UTAH BAR JOURNAL

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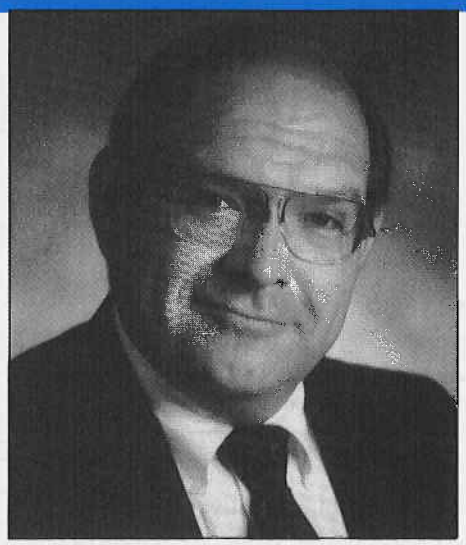


What is ADR

By James Z. Davis

Unless you have been attempting to reduce stress by seeking your inner self at the top of a peak in Nepal, you are probably aware that the letters ADR stand for Alternative Dispute Resolution.

Unfortunately, the word "alternative" in Alternative Dispute Resolution has come to mean an alternative to the resolution of disputes by the civil justice system administered by local, state and federal courts in one permutation or another since the advent of common law as we know it.

In the fall 1991 edition of the Utah Trial Journal published by the Utah Trial Lawyers Association, substantial portions of Judge Bruce S. Jenkins' September 26, 1991 address at the Aldon J. Anderson American Inn of Court were printed.

According to Judge Jenkins, our civil justice system, aided by the significant efforts of the majority of lawyers who practice preventative law, *is* alternative dispute resolution.

> "The alternative provided by the courts is an alternative to bloodshed. Court resolution has had a novel, successful and largely untold history, and even now it has not just a promising but also an essential future. Imagine this country without easily accessible courts, and self help becomes a horrible and horrifying alternative."

Judge Jenkins also observed that in the District of Utah only 3 percent or 4 percent of civil cases actually go to trial and that the entire cost of the federal court system is less than one tenth of 1 percent of the federal budget.

Over the past several years, however, it has been a generally accepted premise that the civil justice system is not doing its job, and other methods of dispute resolution such as mediation, conciliation, and arbitration are necessary, more cost effective and less time consuming than utilization of the courts. Indeed, the growth of "non-judicial" ADR and the desire to provide ADR service and facilities were major objectives in obtaining funding for and construction of the Law and Justice Center; and the Utah State Bar has not waivered in its commitment to the notion that all of our citizens should have access to a methodology of effective dispute resolution. Every year, more and more contracts provide for arbitration of disputes thereunder and limit access to the courts for that purpose. In 1985, Utah adopted the "Utah Arbitration Act" (78-31a-1 *et seq.* Utah Code Ann.); and in 1991, Utah adopted an act entitled "Alternative Dispute Resolution" (78-31b-1 *et seq.*, Utah Code Ann.) giving the courts power to refer a pending dispute for resolution by an ADR provider and granting immunity to the provider. I understand 78-31b-1 *et seq.* has not been utilized as of this writing, but it nonetheless serves as an indication of the legislature's attitude toward ADR. Of course, while the civil justice system is funded primarily by tax dollars, other methods of dispute resolution are funded by the parties to the dispute.

Notwithstanding the foregoing, in that same edition of the *Utah Trial Journal*, the editors asked the following people whether the right to a trial by jury was "as important today as it was in 1791 when the Bill of Rights was finally ratified by the state of Virginia? Or have times so changed that the right to a trial by jury should be abolished and a more efficient form of dispute resolution mandated in its place?" The respondents were Gordon R. Hall, Dennis L. Draney, Monroe G. McKay, Norman Bangerter, Don V. Tibbs, Dee Benson, James Z. Davis, David K. Winder, Eleanor VanSciver, Scott Daniels, Wayne McCormick, Michael L. Hutchings, Boyd Bunnell, H. Reese Hansen, J. Thomas Greene, Michael D. Zimmerman, Cullin Y. Christensen, David Sam and Richard C. Howe. With the exception of Judge Bunnell and Dean Hansen, all of the respondents favor the right to a trial by jury. Since submission of a dispute to arbitration outside the civil justice system constitutes a *de facto* waiver of the right to a jury trial, it appears to me that we are, perhaps, some-

what schizophrenic about our views of these issues.

A survey conducted by a subcommittee of the Civil Justice Reform Act Advisory Committee of the United States District Court for the District of Utah reveals some interesting information, however. Although far from "scientific," the survey attempted to determine the general satisfaction levels of lawyers and litigants using the United States District Court for the District of Utah. The results of the survey suggested that pre-trial discovery had little impact on the cost of litigation, and in many cases was barely utilized. The survey also revealed that, by and large, both the litigants and their attorneys were satisfied with the "services" provided by the District Court. As one might imagine, the major cost of litigation was attorney's fees—presumably a factor in other types of dispute resolution where representation by counsel is desired.

Many of you are aware that the Bar has a very active ADR committee ably chaired by Hardin A. Whitney Jr. That committee is charged with the responsibility of coordinating the involvement of lawyers in alternative forms of dispute resolution and making recommendations to the bar relative to the appropriate involvement of its members. Wisely, Din Whitney has appointed a subcommittee chaired by Marcella Keck to survey the availability of ADR services in the state of Utah, identify providers, identify users, determine costs and identify funding sources. As of this writing, it is anticipated that the subcommittee will complete its work by January 31, 1992. In the meantime, I would urge all lawyers who have an interest in or information about ADR to communicate directly with Din Whitney or Marcie Keck.

. . . it has been a generally accepted premise that the civil justice system is not doing its job . .

Hopefully, through the efforts of Din's committee together with those of other groups, organizations and bar members, we will be able to develop a better grasp of "What is ADR?" For example:

1. Should ADR, by definition, mean an alternate to the civil justice system?

2. Should the definition of ADR be expanded to include the civil justice system as one of the alternatives?

3. Should the civil justice courts have the authority to send pending matters to another forum?

4. Do litigants who utilize the services of counsel in dispute resolution proceedings outside the civil justice system save time or money?

5. To what extent is free access to the civil justice system the "right" of a citizen?

6. What level of resources are being expended on dispute resolution outside the civil justice system?

7. Do alternatives to the civil justice system provide the same level of fundamental due process as does the civil justice system?

8. Who are the primary beneficiaries of dispute resolution outside the civil justice system?

9. Are those who agree to submit disputes to resolution outside the civil justice system aware that they are thereby waiving their right to a jury?

10. Will the Third Branch of Government eventually lose its effectiveness as a stabilizing and moderating influence on executive and legislative power if its role in dispute resolution is diminished?

Court Consolidation— A Discussion of Its Implications

By Craig M. Snyder

On January 1, 1992, one of the most significant pieces of legislation in recent memory affecting the court system and the practice of law will take effect here in Utah. Court reorganization legislation originally passed in the 1991 general session of the legislature begins its implementation in the fifth, sixth, seventh and eighth districts. Some of the enabling legislation dealing with the mechanics of implementation has already been passed by the legislature in the October 1991, special session. A more comprehensive bill dealing specifically with the functions and duties of court commissioners has been prepared and will be presented to the 1992 general session of the legislature.

At the outset let me indicate that the opinions expressed in this article concerning the court consolidation are my own. The Board of Bar Commissioners have, at the time of this writing have not yet taken a position on the legislation pending before the 1992 legislature. The Bar Commission did take a position on the 1991 general session legislation and did express an informal opinion with regard to the legislation that was presented to the 1991 special session.

Court consolidation is not a new idea, nor is it one without some controversy. Anytime legislation is proposed which changes institutional governmental structures and functions it is always subject to criticism and opposition to change. The original legislation, in this case House Bill 436, was the result of a study directed by the legislature. That study reflected the following concerns:

1. A projection which was done by a legislative analyst that the state of Utah will need an additional 26 trial court judges between 1987 and 1996 at a cost of approximately $5.5 million in 1991 dollars.

2. A concern about the proliferation of fees which were being added to fines.

3. A concern that the distribution of fines and fees influences decisions on whether to establish a circuit court and decisions about how criminal cases are charged by prosecutors.

Concerns two and three are only partially addressed by the consolidation of the court legislation and there is a separate bill which is still in the process of being drafted which will purport to address other issues relating to court fees.

The major issue reflected in the legislative study has very little to do with issues one, two and three. The real focus of the legislature's study was the proliferation of single judge courthouses under the then existing law which required a courthouse in each city served by the circuit court. Apparently one prominent member of the legislature discovered that in his district within a five-mile radius there were three separate new courthouses under construction at the same time. He quite naturally raised questions concerning the fiscal management of the court construction and that concern mushroomed into the impetus for the present court consolidation legislation.

If the proliferation of single judge courthouses in cities served by the circuit courts and the construction of three new courthouses within a five-mile radius in Davis County draws the concern of the legislature, then the problem is not with the court system itself, but rather with the management of the construction of facilities. An amendment could have been proposed to the existing statute to permit consolidation of courthouse facilities and their use by different courts. Furthermore, the 1992 Utah State Court's Report to the Legislature prepared by the Court Administrator's Office indicates that Utah is already well ahead of most of the rest of the country in its civil and felony case processing times. An argument can be made that "the

proposed cure is not directed to the disease."

Nonetheless, at the direction of the legislature the State Court Administrator's Office and the Judicial Council prepared the reorganization legislation which was adopted by the 1991 general session of the legislature. Originally it was proposed to include the juvenile courts in the court reorganization. But for reasons which are somewhat vague the juvenile courts opted not to be included in the consolidation legislation and the proposal that was ultimately passed by the 1991 legislature included the consolidation of only the circuit courts into the district courts. The legislation was to be phased in gradually with an effective date of January 1, 1992, in the rural districts (fifth, sixth, seventh and eighth) and a more gradual phase-in for the urban districts (first, second, third and fourth) based upon an implied review of how the system was working in the rural districts. The urban district courts were to come on line on a gradual basis between 1996 and 1998 subject to the review.

The initial legislation, House Bill 436, was presented to the Board of Bar Commissioners by the Judicial Council and the Court Administrators Office prior to being passed by the legislature. The Bar Commission directed its Legislative Affairs Committee to submit a report on the proposed legislation and after receiving that report gave its approval to HB436.

On October 18, 1991, I first became aware that the State Court Administrator's Office and the Judicial Council intended to present additional legislation regarding the implementation of the Court Reorganization Bill to the October 28, 1991, special session of the legislature. Most individuals with whom I discussed the matter were unaware that the October 1991 special session was dealing with anything other than redistricting and reapportionment. The proposed legislation dealt with several mechanical provisions including judicial retirement and other factors, but also contained some broad provisions with regard to the scope and authority of court commissioners. This proposed legislation was presented to the Bar Commission just four days prior to the start of the special session. The Bar Commission expressed its concerns that the provisions dealing with court commissioners as then drafted could actually conflict with provisions of other statutes applicable to the Justices of the Peace, who had some of the same duties. The Bar Commission also expressed its concern that it had had no opportunity for any input or review by its Legislative Affairs Committee prior to being asked to give its stamp of approval to the legislation. Accordingly the Bar Commission declined to give its approval to the legislation as it applied to the functions and duties of court commissioners although it did not object to other portions of the implementing legislation relating to retirement and other mechanical provisions.

Thereafter, I was appointed by Chief Justice Gordon R. Hall to serve on an Ad Hoc Legislation Committee. The purpose of this committee was to refine the draft legislation for the 1992 general session of the legislature. The initial piece of legislation that we have dealt with deals with the title, authority and review of court commissioners. The Ad Hoc Committee was initially comprised of six sitting judges, one sitting court commissioner, one court executive (administrator), one city attorney, one member of the Salt Lake County Legal Defender's Association, one member of the Bar's Legislative Affair's Committee, who also practices privately, and myself. After two meetings of our Ad Hoc Committee two other privately practicing attorneys were added to the Ad Hoc Committee at the request of the Utah State Bar president, James Z. Davis.

The real focus of the legislature's study was the proliferation of single judge courthouses under the then existing law which required a courthouse in each city served by the circuit court.

This committee has now completed its review of the proposed legislation and has made several recommendations to the State Court Administrator's Office and the Judicial Council regarding the scope, authority, duties and review of the court commissioners. The Judicial Council and the State Court Administrator's Office will review those recommendations and prepare a final draft of the legislation to be presented to the 1992 general session of the legislature. That process is an ongoing one and the provisions of the proposed bill are constantly changing even as I write this article.

The original legislation passed in the 1991 general session of the legislature (HB436) provides, among other things, the following:

1. It consolidates all of the district and circuit courts no sooner than January 1, 1996, and no later than July 1, 1998.

2. It consolidates the district and circuit courts in districts five, six, seven and eight beginning January 1, 1992.

3. It permits the Judicial Council to designate one city as a court location and requires at least one court site in each county.

4. It requires the Judicial Council to recommend allocations of judicial vacancies and allows the Judicial Council to determine whether district and circuit court vacancies should be filled by the appointment of another judge, reallocated to another court in the same geographic division, reallocated to another geographic division of the same court, replaced with a court commissioner or be eliminated completely.

5. It establishes a temporary retirement option providing a window which encourages sitting judges with a certain number of years of service to take an early retirement between October and December 1992.

6. It raises certain civil jurisdictional limits in the circuit courts.

7. It permits the cities to establish local responsibility for justice courts or to continue to use the circuit courts.

8. It grants a City Attorney authority to prosecute state misdemeanors.

9. It provides certain reallocations of existing fines and eliminates most of the existing fees.

10. It permits electronic recording as a substitute for court reporting in the district court. The Court Reorganization Bill (HB436) also contemplates the gradual phasing out of individual court reporters. No new court reporters will be hired for existing district court judges and the circuit court judges that are elevated to a district court judge position will have all of their reporting done by electronic equipment. The existing court reporters will be able to maintain their positions until all are eliminated by a process of retirement or natural attrition. In any event it will be necessary to upgrade and update the existing electronic equipment from the circuit courts and to buy additional electronic equipment for all of the other court rooms. Existing electronic equipment in most of

the courts is as much as 10 years behind state of the art.

11. It grants to the court commissioners the authority of a magistrate and purports to define their authority including the following:

A. Court commissioners may accept pleas of guilty or no contest, impose sentence and enter final judgment in misdemeanor cases.

B. Court commissioners may conduct jury or non-jury misdemeanor trials in accordance with the law provided that the defendant gives his informed consent. Upon any conviction a court commissioner may impose sentence and enter final judgment. The judgment entered by a court commissioner will be the final judgment for all purposes including appeal.

C. Court commissioners shall continue to do those things which they are already allowed to do particularly in the domestic relations and sanity area by rule of the Judicial Council.

D. In addition, court commissioners shall have the authority to set bail, issue warrants of search and arrest, conduct initial felony appearances, conduct arraignments, conduct preliminary hearings to determine probable cause and issue other temporary orders as provided by rule of the Judicial Council.

The present legislation which will be presented to the 1992 general session of the legislature deals primarily with the duties, functions and authority of court commissioners. There are many general housekeeping provisions which change terminology and eliminate confusing provisions defining the authority of justices of the peace who are referred to in statutory language as magistrates. The substantive provisions regarding the court commissioner's authority are similar to those which were enacted in House Bill 436, but expand even further the court commissioner's jurisdiction.

The present proposed legislation which is subject to the continuing modification and review of the Judicial Council and the Court Administrator's Office purports to grant court commissioners the same general authority as that which is granted to justices of the peace in criminal matters. In other words, court commissioners will be able to try all Class B and C misdemeanor cases and infractions whether to a jury or not to a jury with or without the consent of the parties. They also will have authority to hear and conduct trials in Class A misdemeanors with or without a jury subject to the consent of the defendant.

They will have authority in civil matters to hear all cases up to a jurisdictional limit of $10,000. In addition they will be able to hear all forcible entry and unlawful detainer cases and will also be granted authority to hear matters involving certain planning and zoning ordinances for municipalities.

They will continue to retain their present jurisdiction and responsibilities in divorce, child custody, domestic relations, and sanity matters. They will also be granted other authority which is unspecified, but which will be granted to them by rule of the Judicial Council. This could include the authority to serve as a special master or mediator or to handle matters in arbitration. The exact scope and nature of additional duties which will be granted under the authority of the Judicial Council has yet to be fully defined.

There are many general housekeeping provisions which change terminology and eliminate confusing provisions defining the authority of justices of the peace who are referred to in statutory language as magistrates.

As I reviewed both the existing and the proposed legislation it occurred to me that the term "consolidation of the courts" or "court reorganization" is really something of a misnomer. What the legislation, including House Bill 436, actually does is to replace the circuit court and elevate those circuit court judges to the status of district court judges. It then creates a tier of court commissioners who essentially have the same authority as the eliminated circuit court judges and in fact will have additional authority in some areas.

These commissioners are subject to a variety of rules, many of which are still in the process of being formulated. The Ad Hoc Committee that I have previously referred to will be meeting in February 1992 to recommend certain rules that may or may not be implemented by the Judicial Council. The Judicial Council may reject or adopt any or all of those recommendations. There are certain other things that are clear about the role of court commissioners.

Each court commissioner is an employee at the will of the Judicial Council and the presiding judge of the district where he/she is primarily employed. None of the court commissioners will be subject to the present judicial nominating process which consists of all applicants being interviewed by the existing judicial nominating commissions with three names being recommended to the governor for his appointment, subject to the advice and consent of the Utah State Senate and to the periodic review and approval of the electorate. District court judges will interview and select the top three candidates from the applicants for each court commissioner position. The top three candidates names will be given to the Judicial Council who will hire the court commissioner from the three names submitted. There will apparently be no input from members of the Bar or from the public.

It remains somewhat uncertain as to what salaries are going to be given to the court commissioners and whether their salaries will be tied on a percentage basis to the district court judges. The court commissioners will not participate in the State retirement in the same manner that the judiciary presently participates. However, some of the sitting court commissioners believe that they should receive retirement and other benefits on a basis similar to that which is available to judges.

One of the questions that I raised during our meetings is whether we will attract quality applicants to the court commissioner positions, particularly if commissioners serve at the will of the Judicial Council and the presiding judge and particularly if their salary is less than that which is paid to the existing court commissioners. Furthermore, while our existing court commissioners are generally highly qualified professionals, many have chosen that position because of their interest in divorce, child custody and domestic relations. Many have not previously expressed any overwhelming desire to participate in matters dealing with other civil cases and misdemeanor criminal offenses. It remains to be seen whether the applicants that may apply for the new court commissioner positions may either be very new and inexperienced lawyers or may be

practitioners who have had difficulty in maintaining the practical economics of a private law practice.

The qualifications and background of court commissioners should also be mentioned. Certainly all court commissioners will be required to be members of the Utah State Bar but other qualifications seem to be less structured. It is my understanding, for example, that the present part-time court commissioner in the Fifth District is actually a resident of Mesquite, Nevada and is not even required to maintain a Utah residence.

I have expressed my concern that although court commissioners are all subject to the same rules that are promulgated by the Judicial Council those rules have a way of being applied in different fashions by individual districts. Undoubtedly, some court commissioners will be assigned different duties in some districts than they will be assigned in others. Such a practice, in my opinion, is not conducive to providing uniformity or clarity in the practice of law. The manner in which an individual district uses its court commissioners can create certain problems with the length of time required to obtain the delivery of legal services and can significantly increase the cost of litigation to the public. By granting the individual district courts authority to decide how they will use their court commissioners, the Judicial Council may risk further compounding that problem.

The issue of the constitutionality of legislation delegating to court commissioners the authority to hear and dispose of cases without the consent of the parties should be mentioned. Both separation of powers and due process arguments need to be considered. The research done by the Court Administrator's Office into that question still has not provided a satisfactory answer to these important issues.

In summary, consolidation of the courts is probably an excellent idea. True consolidation would also achieve cost savings and provide for a more effective utilization of our court system. It would also provide the public with access to a fair and impartial judiciary as a method of resolving disputes and enforcing the law. The average citizen's day-to-day contact with the court system comes in the misdemeanor and traffic enforcement area and in the area of domestic relations, primarily divorce and child custody. It is those areas that provide the public with its most vivid impressions of how our court system works and, indeed, whether or not it is working. If we are to achieve true court consolidation it could most effectively be accomplished by the adoption of a system similar to that which is presently in effect in the state of Minnesota. Under such a proposal we could achieve true court reorganization on the following basis:

1. The district, circuit and juvenile courts should be consolidated into one district court. All judges would have the title of district court judge. Neither the juvenile courts nor any other court should have the choice of whether to opt in or out of the system. There should be three branches of each district court: criminal, civil and domestic, which would include divorce, child custody, adoption, and juvenile court matters.

2. Each district court judge would sit primarily in one division of the court; criminal, civil or domestic for a period of two years. Each judge would rotate into and then out of these divisions of the court every two years.

3. All minor misdemeanor charges should be decriminalized. These should include all traffic offenses except for reckless driving, drunk driving and fleeing or eluding. Most minor misdemeanor violations of city ordinances should similarly be decriminalized. These would include zoning violations, animal violations and other similar offenses. All of these decriminalized offenses would be handled by a hearing examiner or administrative law judge. They would conduct trials and have the authority to impose appropriate fines. To assist in fine collection, jail sentences could be imposed for failure to appear and failure to pay fines in a timely fashion.

4. The justice of the peace courts, which are a constitutional court and often a subject of criticism would not be consolidated but would have much of their importance reduced by the above provisions.

5. Existing court commissioners would be given first priority to apply for district court positions that open up as a result of the retirement window. The governor could be urged to consider appointing qualified existing court commissioners to the first available positions. No new magistrates or court commissioners would be hired.

While this is only a basic outline it would have the affect of achieving true court consolidation and would eliminate the fragmentation that exists and which will only be perpetuated by the substitution of court commissioners for circuit court judges. It will also allow us to have an opportunity to participate in a selection process that continues to ensure that we get competent, qualified, and dedicated people serving the public in our judiciary.

Compliance with the "Lobbyist Disclosure and Regulations Act"

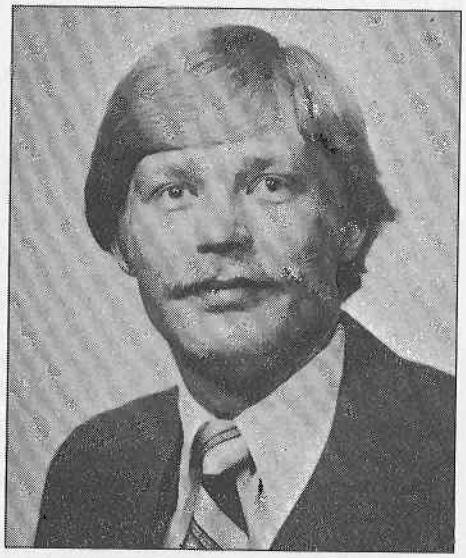
By Gary R. Thorup

I. BACKGROUND

The provisions of House Bill No. 94 (1991), the "Lobbyist Disclosure and Regulations Act" ("Act"), became effective on April 29, 1991. Because the upcoming session of the Utah Legislature commencing in January 1992 will be the first general session to which the Act will apply, it is appropriate to review the basic provisions of the Act and its application to attorney/lobbyists.

II. SCOPE OF THE ACT

Proponents of the Act intended to regulate the conduct of "lobbyists" in all their dealings with government. To accomplish this purpose, they enacted House Bill 94 which broadly defines the term "lobbying" to include essentially all communications "with a public official for the purchase of influencing the passage, defeat, amendment, or postponement of legislative or executive actions." The term "legislative actions" was defined as "(a) bills, resolutions, amendments, nominations, and other matters pending or proposed in . . . the Legislature or its committees or requested by a legislator; and (b) the action of the governor in approving or vetoing legislation." "Executive actions" were defined as (a) nominations and appointments by the governor; (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any rule made in accordance with Chapter 46a, Title 63, Utah Administrative Rulemaking Act; and (c) any policy, action, or matter pending before any state agency." Application of the Act to "executive actions" caused enough concern and uncertainty that the public's right to interact with government would be unduly impaired that Gov. Bangerter placed the item on the Legislature's April 1992, special session agenda, during which the Legislature enacted House Bill 6 (1991, 1st Spec. Sess.) which delays the effective date of the portions of the Act relating to "executive actions" until April 27, 1992, to allow the legislature further time to study its ramifications.



GARY R. THORUP received his Juris Doctor in 1980 from the University of Utah and later received his LL.M. (Taxation) from the New York University School of Law. He practices in the Salt Lake office of Holme Roberts & Owen where he concentrates his practice in state and local taxation and legislative matters. Mr. Thorup previously co-authored an article in the Utah Bar Journal concerning Utah's "Political Action Disclosure Act" of 1988.

III. DESCRIPTION AND ANALYSIS

The main portion of the Act enacts Utah Code Ann. Sections 36-11-101 through 36-11-405 concerning "lobbyist" registration and disclosure. These provisions can be categorized into four major discussion areas.

A. *Definitions and Registration.* The Act requires all "lobbyists" to register with the Lt. Governor *before* commencing any lobbying activities. For purposes of the Act, a "lobbyist" is "an individual who is employed by a principal or who contracts for economic consideration . . . with a principal to communicate with public officials." The Act also defines a "principal" as a "person who pays or directs an individual to serve as a lobbyist either as an employee or as an independent contractor." The term "public official" includes legislators, elected members of the executive branch, and any person appointed to or employed by the executive or legislative branches who (1) occupies a policy-making position, (2) drafts policies, legislation or rules, or (3) makes adjudicative decisions. As a result of the special session amendments, the Act is only intended to regulate communications with a "public official" concerning "legislative actions," however, the Act is not a model of clarity and an argument can be made that it continues to govern communications concerning "legislative actions" with all "public officials," not just with legislators and their appointed staff.

Although the Act does contain some specific exemptions, only one is directly applicable to attorneys. Utah Code Ann. Section 36-11-102(7)(b) (ii) provides that

the term "lobbyist" does *not* include "an attorney representing a client before a court or quasi-judicial body." Any other compensated communication between an attorney and a "public official" is presumably subject to the Act's "lobbyists" registration and disclosure provisions. Some exemptions, however, may indirectly apply to attorneys. For instance, volunteers are not compensated for their activities and, therefore, are not deemed to be lobbyists. Similarly, persons testifying on their own behalf before a legislative committee are exempted from registering as lobbyists. Therefore, an attorney appearing before a legislative committee either as a volunteer for an organization e.g., the Utah State Bar, or on his/her on behalf, need not register as a lobbyist unless also compensated by a client for such appearance.

Attorneys should not only analyze whether their activities and relationships require registration, they should also be mindful when those with whom they associate on a particular matter should register. For instance, an attorney may require the technical support of a client's employee or the testimony of an expert witness. To the extent an employee or an expert is compensated for communicating with "public officials" concerning "legislative actions," prudence may suggest they register as "lobbyists."

Registration as a lobbyist is a relatively simple exercise accomplished by paying a $25 registration fee and filing a written statement with the Lt. Governor, setting forth (1) the lobbyists's name and business address, (2) the name and business address of the lobbyist's principal, (3) the name and address of the person paying the filing fee, if paid by someone other than the lobbyist, (4) a list of any elected or appointed positions held by the lobbyist in state or local government, (5) the types of expenditures for which the lobbyist will be reimbursed, and (6) a certification that the registration information is true, accurate, and complete. Registration forms are available at the Lt. Governor's Office. An attorney's client, referred to in the Act as a "principal," need not register as a "lobbyist," although they may be required to file an annual report if they make reportable "expenditures" other than through their "lobbyist." Completion of the registration process entitles a lobbyist to a lobby license which remains valid until December 31 of the next even-numbered year. Lobbyists licensed under prior law need not re-register until December 31, 1992, but are required to update their registration statements.

Although compliance with the Act's registration requirements is relatively simple, attorneys may find compliance conflicts with their ethical duty to a client. Rule 1.6(a), Rules of Professional Conduct, provides that "a lawyer shall not reveal information relating to representation of a client . . . unless the client consents after disclosure." Certain exceptions to this general rule are set forth in Rule 1.6(b) and in the Comment to Rule 1.6 which recognizes that, "a lawyer may be obligated or permitted by other provisions of law to give information about a client." Nevertheless, the Comment concludes that, "whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession." Should an attorney determine that disclosure conflicts with a client's interests, it is unclear whether an attorney could refuse to identify a client pursuant to Rule 1.6 and still obtain a lobby license. In such circumstances, an attorney may be caught in a "Catch-22" situation, forced to weigh the ethical duty to a client against the civil and criminal penalties imposed for non-compliance with the Act. The number of attorney's caught in this dilemma may increase if the Legislature allows the provisions applicable to "executive actions," an area which comprises more traditional aspects of the practice of law, to go into effect.

B. *Disclosure of Expenditures.* One of the proponents' main purposes in proposing House Bill 94 was to prevent "legislative actions" from being influenced by monetary considerations. The Act accomplishes that purpose by requiring "lobbyists," "principals," and "government officials" to file periodic reports with the Lt. Governor identifying "expenditures" made to benefit a "public official" or members of the official's "immediate family" (hereafter collectively referred to as a "public official"). The extent to which a report is required depends entirely upon the amount and nature of the "expenditures" made.

For purposes of the Act, an "expenditure" means "a purchase, payment, distribution, loan, gift, advance, deposit, subscription, advance, forbearance, services, or goods, unless consideration of equal or greater value is received . . . and a contract, promise, or agreement, whether or not legally enforceable," to provide any of such items. The following, however, are not considered reportable "expenditures" (1) commercially reasonable loans, (2) campaign contributions, and (3) a "public official's" reasonable travel expenses for *food and lodging* if directly related to the official's attendance and participation at a regularly scheduled meeting, when paid for by the organization sponsoring the meeting.

The Act requires "expenditures" to be reported as follows. First, "expenditures" of $100 or more expended on "public officials" in *any* calendar quarter of the preceding calendar year must be cumulatively reported on an annual report. This report is due on January 10 following the year in which the "expenditure" is made, and must be supplemented (1) within ten days after the last day of a general session, listing all "expenditures" incurred from January 1 through the last day of the session, (2) within seven days before a general election, listing all "expenditures" from the last day of a general session to five days before the general election, and (3) seven days after the end of a special or veto override session, listing all "expenditures" made during that session. No report is required, however, if less than $100 of reportable "expenditures" are made during *each* quarter of the preceding calendar year.

Second, in addition to reporting cumulative totals, any "expenditure" of $100 or more for the benefit of any particular "public official" must be itemized. If such an "expenditure" is made to benefit a group of "public officials," such as at a caucus lunch, the disclosure need only provide the date, amount and purpose of the "expenditure." If, however, a single "expenditure" of $100 or more is made to benefit a particular "public official," the disclosure must also itemize the location of the "expenditure" and the identity of other "public official" benefited. The concept of a single expenditure is *not* defined in the Act and has been the subject of much post-enactment discussion. For instance, the proponents of House Bill 94 would suggest that tickets provided to a "public official" to attend the ballet, preceded by dinner, would constitute one single expenditure. On the other hand, critics of the legislation would argue that the dinner and the tickets would each be a separate "expenditure." This difference of opinion has, at least temporarily, been resolved by Lt. Governor Oveson who has indicated his office will not require "lobbyists" to combine related activities for purposes of the itemization requirements of the Act. Although the Lt. Governor is charged with enforcement of the Act, the Act grants the Lt. Governor no rulemaking authority in this area, consequently, "lobbyists" are cautioned that the opinion ex-

pressed by Lt. Governor Oveson may not be dispositive. Therefore, prior to making an "expenditure" that would exceed $100 when combined with a related "expenditure," an attorney/lobbyist may want to carefully consider whether the potential benefit derived from making the "expenditure" outweighs the potential adverse impact upon the client or the attorney if public disclosure were made of the related "expenditures" or of the fact such "expenditures" were not itemized on an annual report. Another controversial and ambiguous portion of the Act concerns whether an "expenditure" is to be reported at its cost or its value. Lt. Governor Oveson has indicated that his office will consider an "expenditure" in light of its value to the "public official." Under this view, a "lobbyist" inviting a "public official" to participate as a member of a golf team at a fundraiser golf tournament would report the regular cost of the green fee, e.g., $30, not the $1,500 contribution nor some pro-rata share of the contribution.

Finally, travel "expenditures" incurred for the benefit of a "public official" must be reported by disclosing (1) the amount expended for each trip taken by any "public official," (2) the destination of the travel and its purpose, (3) the names of all persons taking the trip, (4) the name and address of the organization taking the trip, and (5) an itemization of the amount spent on food, lodging, gifts and side trips.

In addition to disclosing "expenditures," lobbyists, principals and government officials are required to (1) list each "public official" they employ including those engaged as independent contractors, (2) list "legislative actions" by number and short title for which an "expenditure" to a "public official" was made, and (3) set forth the general interests and nature of the organization represented by the lobbyist, principal, or government official. Annual reporting forms are available at the Lt. Governor's office.

As previously suggested in connection with registration requirements, some of the information required on the annual report may place an attorney in conflict with Rule 1.6(a). Prior to incurring reportable "expenditures" or disclosing other client information, a prudent attorney may want to discuss the Act's disclosure requirements with the client and obtain its consent.

C. *Regulation of Lobbyist Conduct.* The Act also proscribes lobbyist activities. For instance, the Act specifically prohibits "lobbyists" and their "principals" from making or contracting, promising, or agreeing to make a "campaign contribution" to a legislator or to a legislator's "personal campaign committee" during the time the Legislature is convened in general, veto override, or in any special session commenced prior to July 1. In addition, "lobbyists" are prohibited from entering into contingent fee arrangements concerning "legislative actions." This provision originally applied to "executive" as well as "legislative" actions, however, application of this provision to "executive actions" has been delayed until April 27, 1992. Finally, a lobbyist may not attempt to influence a legislator's vote by communicating with the legislator's employer and is expressly prohibited from *intentionally* communicating false information materially related to a matter within a "public official's" responsibility.

Attorneys should not only analyze whether their activities and relationships require registration, they should also be mindful when those with whom they associate on a particular matter should register.

D. *Miscellaneous Provisions.* The Act provides the Lt. Governor certain enforcement authority, including the imposition of civil and criminal penalties for noncompliance, and specifies reinstatement procedures for any "lobbyist" who has a lobby license suspended or revoked. The penalties provided under the Act include potential conviction of a Class B misdemeanor, suspension of a lobbyist's lobby license for one to three years and a penalty ranging from $1,000 to $25,000, depending upon the nature of the violation. Finally, although the Act is intended to regulate lobbying practices, the Legislature was careful not to intrude upon constitutional rights by providing that the Act "may not be construed, interpreted, or enforced so as to limit, impair, abridge, or destroy any person's right of freedom of expression and participation in government processes or freedom of the press."

IV. CONCLUSION.

Although it is too early to predict how the Act will affect the legislative process, it will clearly affect the practice of lobbying. The heightened awareness brought about by the debate surrounding House Bill 94 will certainly be followed by increased scrutiny of lobbying practices. Consequently, lobbyists should carefully review the Act before the commencement of the 1992 general session and comply with its provisions. In addition, attorney/lobbyists should advise their clients who may be classified as lobbyists or principals concerning potential compliance traps for the unwary.

Finally, the Act may currently impact an attorney's ability to practice law or create tension between an attorney's ethical duty to a client and full compliance with the Act. This impact, however, is *de minimis* in comparison to the impact the Act will have on the practice of administrative law if the Legislature allows the Act to become applicable to "executive actions." Attorneys who practice before state agencies or other public officials should consider actively participating in the debate that will undoubtedly take place during the 1992 general session.

Profile of Judge Robert T. Braithwaite

By Elizabeth Dolan Winter

BACKGROUND

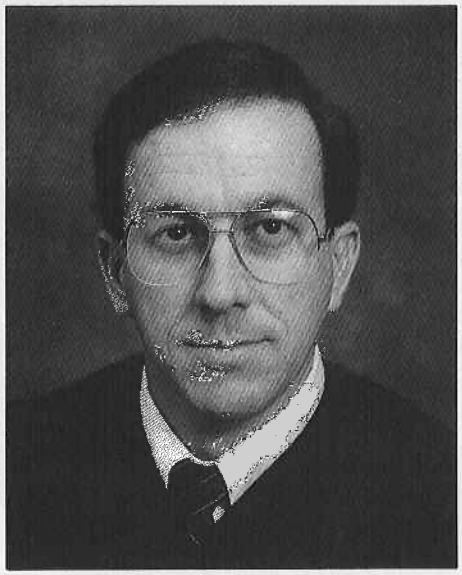
Judge Braithwaite was born in New York, and grew up in the similarly cosmopolitan community of Cedar City, Utah. Braithwaite majored in political science as an undergraduate at Southern Utah State College and the University of Utah. Judge Braithwaite claims he attended law school because he was interested in law and government, and hesitates before he admits that he "didn't really like law school." Braithwaite enjoyed private practice, including the municipal work he did for Cedar City, Parowan and Springdale. When asked his opinion of the recent controversy involving the proposed theater in the small town of Springdale, Judge Braithwaite reports that "Springdale has always had its share of political controversy."

VIEWS ON LEGAL SYSTEM

Talking to Judge Braithwaite you get the distinct impression that either he is very politically correct in interviews, or he is one of those rare individuals who is sincerely content with their lot in life and the way life is going on around them. I choose the latter.

Braithwaite is currently a circuit court judge, and as of January 1, 1992, he and the other circuit court judges in the rural areas, judicial districts five through eight, will become district court judges under House Bill 436. Eventually, in most of the state, unelected commissioners will handle a portion of the cases previously assigned to circuit courts, such as criminal arraignments, preliminary hearings and misdemeanor trials. Judge Braithwaite is ambivalent about the change—although he enjoys the kinds of cases he presently handles, he sees the advantages to a more general jurisdiction trial court in rural areas and is prepared for the new caseload.

The hardest aspect of his job, says Judge Braithwaite, is seeing the suffering of victims who are involved in the criminal justice system. He also notes that there is a lot more crime than he realized in southern Utah. Braithwaite says that domestic cases are also "painful," because of the raw emotion that people going through a family transition must endure. One "unpleasant but unavoidable" aspect of our current system of justice, according to Braithwaite, is that individuals are forced to relive their trauma in court. This aspect of the process, says Braithwaite, is difficult to witness even as a judge.



Judge Robert T. Braithwaite
Fifth District Circuit Court

Appointed:	1987 by Gov. Norman H. Bangerter
Law Degree:	1976, University of Utah
Practice:	Private practice and served as Deputy Iron County Attorney; City Attorney of Cedar City, Parowan and Springdale.
Law-Related Activities:	Past member of the Utah Air Conservation Committee, appointed by Gov. Scott M. Matheson; Member, Board of Circuit Court Judges.

There are other parts of his job that Judge Braithwaite really enjoys. He says there is a real sense of camaraderie among the judges in the fifth district that makes the role of a judge in a rural setting less isolating. Braithwaite says he enjoys hearing cases and helping individuals settle disputes. As a circuit judge, Braithwaite currently handles a fair number of arraignments and preliminary hearings. In small claims and traffic/misdemeanor cases, he says, parties do not have the resources to hire attorneys. The effect is that the proceedings are "more people-oriented than lawyer-oriented"—he often deals directly with non-lawyer citizens speaking on their own behalf. Although he is quick to point out that he is not suggesting that lawyers are not people or that he doesn't also enjoy working with lawyers, Braithwaite simply likes the intimacy of working directly with the public.

One issue that concerns Judge Braithwaite is the frequency of perjured testimony, even in smaller cases. Often the testimony relates to whether the person *was* there or *was not* there—or whether the person involved committed or did not commit the act at issue. Braithwaite notes the recent high profile case regarding the Hill and Thomas testimony where the difference in testimony amounted to more than a mere difference in the way the individuals interpreted the facts. This troubling situation "plays out more quietly in a range of cases from felonies to small claims," reports Braithwaite. The judge must weigh the testimony and determine who to believe in deciding the case, the court must review these difficult issues again if they come up as part of a separate prosecution for perjury.

STRATEGY FOR SUCCESS BEFORE JUDGE BRAITHWAITE

Judge Braithwaite reports that he respects the level of competence from lawyers appearing before him. He notes that on occasion, however, lawyers are simply not adequately prepared to present their case. According to Braithwaite, the key to arguing in his court is to "talk to your witnesses, know what laws affect your case, and know what your case is about," before trial or argument. Although Braithwaite winces at the thought of lawyers calling for a "forecast" or future prediction regarding how he will rule on a substantive issue of a case, he says that lawyers can call to ask technical questions about the procedure in his court.

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Profile of Judge George E. Ballif

By Terry E. Welch

GENERAL BACKGROUND

Judge Ballif grew up among several lawyers, including his father, his uncle and a cousin. He, therefore, attributes his desire to become a lawyer to his family, and particularly his father. Because his father was a judge, as well as a practicing attorney, Ballif had a realistic view both of the practice of law and of life on the bench before going to law school. Ballif attended Stanford Law School for two years and completed his legal education at the University of Utah after taking some time off to determine whether he did, in fact, want to make a career in the legal profession.

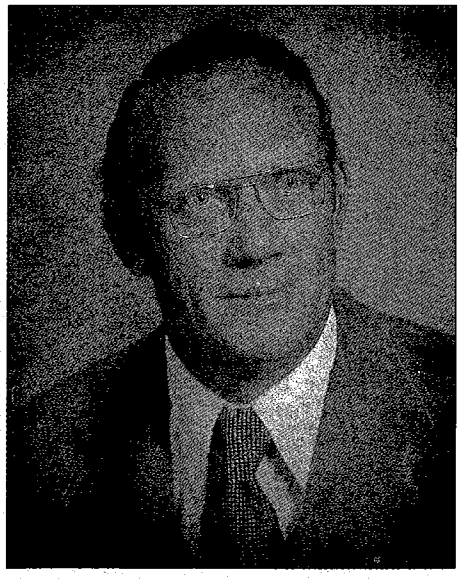
As a lawyer, Judge Ballif maintained a general practice with his father in addition to holding various prosecutorial and other public legal positions. Since becoming a judge, Ballif finds that his expectations about the bench were not far from reality, and he has thoroughly enjoyed his time on the bench.

One of the aspects of life on the bench that Ballif enjoys most as compared with private practice is his ability to maintain some degree of order in his personal schedule. Most evenings Ballif is able to leave for home at approximately 5:00 p.m., and finds that he is more able to relax after work, without worrying about the next day's schedule or receiving an unexpected phone call.

VIEWS ON THE LEGAL SYSTEM

Judge Ballif sees the adversary nature of our present system as one of its greatest strengths. The orderly process of putting evidence before the jury or judge—each side, in turn, building a case—and the ability of each side to present persuasive arguments in its favor increases the likelihood of determining the truth in any particular case. Ballif believes that the image of the current legal system is perhaps its greatest weakness. Lawyers and the system in general are no longer held in great esteem as they once were. Rather, the public's perception of the legal system is one of greed, distortion of truth and technicality over substance. Ballif believes that much of this image came with a shift in the focus of law practice toward a more capital intensive pursuit. Unfortunately, he explains, it is no longer possible to practice law for any significant amount of time without a substantial capital investment. Attorneys simply must continue to bring in money or they cannot continue to practice law. Along with the need to change the image of the legal system and those who practice within it, Judge Ballif emphasizes the need for more pro bono work. He believes that mandating a certain amount of pro bono work and administering a pro bono program on the same basis as the current continuing legal education program is one possible solution.

Judge Ballif also perceives a need to substantially revamp the current criminal system to avoid the often unnecessary and repetitive appeals processes, particularly in death penalty cases. Ballif believes that as a nation we must either eliminate the death penalty completely or realign the state and federal systems to uniformly and more efficiently determine the appropriateness and constitutionality of the death penalty in particular cases. While he acknowledges that creating a national standard may perhaps require significant changes to state constitutions, Ballif believes that the problem of endless appeals in death penalty cases must be addressed.



Judge George E. Ballif

Appointed:	1971 by Gov. Rampton. At the time of appointment, Ballif was the youngest district judge in the state.
Law Degree:	1954, University of Utah.
Practice:	Assistant City Attorney, Provo; Corporate Counsel for Provo; Assistant District Attorney; Deputy County Attorney; General Private Practice including personal injury, domestic law and state condemnation proceedings.

LIFE IN JUDGE BALLIF'S COURTROOM

While he commands order in the courtroom, Judge Ballif does not require formality for formality's sake. He stresses that humor in the courtroom is acceptable in appropriate situations. His main point of advice to lawyers who practice before him—or anyone—is to never misrepresent anything to the court or opposing counsel. Unfortunately, Ballif states, such misrepresentations are made quite often.

OUTSIDE INTERESTS

Judge Ballif is planning on retiring within a few months and looks forward to traveling and enjoying a more relaxed lifestyle. He enjoys golf, pool and reading—particularly novels. His favorite authors include Tom Clancy and Charles Dickens.

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OUTSIDE INTERESTS

Judge Braithwaite lives in Cedar City with his four children and his wife Arlene, who is an art professor at Southern Utah University. Judge Braithwaite says he plays basketball "for relaxation." The brace on his hand supporting bones broken during his last "basketball meditation" session undoubtedly helps to take his mind off of the pressing demands of his courtroom. He didn't really specify whether it is the sport or the pain resulting from the sport that acts as the escape. Interesting way to relax. Braithwaite said he also plays the piano to unwind. He says he particularly likes "really loud songs," including songs from the operas of "Les Mis" and "Phantom of the Opera." In his present condition it looks like the two hobbies he undertakes for relaxation are mutually incompatible. Maybe he should take up painting.

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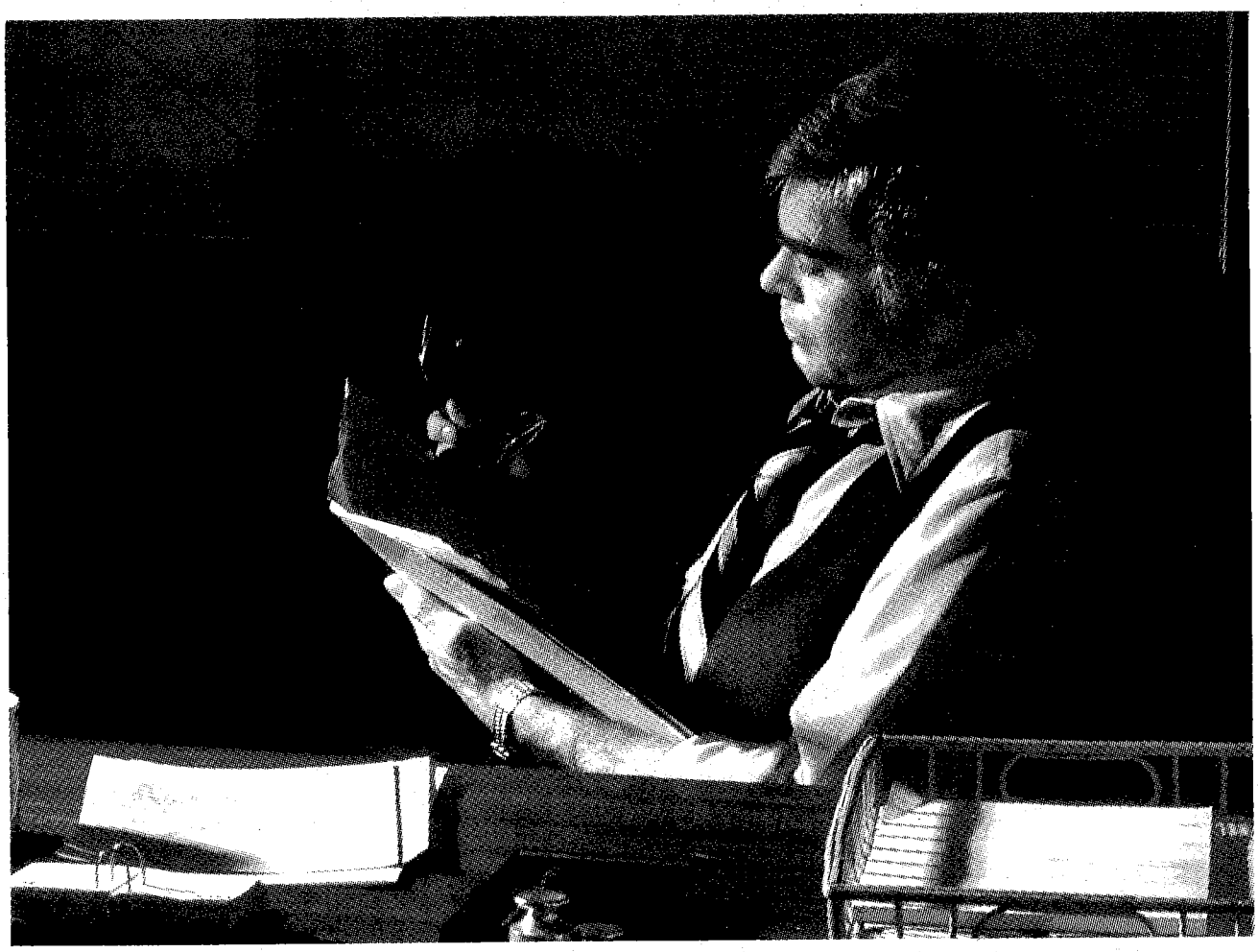

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David Halladay	Jeff Kahn	Charles B. Hewlett
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STATE TRIAL COURT CONSOLIDATION

Court Consolidation in Perspective

By Harold Christensen, Chair, Statewide Transition Team

Several of my friends from the bench and the bar who have been working on the court consolidation project have commented to me about how many "blanks" the legislature left for them to fill in. Turning a broad legislative mandate into detailed plans for combined calendars, staffs, and information dissemination is no easy task. Some have expressed the wish that the legislature had not left so much of the work for them to complete.

My view is to the contrary. I believe that the legislature has granted the court system and the bar (and members of the wider justice community) a most valuable opportunity. We would be foolish indeed not to seize it. In effect, the lawmakers have said to us: "We will establish the goals and broad guidelines. We trust to your knowledge and experience to do the rest."

Most of us would agree that court personnel and attorneys are better qualified to organize court operations than a legislative committee. The lawmakers have given us an impressive vote of confidence. We now must show them that this confidence in our ability to make the system meet their goals is well placed.

The "initial launch phase" of the transition process has been successful. To continue this success, we need suggestions and feedback from those involved in the process on a day-to-day basis, and from the state and local transition teams. We need to hear from court personnel, the bar, and all other interested people about what is working, and what is not.

For the purpose of facilitating the implementation of H.B. 436 and consolidation of the courts, the Judicial Council created the Statewide Transition Team as well as Local Transition Teams for each of the judicial districts. The role of the Statewide Team is coordination, communication and oversight. The local transition teams will be developing plans for implementation which reflect issues peculiar to each judicial district.

Harold Christensen

I have asked the *Bar Journal* editors to publish the names of all the local teams and the state team so that everyone will have the list of people to contact at their fingertips. Each month there will be an update on activities from the Statewide Transition Team and a report from a Local Transition Team. This month's issue contains a report from the Third District Team. Next month I will provide a report on the role of the Statewide Transition Team and an update on upcoming issues which will be of interest to you. We are eager to hear from you.

STATEWIDE TRANSITION TEAM H.B. 436

Hon. Michael Zimmerman, Supreme Court Justice
Hon. Dennis L. Draney, Eighth District Court
Hon. David L. Mower, Sixth Circuit Court
Hon. Stanton M. Taylor, Second District Court
Hon. David S. Young, Third District Court
Hon. Ray M. Harding, Fourth District Court
Hon. Tyrone Medley, Third Circuit Court
Hon. W. Brent West, Second Circuit Court
Hon. Joseph I. Dimick, Fourth Circuit Court
Commissioner Michael G. Allphin, Second District Court
Hon. Paul C. Keller, Senior Judge
Hon. Sterling Gardner, Justice Court Judge
Timothy M. Shea, Court Executive Third District
James M. Nelson, Court Executive Fifth District
Harold G. Christensen, Snow, Christensen & Martineau
Sen. Lyle W. Hillyard, Utah State Senate
Ronald W. Gibson, Deputy State Court Administrator

LOCAL TRANSITION TEAMS

FIRST JUDICIAL DISTRICT
Hon. Gordon Low, District Court Judge
Hon. Franklin Gunnell, District Court Judge
Hon. David Sorenson, Juvenile Court Judge
Hon. Robert Daines, Circuit Court Judge
Hon. Burton Harris, Circuit Court Judge
Hon. Clint Judkins, Circuit Court Judge
Nelda Hollingsworth, Court Executive
Ben Hadfield, Utah State Bar Association
Pam Shaw, Rich County Clerk

SECOND JUDICIAL DISTRICT
Hon. Rodney S. Page, District Court Judge

Hon. David Roth, District Court Judge
Hon. Stanton Taylor, District Court Judge
Hon. Alfred VanWagenen, Circuit Court Judge
Hon. Parley Baldwin, Circuit Court Judge
Hon. Kent Bachman, Juvenile Court Judge
Maurice Richards, Commissioner
Margaret Satterthwaite, Court Executive
Kim Walpole, Weber County Bar Association
Terry Cathcart, Davis County Bar Association
Penny Taylor, Morgan County Clerk

THIRD JUDICIAL DISTRICT
Hon. Michael Murphy, District Court Judge
Hon. Timothy Hanson, District Court Judge
Hon. Richard Moffat, District Court Judge
Hon. William Thorne, Circuit Court Judge
Hon. Robin Reese, Circuit Court Judge
Tim Shea, Court Executive
Sandra Peuler, Commissioner
Doug Geary, Summit County Clerk

FOURTH JUDICIAL DISTRICT
Hon. Ray Harding, District Court Judge
Hon. George Ballif, District Court Judge
Hon. Boyd Park, District Court Judge
Hon. Lynn Davis, Circuit Court Judge
Hon. Patrick McGuire, Circuit Court Judge
Howard H. Maetani, Commissioner
Mike Havemann, Court Executive
Brent Young, Utah State Bar Association
Marlene Whicker, Utah County Clerk
Carma Smith, Clerk of Court
Hermine Harvey, Clerk of Court

FIFTH JUDICIAL DISTRICT
Hon. J. Philip Eves, District Court Judge
Hon. James L. Shumate, Circuit Court Judge
Hon. Robert Braithwaite, Circuit Court Judge
Hon. Joseph Jackson, Juvenile Court Judge
Marlynn B. Lema, Commissioner
James M. Nelson, Court Executive
Keith F. Oehler, Utah State Bar Association
Paul Barton, Beaver County Clerk
Linda Williamson, Clerk of Court

SIXTH JUDICIAL DISTRICT
Hon. Don V. Tibbs, District Court Judge
Hon. David L. Mower, Circuit Court Judge
Hon. Louis G. Tervort, Juvenile Court Judge
Brent Bowcutt, Court Executive
Kay L. McIff, Utah State Bar Association
Kristine Christiansen, Sanpete County Clerk
Marie Hintze, Clerk of Court
Carole Mellor, Court Coordinator

SEVENTH JUDICIAL DISTRICT
Hon. Boyd Bunnell, District Court Judge
Hon. Bryce K. Bryner, Circuit Court Judge
Hon. Bruce K. Halliday, Circuit Court Judge
Hon. Paul C. Keller, Juvenile Court Judge
Tim Simmons, Court Executive
Michael R. Jensen, Utah State Bar Association
Bruce C. Funk, Emery County Clerk
Barbara Procarione, Clerk of Court

EIGHTH JUDICIAL DISTRICT
Hon. Dennis L. Draney, District Court Judge
Hon. A. Lynn Payne, Circuit Court Judge
Hon. Merrill L. Hermansen, Juvenile Court Judge
Val Harris, Court Executive
Gayle McKeachnie, Utah State Bar Association
Gene Briggs, Daggett County Clerk
Shanna Witbeck, Clerk of Court

Editors Note: See related articles:
Utah's Trial Court Organization and Jurisdiction Act by Chief Justice Gordon R. Hall and John L. Valentine, Volume 4, Utah Bar Journal, *April '91.*
Unification of Utah's Judiciary by Randy L. Dryer, Volume 4, Utah Bar Journal, *June/July '91.*

State Trial Court Reorganization: What's Happening in the Third District

By James B. Lee, Esq. and Michael R. Murphy, Third District Judge

The 1991 Legislature enacted sweeping structural changes in state trial courts. The legislation, H.B. 436, seeks to more efficiently use and allocate judicial resources and court facilities through various means, including consolidation of the district and circuit courts. Consolidation in the Fifth, Sixth, Seventh and Eighth Districts will occur as of January 1, 1992. The remaining districts, including the Third District, will be consolidated between January 1, 1996 and January 1, 1998. The actual time when consolidation in the Third District will occur is primarily dependent on district court caseload needs. In the interim, district court vacancies will be filled as in the past; circuit court vacancies will not be filled. Commissioners will be appointed as needed to fulfill some of the duties performed by circuit judges.

Quite obviously there is a need to provide logical and smooth transition from the existing organization of trial courts to that contemplated by H.B. 436. The transition in the Third District is being overseen by a group of judges, a bar representative and court administrators. The following people are on the Third District transition group:

Michael R. Murphy, District Court Judge

Timothy R. Hanson, District Court Judge

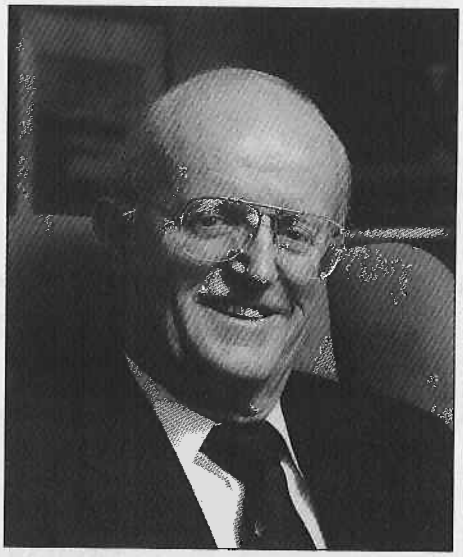
Richard H. Moffat, District Court Judge

William A. Thorne Jr., Circuit Court Judge

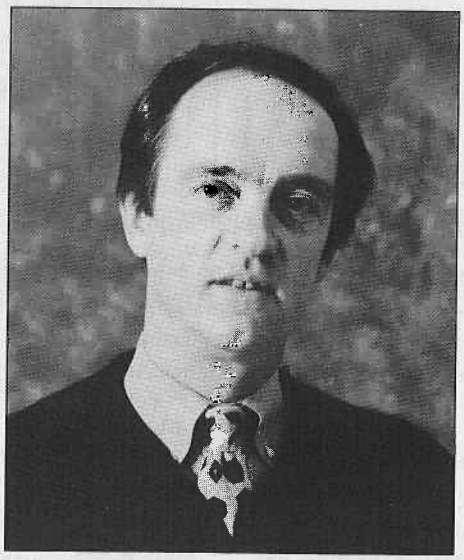
Robin W. Reese, Circuit Court Judge

Ex Officio members:

Sharon P. McCully, Juvenile Court Judge



James B. Lee



Michael R. Murphy
Third District Judge

Sandra N. Peuler, Commissioner
James B. Lee, Bar Representative
Timothy Shea, Court Executive
Doug Geary, Summit County Clerk

This transition group began monthly meetings in November. As the group proceeds, it will face many significant decisions such as timing of the consolidation; proper use of the Sandy, Murray, West Valley and Salt Lake City courthouses; the appropriate number of commissioners and the types, quantities and manner of their case assignments. The proper resolution of these matters will lead to greater and more economic, speedy and convenient access to courts for parties and their counsel in all cases whether they be civil or criminal.

The first order of business has been to address two pressing issues: (1) the assimilation of circuit judges into the workings of the district court and (2) the proper use of commissioners. It is to the first of these two issues that this article is directed.

The Third District transition group has been considering a proposal to rotate circuit judges on the district and circuit court calendars in Summit and Tooele counties. The benefits of such a proposal are the following:

1. *Assimilation of circuit judges into the workings and caseload of the district court by means which will have the least disruption to the expectations of counsel and the parties.* Summit and Tooele counties presently operate on a master calendar. As a result, counsel and parties do not have an expectation that a particular judge will be assigned to their cases.

2. *Allocation of judicial resources from areas where there is excess capacity to areas where there is a need for*

additional judges. In January 1992, Sandy City and Tooele County will begin operating justice courts which will handle many matters previously adjudicated by circuit court judges. As a result, there will be additional capacity at the circuit court level. Correspondingly, district court caseloads continue to increase and in some circumstances district judges have been unable to resolve pending motions and cases with the care and speed to which they have become accustomed. Additionally, there appears to be a need to bring the Summit County caseload current and resolve cases which have been pending too long.

At the outset, it should be understood that there is no linkage between this proposal and the appropriate time for complete consolidation of district and circuit courts in the Third District. The greatest impediment to proceeding with this proposal is the need to properly maintain a record in Tooele and Summit County proceedings. Various alternatives will have to be considered if the proposal for the use of circuit judges proceeds. The alternatives are these: (1) to use a court reporter to cover some of the proceedings; (2) to install a video recording system in the Tooele courtroom; (3) to install a high-quality audio-recording system in the Summit courtroom. A further but not insuperable impediment is the perceived need to assure that the judge in a criminal preliminary hearing is not the judge before whom the case will be tried.

The proposal to assign circuit judges to the district court calendars in Summit and Tooele counties is just that, a proposal. It will not proceed beyond a proposal until practitioners in Summit, Tooele, and Salt Lake counties have had an opportunity to participate by criticism, comments and suggestions. The solicitation of such input is the primary purpose of this article. Practitioners who wish to have their views considered should call or write to any member of the Third District transition group. Only by such input can the transition group determine whether the proposal should proceed and, if so, the manner in which it should proceed in order to assure that Summit and Tooele counties will continue to receive quality judicial service.

The Third District transition group will attempt to keep practitioners apprised of its proceedings and proposals with periodic articles such as this in the *Utah Bar Journal* and *Bar and Bench Bulletin* of the Salt Lake County Bar Association.

Commission Highlights

During its regularly scheduled meeting of October 24, 1991, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The minutes of the Commission meeting of September 26, 1991, were approved with minor revisions.

2. Chief Justice Gordon R. Hall, Court Administrator Bill Vickrey, David Bird, Tim Shea, James B. Lee and Harold Christensen appeared to discuss the Court Reorganization bill amendments. Mr. Davis reminded the Board that under Supreme Court and Bar rules the Board cannot take a position on the bill unless it had been reviewed by the Legislative Affairs Committee. Following the taking of a straw vote, Davis concluded that it was the sense of the Board at the moment to support the bill's retirement and housekeeping modifications and to oppose the remaining substantive portions.

3. Chief Justice Hall reported that the petition to subsidize the Lawyer Referral Service was approved.

4. Davis reported that the Executive Committee determined, subject to Commission disapproval, that they would like to explore further the triple-net lease option for building use and alternative proposals.

5. L. Robert Anderson was appointed to the 7th District Trial Court Judicial Nominating Commission.

6. Herm Olsen was appointed to the 1st District Trial Court Judicial Nominating Commission.

7. The 1991-92 Bar Committee Charges were adopted with some revisions.

8. The Board voted that the President appoint an appropriate committee to study the issue of allowing non-members to join sections and to solicit suggestions from section chairs as to how this move would affect their section, and what rules they would propose.

9. Mr. Davis reported that he, Randy Dryer and John Baldwin met with the Editorial Board of KSL, and would be meeting with *Ogden Standard Examiner, Deseret News* and *The Salt Lake Tribune.*

10. Baldwin was authorized to tell the Ethics Advisory Committee to hire research help through the Office of Bar Counsel.

11. The Board voted to explore a proposal for affiliate status in the Bar for legal assistants by the Legal Assistants Association of Utah and to have the Bar approve a liaison committee to work through the policies and rules with the LAAU.

12. The Board also requested that input be obtained from members outside LAAU as well as from legal administrators in the state.

13. Budget & Finance Committee Chair, Dennis Haslam, reported that the Committee had met and reviewed the financial reports.

14. Accounting definitions and guidelines were distributed. Birrell reported that the accounting system is up and running and checks can now be cut in-house.

15. The Board voted to authorize Bar Counsel to proceed with structuring the rules for turning over of public discipline hearings to the District Court and retaining the Board to continue to be involved in private discipline.

16. The Board voted to have Bar Counsel amend the Fee Arbitration agreement so that an attorney cannot collect attorney fees for participating.

17. The Board voted to authorize Bar Counsel to draft a rule to allow a candidate to resign with discipline pending.

18. Chairman of thw MCLE Board, Robert Merrill, and MCLE staff, Sydnie Kuhre, gave a brief status report on MCLE.

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

United States Court of Appeals for the Tenth Circuit

NOTICE OF PROPOSED RULES AMENDMENTS

In accordance with the provisions of 28 U.S.C. §2071(b), the United States Court of Appeals for the Tenth Circuit hereby gives notice of proposed amendments to its local rules of practice.

One purpose of the proposed rules amendments is to eliminate provisions in the Court's rules that were found by the Local Rules Project (a project formed by the Judicial Conference's Committee on Rules of Practice and Procedure) either to repeat or to be inconsistent with provisions in the Federal Rules of Appellate Procedure. Other purposes of the amendments are to incorporate into the rules provisions of the Court's General Order of October 15, 1990, and to make more clear the procedures to be followed in cases filed in the Court.

In order to facilitate cross referencing, every rule in the amended rules will be preceded by the federal rule dealing with the same subject matter.

OPPORTUNITY FOR COMMENT

Copies of the Court's rules, together with all proposed amendments may be viewed at the office of the clerk of court in Denver, Colorado, or at the clerks' offices of the United States District Courts within the Tenth Circuit.

Written comments on the proposed amendments may be submitted on or before January 31, 1992, to:

Robert L. Hoecker, Clerk
United States Court of Appeals for the Tenth Circuit
C-404 United States Courthouse
Denver, CO 80294

The Court will consider all comments timely submitted before final adoption of amended rules.

Discipline Corner

ADMONITIONS

1. An attorney was admonished pursuant to Rule 4.4 (Respect for Rights of Third Persons) for having sent two letters to the opposing counsel in March of 1991 disclosing information unrelated to the issues in the lawsuit the purpose of which was to embarrass the opposing party.

2. An attorney was admonished pursuant to Rule 1.2(a) (Scope of Representation) for failure to exercise reasonable diligence in pursuing his client's interest in a divorce modification action to obtain increase visitation and for violation of Rule 1.1 (Competency) for failure to properly plead his client's cause of action.

3. An attorney was admonished pursuant to Rule 1.14(d) (Declining or Terminating Representation) for having precipitously terminated his representation in a divorce action to the client's detriment. The attorney filed the Notice of Withdrawal on September 18, 1991 with a pretrial settlement conference scheduled for September 23, 1991. Subsequent to termination, the attorney failed to take steps to the extent reasonably practicable to protect the client's interest.

PRIVATE REPRIMAND

1. An attorney was privately reprimanded for violating Rule 1.3 (Diligence) for failure to exercise reasonable diligence in representing a client in a personal injury action resulting from an automobile accident on March 29, 1985. Client retained the attorney in December 1987. Attorney failed to file the complaint until March 29, 1989 and effectuated service on March 23, 1990. The attorney was also reprimanded for violating Rule 1.4(a) (Communication) for failure to keep the client informed as to the status of the case. In mitigation, the Board of Commissioners of the Utah State Bar considered the attorney's expeditious settlement of the case after the Bar complaint was filed.

PUBLIC REPRIMAND

1. On November 13, 1991, Joseph R. Fox was publicly reprimanded for violating Rule 1.3 (Diligence), and Rule 1.4(a) (Communication). Mr. Fox was retained to file an answer and counterclaim to a civil complaint filed on April 2, 1988. Mr. Fox failed to file the answer until May 10, 1988. Also on May 10, 1988 a certificate of default was entered against his client and the default judgment was signed on May 11, 1988. The answer that Mr. Fox filed was essentially the same as one prepared by his client and failed to include a counterclaim. On January 2, 1989, Mr. Fox filed a Motion to Set Aside the Default Judgment. No action has been taken on the motion. Further, Mr. Fox failed to respond to his client's repeated requests for information regarding the status of the case. In addition to the public reprimand, Mr. Fox was ordered to make $1,000.00 restitution to his client and reimburse the Utah State Bar for the costs incurred in the prosecution of this matter.

2. On November 14, 1991, Dale E. Stratford was publicly reprimanded for violating Rule 1.3 (Diligence) and Rule 1.4 (Communication). Mr. Stratford was retained in March of 1987 to represent a client in a personal injury action. From May 1987 until August 1989, Mr. Stratford repeatedly reassured his seventy-nine (79) year old client that the lawsuit had been filed. From October 1989 until January 1990, the client telephoned Mr. Stratford repeatedly and Mr. Stratford either refused to take the calls or would state that he was in the process of obtaining a trial date. Mr. Stratford filed the complaint January 23, 1990. In March 1990, the client retained new counsel to pursue the matter.

In mitigation, the Supreme Court considered the fact that Mr. Stratford had suffered a major heart attack in August of 1987 and was hospitalized for three and one half months and for a period of time thereafter was restricted to limited work hours. Also as a mitigating factor, the Court considered the fact that Mr. Stratford had in fact prepared a complaint in August of 1989 but had failed to file it with the trial court.

In aggravation, the Court considered Mr. Stratford's failure to promptly forward to the client's new attorney reports and other pertinent data causing further delay in the prosecution of the case the effect of which was compounded due to the client's age.

3. On November 20, 1991, Allen S. Thorpe was publicly reprimanded for violating Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) and (b) (Communication), and Rule 8.4(c) (Misrepresentation). Mr. Thorpe represented his client in a criminal trial on May 5, 1989. Subsequent to conviction and pursuant to the client's request, Mr. Thorpe filed a Notice of Appeal on June 5, 1989. Thereafter, Mr. Thorpe failed to perfect the appeal and the same was dismissed on August 1, 1989. In July of 1989, Mr. Thorpe misrepresented to his client that the appeal was progressing satisfactorily.

SUSPENSION

1. On November 22, 1991, Royal K. Hunt was indefinitely suspended from the practice of law for medical reasons. Any attempt to return to the practice of law shall be conditioned upon his making restitution to all his clients, and a sufficient showing his health is restored, and his full compliance with Rule XVIII, Procedures of Discipline.

2. On November 13, 1991, Harold R. Stephens was suspended for one (1) month for violation of Rules 1.2(a) (Scope of Representation), 1.4(a) (Communication) and 8.4(c) (Deceit). Mr. Stephens was retained in June of 1989 to defend against a petition to modify a decree of divorce. At the June 23, 1989 hearing Mr. Stephens appeared without his client and judgment in the amount of $1,500.00 was entered against the client. Immediately thereafter, Mr. Stephens, misrepresented to the client that the Court had taken the matter under advisement. During the subsequent weeks,

the client made numerous unsuccessful attempts to contact Mr. Stephens. On September 1, 1989, the client was informed by his former wife that a hearing was scheduled for September 13, 1989. Mr. Stephens had not notified his client of the September hearing. Upon contacting the Court directly, the client, for the first time, learned of the June 23, 1989 judgment against him. The client terminated Mr. Stephens' services and retained new counsel who discovered that a second judgment had also been entered against the client in August of 1989. Upon termination, the client requested a refund of his retainer fee and that his file be given to the new counsel. Mr. Stephens failed to respond to these requests.

DISBARMENT

On November 13, 1991, Gerald Turner was disbarred for his conviction of Bankruptcy Fraud pursuant to 18 U.S.C. Sec. 152 in the United State District Court for the District of Utah. The Court found Mr. Turner's conviction was for a crime involving moral turpitude and therefore, pursuant to Rule II(a) of the Procedures of Discipline, the record of his conviction was conclusive evidence of his conviction giving grounds for his discipline. Any attempt to be readmitted shall be conditioned upon his full compliance with Rule XVIII, of the Procedures of Discipline.

RULE CHANGE ALERT

The following revisions to Rule 65A of the Utah Rules of Civil Procedure went into effect on September 1, 1991.

(b) Temporary restraining orders.

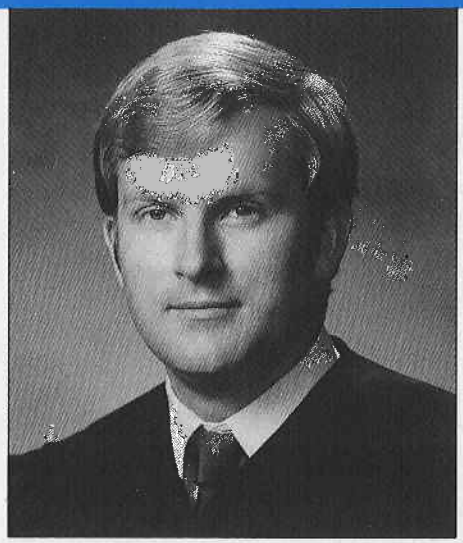
(1) Notice. No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless:

(B) the applicant or the applicant's **attorney certifies to the Court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.** (emphasis added.)

(d) Form and scope. This paragraph has been expanded to include:

...If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the Court's decision to proceed without notice.

(f) Domestic relations cases. This paragraph is new and is added to ensure that nothing in this rule shall be construed to limit the equitable powers of the Court in domestic relations cases.



Twenty Tips for Successful Courtroom Advocacy

By Judge Michael L. Hutchings

It has been nearly nine full years since I began my tenure as a circuit court judge. During those years, I have seen hundreds of lawyers and presided at thousands of hearings and trials. Over those years, I have formed some opinions about effective courtroom advocacy. I have compiled 20 tips for courtroom success. I speak only for myself although I know that many of my views are shared by many of my colleagues on the trial court benches of this state. I hope these suggestions may assist you in your courtroom advocacy.

1. **Preparation.** The virtues of preparation are obvious and there simply is no substitute for preparation. It usually becomes apparent early in the trial about who has the case organized and prepared. Sometimes an attorney will make an argument on an important legal issue and not even be able to cite an applicable case, statute or rule in favor of his or her articulated position. When this happens, the attorney's credibility is diminished.

2. **Settlements.** There is no better time than now to try to settle the case. Vigorous settlement efforts, even on the day of trial, should be employed. I have been surprised when I have asked the attorneys if they had made any effort to settle the case and the answer has been in the negative. Reasonable settlement efforts should be made in every case.

3. **Interview All Witnesses.** Interview all witnesses before trial. Sometimes a witness you have not interviewed may show up right before trial. Take a few minutes and interview the witness. The new witness' testimony may have a significant impact on the result of the case. I have often seen attorneys surprised by the testimony of a witness who has not been interviewed before trial.

4. **Copies of Cases Cited.** I appreciate attorneys who provide a copy of each case cited in support of their position. I am personally not offended if the attorney highlights relevant passages of each case. Copies of cases should also be provided to opposing counsel.

5. **Novel Issues at Trial.** Please alert the judge in advance about any novel issues that may be raised during the trial. I personally appreciate these warnings because I have some additional time to consider how I'll rule before the issue becomes ripe for decision. A short trial brief, setting out your position on the matter, with copies of relevant cases, statutes and rules is most helpful.

6. **Plea Bargains.** Avoid involving judges in the process of plea bargaining. Most judges are not comfortable with conditional pleas. I am very hesitant to get involved in conditional plea arrangements.

7. **Marked Exhibits.** All trial exhibits should be marked before trial. This saves time during the trial and shows that you are prepared and organized.

8. **Objections.** State your objections and a specific reason for the objection. Do not assume the judge knows why you are objecting. For example, an attorney can state "objection—hearsay" or "objection—foundation" which clearly and quickly communicates the objection and the reason for it. When opposing counsel makes an objection, quickly state a reply to the judge and wait for a ruling. If the judge sustains the objection, go on to another question. When an objection is overruled, please restate the question for the benefit of the witness. Also, save your objections for the evidence that really will have an

MICHAEL L. HUTCHINGS was appointed to the Third Circuit Court Bench in 1983 by Gov. Scott M. Matheson. He graduated from the J. Reuben Clark Law School in 1979 after serving two years as a member of the BYU Law Review. He is currently president of the BYU Law School Alumni Association. In 1989, he was named Law School Alumnus of the Year.

Judge Hutchings was named Circuit Court Judge of the Year in 1988 by the Utah State Bar Association. He currently serves on the Utah Judicial Council, the Editorial Board of the Bar Journal and on the Bar's Fee Arbitration Committee.

impact on the case. Judges lose patience with attorneys who make every allowable yet unnecessary objection at trial.

9. **Identify Yourself and Your Client First.** When the judge first calls the case, please state your name and who you represent. This helps preserve an accurate record of the proceedings. Also, this benefits the judge who may not know the attorney by name. It also helps the court clerk who must write down the names of counsel in docket entries for the case.

10. **Reactions to Rulings.** The courtroom is an environment where a party wins and a party loses. Judges know that attorneys will not always be pleased with their rulings. However, the rulings must be made. Please react professionally when a ruling is announced. Some attorneys throw up their hands in disbelief; some exhibit derogatory facial expressions or begin to reargue the case with the judge. A few attorneys make derogatory comments about the judge and the ruling. All of this is unprofessional and may mar your effectiveness before the judge on the next case. It is not worth risking your reputation and your relationship with the judge by reacting negatively to any ruling.

11. **Proposed Orders.** Orders should be proposed with an "approved as to form" line signed by opposing counsel. This saves the judge and the clerk time in comparing the language of the order with the file. If opposing counsel will not sign the proposed order, be sure to mail copies of the proposed orders to opposing counsel and allow sufficient time for response before submitting the matter to the judge for signature.

12. **Attorneys Fees Affidavits.** Rule 4-505 of the Code of Judicial Administration sets out the requirements for submission of attorneys fees affidavits. The requirements are specific. Be sure to list the specific nature of the work performed and the time spent. Also state with particularity the legal basis for the award and affirm the reasonableness of the requested award. Often, attorneys fees affidavits do not comply with the rule and are returned.

13. **Attorneys Fees at Trial.** If your client is seeking an award of attorneys fees as a prevailing party, you must present evidence during your client's case in chief regarding attorneys fees. Do not assume that you can just submit an affidavit after trial. Often attorneys neglect to address this issue when presenting the case in chief. Broach the issue with the judge and opposing counsel during your client's case in chief. Some judges require that attorneys fees be proven during trial and other judges prefer that attorneys fees affidavits be submitted after the merits of the underlying case are resolved. Be prepared to present detailed testimony about your client's claim for attorneys fees.

14. **Jury Instructions.** Have your proposed jury instructions submitted to the judge before trial. You should identify those instructions which are the most important instructions to your case and those instructions which we would deem to be "stock instructions." Avoid proposing voluminous instructions which may, by their sheer number, confuse the jury.

15. **Courtesy Copies.** Too often attorneys neglect to provide courtesy copies of exhibits to opposing counsel, the judge and the jury. Once the foundation is laid and the document is admitted, you can delve into the merits of the document in detail. When this is done, a copy of the document should be provided to the judge, the jury and opposing counsel. It is obviously much easier for everyone to understand a witness' testimony about the specifics of the document with a copy of the document in hand. I am surprised how often attorneys fail to provide copies of exhibits at trial. This lapse in preparation and judgment can annoy even the most patient judge, jury, and attorney for the opposing party.

An attorney can state "objection—hearsay" or "objection—foundation" which clearly and quickly communicates the objection and the reason for it.

16. **Avoid Ex Parte Communication with the Judge.** There are rules against speaking with the judge about pending cases. Avoid approaching a judge without opposing counsel involved. Please be sensitive to this concern.

17. **Get to the Point.** Do not take up all the allotted time unless it is absolutely necessary. Too many lawyers take too long to get to the point. Judges and juries lose patience with attorneys who appear only interested in hearing themselves speak and who continue to re-emphasize the same facts. On the other hand, those attorneys who quickly and competently get to the point are universally appreciated by the judges.

18. **Stipulations.** Make a genuine effort to reach reasonable stipulations regarding uncontested and minor issues before trial. I am surprised how often attorneys fail to even attempt to make reasonable stipulations before trial. Once two seasoned attorneys appeared before me and said, "Judge, this case could take two days of trial. We have reached stipulations to all but two of the issues." They stated their stipulations for the record and pointed out that they could stipulate to almost all of the documentary evidence in the case. They identified a few documents with which they could not agree. The case took only two hours to try. The attorneys were articulate and well prepared. The case really was a joy to try. This procedure of reaching reasonable stipulations and then focusing on the few remaining contested issues should be followed with much more regularity by trial lawyers.

19. **Continuances.** This must be the first word learned by some attorneys after passing the bar examination. A few attorneys have a cavalier attitude about continuances and ask for them often. I encourage you to avoid asking for a continuance unless absolutely necessary. If you must seek a continuance, do it early in the case. A last minute continuance wastes the time of the judge who has spent time preparing for your case. It can also disrupt the judge's trial schedule and the schedules of witnesses and opposing counsel.

20. **Bring Your Calendar to Court.** I am amazed about how many attorneys fail to bring their calendars to court. This makes setting a future hearing date nearly impossible. Such an attorney can annoy even the most understanding judge.

CONCLUSION

I have identified 20 ways an attorney can improve courtroom practice. Many of these suggestions may seem basic and yet it is surprising how often they are not followed by even seasoned trial lawyers. It is my hope that you will follow them and that they may be of benefit to you in your practice. I'll see you in court!

YLS, YLD, ABA, AOP, MSN, BLDC: A Young Lawyer Code?

By Charlotte Miller
Young Lawyers Section President

When I first became involved in Young Lawyers, I often felt as if everyone else was speaking in code when talking about the organizational structure of the Young Lawyers. Now that I have unraveled the code, I want to let other Utah Young Lawyers know what it means and why the organization behind the code is important.

The Young Lawyers Section (YLS) of the Utah State Bar is an affiliate of the Young Lawyers Division (YLD) of the American Bar Association (ABA). The YLD provides several services to local affiliates such as the Utah YLS: grant funds for programs; model projects; resource materials such as video tapes and brochures; liaisons with other ABA groups; liaisons with other young lawyer organizations; national and regional seminars.

Three times a year the YLD/ABA sponsors a national seminar. In the fall and spring of each year young lawyers from all over the country attend the Affiliate Outreach Project (AOP) and Membership Support Network (MSN) seminars. At those seminars young lawyers present projects from their own affiliates so that other affiliates may transplant the projects to their own local areas. The most recent seminar was held in Richmond, Virginia. A few of the projects presented were:

- A Divorce Video for Children
- Death Penalty Representation
- Shaken Baby Syndrome Awareness
- Surviving as a Lawyer in the '90s
- Substance Abuse in the Legal Profession
- Service to Modest Means Clients
- Minorities in the Profession

The Spring 1992 AOP will be held in Marco Island, Florida in May.

The third annual seminar is a Bar Leadership Development Conference (BLDC) held in conjunction with the ABA mid-year meeting. This year the meeting will be held in Dallas, Texas January 30-February 2. The Conference focuses on helping young lawyers gain leadership skills. Some of the scheduled programs include:

- Effective Communications
- Public Relations
- Diversifying Bar Membership
- Short and Long Range Planning
- Fund Raising and Budgeting

The YLD has planned a public service project in Dallas during the week of the seminar. Volunteers will paint, do light carpentry, sort clothes and perform any other tasks useful to the Dallas Life Foundation which services Dallas' poor and homeless.

The Utah YLS is proud that Jerry Fenn of Snow, Christensen & Martineau is one of the coordinators of the Dallas BLDC.

In addition to getting ideas from other young lawyers, the national seminars provide a forum for young lawyers to meet other lawyers at social and tourist activities.

The Utah YLS helps two to three Utah young lawyers attend each of the national seminars by paying airfare and a portion of other out-of-pocket expenses. The Utah YLS has been honored to make presentations at several of the past seminars. When the ABA/YLD chooses a Utah program for a presentation the ABA pays a portion of the costs to send the presenter from Utah to the seminar.

Regional mini-conferences are also held in the Spring to provide regional contact among young lawyers. Utah will be sponsoring the Rocky Mountain regional conference this year in Park City, April 3-5.

Over the past few years, I have had the opportunity to attend three national confer-

ences and one regional conference. The substantive programs and the camaraderie at the conferences increased my enthusiasm about public service by lawyers and about the legal profession itself. At a time when the legal profession is criticized by non-lawyers and lawyers, it is refreshing to talk to people who enjoy practicing law. In Richmond, I met two attorneys from Arkansas, one who represents death-row inmates and one who practices domestic relations law; a prosecutor from Detroit whose hobby is trains; an entertainment lawyer from New Jersey. The groups at each conference have been extremely diverse: government lawyers, sole practitioners, corporate attorneys, plaintiffs and defense attorneys. One of the greatest personal benefits for me has been getting to know and becoming friends with attorneys from Utah who attend the seminars.

Young lawyers who are interested in attending any of the seminars should contact me. I can provide you with more information about future seminars and, depending on the funds available, the Utah YLS may be able to help defray some of the cost.

Young Lawyer's Victory Clarifies Review of Administrative Findings

Linda Barclay, A Young Lawyer practicing in Provo at Howard, Lewis and Petersen recently won a significant victory in a pro bono workers' compensation case before the Utah Court of Appeals. The case, **Adams v. Board of Review,** 173 Utah Adv. Rep. 18 gives administrative agencies explicit guidance on the appropriate scope with which findings of fact and conclusions of law must be prepared in order to withstand appeal.

The case focused on the existence and cause of injuries to Roberta N. Adams. Barclay argued that Adams, who had been employed as a telemarketer, was a victim of "repetitive motion syndrome" and that as a result, she was subject to pain, stiffness and numbness in her neck, arms and shoulders. The Workers' Compensation Fund argued that Adam's problems were psychological and unrelated to her employment.

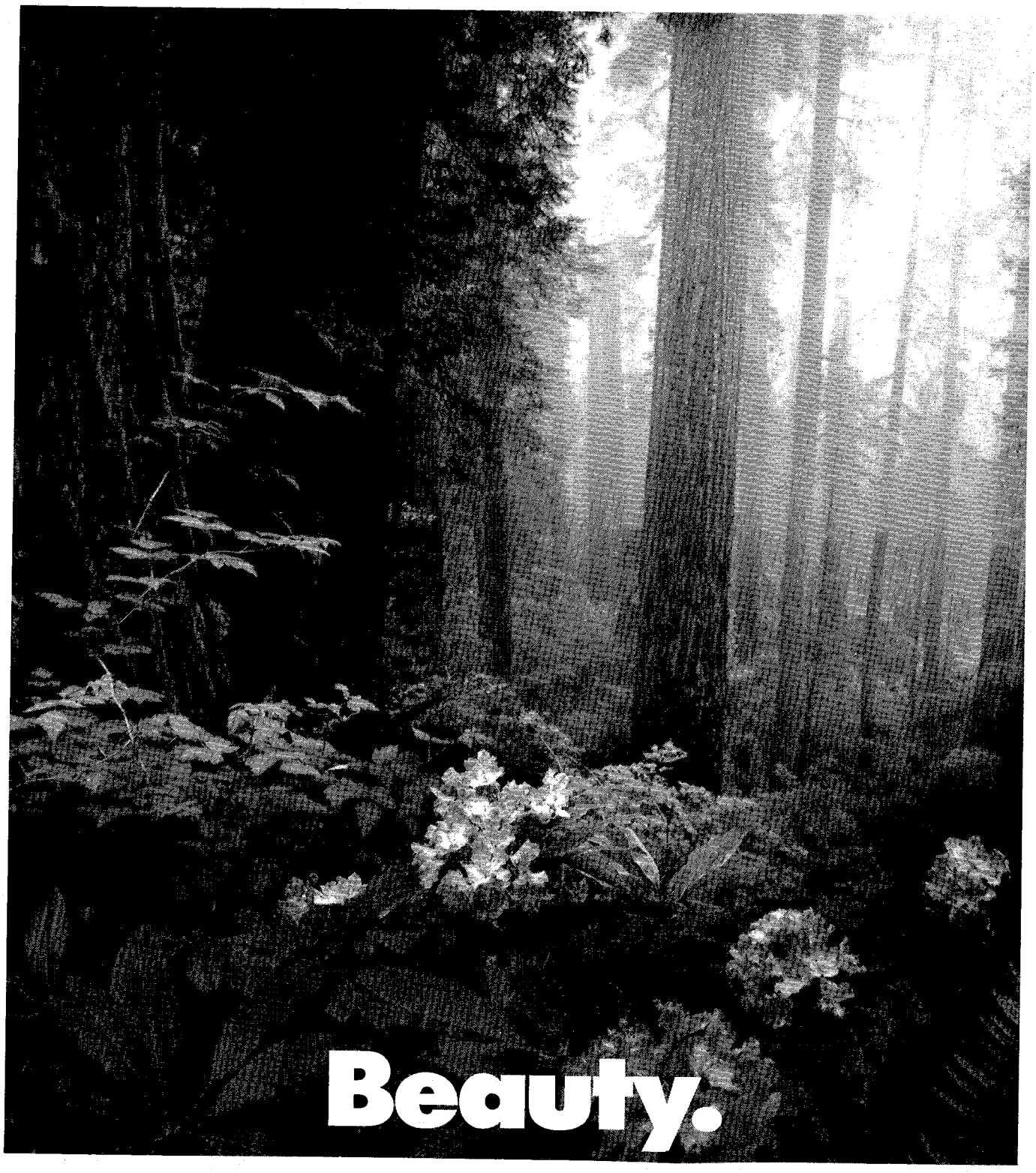
Rather than making specific findings about the nature of Adam's injuries, the Industrial Commission found that "The preponderance of medical evidence in this case establishes that the applicant's various listed symptoms are not related to her work as a telemarketer at Unicorp." The Court of Appeals found that the Commission failed to make any finding about the nature of Adam's medical condition and that without that finding the court had no basis upon which to make a determination of causation.

The Court vacated the Industrial Commission's decision rather than remanding and directed the Commission to make adequate findings. The Court noted that absent adequate findings "there is no presumption that the Commission's decision is correct."

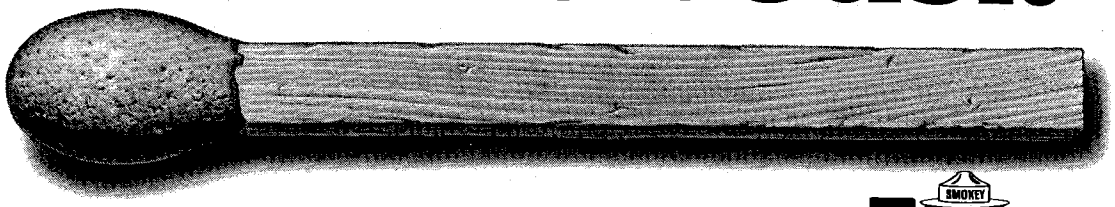
Barclay says she took the appeal on a pro bono basis because her client's treatment by the system "made me mad." She acknowledges that the process has not yet resulted in an award of benefits for her client but hopes that Court of Appeals decision will encourage administrative agencies to be more thorough in their consideration of all the facts in a given dispute.

Rape Project Seeks Donations

The Rape Project of the Young Lawyers Section of the Bar is looking for support in the form of clothing or donations. Kim Hornak, chairperson of the Rape Project has organized a program to provide sweatsuits for rape victims whose clothing is often held by the police as evidence. The availability of the sweatsuits assures that victims will have clean clothing to wear home. To support the program, the committee is asking young lawyers to donate either an adult-size sweatsuit or $10.00 toward the purchase of a suit. For further information, contact Kim Hornak at 363-7900 or Lisa Jones at 521-3200.



And the Beast.



A Public Service of the U.S.D.A. Forest Service and your State Foresters.

Ad Council

SMOKEY

Annual Founders' Day Luncheon

Rex Olsen (left), Executive Director of the Legal Aid Socity, and Judge Norman H. Jackson, President of the Utah Bar Foundation, discuss ways IOLTA funds have been used to protect children and spouses from abuse through the LAS Domestic Violence Program.

The Utah Bar Foundation has provided $881,318 in grants for legal aid, legal education and other law-related services since 1984, when the Utah Bar Foundation initiated the Interest on Lawyer's Trust Accounts (IOLTA) program. At its 1991 Founders' Day Meeting on Tuesday, December 17, individuals and organizations, which had directly benefitted from the Bar Foundation's $182,775 in grants this year, told how the funds had provided critical services for Utahns in need.

Utah Legal Services, Legal Aid Society, and the Legal Center for People with Disabilities are among the organizations which received funding and participated in the program. Anne Milne, Director of Utah Legal Services said that Bar Foundation funds have allowed the organization to open and maintain an office in Price to serve low-income, laid-off, aged and disabled Utahns seeking help with unemployment, Social Security, and access to health care.

"Funding from the Utah Bar Foundation adds materially to our ability to provide legal assistance annually to more than 3,000 people in need," said Rex Olsen, Executive Director of the Legal Aid Society. "Without this support, we would need to significantly reduce the number of clients we serve at a time when the demand for our services is growing," he said.

Phyllis Geldzahler, Executive Director of the Legal Center for People with Disabilities, said the Bar Foundation grants help provide informed advocates to assist disabled people in their quest for equal treatment under the law.

Foundation President Hon. Norman H. Jackson said the grants are made possible through the cooperation of participating lawyers, law firms and Utah banks.

Following the luncheon, former Trustee David S. Kunz was recognized for his many years of service to the Utah Bar Foundation. Brigham Young University's graduating law student Mark T. Urban and Kerry Lee Chlarson from the University of Utah were recognized for having won the Foundation's Ethics Award, and scholarship recipients Rosemond V. Blakelock (BYU) and Hong Thi Tran (U of U) were recognized as having been selected to receive the Foundation's law school scholarships for 1991-92.

The Utah Bar Foundation was organized nearly 30 years ago as a non-profit charitable Utah corporation. All active members of the Utah Bar are members and may voluntarily participate in the IOLTA program which generates the funds for grants. The Foundation Trustees consider grant applications annually for worthwhile law-related public purposes. Trustees are Hon. Norman H. Jackson, president, Ellen M. Maycock, vice president, James B. Lee, secretary-treasurer, Richard C. Cahoon, Stephen B. Nebeker, B. L. Dart, and Carman E. Kipp.

ANNOUNCING

RELOCATION OF THE LAW OFFICE OF

BRYCE E. ROE

TO

BENEFICIAL LIFE TOWER

36 SOUTH STATE STREET, SUITE 1200
SALT LAKE CITY, UTAH 84111

Telephone: (801) 538-0202
Facsimile: (801) 328-3629

THE LAW FIRM OF

HANSEN JONES & LETA

IS PLEASED TO ANNOUNCE THAT

LYNN H. PACE

FORMERLY AN ASSOCIATE WITH RAY, QUINNEY & NEBEKER HAS JOINED THE FIRM AS AN ASSOCIATE AND

WILLIAM R. GRAY

AND

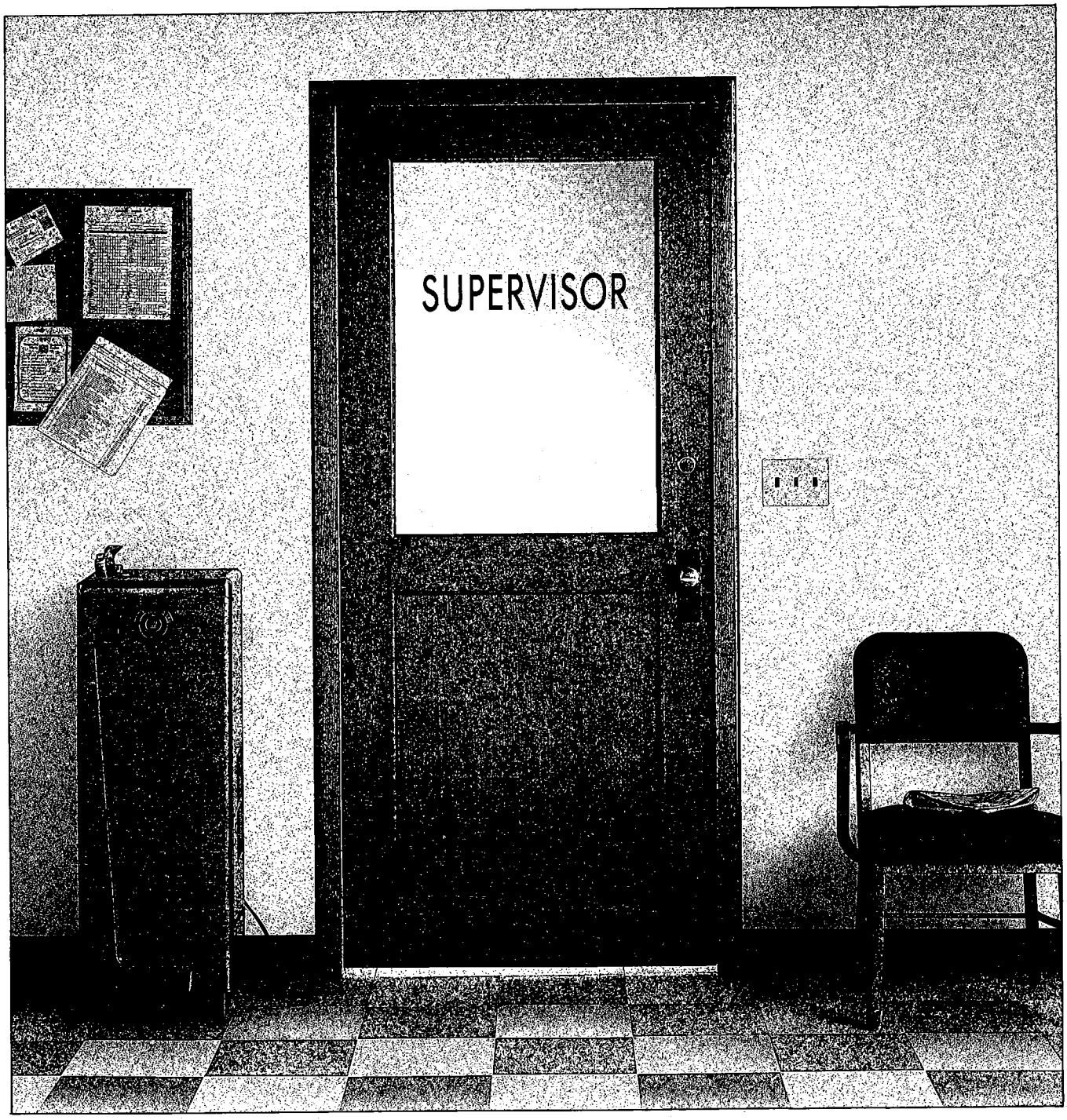
JEFFREY T. SIVERTSEN

HAVE JOINED THE FIRM AS ASSOCIATES

VALLEY TOWER BUILDING
50 WEST BROADWAY, SIXTH FLOOR
SALT LAKE CITY, UTAH 84101

TELEPHONE: (801) 532-7520
TELECOPIER: (801) 364-7699

NOVEMBER 1991



OBSTACLE COURSE.

Unfortunately, many employers just don't realize how vital the National Guard and Reserve is to our armed forces. The fact is, they make up over 44% of our national defense.

So the next time someone who works for you needs time off for Guard and Reserve duty, please give your full support. And let the obstacle course begin at annual training.

ESGR

EMPLOYER SUPPORT OF
THE GUARD AND RESERVE

Ad Council

UTAH STATE BAR
1992 MID-YEAR MEETING

March 12 to 14, 1992 • Holiday Inn, St. George, Utah

APPROVED FOR 8 HOURS CLE CREDIT
WHICH INCLUDES 2 HOURS IN ETHICS

Thursday, March 12, 1992

6:00 to 8:00 p.m. **Registration—Hotel Lobby**
Opening Reception—Hotel Lobby/Sabra Rooms

SPONSORED BY: JONES, WALDO, HOLBROOK AND McDONOUGH

Friday, March 13, 1992

8:00 a.m. **Registration/ Continental Breakfast**—Hotel Lobby

SPONSORED BY: SNOW, CHRISTENSEN AND MARTINEAU

8:30 a.m. **Opening General Session**—Sabra Rooms
Welcome and Opening Remarks
James Z. Davis, President, Utah State Bar
Michael L. Larsen, Chair, 1992 Mid-Year Meeting

8:40 a.m. **KEYNOTE SPEAKER Ethics and Your First Amendment Rights**
Dominic P. Gentile, Gentile, Porter & Kelesis; and Nevada State Bar Commissioner

SPONSORED BY: UTAH ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

9:30 a.m. **Conflicts: The First Amendment, Effective Representation on the Rules of Professional Responsibility**
Jo Carol Nesset-Sale, Moderator, Associate, Haley and Stolebarger;
William B. Bohling, Shareholder, Jones, Waldo, Holbrook and McDonough;
Gregory G. Skordas, Deputy County Attorney, Salt Lake County Attorneys Office;
Andrew A. Valdez, Salt Lake Legal Defenders Association

10:20 a.m. **Break**—Hotel Lobby

SPONSORED BY: ROLLINS BURDICK HUNTER OF UTAH, INC. AND CHARTER SUMMIT HOSPITAL

10:40 a.m. **PROGRAM A:**
Part I—**Federal Employment Law and the Civil Rights Act of 1991**
Chris P. Wangsgard, Shareholder, Parsons Behle & Latimer

Part II—**Employment Law in Utah After *Berube*: Plantiff's & Defendant's Perspectives**
Janet Hugie Smith, Shareholder, Ray, Quinney & Nebeker
Robert H. Wilde, Attorney at Law, P.C.

PROGRAM B-1:
Preserving Arguments for Appeal
Hon. Gregory K. Orme, Utah Court of Appeals

PROGRAM B-2:
Primer—Wills & Trusts
Steven J. Dixon, Shareholder, Nielsen and Dixon

11:00 a.m. to 12:00 noon **Spouse Golf Clinic**—Sunbrook Golf Course

12:20 p.m. **Meetings Adjourn**

1:15 p.m. **Golf Tournament**—Sunbrook Golf Course

2:00 p.m. **Tennis Tournament**—Green Valley Tennis Courts
Trapshoot Tournament—Green Valley Shooting Range

6:30 p.m. **Social Reception**—Holiday Inn

SPONSORED BY: PARSONS BEHLE AND LATIMER

7:30 p.m. **Mexican Fiesta**—Holiday Inn

Saturday, March 14, 1992

7:30 a.m. **Fun Run**—Red Hill/Sugar Loaf

8:30 a.m. **Registration/ Continental Breakfast**—Hotel Lobby

SPONSORED BY: MICHIE COMPANY

9:00 a.m. **General Session Announcements**—Sabra Rooms

9:00 a.m. **Tennis Clinic**—Vic Braden Tennis College

9:10 a.m. **Demonstrative Evidence: From High-Tech to the 'Shoestring' Budget**
Gail A. Jacquish, Ph.D. Juris Graphics & Consulting, Inc.;
G. Fred Metos, McCaughey and Metos;
David J. Schwendiman, Assistant U.S. Attorney

SPONSORED BY: THE LITIGATION SECTION

10:50 a.m. **Break**—Hotel Lobby

SPONSORED BY: FIRST INTERSTATE TRUST DIVISION

11:10 a.m. **PROGRAM A—1:**
1992 Utah Legislative Review
John T. Nielsen, Shareholder, Van Cott, Bagley, Cornwall & McCarthy

PROGRAM A-2:
Primer—CERCLA: Know Your Clients' Liability
Richard J. Scott, Partner, Chapman and Cutler

PROGRAM B:
Blood Money and Busted: A Sobering Discussion on the Issues of Alimony and Bankruptcy in Divorce Actions
Bert L. Dart, Senior Partner, Dart, Adamson and Kasting;
George H. Speciale, Sole Practitioner;
Marco B. Kunz, Cohne, Rappaport and Segal
Julie A. Bryan, Cohne, Rappaport and Segal

SPONSORED BY: THE FAMILY LAW SECTION

1:00 p.m. **Meetings Adjourn**

2:00 p.m. **Mountain Biking Tour**—Snow Canyon

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CLE CALENDAR

BIOREMEDIATION: THE STATE OF PRACTICE IN HAZARDOUS WASTE REMEDIATION OPERATIONS

A live via satellite seminar. This seminar is being presented by the American Waste Management Association.

CLE Credit: 4 hours
DATE: January 9, 1992
PLACE: Utah Law & Justice Center
FEE: $150 (plus $6 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

BANKRUPTCY WORKSHOP

This is a New Lawyer CLE workshop and is open to general registrations on a space available basis. Carolyn Montgomery, the former Chair of the Bankruptcy Section, will be making this presentation on basic practice in bankruptcy.

CLE Credit: 3 hours
DATE: January 15, 1992
PLACE: Utah Law & Justice Center
FEE: $30
TIME: 5:30 to 8:30 p.m.

FUNDAMENTALS OF THE PERSONAL INJURY TRIAL

This seminar will cover the basics involved in a personal injury case. An automobile accident case will serve as a demonstration case to highlight the elements of the personal injury case. Experts with experience in presenting these cases will bring their experience and techniques to you in this basic level and review course.

CLE Credit: 4 hours
DATE: January 17, 1992
PLACE: Utah Law & Justice Center
FEE: $50.00
TIME: 8:00 a.m. to 12:30 p.m.

WINNING STRATEGIES IN PRODUCT LIABILITY CASES

A live via satellite seminar. Here's an opportunity to hear from some of the most experienced trial lawyers in the country on handling product liability litigation. This seminar will take you from an evaluation of the case all the way through examination of the expert.

CLE Credit: 6.5 hours
DATE: January 21, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 8:00 a.m. to 3:00 p.m.

LAW FIRM BUSINESS MANAGEMENT

A live via satellite seminar. This seminar will be of special interest to firm managing partners, executive and management committee members, department and office heads, executive directors, chief financial officers, and all partners concerned with how their firms can be managed more effectively.

CLE Credit: 6.5 hours
DATE: January 28, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 8:00 a.m. to 3:00 p.m.

BANKRUPTCY LAW & PRACTICE: THE YEAR 1991 IN REVIEW

A live via satellite seminar.

CLE Credit: 4 hours
DATE: January 30, 1992
PLACE: Utah Law & Justice Center
FEE: $150 (plus $6 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

HOW TO DIAGNOSE AND TREAT YOUR BANK OR THRIFT CLIENT

A live via satellite seminar. This program will detail proven methods on how to perform a due diligence assessment of your client and how to design an action plan to address specific problems. The program is designed for attorneys, accountants, and other consultants to financial institutions, bank directors and officers, as well as the regulators. The issues explored are important for all financial institutions, large or small, public or closely held.

CLE Credit: 6.5 hours
DATE: February 11, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 8:00 a.m. to 3:00 p.m.

THE CIVIL RIGHTS ACT OF 1991

A live via satellite seminar.

CLE Credit: 4 hours
DATE: February 13, 1992
PLACE: Utah Law & Justice Center
FEE: $150 (plus $6 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

CONSUMER BANKRUPTCY

This course, co-sponsored with ALI-ABA, is designed to assist counsel who are not specialists in representing consumer debtors or their creditors. The course is structured around the question of whether a client will be better served by filing a chapter 7 liquidation case or a 13 case and plan. The advantages and disadvantages of each chapter, as well as the opportunity for creditors to challenge or have an effect on the debtor's choice of chapters, will be fully explored by the faculty.

CLE Credit: 13 hours
DATE: February 13-14, 1992
PLACE: Olympia Hotel, Park City
FEE: $495
TIME: 9:00 a.m. to 5:00 p.m.

UPDATE: IMPLEMENTATION OF THE 1990 CLEAN AIR ACT AMENDEMENTS

A live via satellite seminar.

CLE Credit: 4 hours
DATE: February 27, 1992
PLACE: Utah Law & Justice Center
FEE: $150 (plus $6 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

CORPORATE MERGERS & ACQUISITIONS

Co-sponsored with ALI-ABA

CLE Credit: Approx. 12 hours
DATE: March 5-6, 1992
PLACE: Olympia Hotel, Park City
FEE: $495
TIME: 8:00 a.m. to 5:00 p.m.

NON-DISCHARGEABLE DEBTS

A live via satellite seminar.

CLE Credit: 6.5 hours
DATE: March 10, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

UTAH STATE BAR 1992 MID-YEAR MEETING

Come down to St. George for this excellent CLE convention. Enjoy the warmth of southern Utah while getting a jump on your CLE requirements for the next reporting period. Watch for mailings on this program and sign up early to ensure your registration.

CLE Credit: 8 hours (2 in ETHICS)
DATE: March 12-15, 1992
PLACE: Holiday Inn, St. George

SUCCESSFUL TEAMWORK IN A PRODUCTS LIABILITY CASE USING SUPPORT STAFF

A live via satellite seminar.

CLE Credit: 6.5 hours
DATE: March 17, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

COUNSELING COMPANIES ON EEO

A live via satellite seminar.

CLE Credit: 6.5 hours
DATE: March 24, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

A LAWYER'S GUIDE TO WHAT'S HAPPENING IN FRANCHISING

A live via satellite seminar.

CLE Credit: 6.5 hours
DATE: April 7, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

EVIDENTIARY FOUNDATIONS

A live via satellite seminar.

CLE Credit: 6.5 hours
DATE: April 8, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

COMPUTER LAW UPDATE

A live via satellite seminar.

CLE Credit: 6.5 hours
DATE: April 28, 1992
PLACE: Utah Law & Justice Center
FEE: $185 (plus $9.75 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

UNDERSTANDING FINANCIAL STATEMENTS: ACCOUNTING FOR LAWYERS

A live via satellite seminar.

CLE Credit: 4 hours
DATE: April 30, 1992
PLACE: Utah Law & Justice Center
FEE: $150 (plus $6 MCLE fee)
TIME: 10:00 a.m. to 2:00 p.m.

CLE REGISTRATION FORM

TITLE OF PROGRAM FEE

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

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

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

CLASSIFIED ADS

For information regarding classified advertising, please contact Leslee Ron at 531-9077.

BOOKS FOR SALE

LAW BOOKS FOR SALE at greatly reduced price: ALR, 1st through 4th; United States Code Annotated; C.J.S. Contact: Chou Chou Collins 532-1234.

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POSITIONS AVAILABLE

Small, well-established Salt Lake City law firm seeks a lawyer with one to three years litigation experience. Some bankruptcy knowledge would be helpful. Salary negotiable based on background and experience. Include one writing sample with resume. Reply to Utah State Bar, Box K, 645 South 200 East, Salt Lake City, UT 84111.

Major southwestern law firm headquartered in Phoenix, Arizona seeks 2 to 4 year lawyer with experience in mining, water, and public lands law. General transactional experience helpful. Superior academic credentials required. Candidates must be in good standing with their present employer. Salary and benefits are competitive with major, regional law firms. Excellent opportunity for advancement. Please contact Nancy Philippi, Streich Lang, 2100 First Interstate Bank Plaza, Phoenix, AZ 84003.

POSITION SOUGHT

Ex-Utah resident practicing in Denver seeks position in Salt Lake City. Seven-and-a-half years commercial litigation experience, including securities, commodities, broker/dealer. Licensed in Utah and Colorado. Inquiries must be confidential. For copy of resume or interview: (303) 866-9412 work or (303) 423-2518 home.

MISCELLANEOUS

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