the book. The anticipated publication date is winter, 1993.

Needs of the Elderly

Shauna H. O'Neil, Chair

19 members

The Needs of the Elderly Committee continued to fulfill its charge of formulating positions on issues regarding the needs of our elderly population and recommending appropriate action.

New Lawyers CLE

Mark M. Bettilyon, Chair

10 members

New lawyers are required to obtain one-half of their CLE credits through attendance at specially designated seminars and workshops. The New

Lawyers CLE Committee sponsored an annual seminar and a series of monthly workshops which meet these CLE requirements. The Committee's goal is to provide new lawyers with the best possible CLE options available. The committee, with completely new members this year, has revised the seminar and proposed a number of changes to the workshop schedule. The committee also continually monitors the workshops in an effort to upgrade and improve the program.

Professional Liability

Carman E. Kipp, Chair

7 members

This Professional Liability Committee was formed many years ago as a sort of blue ribbon task force to deal with the ebb and flow of lawyers professional negligence coverage. The Committee reviewed and concluded that current coverage availability is quite good, that rates are charged consistent with actual loss experience, and that in general the bar enjoys good availability of coverage and good relations with and service from the bar sponsored carrier. The Committee monitored the loss experience of the Utah State Bar for the past year, compares this to historical data for recent past years and reviewed rate quotes to see that they are consistent with loss experiences and market trends.

Securities Advisory

Norman S. Johnson, Chair

35 members

The Securities Advisory Committee provided technical advice to the staff of the Securities Division of the Utah Department of Commerce to enable the Division to function more efficiently and effectively. The committee heard reports from the Division staff concerning planned legislation and rules under consideration, including a North American Securities Administrators Association (NASAA) rule known as the Small Corporate Offering Registration (SCOR). The Committee discussed the Electronic Data Gathering and Retrieval System (EDGAR) being introduced by the Securities and Exchange

Commission, and the State Registration Depository, and being developed by NASAA. Each system is aimed at development of electronic means to register securities offerings. Three subcommittees were organized to commence a study of the Uniform Securities Act. The study will compare the Utah Act with the Model Act and the Uniform Act and will consider the need to amend the Act from the stand points of registration, licensing and enforcement issues.

Unauthorized Practice of Law

G. Steven Sullivan, Chair

20 members

The UPL Committee is charged with the task of investigating persons who may be practicing law without a license. The number of such complaints has grown each year. Over 40 complaints were investigated by the Committee. Many cases are resolved through stipulation of the parties. Such stipulations almost always include an agreement by the party being investigated that the practice complained of will cease.

Awards recipients for 1993 include:

**Hon. Bruce S. Jenkins,
Judge of the Year**

**William B. Bohling,
Distinguished Lawyer of the Year**

**Gregory G. Skordas,
Distinguished Young Lawyer
of the Year**

**Litigation Section,
Distinguished Section**

**Legislative Affairs Committee,
Distinguished Committee;**

**James C. Lewis and John Lewis,
Distinguished Pro Bono Lawyers
of the Year**

**Lyle Campbell,
Distinguished Non-Lawyer for
Service to the Profession**

NEWLY ESTABLISHED PROGRAMS

Several new programs or initiatives were undertaken this past year by the Commission, the Bar staff or various committees. The more significant undertakings are summarized below.

Alternative Dispute Resolution Committee State-Wide Educational Program

Hardin A. Whitney, Chair

The ADR Committee was charged by the Board of Bar Commissioners to develop a CLE program through which it explained and outlined various forms of alternative dispute resolution for the purpose of acquainting the members of the Bar with how it works. Presentations were made in: Tooele County, St. George, Salt Lake County, Davis County, Carbon County, Weber County, Uintah County, Box Elder/Cache Counties, and Utah County. We were granted permission to award two hours of CLE credit in all of these places with the exception of Salt Lake County, where we were asked to keep our presentation to one hour. We undertook a program of systematic evaluation of various legislation and other programs in alternative dispute resolution; began a program of educating the Bar members as to the benefits of ADR and to defer taking any public action involving ADR legislation until such evaluation is complete. The ADR Committee was asked to engage in 8-10 months of study and education, and hopefully then to be in a position to advise the Bar as to the best course of action both with respect to possible legislation and as to other aspects of the subject. The basis stemmed from a number of concurrent developments:

First, The United States District Court for Utah has been designated as one of ten pilot courts to experiment with voluntary court-annexed ADR, including arbitration and mediation.

Second, late in 1991 the Utah Judicial Council instructed the State Court Administrator's Office to draft a proposed statute for mandatory court-annexed ADR.

Third, some states are already taking the lead in aggressively undertaking ADR initiatives.

Fourth, many private firms, both legal

and non-legal, are now being established to provide panels of former judges, lawyers and lay persons to aggressively promote private ADR services, which raises the question as to whether they should be regulated, and fifth, there is a paucity of information about ADR among many Utah lawyers, some of whom believe that it is a competitive threat to the profession. Our Committee is working with the State Court Administrator's Office to draft a court-annexed ADR statute for presentation to the 1994 Legislature. When prepared, it will be presented to the Bar Commission for its possible endorsement.

Mini-Breakfast Series

The Bar sponsored a series of six free general interest seminars at the Utah Law and Justice Center and provided a continental breakfast. Topics included, "What Every Civil Lawyer Should Know About the Criminal Justice System, or What to do When Your Friend, Neighbor or Child Calls at 1:00 a.m. and Says, 'Help, I'm in Jail!'; "Reporting on the Law, the Courts and the Legal Profession - A Candid Discussion with Salt Lake's Courts Reporters, or Why do Lawyers Get Such a Bum Rap from the Media?"; "State Legislative Issues Affecting the Legal Profession, or What are my Legislators Doing for me Anyway?"; "Ten Practical Pointers on Practice Development and Marketing for The Small Firm Practitioner, or How Do I Compete with the big Firms without Busting the Budget?"; "The Inner Workings of the Utah Court of Appeals, or How are Decisions Made up there Anyway?" and "Utah's Top Legal Beagles, What Do They Have in Store for '93? -- Bark, Bite or What!"

Utah Dispute Resolution

Utah Dispute Resolution (UDR) is a community mediation program, located at the Utah Law and Justice Center, offering free mediation services to the community. It developed as a result of a two-year federal grant to the Utah State Bar from the State Justice Institute. Mediators handle various types of cases including consumer-merchant, landlord-

tenant, neighbor-neighbor, and virtually any other type of dispute. The only type of cases that UDR does not currently accept are those involving divorce or child custody. Approximately 85 percent of UDR's cases reached agreements through mediation. In addition to the cases mediated at the Utah Law and Justice Center, UDR offered services through both the Salt Lake City and Murray City Small Claims Courts since October 1991 and in February 1993, began operation of another satellite location in Utah County.

Public Forum on Divorce & Society in Utah

On April 29, 1993, the Bar's Special Public Forum Steering Committee joined with Utah Children and the Civist Society to host a panel discussion on divorce and its impact on the family. A broad-based group of judges, lawyers, community leaders, family-law practitioners, social service coordinators, academicians and citizens who have experienced divorce through the courts engaged in lively dialogue in the day-long seminar. The panel reviewed the problem associated with access to the Courts by low and middle income citizens and the disruptive efforts of divorce proceedings. The forum has published its report and expects to organize a second panel in the fall.

Non-Profit Officers and Directors Handbook

The Corporate Counsel Section and the Business Law Section sponsored presentations in which the boards of directors and officers of local non-profit corporations were invited to participate. The sections also produced a handbook on the topic of Officers and Directors Rights and Responsibilities. This educational and public relations effort was done in conjunction with the United Way and the Junior League.

Legal/Medical Interprofessional Code

The Bar's Legal/Health Care Committee has joined with the Utah Medical Association to revise and update the *Legal/Medical Interprofessional Code for Utah*. The Code deals with issues

NEWLY ESTABLISHED PROGRAMS CONTINUED

relating to interprofessional relationships concerning clients and patients and describes how physicians and attorneys should relate to one another in resolving issues which involve patient care and such other issues as depositions, subpoenas and access to records. Physicians representing the medical

profession and attorneys representing plaintiffs and defendants participated in producing this update. The Code was first published in 1971 and revised in 1982. The Bar will publish the Code. the Utah Medical Association has agreed to distribute it to all Utah physicians and the Utah Trial Lawyers Association and

the Litigation Section will distribute the Code to its members. Free copies of the revised code are available at the Bar office, c/o Kim Williams, 645 South 200 East, Salt Lake City, UT 84111-3834.

SOLE PRACTITIONER/SMALL FIRM TASK FORCE

Richard D. Burbidge, Chair
Charles R. Brown, Vice Chair
Paul H. Van Dyke
L. Tasman Biesinger
Frank J. Gustin
Barbara L. Maw
Katherine A. Fox
Keith F. Oehler
Richard Medsker
Thomas W. Seiler
M. Don Young
Glen T. Cella
Kenneth G. Anderton
Margret Taylor
Warren H. Peterson

In July, 1992, Randy L. Dryer, President of the Utah State Bar, asked Richard D. Burbidge to chair a newly created Task Force on Solo and Small Firm Practitioners. A number of small firm practitioners responded to a notice in the August/September 1992 issue of the Utah Bar Journal, and to direct solicitation through county bar associations throughout the state, and

agreed to serve on the Task Force. Those participating studied concerns in such areas as feelings of distance and disenfranchisement from the Bar and its activities as well as from peers, inadequate group health insurance opportunities through the Bar, the need for assistance in establishment and maintenance of small firm practice, small firm operational problems, and the need for mentor and peer networking. The Task Force recognized that there was a telling need for the establishment of a permanent Standing Committee of the Bar which would continue to assess the needs and requirements of small firm practitioners, develop recommendations and programs to meet those needs and, on an ongoing basis, make substantial and positive steps toward the franchisement of small firm practitioners in the Bar organization and its activities.

While the Bar must establish mechanisms for the more convenient involvement of small firm practitioners, especially those in outlying areas, it will come to naught unless the small firm practitioner takes initiative to become involved. Unavoidably, that will require some sacrifice. Hopefully, it will repay. We believe if the appropriate mechanisms are established minimizing the inconvenience, that sacrifice will be significantly rewarded.

The Utah State Bar must know and serve all its membership, including its majority. The activities of the State Bar can and should be conducted in such a way as to encourage and facilitate participation by all members, including practitioners in outlying areas. Small firms can be organized and can share and strengthen one another by an organization. That organization is the one they already belong to. By the same token, even with greater facilities for participation, there must be effort devoted by the small firm practitioner to participate and contribute. Copies of the Task Force Report may be obtained from Mary Munzert at the Utah Law & Justice Center.

FUTURES COMMISSION

James B. Lee, Chair
Jim Butler
Hon. Michael R. Murphy
Mary C. Corporon
Palmer DePaulis
Mark Jones
Keith A. Kelly
Gayle F. McKeachnie
Michael E. Christensen
Dean Lee E. Teitelbaum
Brian R. Florence
Hon. Stephen H. Anderson
Janene H. Eller
Tobin J. Brown

The Utah State Bar Futures Commission was created by Bar President Randy Dryer in July, 1992 to develop a demographic profile of the Utah State Bar and its members, and identify the various markets for legal services in Utah, and to project that same information to the year 2002. The Commission is working with the Utah Foundation to prepare a report to be presented to the members of the Bar at the Annual Meeting.

As its first task, the Commission has assembled a demographic profile of

the Utah State Bar in 1992. While there is a significant amount of information which describes who Utah lawyers are and what they do, it has been gathered by disparate parties at different times and is typically inconsistent in scope, format and purpose. From this data base, the staff of the Utah Foundation has helped the Commission to prepare a current demographic profile of the Utah Bar, and by applying economic and population projections for Utah and the nation, to prepare demographic projections of the Utah Bar for the next decade. Finally, to these projections, the Commission has applied its own experience, combined with the knowledge and expertise of other members of the Bar, the Judiciary and Court Administrators to provide a narrative forecast of trends in Utah's legal community and legal markets.

Predicting the future is an interesting, but perilous exercise. Nevertheless, the Commission believes that the most likely changes in the Utah Bar over the next decade can be discerned in trends that are evident today. The report will identify a number of trends, projected changes in legal markets and the demographic composition of the Bar.

While there are many important trends that will affect Utah lawyers and their practice, the Commission's discussion consistently returned to the continuing evolution of a bifurcated market for legal services. On one level, in those areas that traditionally provide the most profitable legal work, the legal market can be expected to remain relatively crowded, with more lawyers competing for client legal budgets that are fixed or growing slowly. On another level, however, the need for legal services for low and middle income Utahns in areas of family and domestic law, criminal law, and administrative law continues to grow. Despite the significant and commendable efforts of the Bar to provide these legal services, unmet legal needs remain. If these needs are to be met, the Bar must expand its current efforts, and increase its support for existing legal service programs, or face increasing pressure for more significant structural changes in the market for these legal services. Copies of the report of the Commission may be obtained from Mary Munzert at the Utah Law and Justice Center.

Commission Appointments

The Bar Commission made appointments to fourteen various public service committees, boards and commissions pursuant to various statutes and the Utah Constitution. The appointments during the last fiscal year included:

Utah State Bar's Representative to the ABA House of Delegates -
Reed L. Martineau.

Judicial Council Court Commissioners Conduct Committee -
Frederick N. Green

Judicial Council Ethics Advisory Committee - David B. Watkiss

State Executive And Judicial Compensation Commission -
James B. Lee

Judicial Council Judicial Conduct Commission -
Denise A. Dragoo

Judicial Council Judicial Performance Evaluation Committee -
Jeff R. Thorne

State Traffic Decriminalization Committee - J. Michael Hansen

Trial Court Judicial Nominating Commissions -

1st District - Reed W. Hadfield, Herm Olsen

2nd District - Kathleen M. Nelson, Brian R. Florence

3rd District - Michael N. Martinez, Barbara K. Polich

4th District - D. David Lambert, Brent D. Young.

5th District - John W. Palmer, David Nuffer

6th District - Tex R. Olsen, Paul R. Frischknecht

7th District - L. Robert Anderson, Sr., Margret Sidwel Taylor

8th District - Harry H. Souvall, Kenneth G. Anderton

Utah Judicial Council - James Z. Davis

Utah Legal Services, Inc. - Marten W. Custen, Michael Nielsen,
James H. Backman, Mark E. Kleinfeld, Mary S. Tucker

Utah Substance Abuse Coordination Council - Karen Jane Stam

Utah Sentencing Commission - Rodney G. Snow

Commission on Criminal and Juvenile Justice - Max D. Wheeler,
Joseph Fratto, Brooke C. Wells

Judicial Council Technology Committee - Clark W. Sessions,
Brooke C. Wells

FUTURE ISSUES FACING THE BAR

Changing markets, a growing population and emerging legal and social issues will undoubtedly pose challenges to the profession in the years ahead.

The Bar is just now beginning to focus on some of these issues and to start up the process of addressing these trends. The following outlines some of the trends the Bar will be facing in the next few years.

Alternative Dispute Resolution

The skyrocketing cost of litigation has fueled the search for less expensive ways of resolving legal disputes. Various forms of ADR, primarily from private providers, have flourished in many areas of the country. ADR is in its infancy in Utah and forces for its development. The Bar has no formal policy on the subject and the Utah practitioner, to the extent he/she utilizes ADR, does so in a limited fashion. ADR is undoubtedly the wave of the future and the move to better and more frequently invoke the various forms of ADR in an institutional manner is and will be driven by client and legislative pressures. Businesses throughout the country are signing pledges to turn first to ADR techniques before filing lawsuits against other businesses. Over 60% of the Fortune 500 companies have already subscribed to such pledges.

Each year ADR legislation has been introduced in the Legislature and each new bill is more and more comprehensive and sweeping in its intrusion into the traditional litigation arena.

Unmet Legal Needs of the Indigent

The Utah Commission on Justice in the Twenty-First Century, in its recently completed report, noted that despite the "impressive amounts" of pro bono work done by Utah lawyers individually and through the Bar's Tuesday Night Bar program, increasing numbers of Utahns are being denied access to legal services. The Commission recommended that a special task force of lawyers, legislators and lay members be created to determine how best to address this growing problem. Budgetary pressures are such that government subsidized legal services probably will never adequately address the need. Legal insurance, for a variety of reasons, has never gotten off the ground.

The most likely place to turn for a solution is to the Bar -- through pro bono service.

How to provide pro bono services to the indigent is an issue the Bar ultimately will be forced to confront by outside pressures if it does not address the subject on its own volition.

Growing Numbers of Lawyers

For the past several years, the lawyer population in Utah has increased at a rate greater than the general adult population. Each year the bar realizes a net gain of between 200-250 attorneys. More and more attorneys from other jurisdictions are moving to Utah. Application to our two law schools are increasing and the number of applicants admitted continues to rise. More and more graduates are opting to seek employment within the state. The growing number of attorneys in Utah obviously is an issue that not only poses competitive concerns, but also concerns about how our state and the bar can absorb, support and regulate this growing number. The public in general certainly holds the view that we have too many lawyers already and that many of society's ills are a result of this oversupply. Should the marketplace deal with this situation or is it appropriate for the Bar to take steps to curtail membership growth? Other states have examined the possibility of limiting enrollment at law schools within the state. Still others have responded by raising admission standards such as increasing the scores necessary for passing the Bar examination. In Utah, the pass rate has risen steadily the last several years to the point where the pass rate reached 90% this past June. Still other jurisdictions have tightened up on the qualifications and conditions for out of state attorneys to practice in their state or to gain admittance.

Growing Numbers of Unethical Lawyers

Although the subject of unethical lawyers is certainly not new, it will continue to be a problem and is a growing one in Utah. The number of complaints made against Utah attorneys continues to rise each year. Given the growth of the Bar, the public's hostility toward lawyers and an increased readiness to blame one's

counsel for an unhappy result, it is not reasonable to believe that this upward spiral will continue in the near future.

Can we continue to adequately respond? Our current disciplinary system and procedures certainly have felt the strain of this increased caseload. In response to this growing pressure and other concerns with lawyer discipline, the Utah Supreme Court has recently completely overhauled the process. How we deal with increasing numbers of unethical lawyers in the next few years (or at least until fevered lawyer bashing subsides), will be closely watched by the public, the Supreme Court and the legislature.

Legal Assistants

Lawyers are utilizing trained and experienced legal assistants more and more to augment their practice and perform appropriate related services under their direction. Local colleges are increasing their emphasis to legal assistant programs and increasing numbers of qualified paralegals are available to work in legal services.

For some while now, the Bar has been reviewing its obligation to assure that legal assistants only perform legal work under the supervision of licensed lawyers, and we have explored the appropriateness of a more formalized relationship with establishing paralegals.

The Bar Commission has recently authorized President-Elect Jim Clegg to establish a committee to consider how, if at all, the Bar should be involved in providing guidelines for the utilization of paralegals or even if the Bar should petition the Supreme Court to provide legal assistants some type of affiliate status. The committee will include lawyers, legal assistants, and representatives of the Legal Assistants Association of Utah. There is currently no regulation of legal assistants in Utah. The state's legal assistants have varied sentiments about whether or not they should be regulated, and if so, whether the Bar or the State Department of Commerce would be the more appropriate organization for regulation.

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