UTAH BAR JOURNAL

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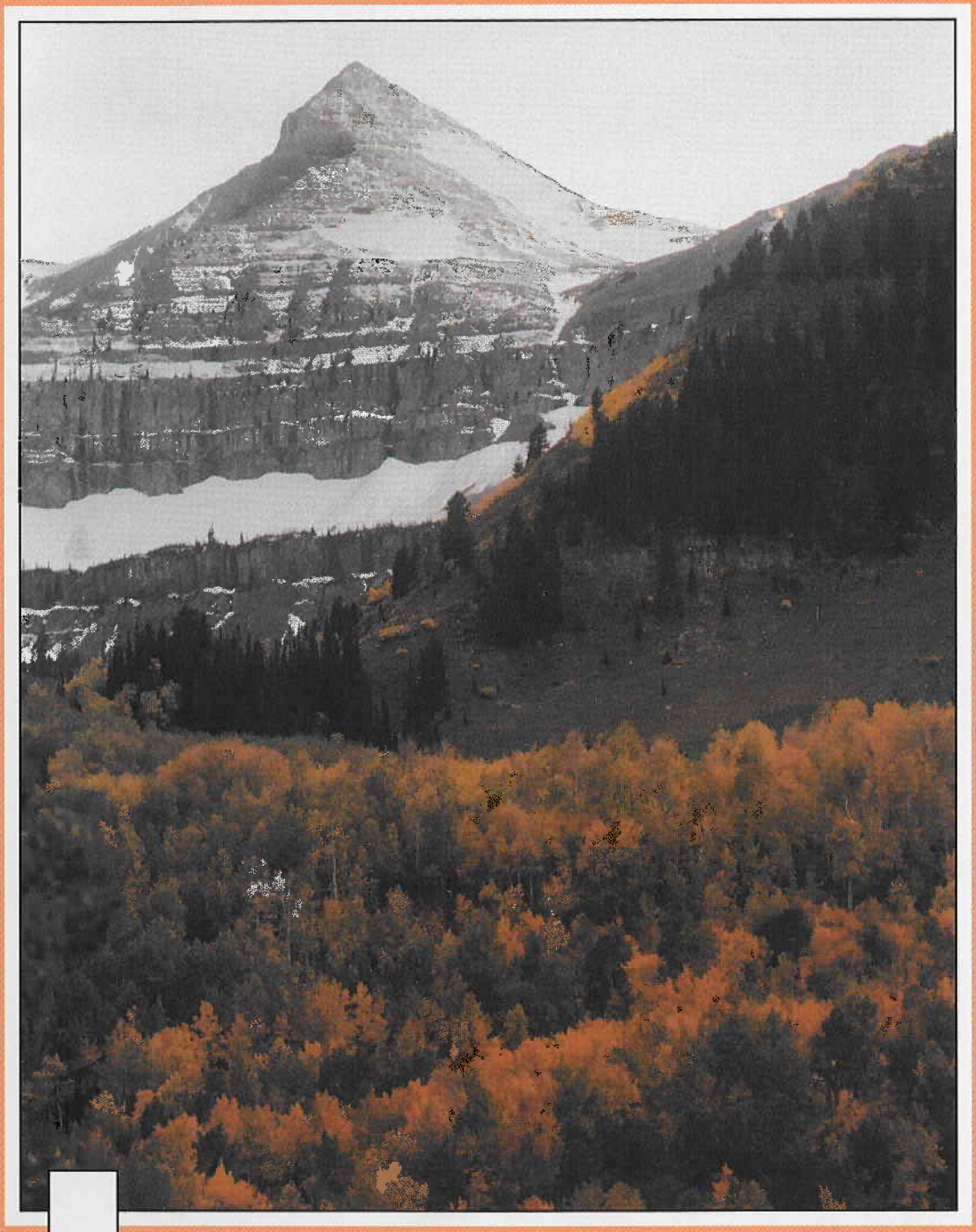

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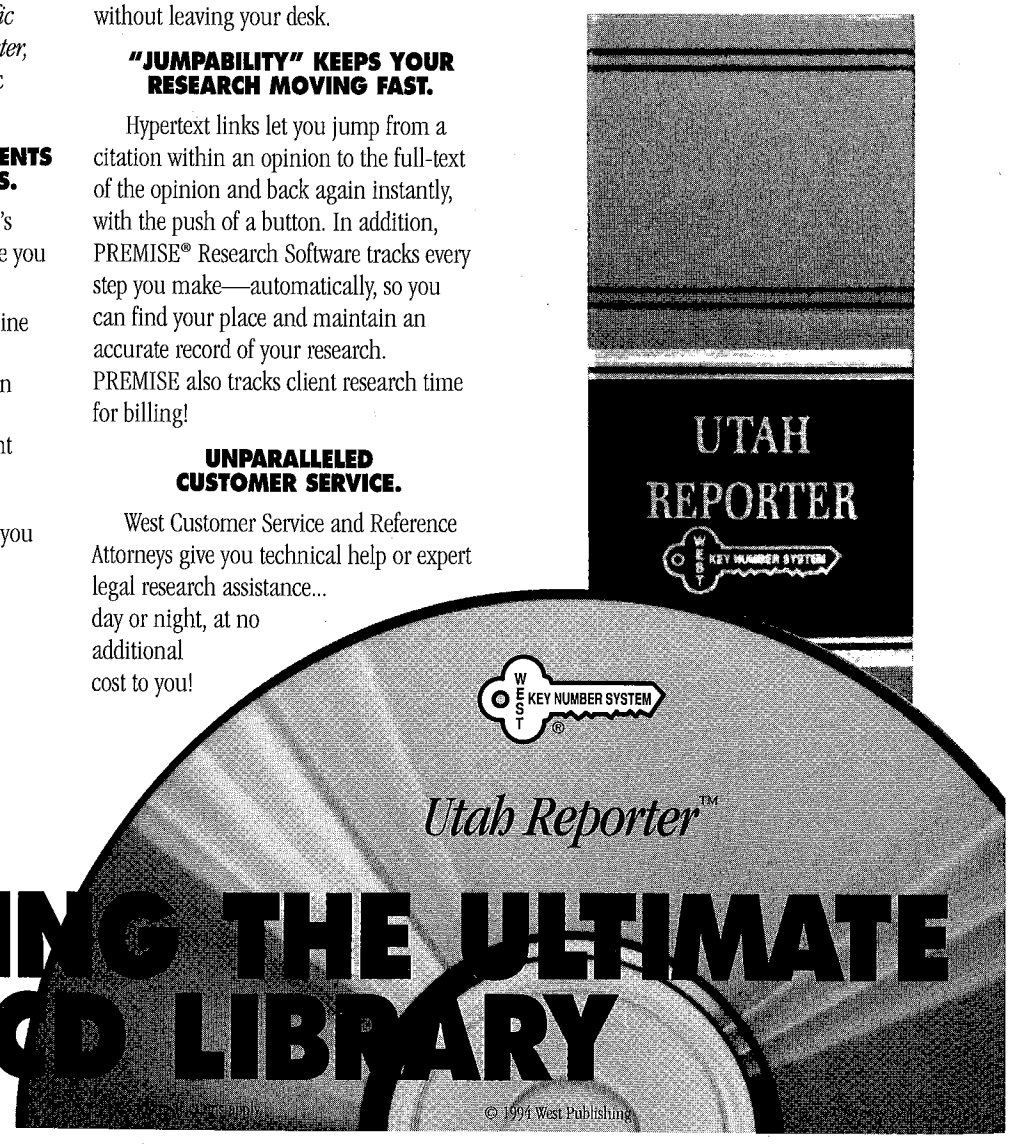

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UTAH BAR JOURNAL

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COVER: View of Mt. Timpanogos, Utah from the Alpine Loop drive taken by John Preston Creer, Esq. of Salt Lake City.

Members of the Utah Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle Gate Tower, Salt Lake City, Utah, 84111, 532-5200. Send both the slide, transparency or print of each photograph you want to be considered.

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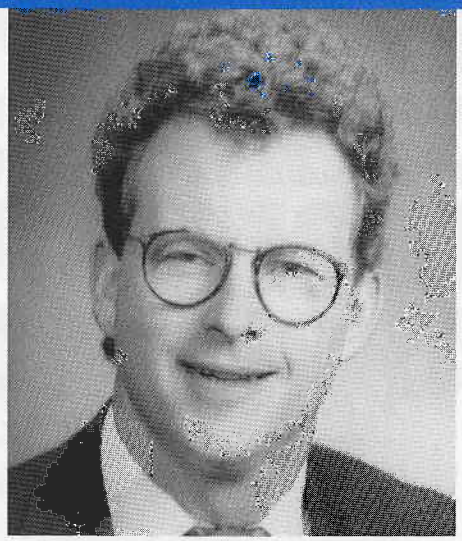


Bar Commission Recommends Two New Programs

Creation of a Legal Assistant Division A Solicitation of Comment from Bar Members and Pro Bono Services

By Paul T. Moxley

As most of you are aware, the Bar Commission has not endorsed any new programs for the past six years if they had any material economic effects on lawyers because it has been our primary objective to pay off the mortgage on the Law & Justice Center. For this reason, during the last few years many good programs have not been funded when proposals have been made. The Bar Commission has been considering several worthy programs which are consistent with Bar objectives which have minimal economic effects on lawyers while serving them and the public. One item of grave concern to us is facilitating meeting current unmet legal needs in a sensible way. Just about all lawyers are concerned about availability of legal services to people who need them and are committed to solving that problem.

In order to facilitate the need for less expensive legal services, the creation of a legal assistants division of the State Bar has been unanimously endorsed by the Board of Bar Commissioners and after a response from Bar members a petition will be filed with the Supreme Court concerning this program. This recommendation follows almost a decade of discussion by legal assistants in Utah about certification, licensure regulation and professional standards. The Bar Commission has considered multiple requests the last few years concerning this subject, has studied them and followed the work of the ABA.

The Bar Commission believes that the regulation of legal assistants is inevitable. By the creation of a legal assistant division within the Bar, both attorneys and legal assistants will have some control over both the process and the end result while continuing to provide legal services to a variety of people and groups who need the services. Other states are struggling with these issues and it has been a hot topic at ABA conventions. Recently, Arizona accepted the proposition that non-lawyers should be allowed to provide some legal services in 11 areas of the law without lawyer supervision. The Bar Commission envisions the adoption of this program as a method of assuring the public that legal services will be performed at the lowest price while assuring the quality of work because legal assistants will work with lawyers who will be responsible for the end product. We believe this is the proper approach.

The parameters of the Division will be as follows:

Definition

"A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a suffi-

cient knowledge of legal concepts that, absent such assistant, the attorney would perform the task."

Structure

A rule establishing an application process for Legal Assistant Affiliates of the Utah State Bar including:

(a) initial and annual certification of continuous sponsorship of a Legal Assistant Affiliate by an employer who is a member of the Utah State Bar;

(b) certification by the attorney and Legal Assistant Affiliate that the legal assistant undertakes no legal work outside the attorney's supervision or supervision of attorney members of the firm. Joint sponsorship by joint employers would be permitted;

(c) an assumption of responsibility by the attorney for the compliance of the legal assistant with all applicable rules of the Utah State Bar including those adopted in paragraph 1 above;

(d) the Legal Assistant Affiliates parallel commitment that the attorney and Legal Assistant Affiliate will notify the Bar of any change of employment of the Legal Assistant Affiliate will terminate concurrent with employment by the sponsor unless sponsorship is accepted by another employer-member of the Utah State Bar; and

(e) an appropriate fee.

A suborganization for Legal Assistant Affiliates which would have a leadership group consisting of a Bar Commission member (ex officio, non-voting), a president and three active Affiliates elected by the group.

Legal Assistant Affiliates would receive the Bar Journal, notices of Bar functions and bar member rates at seminars and meetings. Legal Assistant Affiliates would not be eligible for office within the Utah State Bar.

Under this proposal, the Legal Assistant would not be directly subject to discipline by the Bar since the Legal Assistant status is dependent upon affiliation with an attorney, and since the affiliation confers no rights or privileges to the public. The attorney would be subject to discipline. This avoids establishment of additional disciplinary procedures specific to Legal Assistants.

While the LAAU proposal included the recommendation of a "division" of the Utah State Bar, the use of the term "Affiliate" is recommended to imply the separation which exists.

We invite your comments on this proposal and we will conduct a hearing at a future Bar Commission meeting on any comments if it is requested prior to filing a petition with the Supreme Court. We view this as a positive step towards encouraging a high order of ethical and professional attainment; to further education among members of the division; to support and carry out the programs of the division; and to establish good fellowship among division members, the State Bar of Utah, the members of the legal community at large and the public.

"We invite your comments on this proposal. . . ."

In July, the Bar Commission also endorsed a Pro Bono Project and authorized an expenditure of $50,000 for such a program which will endeavor to meet the legal needs of the public by providing a facilitator to supply volunteer lawyers to work on Pro Bono projects. Following this article is a copy of the Petition which is being filed in the Supreme Court concerning this program. The Delivery of Legal Services Committee has worked tirelessly on this matter and the Board is hopeful this program will be a step towards remedying the problem which is significant. We believe many lawyers are desirous of performing legal services on such a basis and are hopeful this project will foster that work. At the same time, we are cognizant of the need to adopt only programs that will be effective and cost productive. Accordingly, what is being proposed is a one year program and the Bar Commission will monitor it carefully. We invite your comments on the program and the Petition.

John C. Baldwin, #186
Executive Director

UTAH STATE BAR
645 South 200 East
Salt Lake City, Utah 84111-3834

IN THE SUPREME COURT
OF THE STATE OF UTAH

IN RE:	
Utah State Bar, Petitioner.	Petition For Approval To Create and Fund the Program to Encourage Voluntary Pro Bono Services

The Utah State Bar hereby petitions the Court for authorization to create a program to facilitate pro bono services voluntarily provided by members of the Bar by hiring a coordinator of volunteer legal services who would be a member of the Bar staff and through reassigning overhead costs currently allocated among other Bar programs. This Petition is made pursuant to the Utah Supreme Court's Minute Entry No. 890468, dated August 10, 1990, which requires the Bar to obtain authorization to use mandatory dues for non-regulatory programs which are not budgeted to be self-supporting.

The need for a program to coordinate voluntary pro bono services was presented to the Bar by its Delivery of Legal Services Committee. Acting under the guidance of an advisory board consisting of several members of the judiciary and other interested and involved community representatives, the Delivery of Legal Services Committee conducted a state-wide volunteer needs assessment and prepared a plan of action based on that assessment. Among other things, the Delivery of Legal Services Committee recommended that the Bar devote resources to coordinating unmet legal needs with lawyers who are willing to provide their time on a pro bono basis, and to hire a coordinator on staff to administer this ambitious undertaking. (A copy of this exhaustive needs assessment and comprehensive plan of action submitted by the Delivery of Legal Services Committee to the Bar is attached as Exhibit A hereto.)

After receiving favorable comments by the Bar and the public in an open forum on volunteer issues, the Board of Bar Commissioners voted on July 29, 1994 to begin

funding the program, beginning in the current (July, 1994 through June, 1995) fiscal year's budget. The Commission approved the hiring of a staff coordinator to begin the program and requested that a position description be drafted to prioritize the staff coordinator's goals for the program while it is in its formative stages, budgeted $50,000 to fund the program for this first fiscal year, and directed that this Petition be made to the Court to authorize spending for this initiative.

A preliminary job description for the coordinator's position is attached as Exhibit B hereto. The coordinator will report directly to Executive Director John C. Baldwin. The coordinator will be authorized to use up to fifty percent of the time of a clerical position currently on Bar staff. The actual time of that clerical spent on the program and the indirect costs for her office space, the office space to be utilized by the coordinator, and their proportional share of common areas, will be reallocated from programs to which they are currently being devoted. It is anticipated that the program will not require all of the $50,000 budgeted for this first year, including the indirect costs allocated to the office space and the time spent by the clerical position. These latter costs will not result in any net effect on expenditures made by the Bar because they are already allocated to the direct and indirect costs of other programs, and those expenses would then be allocated to become part of this program's overall direct and indirect costs.

The creation of the program and the hiring of a coordinator of volunteer services will help fulfill the purposes of the Bar as set forth in Section (A)1. of the Rules for Integration and Management of the Utah State Bar. Section (A)1. provides in pertinent part:

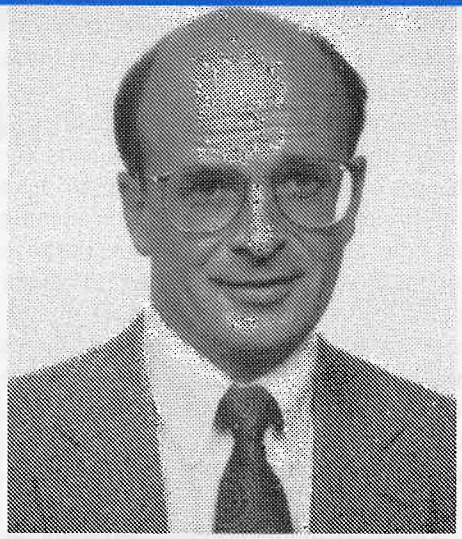
> The purposes, duties and responsibilities of the Utah State Bar include, but are not limited to, the following:
> (a) To advance the administration of justice according to law;
> (b) To aid the courts in carrying on the administration of justice;
>
> * * * *
>
> (e) To foster and to maintain integrity, competence and public service among those practicing law;
>
> * * * *
>
> (i) To provide service to the public, to the judicial system and to members of the Bar;
> (j) To educate the public about the rule of law and their responsibilities under the law; and
>
> * * * *

(See Order amending Rules for Integration and Management of the Utah State Bar dated May 27, 1993). The program will assist the Bar in achieving the purposes enumerated above by providing for greater coordination of the delivery of legal services to the public and by assisting the judiciary in ensuring representation of indigent litigants to the greatest extent possible.

In summary, the Utah State Bar believes that a Voluntary Pro Bono Services program is necessary to ensure the most efficient and effective delivery of legal services to the poor and indigent in Utah. Accordingly, the Bar respectfully requests that the Court approve this Petition.

DATED THIS ____ DAY OF SEPTEMBER 1994.

UTAH STATE BAR
BY: JOHN C. BALDWIN
EXECUTIVE DIRECTOR



In Defense of the Bench

By James C. Jenkins

As members of the Bar we should strive to promote confidence in, respect for, and support of the judicial branch of government.

In recent years an increasing amount of criticism has been leveled against the judiciary, not just from a few disgruntled and isolated groups but from a variety of individuals and associations representative of a wide cross-section of society, even including those within the legal profession and members of the judiciary. Some of the criticism and scrutiny is well reasoned and may be justified. Certainly, society should encourage and is entitled to improvement. Much of the current condemnation is, however, unwarranted, self-serving, and unproductive; made in ignorance of the legal system or out of spite. And while constant evaluation and positive criticism is healthy, destructive criticism, particularly when it is expressed publicly accomplishes no worthy purpose.

As society becomes more educated and sophisticated, it tends to become more demanding. Our society is now more prone to criticize its institutions. This criticism should be seriously considered, even welcomed, if it is intended to be constructive. But we must beware of criticism which incites disrespect or unjustified distrust in our judicial institutions and officers. There is likely no immediate and universal remedy to this cynicism. However, the following suggestions, although not exhaustive, should help improve the public's regard for the Judiciary and enhance the relationship between the Bar and the Bench:

Avoid Unnecessary or Unwarranted Criticism of Judges or the Courts. It is the nature of litigation to produce winners and losers. It is the nature of humanity to blame others for our losses. It is unprofessional for an attorney to denigrate a Judge in order to rationalize a loss. When members of the legal profession unjustly criticize the Courts, the public may feel justified in perpetuating such aspersions. Clients will soon wonder whether they can trust an attorney who has no confidence in the judicial system which the attorney has selected for a career environment. While constructive criticism may be appropriate in a given circumstance, one should exercise caution and prudence in how and to whom such criticism is expressed.

Encourage and Participate in Public and Client Education. It is important to take opportunities to educate the public and clients about the purposes and procedures of our legal system. Some of the fundamental purposes of the judiciary are to resolve disputes and to provide order and security to society. Attorneys are uniquely able to explain what makes our judicial system the best in the world. A responsible lawyer will never guarantee for his client the outcome of a case. But rather, he will explain that despite the strengths and merit of the client's case, an objective judge or jury may see things differently. This is why settlement should always be considered. Every experienced attorney knows that judges at times make mistakes. This does not alone make them incompetent or corrupt. Clients should understand that the appellate system exists to correct mistakes at trial. We should also explain that complaints of judicial misconduct should be reported to the Judicial Conduct Commission, and we should help explain the distinction between matters for appeal and matters of judicial misconduct.

Be Willing to get Involved in Making Productive Changes. It is often easier to counsel others to take action than do something yourself. Attorneys and judges have a responsibility to report judicial misconduct in order to maintain the integrity of the judicial system. We should also take the time to participate in the analysis of proposed changes to the system. There are more than 5500 licensed members of the Utah State Bar. How many read proposed rule changes when they are published for comment? How many submit comments?

How many have constructively participated in the proposals for constitutional reform or court consolidation which have been promoted over the last several years? Apathy is a disease which will destroy democracy. Lawyers should express publicly their reasoned opinions regarding proposals for change. Lawyers should be willing to share with the public the benefit of their training and education. This alone might improve the public image of lawyers and engender confidence in the judicial branch of government, by refuting the notion that lawyers only give opinions for a fee or that they are merely a rubber stamp for the judiciary. Reasoned constructive commentary is the cure for an apathetic society and the prevention from the designs of the autocratic few.

Foster Regular and Open Interchange between the Bar and the Bench. Lawyers and judges are officers of the court. Yet, we sometimes perceive ourselves as adversaries. One of the services of the unified Bar is to provide a mechanism and environment for communication and exchange of ideas between the judiciary and attorneys. Many committees and commissions which are engaged in the review of the legal system are composed of representatives from the bench and the bar. Within the bounds of the Rules of Professional Conduct and the Judicial Code of Conduct, we should encourage better understanding of the particular needs and difficulties each experiences. Several judges have expressed the value of the anonymous written comments which can be submitted with the periodic judicial retention evaluations. Perhaps each judge should have a "Suggestion Box" so that anonymous criticism, praise or evaluation can be given on a more regular basis.

Hopefully these ideas will stimulate thought and resolve to speak out against unjust criticism of our judicial government and the many individuals who earnestly and diligently serve within the system. May we all commit to defend the great institution that it is. May we determine to improve and protect rather than condemn and disparage our judiciary.

Bad Faith Dialogue

By David A. Westerby

Amy walks into the large conference room. Will is muttering. "What's wrong?" Amy asks.

"I can't believe the insurance company won't just pay their $25,000 limits and be done with it. A case of clear liability. But will they pay? No!! They insist on jerking the Johnsons around." Will jumps up and glares at Amy in mock hostility. "I'm telling you —" He points his finger near her nose. "I'm going to file the biggest bad faith claim you have ever seen!"

"Really?" she asks calmly, turning away. "Who's the insurer?"

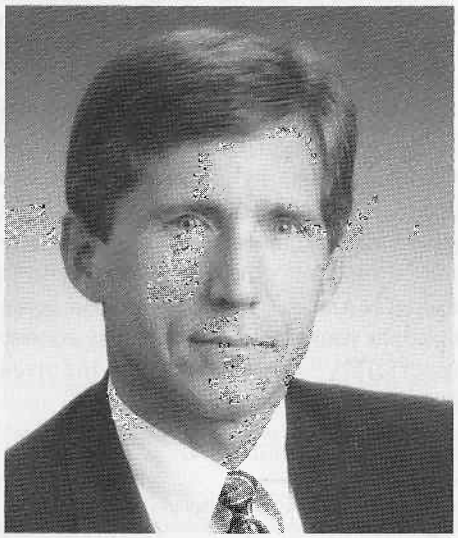
"Holy Grail!"

"First party situation?"

"No. The Johnsons were rear ended by Holy Grail's driver, Pinkerson."

"Help me here," Amy begins slowly. "How does a victim have a bad faith claim against the *other party's* insurer for failure to settle? Holy Grail is Pinkerson's insurer, not the Johnsons'." Amy could smell blood.

Will doesn't blink. "Hey, trust me here. I saw an article in Trial magazine a couple years ago[1] where a jury awarded bad faith punitives to a rancher from a power company that refused to settle a case of clear liability — where a neglected power line set his ranch on fire. I can't think of the name of the case."



DAVID A. WESTERBY practices law in Salt Lake City with Kirton & McConkie after many years as in-house counsel for Utah Power & Light Company and PacifiCorp. His practice focuses on tort litigation, employment law, and insurance coverage litigation. He is a former chair and executive committee member of the Bar's Litigation Section. Presently he serves as a trustee of the Utah Chapter of National Hemophilia Foundation. Of his four children, one is an Amy, who is engaged to marry a Will.

Amy turns slightly to conceal an emerging smile. "The case was *Ogden v. Montana Power Company*[2] —" She turns her head slowly back to Will and adds with professorial emphasis, "*a Montana case. You* have been reading too much ATLA and not enough *Utah case law*. Besides, my eager friend, that article was written *before* the Montana Supreme Court changed its opinion and decided the power company could *not* be held liable for bad faith claims handling." Will watches silently as Amy walks teasingly to the white board and pops the top of the brown DryErase marker. "Watch carefully."

Insurance Bad Faith Claims Handling Litigation in Utah[3]

1	2	3
Insured **Sues for Bad Faith Handling of *Insured's* Direct Policy Benefits Claim (First Party)**	***Insured*** **Sues for Bad Faith Handling of *Victim's* Claim against Insured (Third Party)**	***Victim*** **Sues for Bad Faith Handling of *Victim's* Claim against Insured**
Beck[4] Contractual claim Both direct and consequential damages Not limited to policy limits	***Ammerman***[5] Tort claim Based on fiduciary relationship between insurer and insured	***Ammerman*** ***Broadwater***[6] ***Pixton***[7] ***Savage***[8] Insurer Has No Duty to Victim to Deal in Good Faith

"You, sir, are in category 3, *and you lose*," concludes Amy with conviction.

Studying the board, Will doesn't miss a beat. "No, I *won't* lose. I'll just move into category 2 by taking an assignment of Pinkerson's bad faith claim."

"I see two problems at this stage, Will. The first is a practical problem: How are you going to get Pinkerson to assign his claim when he is so firmly entrenched behind Holy Grail's shield? He believes in Holy Grail, and you are the enemy. The second problem is legal and would apply even after you get your gigantic judgment against Pinkerson. Personal injury claims arising out of tort are generally not assignable.[9] Now maybe you could try to create an assignment of Pinkerson's *interest in the recovery* rather than his entire cause of action,[10] but that would be risky, since *Ammerman* discourages victims' indirect attacks on insurers."[11] Amy loved silencing Will with her intellect.

"OK. Maybe you're right about assignment, so let's get creative here. Let's see." Will pauses for inspiration. "Alright," he starts slowly, "I get my monstrous excess judgment against Pinkerson. Holy Grail pays its limits. Pinkerson has no other significant assets." Will picks up steam. "So I do a writ of garnishment on Holy Grail. Since Holy Grail could have settled for limits, it owes Pinkerson for its bad faith claims handling, and we grab that chose in action." He finishes with a flourish and a smile of triumph.

"Bravo! 'A' for effort," Amy cheers with feigned enthusiasm, then drops her volume. "But wrong again. You see, the Supreme Court of Utah has already determined that garnishment is not the right vehicle to determine an insurer's bad faith liability to its insured.[12] And, lest I disappoint you again, don't pin your hopes on third-party contract beneficiary[13] or subrogation theories, either.[14] They're losers too."

Will struggles to maintain his facade of enthusiasm. "You're never going to convince me I can't puncture Holy Grail's armor, but I confess I'll have to crack the books to best you insurance technocrats."

"Would you allow this humble bookworm to make a suggestion, Sir Galahad?" Amy sees through to Will's deflated ego, and continues. "The first is what I will call an "agreement to pursue." Once you get your gargantuan judgment against Pinkerson, he may become more pliable. He'll see the excess judgment edging toward his personal assets. You then get him to agree to pursue Holy Grail on *his* bad faith claim in return for the Johnsons' promise not to execute on Pinkerson's personal assets. Of course, you do this primarily for the benefit of the Johnsons, but you cut Pinkerson in on the fruits. If you don't, you run the risk of the court deciding that Pinkerson is only a nominal party and that you are using him for an end run around the anti-

assignment rule. Two Utah cases are important to review — *Campbell v. State Farm Mutual Automobile Insurance Co.*, 840 P2d 130 (Utah App 1992)[15] and *Ammerman v. Farmers Insurance Exchange*, 19 Utah 2d 261, 430 P2d 576 (1967)."[16] Will is nonchalantly taking detailed notes.

"My second thought would apply to certain egregious cases. As I said before, the adjuster owes no duty to a tort victim to attempt to settle a case in good faith. *But* if the adjuster negotiates, and if you catch her in a significant, meaningful lie or some other outrageous statement or action, then the Johnsons just may have a tort claim against Holy Grail for fraud, misrepresentation or intentional infliction of emotional distress. It's worked before in at least one first-party case in Utah[17] and it has been attempted in several other first-party cases.[18] The Utah courts even hint that a victim might have a tort claim against the other party's insurer in outrageous cases. As long as you're in a writing mood, put these cases down — *Broadwater v. Old Republic Surety*, 854 P2d 527 (Utah 1993)[19] and *Pixton v. State Farm Mutual Automobile Insurance Co.*, 809 P2d 746 (Utah App 1991).[20] Amy pauses, ready to claim victory.

Will puts his pencil down and slowly looks up at Amy. Quietly he says, "Alright, you want to explain to me how you have so much bad faith insurance law at the tip of your tongue? I suppose you want me to believe you're a genius."

"Certainly! Was there ever any doubt in your mind?" Amy raises her chin and strolls to the conference room door. "Of course, it didn't hurt to clerk for Justice Stewart when he wrote the *Broadwater* decision."

[1]E.B. Thueson, "Fair Claims Practice for Self-Insureds" *Trial*, page 29 (December 1987).

[2]747 P2d 201 (Mont 1987).

[3]See generally Humphreys, "Insurance Bad Faith in Utah," *Utah Bar Journal* page 13 (December 1993).

[4]*Beck v. Farmers Insurance Exchange*, 701 P2d 795 (Utah 1985).

[5]*Ammerman v. Farmers Insurance Exchange*, 19 Utah 2d 261, 430 P2d 576 (1967).

[6]*Broadwater v. Old Republic Surety*, 854 P2d 527 (Utah 1993).

[7]*Pixton v. State Farm Mutual Automobile Insurance Co.*, 809 P2d 746 (Utah App 1991).

[8]*Savage v. Educators Insurance Co.*, 874 P2d 130 (Utah App 1994) (workers compensation context). The Supreme Court of Utah has granted a writ of certiorari on this case.

[9]*State Farm Mutual Insurance Co. v. Farmers Insurance Exchange*, 22 Utah 2d 183, 450 P2d 458, 459 (1969) (a claim or cause of action for personal injuries arising out of tort is not assignable); *Losser v. Atlanta International Insurance Co.*, 615 F Supp 58, 61 (any bad faith tort claim business might have against its liability insurer was not assignable to tort victim). *See Ammerman v. Farmers Insurance Exchange*, 19 Utah 2d 261, 430 P2d 576, 578 (1967) (general rule is that a judgment creditor has no right to appropriate a tort claim of his debtor). See generally Annotation, *Assignability of Claim for Personal Injury or Death*, 40 ALR2d 500, 501 (1955) ("As to personal injuries, it is held that, absent statutory authorizations of assignment, the claim cannot be assigned.")

[10]See *In re Behm's Estate*, 213 P2d 657, 662 (Utah 1950) (an assignment of any interest that a person may have in a wrongful death recovery is valid, even though the *cause of action* for wrongful death is not assignable — "Courts have adopted the same rule where one who has sustained personal injuries assigns such proceeds as may possibly be recovered by him in an action brought against the tort-feasor. Moreover, a court of equity will enforce the assignment even though the cause of action is not assignable.")

[11]*Ammerman v. Farmers Insurance Exchange*, 19 Utah 2d 261, 430 P2d 576, 578 (1967) (Soliz, the victim who was not allowed to be a party plaintiff in the excess-judgment bad faith action against Ammerman's insurer, would not be allowed to recover indirectly by permitting recovery by Ammerman, the nominal plaintiff-insured who had not actually been in the action).

[12]See *Auerbach Co. v. Key Security Police, Inc.*, 680 P2d 740, 742-43 (Utah 1984); *Paul v. Kirkendall*, 6 Utah 2d 256, 311 P2d 376, 380 (1957).

[13]See *Broadwater v. Old Republic Surety*, 854 P2d 527, 536 (Utah 1993) ("For a third party to have an enforceable right, the contracting parties must have clearly intended to confer a separate and distinct benefit upon the third party.")

[14]See S.S. Ashley, *Bad Faith Actions – Liability and Damages* § 6.09 at ch 6, p 19 (1990) (victim has not paid any of insured's loss).

[15]The insureds (Campbells) pursued bad faith litigation against their insurer (State Farm), primarily for the benefit of the victims (Slusher and the Ospitals), who had obtained an excess judgment, above the Campbells' State Farm limits. The agreement was that Slusher and the Ospitals would not execute on the Campbells' personal assets in order to satisfy their judgments, in return for the Campbells' promise to pursue a bad faith claim against State Farm. The fruit of such a claim was to be applied first to the litigation expenses, then to satisfy the judgments of Slusher and the Ospitals. Any recovery above that amount would be distributed 45% to Slusher, 45% to the Ospitals, and 10% to the Campbells. This interesting, hotly-contested case is back at the District Court level in Salt Lake County (Judge Rokich, Case 890905231), where the Campbells apparently seek to attack State Farm's settlement policies and practices, based upon numerous cases from around the country, in order to recover punitive damages.

In recent months, Judge Rokich has made several significant rulings: (1) The trial will be bifurcated. In the first trial, these issues will be determined: (a) whether there was a substantial likelihood of judgment in excess of the policy limits in the underlying case and (b) the reasonableness of State Farm's conduct. These determinations can be made from the facts that arose in the prosecution of the underlying case, and the plaintiff's proof will be limited to this area. In other words, in the first trial, State Farm will not be judged institutionally upon its settlement practices in other cases. (2) Recovery for bodily injury relating to bad faith is limited to financial emotional distress generated during the time period between the excess verdict and the agreement not to execute on Campbells' assets. (3) No recovery may be had for consequences of the emotional distress inherent in prosecuting the bad faith action itself. (4) The agreement to pursue is not an improper assignment and does not split a cause of action.

[16]The victim (Soliz) obtained a personal injury judgment against the insured (Ammerman). Ammerman's insurer (Farmers) paid its limits, but that was not enough to satisfy the judgment. Ammerman and Soliz jointly sued Farmers for its bad faith refusal to settle within policy limits. The details of the agreement between Ammerman and Soliz are not specified, but the court found that Ammerman had not manifested any active interest or concern with the case, which was instituted by the attorneys who represented Soliz against Ammerman in the prior action. Ammerman's attorney appeared only once at the beginning of trial, then departed. Ammerman himself did not appear either in the lower court or on appeal. There is no indication that the attorneys for Soliz, who presented the case at trial and on appeal, represented anyone other than Soliz. The court concluded from these facts that the moving force in initiating and carrying on the action was Soliz and that the real parties in interest were Soliz and Farmers. The court determined that it would be manifestly unfair to permit the judgment to stand undisturbed as to the nominal plaintiff Ammerman who had not actually been in the action. If so, Soliz would be allowed to accomplish indirectly what he could not do directly and thus circumvent the rules that prevented him from taking and maintaining the cause of action for himself.

[17]In *Crookston v. Fire Insurance Exchange*, 817 P2d 789 (Utah 1991), the court upheld a fraud verdict where the adjuster misrepresented to the Crookstons' attorney that the insurer was not yet in a position to settle the claims and that he would later include the Crookstons in the settlement negotiations, knowing he was then prepared to settle with the bank that same day without the Crookstons. In the 1987 trial, the jury found that the insurer had breached its insurance contract, including the implied covenant of good faith and fair dealing, had intentionally inflicted emotional distress, had committed fraud and misrepresentation and should, therefore, pay the plaintiffs $815,826 in compensatory damages and $4,000,000 in punitive damages. The insurer appealed, arguing (among other things) that the evidence was not sufficient to support a finding of either intentional infliction of emotional distress or fraud. In his closing, plaintiffs' counsel had pointed to seven different instances of fraud, and the court found it sufficient to locate evidentiary support for compensatory damages in the adjuster's statement that the insurer was not yet in a position to settle and that the adjuster would later include the Crookstons in the settlement negotiations. The claim of intentional infliction of emotional distress was not addressed in the opinion. This case teaches defense counsel to be vigilent in objecting to jury instructions on fraud that do not detail all nine elements of fraud recognized by Utah law, especially reliance and inducement to act.

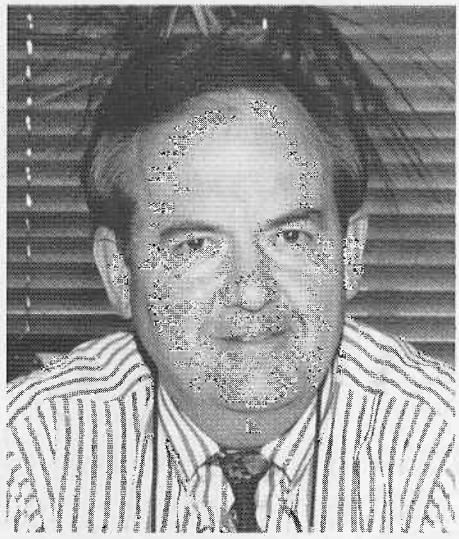
[18]See *Culp Construction Co. v. Buildmart Mall*, 795 P2d 650 (Utah 1990) (court remands following summary judgment for insurer because fact issue remains on claim of negligent misrepresentation); *Hardy v. Prudential Insurance Company of America*, 763 P2d 761 (Utah 1988) (court reverses summary judgment for insurer in a case where life policy beneficiary sought damages for intentional infliction of emotional distress, among other wrongs); *Robertson v. Gem Insurance Co.*, 828 P2d 496 (Utah App 1992) (court reverses judgment dismissing claims of misrepresentation and intentional infliction of emotional distress based upon ERISA preemption and remands for a determination whether employee benefit plan was involved); *Amica Mutual Insurance Co. v. Schettler*, 768 P2d 950 (Utah App 1989) (affirms summary judgment for insurer on insured's counterclaim for malicious prosecution, abuse of process, defamation, intentional infliction of emotional distress and negligence); *American Concept Insurance Co. v. Lochhead*, 751 P2d 271 (Utah App 1988) (reverses summary judgment for insurer on insured's counterclaim for bad faith and intentional infliction of emotional distress and remands case); *Callioux v. Progressive Insurance Co.*, 745 P2d 838 (Utah App 1987) (summary judgment for insurer affirmed on insureds' claims that included malicious prosecution and intentional infliction of emotional distress).

[19]"While it is conceivable that something other than a contractual relationship may impose a duty on an insurer to deal fairly with a third party, plaintiff has failed to allege any facts that might impose such a duty. . . . To bring an independent tort claim, the plaintiff must allege all the elements of the claimed tort." 854 P2d at 536.

[20]Pixton alleged fraud against State Farm but failed to mention the dismissal of her fraud claims in her appellate brief. Therefore, the court could find no support for the fraud claim in the record.

Alternative Dispute Resolution in the U.S. District Court

By Markus B. Zimmer, Clerk
Laura M. Gray, ADR Administrator



MARKUS B. ZIMMER is Clerk of the U.S. District Court for the District of Utah, a position he assumed in 1987. From 1978-1987, Zimmer served in several senior staff positions at the Federal Judicial Center, the Washington D.C.-based research, education, and planning agency of the federal judicial system. Zimmer earned B.A. and M.A. degrees from the University of Utah and Ed.M. and Ed.D. degrees from Harvard. He was a Fulbright fellow at the University of Zurich from 1972-73. He serves on several national committees in the areas of court administration and management. He recently was named one of three national recipients of the 1994 Director's Award for Outstanding Leadership presented by the Administrative Office of the U.S. Courts.

LAURA M. GRAY is the Alternative Dispute Resolution Administrator for the U.S. District Court for the District of Utah. She practiced law as an associate with the law firm of Anderson & Watkins before serving judicial clerkships with Chief Justice Gordon R. Hall of the Utah Supreme Court and Judge James Z. Davis of the Utah Court of Appeals. Gray also serves as an adjunct professor at the University of Utah where she teaches a course entitled "Women and the Law." She received B.A. and J.D. degrees from the University of Utah.

Following a lengthy development effort that began in 1991, the U.S. District Court's Alternative Dispute Resolution Program (ADR Program) is now in place and functioning. The rule and procedures that govern the ADR Program went into effect on March 1, 1993, and are set forth in Rule 212 of the local Rules of Practice. The program offers voluntary non-binding arbitration and mediation to parties who file lawsuits in federal court.[1]

Creation of the court's program was prompted by two separate pieces of federal legislation. First, the District of Utah was one of twenty federal districts authorized in 1988 under Section 907 of Public Law 100-702 (28 U.S.C. §§ 651-658) to experiment with arbitration. The legislation authorized ten districts to utilize *mandatory* arbitration; the remaining ten, of which Utah is one, were authorized to utilize *voluntary* arbitration. Originally, the experimentation was to conclude after five years. In 1993, however, the Congress extended it for another year, and an effort is underway to extend it indefinitely.

Second, the District of Utah also was designated as a pilot court under legislation signed by President Bush in 1990 and popularly known as the Civil Justice

Reform Act (CJRA) of 1990, the thrust of which was a national effort aimed at improving litigation management and ensuring just, speedy and inexpensive resolution of civil disputes in the federal trial courts. Authority for the court's ADR Program is provided for in the CJRA (see 28 U.S.C. §§ 471-482). Pursuant to those provisions, the court implemented a Civil Justice Expense and Delay Plan which specifies that the court will experiment with voluntary, non-binding arbitration and mediation, determine if such litigation alternatives are in demand, and monitor the results.

The ADR Program is administered by the clerk's office under the guidance of the federal district judges. It offers litigants the option of having disputes either mediated or arbitrated as an alternative to the litigation process through which most civil cases progress.[2] To facilitate the ADR proceedings, the court has appointed a cadre of highly experienced and prominent members of its bar to serve as arbitrators and mediators. Use of the court's ADR program entails no expense to the litigants apart from the initial fee required for filing any civil case in federal court.

Attorneys who practice in federal court often ask questions about this new program. Some of the most frequently asked questions are as follows.

1. WHY SHOULD A CLIENT OPT FOR ADR WHEN LITIGATION IS GUARANTEED TO RESOLVE THE DISPUTE?

You may be hesitant to counsel your clients to opt for alternative dispute resolution (ADR) because you are comfortable with litigation, have extensive experience with it, and consider yourself an effective advocate. You may not understand the benefits that this dispute resolution alternative offers for certain types of cases. You may feel that opting for ADR will deprive your clients of their right to their day in court, of their right to have their dispute heard by a judge. Your hesitation may be based on unfamiliarity with how this new program works and what your options are. A number of local attorneys who originally were skeptical of ADR's potential have discovered that it can be a valuable tool to solve their client's disputes more rapidly and inexpensively than litigation without any loss of access to the court's traditional litigation forum. In such cases, use of ADR enhances client satisfaction. Here are some recent examples of feedback the court has received regarding ADR:

"I was initially skeptical of the federal court's ADR Program until I had a case that I was sure would go to trial. I tried mediation, and the case settled that same day. I am presently using the ADR Program in several cases and always make the option available to my clients. The program has enhanced my practice because my clients know I am trying to resolve their cases in the most expeditious and inexpensive manner." (Michael Patrick O'Brien of Jones, Waldo, Holbrook & McDonough).

"This was my first experience with the Federal Court's ADR Program and, I must say, it was a positive one." (Gary L. Johnson of Richards, Brandt, Miller & Nelson, after settling a case referred to arbitration).

"[ADR] offers litigants the option of having disputes either mediated or arbitrated. . . ."

"My feeling is that ADR will settle those cases which the parties want to settle and will do so earlier in the process. Getting together, talking it over and working against a hearing date is effective. Those cases which the parties do not want to settle will opt out of ADR, so the success rate in disposition of cases on the ADR track should be high." (Harold G. Christensen of Snow, Christensen & Martineau).

Although not all civil cases are well suited for ADR, the process does offer attorneys and their clients additional options for resolving legal disputes. With approximately ninety-five (95) percent of all civil cases settling before trial, ADR can serve as an effective tool for early case evaluation and resolution.

2. HOW ARE CASES REFERRED TO THE COURT'S ADR PROGRAM?

When you file a civil lawsuit in federal court, you subsequently receive a Certification of Acknowledgment of ADR form from the clerk of court. On that form, you and your client jointly (i) certify that you have discussed and considered the ADR Program, and (ii) opt for arbitrating, mediating, or litigating your case. Regardless of which option you select, the ADR certification form must be completed and filed with the clerk no later than ten days before the initial scheduling conference.

Where at least one party elects ADR, the assigned district or magistrate judge will discuss ADR as an alternative for resolving the case with the parties at the initial scheduling conference. If both parties elect to proceed with ADR, the judge will order the case referred into the ADR Program unless, for good reason, the judge determines ADR to be inappropriate.

3. WHAT HAPPENS ONCE THE JUDGE SIGNS THE ADR REFERRAL ORDER?

After the ADR referral order is entered, the case returns to the clerk's office where the ADR administrator assists the parties and their counsel to (i) select the arbitrator(s) or mediator from the court's roster, and (ii) arrange a time and place for the arbitration or mediation to be held. Normally, ADR proceedings are held at the Frank E. Moss U.S. Courthouse in rooms arranged for by the ADR administrator.

4. CAN PARTIES OPT FOR ADR IF THEIR CASE ALREADY IS IN LITIGATION?

Yes, subject to the approval of the assigned judge. For some cases, partial discovery may more clearly reveal what is at stake, thereby improving their prospects of prompt resolution through ADR. In such cases, the parties must submit a stipulation and proposed ADR referral order to the judge assigned to the case. The judge then determines whether to sign the order referring the case to ADR.

5. CAN PARTIES RETURN TO LITIGATION IF THEIR CASE HAS BEEN REFERRED TO ADR?

Yes, providing certain conditions are met. Any party whose case has been referred to ADR may opt for litigation simply by filing a written notice with the

clerk of court within twenty (20) days of the ADR referral order. After twenty (20) days, any party wishing to withdraw from ADR must file a motion showing good cause before the assigned judge will consider referring the case back to litigation. In effect, then, individual parties can withdraw from ADR. Where the case involves a single plaintiff or defendant, withdrawal of either party is equivalent to withdrawal of the case from ADR, and the case will be returned to litigation. D.Ut. 212(d) specifies that where all of the plaintiffs or all of the defendants in a civil matter chose to opt out, the case will be returned to litigation. In a multi-party case, then, withdrawal of one party from ADR may not result in withdrawal of the case from ADR; the other parties may elect to continue with ADR. When, subsequently, the ADR process for that case has been completed, any issues remaining relative to the party that withdrew may be litigated.

6. WHAT ABOUT DISCOVERY AND OTHER PRETRIAL DEADLINES ONCE A CASE IS REFERRED INTO ADR?

Normally, discovery is stayed upon referral of a case into the ADR Program. However, parties may, and often do, stipulate to continuing limited discovery to facilitate the ADR process. If the assigned district or magistrate judge has entered a pretrial scheduling order in a case that subsequently is referred to ADR, any dates and restrictions in that order remain in effect unless otherwise ordered by the judge.

7. IF A CASE IS REFERRED TO ARBITRATION AND AN AWARD IS MADE, IS THE AWARD BINDING?

The ADR Program's arbitration proceedings are non-binding unless the parties stipulate or the assigned judge orders otherwise. If a party is dissatisfied with an arbitration award, the party has thirty (30) days after the filing of the award to file a trial de novo demand. When such a demand is filed, the assigned judge is notified and the case returns automatically to litigation.

8. WHAT IF A CASE IS MEDIATED BUT NO SETTLEMENT IS REACHED?

In a successful mediation, after the parties reach agreement on how to settle their dispute, they submit a stipulation for dismissal to the court. Where they fail to reach settlement, the assigned judge is notified and the case is referred back into litigation.

9. WHERE A CASE IS REFERRED TO ADR BUT THE PROCESS IS UNSUCCESSFUL AND THE CASE IS RETURNED TO THE ASSIGNED JUDGE FOR ADJUDICATION, IS THE JUDGE INFORMED AS TO WHY ADR FAILED?

No. In any ADR proceeding, whether arbitration or mediation, the assigned judge neither takes part in the ADR process nor is kept informed as to case progress. Where ADR does not resolve the case, the details about the proceedings and why they did not lead to a successful conclusion remain confidential. They are not included in the official case file folder that is maintained by the clerk of court; nor are they shared with the assigned judge. All the judge knows, when the case is returned to litigation, is that the ADR process was unsuccessful.

"The ADR Program's arbitration proceedings are non-binding unless the parties stipulate. . . otherwise."

10. HOW SUCCESSFUL HAS THE ADR PROGRAM BEEN?

The program is working well. Over the past 15 months, approximately five (5) percent of the civil cases filed with the court and eligible for ADR have been referred to the program. In another ten (10) percent of the eligible civil cases, at least one party opted for ADR. Of the two ADR options, arbitration and mediation, mediation is by far the more popular. Of the cases referred to mediation, just over seventy (70) percent have settled; not quite thirty (30) percent have been returned to litigation. Of the completed arbitration cases, fifty (50) percent settled after the arbitration award was entered. The remaining fifty (50) percent were returned to litigation.

11. WHO CONDUCTS THE COURT'S ARBITRATION AND MEDIATION PROCEEDINGS?

One of the most notable features of the court's ADR Program is the quality of arbitrators and mediators — the members of the court's ADR panel — who are available to assist the parties in resolving their disputes. All are well-qualified attorneys and members of the court's bar. To qualify for membership on the court's panel, they must have a minimum of ten years' experience. They include current and former state court judges and justices, and all have experience and training in arbitration, mediation, or both. All panel members are appointed by the court and have completed a training program offered through the clerk's office.

12. WHO DECIDES WHICH ARBITRATOR OR MEDIATOR WILL CONDUCT THE ADR PROCEEDINGS?

Essentially, the decision is made by the parties. After a case is referred to the ADR Program, the parties are supplied with a list of either arbitrators or mediators, depending on which option, arbitration or mediation, they selected. Parties are asked to stipulate to a mediator or arbitrator(s). If the parties cannot reach agreement, the selection procedure that is outlined in D.Ut. Rule 212(f)(5) is utilized. In almost all cases that have been referred to ADR to date, the parties have agreed on whom they would like to handle their proceeding.

13. HOW MUCH TIME DO ADR PROCEEDINGS REQUIRE?

Arbitration Proceedings: Arbitration proceedings typically consist of (i) a prehearing conference at which issues are narrowed and hearing parameters are set, and (ii) the actual arbitration hearing. The prehearing conference usually takes between one and two hours; the arbitration hearing normally is completed within four to eight hours. Overall, from start to finish, the arbitration process may take from two to six months from the date the case is referred into the program.

Mediation Proceedings: Mediation proceedings typically consist of a mediation session where the parties sit down with the mediator to try to reach settlement; normally the session takes from four to eight hours. Overall, from start to finish, the mediation process can be completed in a matter of weeks — sometimes days if the parties are highly motivated to settle the matter — from the date the case is referred into the program.

Both methods, as a rule, take considerably less time and involve less cost than

what is entailed in litigating a case, especially if the case goes to trial. However, for a variety of cases, litigation may be the best or the only viable option for effectively resolving the dispute. The court views its ADR Program as a supplement to rather than substitute for the traditional litigation process.

14. WHAT COSTS ARE REQUIRED TO UTILIZE THE ADR PROGRAM?

None. The court has made the ADR Program available to litigants in civil cases at no cost. A party pays only the standard civil case filing fee and, where required, other incidental fees and costs associated with initiating a lawsuit in federal court. Members of the court's panel who oversee arbitration proceedings are paid a modest fee for their services by the court; those who oversee mediation proceedings do so voluntarily because legislation does not yet exist that authorizes the court to pay them an equivalent fee. Court-appointed arbitrators or mediators are forbidden from accepting any form of compensation for their services from the parties.

15. HOW CAN I OBTAIN ADDITIONAL INFORMATION ON THE COURT'S ADR PROGRAM?

The court has available free of charge a pamphlet on the ADR Program that explains the program's alternatives and procedures. The court also has an ADR Program administrator who works closely with attorneys and clients whose cases are referred to the ADR Program; an attorney with experience in private practice, she is available to explain the process and to respond to questions you may have about ADR in the District of Utah. To receive a copy of the pamphlet and to obtain additional information, please contact the court's ADR Administrator, Laura Gray, at 524-5211, extension 3406.

Members of the Court's ADR Panel

The current members of the court's ADR Panel are as follows. (Note: (A) indicates that the person serves as an arbitrator, and a (M) indicates that the person serves as a mediator.)

Daniel M. Allred (M); John P. Ashton (M); Lois A. Barr (A, M); Peter W. Billings, Jr. (A); Peter W. Billings, Sr. (A, M); Judge William B. Bohling (M); Alan C. Bradshaw (M); Harold G. Christensen (A); H. James Clegg (A); K.S. Cornaby (A); Scott Daniels (A, M); Ralph L. Dewsnup (A, M); Randy L. Dryer (A, M); Elizabeth T. Dunning (A); Thomas A. Ellison (M); Paul S. Felt (M); Edwin B. Firmage (M); Philip R. Fishler (A); Gordon R. Hall (A, M); Glenn C. Hanni (A); Stewart M. Hanson, Jr. (A); James R. Holbrook (A, M); M. Dayle Jeffs (A); Lucy B. Jenkins (M); Marcella L. Keck (M); Dale A. Kimball (A, M); James B. Lee (A); Geoffrey W. Mangum (A, M); Brent V. Manning (A, M); Douglas Matsumori (A, M); Ellen Maycock (A, M); Gayle F. McKeachnie (A, M); Michelle Mitchell (M); Stephen B. Nebeker (A, M); David Nuffer (A, M); Patricia A. O'Rourke (A); Earl Jay Peck (A, M); Wayne G. Petty (A); Elliott Lee Pratt (A); Arthur B. Ralph (A); Ronald L. Rencher (M); Cherie P. Shanteau (M); Patrick A. Shea (A, M); George H. Speciale (A); Clark Waddoups (A); David K. Watkiss (A); Hardin A. Whitney (A, M); Francis M. Wikstrom (A, M); D. Frank Wilkins (A); Gerald R. Williams (M); and Mary Anne Q. Wood (A).

MIDYEAR MEETING

March 2 – 4, 1995
St. George, Utah

THE LAW FIRM OF

WORKMAN, NYDEGGER & JENSEN
A PROFESSIONAL CORPORATION

ANNOUNCES THE CHANGE OF THE FIRM NAME TO

WORKMAN, NYDEGGER & SEELEY
A PROFESSIONAL CORPORATION

AND TAKES PLEASURE IN ANNOUNCING THAT

DAVID R. WRIGHT
JOHN C. STRINGHAM
MICHAEL F. KRIEGER
BRADLEY K. DESANDRO
JOHN M. GUYNN

HAVE BECOME SHAREHOLDERS OF THE FIRM

ERIC L. MASCHOFF
GREGORY V. BEAN
SALLY J. BROWN
BRIAN C. KUNZLER
SUSAN K. MORRIS

HAVE JOINED THE FIRM AS ASSOCIATES

JEFFREY L. RANCK

HAS JOINED THE FIRM
AS A REGISTERED PATENT AGENT

ALLEN R. JENSEN

HAS BECOME OF COUNSEL TO THE FIRM

PATENT, TRADEMARK, COPYRIGHT,
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BRADLEY K. DESANDRO
JOHN M. GUYNN
DANA L. TANGREN
ERIC L. MASCHOFF
GREGORY M. TAYLOR
KEVIN B. LAURENCE
GREGORY V. BEAN
SALLY J. BROWN
BRIAN C. KUNZLER
SUSAN K. MORRIS

REGISTERED PATENT AGENT
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Attorney-Legislators: An Interview with the Candidates[1]

Written and compiled by Derek P. Pullan

Special thanks to Shelley Day Hall and Dee Larsen of the Office of Legislative Research and General Counsel.

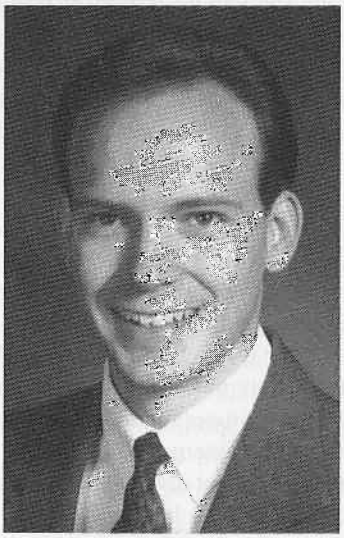
Over the past four years, the number of attorneys serving in the Utah State Legislature has steadily declined. Today, only three senators and four representatives list their occupation as "attorney."[2] The number of attorney-legislators has not always been so low. In 1976, fourteen attorneys served in the legislature.[3] Ten years later, thirteen served.[4] However, the number of attorneys in the senate has fallen from six in 1986, to five in 1988, to four in 1992 and finally to three today. The parallel decline in the House is both more recent and more dramatic. In 1990, eleven representatives were listed as attorney's. That number dropped to seven in 1992 and to four in 1994.[5]

This trend is not unique to Utah. In 1987, the National Conference of State Legislatures published a study entitled "State Legislators' Occupations: A Decade of Change" which profiled "the occupations of state legislators in 1986 (and) compare(d) them to those of legislators in 1976."[6] The study showed that "over the decade, the most dramatic change in legislator's occupations nationwide (was) the decline in attorneys, from 22% in 1976 to 16% this year."[7] It showed "even more pronounced drops . . . in selected regions, such as the Middle Atlantic (from 32% to 21%), East South Central (from 30% to 21%), and West South Central (from 36% to 26%).[8]

Commenting on this trend, the Conference wrote:

> While it is impossible to pinpoint a *single* cause, several factors have probably contributed to this decline. The primary cause may lie in the time requirements of legislative office. In light of the increasing complexity of the work of the legislature, many legislators find it difficult to maintain a law practice while holding public office.
>
> Stringent disclosure laws in some states have been another salient factor . . . . Rather than reveal the names of all clients, a significant number of attorneys have resigned from or declined to run for the legislature . . . .
>
> In addition, the fact that attorneys are now allowed to advertise their services has made it unnecessary for them to use election to the legislature as an advertising tool. Also, to be an attorney in the legislature may be politically unpopular in certain areas.[9]

To these possible causes, Representative Bill Orton added the public's negative perception of attorneys and the candidate's inevitable sacrifice of his or her private life. "People need a villain and lawyers are easy to blame. When a politician complains that the problem with government is all the lawyers, it resonates with the public. Also, what you give up, in order to take on public life is your private life. More and more, there are people saying, 'I am not willing to subject myself, my family, and my clients to the kind of scrutiny public officials receive.'"



DEREK P. PULLAN is a Deputy Washington County Attorney. He received his juris doctor degree, cum laude, from J. Reuben Clark Law School in 1993 where he graduated Order of the Barrister. He was admitted to the Utah State Bar in 1993 and spent the next year at the Utah Supreme Court as a law clerk for Justice Richard C. Howe.

The unfortunate thing about attorneys not serving in the legislature is that legal training is particularly conducive to the legislative process. "I can tell you that a background in law is irreplaceable when you have to write the law," Orton said. "We've got a lot of people who want to establish public policy, but very few people who have the background to sit down and craft wise statutes that implement that policy. That's really the more difficult part of legislating." Lyle Hillyard, a senator for the past ten years and a practicing attorney, agrees. "Legal training teaches you to be critical about proposed statutory language. It also gives you a familiarity with laws in general so that you can hit the ground running." This is to say nothing of what Oscar McConkie, past president of the senate, calls a lawyer's "civic duty." "It takes a firm commitment to run for office. It's disruptive of work and billable hours," he admits, "but firms ought to accommodate attorneys who wish to run. I feel that lawyers in particular have an obligation to serve as legislators and should be motivated by civic duty."

This year seventeen attorneys filed for state office. The *Bar Journal* approached each of these candidates and posed two questions:

1. *How do you account for the declining number of attorneys in the*

state legislature?
2. *How will your legal training assist you as a state legislator?*
Here are their responses:

CANDIDATES FOR SENATE

Robert C. Steiner (Democrat, district 1):

"It is a big sacrifice in terms of time, but I wanted to make a contribution to good government."

"My legal training has been helpful to me especially in analyzing criminal law issues and the administration of the courts. The legal point of view is important at times simply for the good of society. There are times when the whole Senate looks to the one or two Senators with legal training for advice."

Larry R. Williams (Democrat, district 10):

"Time is one issue. Holding an active law practice and being a legislator is very difficult. It will cut your billable hours. Also, many attorneys feel that they are involved in other public service through pro bono work."

"Lawyers are not only able to understand the legislative process but also how statutes will be read and interpreted by judges. Also, lay persons may not always understand how laws interact with each other."

Craig Hall (Republican, district 11):

"As a long-time legal representative of local government, I am excited about using my legal expertise and experience to benefit my constituents and the state. But, the majority of attorneys in Utah work in small firms and cannot justify it economically."

"Lawyers have the unique ability to analyze a problem from the perspective of its resolution as well as from the drafting standpoint, so that in the end we know what we are getting."

Craig L. Taylor (Republican, district 22):

"I think the practice of law is much more competitive and attorneys are having to work harder for the same dollar than they have in the past. Practicing on my own will give me more flexibility. I worked with a large law firm. I was on a city council during that time but I still had to bill the same hours. I could never have run for the state legislature while I was there. Being on my own allows me to choose which 80 hours in the week I will work."

"I work daily with the same laws the legislature studies, debates and enacts. That familiarity gives me some understanding of its subtleties. I am not saying that attorneys have a monopoly on reading and interpreting statutes correctly and I am not an expert in every area of the law. But it is a legislator's job to see both sides of an issue and that is one thing legal training does for you."

Lawrence Buhler (Democrat, district 22):

"There is a general cynicism about politics and attorneys may not view being in the legislature as a way to help their careers. Time pressures and the nature of the practice of law also prevent them from running for office."

"Legal training gives a legislator a keen understanding of the effect of statutes and of the need for careful drafting. Lawyers must apply the law in everyday life and they see how the law affects clients. Also, the profession requires an understanding of the effect of statutes and words on public policy."

CANDIDATES FOR THE HOUSE OF REPRESENTATIVES

Charles E. Bradford (Republican, district 20):

"Lawyers simply cannot afford the time."

"I have reached retirement age and I suppose there are a lot of other things I could be doing. But we have some needs right now. The juvenile court system has been emasculated by the systematic elimination of resources. My experience as a juvenile judge has given me insight into those problems. Also in passing laws you need someone with talent in legal analysis and drafting. Right now, few understand the long reaching effect of statutes."

Frank R. Pignanelli (Democrat, district 24):

"Attorneys are very electable, but it's the practice of law that makes it difficult. Having an employer and a judiciary that understands the time commitment is necessary. Other legislators are on a leave of absence and can go home each day during the session. Lawyers go back to the office."

"Being in the legislature has helped my legal training. The two complement each other."

Beatrice M. Peck (Democrat, district 37):

"I don't think I can give a generic reason for why attorneys are not running for office. I know why I am running, and

many of my reasons don't have much to do with my being an attorney — in fact, that can be a detriment because of public opinion. Being an attorney is not necessarily a prerequisite to being a good legislator."

"But it's good to have attorneys in the legislature especially for purposes of drafting legislation. They are able to recognize how wording may cause constitutional troubles. Lawyers in the legislature have to use their talents and skills for positive ends, not simply to obstruct the process or unnecessarily increase the complexity of legislation. They have to bring to the process their ability to gather information, see different viewpoints, negotiate, and compromise."

Wendy Lewis (Democrat, district 45):

"I think there is a real misconception about the number of attorneys in the legislature and that works against them when they run for office. The public says, 'We don't need another lawyer up there.' Then, of course, the practice of law is time consuming. Running for the legislature has already taken more time away from the office than I realized it would."

"Legal training teaches you to think about issues. Specifically, I believe it will help me in drafting statutory language. The legislative process works best when there is a wide range of representation from many different professions and this would include lawyers. Also, lawyers can see the practical operation of the law."

David Slaughter (Republican, district 48):

"There are significant sacrifices in any decision to pursue public service. A 45-day separation from my practice during each session will be difficult. Fortunately, I have my firm's support and understanding clients. In addition to allowing me an opportunity to contribute to the governmental process directly, I hope that the legislative experience will make me a better lawyer."

"My professional experience has helped me develop an increased sensitivity to the need for responsible regulation and government and also to the potential problems resulting from modifications or perceived improvements to existing laws. My legal training has made me skeptical — and that is something to guard against when faced with changes or new ideas. But I think I have also acquired a measure of objectivity that allows me to see both sides of an issue and to recognize when compromise is both possible and appropriate."

Greg J. Curtis (Republican, district 49):

"The primary reason attorneys are not running for the state legislature is the time commitment required for both campaigning and for serving in the legislature. The time commitment distracts you from your work with the result being a large financial commitment to campaign for the legislature."

"Lawyers have a unique perspective of legislation. An attorney may recognize constitutional difficulties in proposed legislation. Also, attorneys involved in civil and criminal litigation on a regular basis recognize the strengths and weaknesses of the judicial system."

John L. Valentine (Republican, district 58):

"The press has become more vindictive. The compensation is poor and the cost is high. But my partners and associates are supportive and accommodating."

"I am absolutely panicked about the declining number of attorneys in the legislature. It is difficult to pass well-reasoned laws without legal training. Lawyers look at things from an analytical point of view, reading each word of a bill and passing them based on what it says, not on what they think it says. The Office of Legislative Research and General Counsel is excellent, they are just overburdened. Last session they had 1200 requests for legislation. But once attorneys are elected, they cannot act like lawyers. You can't lecture others as if you know it all and they know nothing. You have to recognize that expertise from non-lawyers if valuable too."

[1]This article is not an endorsement by the Utah State Bar of any particular candidate.

[2]The attorneys in the Senate are Lyle W. Hillyard, Ronald J. Ockey, and David L. Watson. *See*, STATE OF UTAH, DIRECTORY FIFTIETH LEGISLATURE 1993-94 7, 10, 13. Senator Robert C. Steiner is an inactive member of the Utah State Bar, but lists his occupation as "Steiner Corporation." *Id.* at 12. The attorneys in the House are Russell A. Cannon, Frank R. Pignanelli, Phil H. Uipi and John L. Valentine. *Id.* at 31, 44, 49, 50.

[3]Beth Bazar, *State Legislators' Occupations: A Decade of Change*, NATIONAL CONFERENCE OF STATE LEGISLATURES, March 25, 1987, at 48.

[4]*Id.*

[5]The information in the table below was compiled from the Utah Legislative Manual for the designated years.

Years	Attorneys in Senate	Attorneys in House	Percent of Attorneys in State Legislature
1993-1994	3	4	7%
1991-1992	4	7	11%
1989-1990	5	11	15%
1987-1988	5	6	11%
1985-1986	6	7	13%
1983-1984	4	8	12%

[6]Bazar, *supra note* 3, at 1.

[7]*Id.* at 3.

[8]*Id.*

[9]*Id.*

larly for the trustor, known to the beneficiary and mail to all of them. In addition, some practitioners mail duplicate copies of notices to the same addresses by first class mail.

The copies of the Substitution of Trustee and Notice of Default to be served must contain the recording date. The time limitation for reinstatement of the trust deed by the trustor is measured from that date and is therefore important. In the event the trust deed does not contain a request that notice be sent to the trustor at a specific mailing address and no separate Request for Notice has been recorded by the trustor, the Trust Deed Statute requires that the Notice of Default be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the property, or some part of it, is situated. Publication must begin within the same ten days of recording the Notice of Default that mailed notice is to be sent. In lieu of publication, a copy of the Notice of Default may be delivered personally to the trustor within the ten days or at any time before the publication is completed. The best course is to begin publication immediately and discontinue it if and when the trustor is personally served. It is prudent to specifically instruct the newspaper to print the date of recording. The mere fact that the recording date appears on the copy sent to the publisher does not insure its publication.

CURING THE DEFAULT

Once a proper Notice of Default has been recorded and copies have been properly served by mail or otherwise, the trustor, her successor in interest or any other person having a subordinate lien or encumbrance of record, or any beneficiary under any subordinate trust deed has three months in which to cure the default. This is done by paying the beneficiary of the foreclosing trust deed or her successor the entire amount due under the terms of the trust deed (including costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, and the trustee's and attorney's fees actually incurred) less that portion of the principal that would not have been due absent the default and acceleration of the entire debt. Such a cure of the default requires that all proceedings be dismissed or discontinued and that the obligation and trust deed be reinstated as if no acceleration had occurred. Note that the curing party must pay the entire unaccelerated amount due at the time of cure and not just the amount due at the time of the Notice of Default.

CANCELLATION OF NOTICE OF DEFAULT

In the event of a timely reinstatement, any person having an interest in the property may demand that the beneficiary or her assignee execute and deliver to the demanding party a request to the trustee to execute, acknowledge and deliver a cancellation of the recorded notice of default (a "Cancellation of Notice of Default"). Failure to comply with such a demand within 30 days subjects the recalcitrant party to liability for all damages resulting from the refusal. A suggested form of Cancellation of Notice of Default is found in Utah Code Ann. § 57-1-31(2). A release and reconveyance of the trust deed itself, such as would occur when the entire secured obligation is satisfied, has the effect of a Cancellation of Notice of Default as well.

". . . the curing party must pay the entire unacelerated amount due at the time of cure. . . ."

THE TRUSTEE'S SALE

Absent a timely cure of the default and reinstatement of the trust deed, the property may be advertised for sale. This is done by a written notice particularly describing the property to be sold and stating the place and time of sale (the "Notice of Trustee's Sale"). A suggested form of Notice of Trustee's sale is found in Utah Code Ann. § 57-1-31(2). A complete legal description is essential and an accurate street address or other commonly known description is desirable to assist potential buyers in locating the property for inspection prior to sale. Care should be taken to include in the description any items of personal property which are to be sold. For example, shares of corporate stock evidencing water rights used, intended to be used or suitable for use on the property and which are hypothecated to secure an obligation secured by the trust deed can be sold pursuant to the trust deed private power of sale. In addition, any other personal property subject to the Utah's Uniform Commercial Code, Utah Code Ann. § 70A-9-101 *et. seq.*, can be sold pursuant to the trust deed private power of sale if the trust deed also constitutes a security agreement as to that personalty. The place of sale must be the courthouse of the county in which the property or some part of it is located. The time of sale must be between the hours of 9 a.m. and 5 p.m. The date of the sale should allow sufficient time for publication, posting and service of the Notice of Trustee's Sale.

The Notice of Trustee's Sale must be published at least three times, once a week for three consecutive weeks. The last publication date must be at least ten days but not more than 30 days prior to the sale, in some newspaper having a general circulation in each county in which the property or some part of it is located. It must also be posted, at least 20 days before the date of sale, in some conspicuous place on the property and also in at least three public places of each city or county in which the property is located. Finally, the Trust Deed Statute requires that a copy of the Notice of Trustee's Sale be mailed, at least 20 days before the date of sale to the same parties and in the same manner as the Notice of Default. The Notice of Trustee's Sale need not be recorded, but a number of practitioners do so for the sake of furnishing future title searchers a more complete public record of the non-judicial proceedings. If the Notice of Trustee's Sale is to be recorded, it must be duly acknowledged.

FEDERAL TAX LIEN UPDATE

At the time of setting the sale date, an update of the earlier Title Report should be obtained. The update, often referred to as a "federal tax lien update," can generally be obtained for no charge if the title company has not previously issued more than one written Title Report. The update should be effective as of 30 days prior to the scheduled sale date. This is because 26 U.S.C. § 7425 and related statutes and regulations require that the Internal Revenue Service (the "IRS") be given a special notice (the "Notice of Non-judicial Sale") at least 25 days prior to any sale of property on which the IRS has properly filed a federal tax lien more than 30 days prior to the sale. The Notice of Nonjudicial Sale must be given in writing by registered or

certified mail or by personal delivery to the district director and marked for the attention of the chief, special procedures staff for the IRS district, in which the sale is to be conducted. Absent appropriate notice to the IRS, the junior federal tax lien will not be foreclosed, but survive the sale.

NOTICE OF NON-JUDICIAL SALE

The Notice of Non-judicial must contain the following information: (1) the name and address of the person submitting the Notice of Trustee's Sale; (2) a copy of each notice of federal tax lien affecting the property or, in the alternative, the IRS district, name and address of the taxpayer and date and place of filing of the tax lien, all as shown on the face of each notice of lien; (3) a detailed description, including the street address, city, and State and the legal description contained in the title or deed to the property, and a copy of the updated Title Report to the extent available; and (4) the approximate amount of the obligation, including interest, secured by the trust deed and a description of the other expenses (such as legal expense, selling costs, etc.) which may be charged against the sale proceeds. If a timely Notice of Non-judicial Sale contains at least the name and address of the person submitting it, the IRS will notify that person in writing of any item of information which is inadequate. In any case where the person submitting a timely notice containing her name and address does not receive, more than five days prior to the date of the sale, written notification that the notice is inadequate, the notice will be considered adequate by the IRS. In addition, the person submitting the notice can obtain an IRS acknowledgement of the date and time of receipt of the notice by submitting it in duplicate with a written request for the acknowledgement. Special rules beyond the scope of this article apply to postponed sales. See 26 C.F.R. § 301.7425-3 (1993).

PREPARING A BID

Immediately prior to the scheduled sale, the practitioner should discuss the beneficiary's bid at the sale with the beneficiary to ensure that the beneficiary understands the procedure and has furnished all relevant information. The preparation of a bid sheet can be very useful both in these discussions as well as at the sale. One general rule of thumb is for the beneficiary to bid the lesser of the amount of her debt or the value of her lien on the property. The amount of the debt is relatively easy to establish by mathematical calculation of all items due and chargeable pursuant to the trust deed and note. These items commonly include late charges, costs advanced for the Title Report, appraisals, environmental audits, taxes, insurance and attorney fees in addition to the principal and interest due as of the date of sale. It is desirable to have an accounting reflecting the debt computation at the sale in the event any inquiry or dispute regarding the amount should arise. Determining the value of the beneficiary's interest in the property is a little less precise. It will obviously require an assessment (varying in formality from the beneficiary's own opinion to a full MAI appraisal) of the fair market value of the property. From that value, the beneficiary should subtract the amount of prior encumbrances that will survive the sale, such as unpaid real property taxes and assessments, prior trust deeds and other types of liens, if applicable.

"Witnesses are not a statutory requirement, but they can . . . lessen evidentiary problems in . . . subsequent dispute[s]. . . ."

CONDUCTING THE SALE

The trustee or her attorney may conduct the sale at the time and place designated in the Notice of Trustee's Sale. It is advisable that the person conducting the sale take the beneficiary to witness the sale even if the beneficiary has previously given adequate instruction for the bidding at the sale. In any event, it is advisable to write down the names, addresses and phone numbers of those attending the sale. These witnesses can be a valuable resource in the event the actual occurrence of the sale or any aspect of its proceedings should be challenged later. If the sale generates no witnesses, personnel of the county offices located in the courthouse might be willing to give their names and office phone numbers. Some might be willing and able to witness the sale. Others might at least keep the business

card of the person conducting the sale with the time and date of appearance written on it to assist them in substantiating the person's appearance at the courthouse. Witnesses are not a statutory requirement, but they can certainly lessen evidentiary problems in the event that subsequent dispute arises regarding the conduct of the sale.

The person conducting the sale should clearly identify the sale which is to take place as well as the property to be sold prior to opening the bidding. Simply reading from the Notice of Trustee's Sale is generally a good way to accomplish this. Anyone, including the trustee or beneficiary, may bid at the sale, and the property must be awarded to the highest bidder. All bids constitute irrevocable offers and any successful purchaser refusing to pay the amount bid is liable for any loss occasioned by the refusal, including interest, costs, and the trustee's and reasonable attorney's fees of reselling the property. By failing to describe the interest rate or principal amount to be used in calculating interest damages, the Trust Deed Statute leaves some room for argument over its practical application. Given the remedial intent of the statute it can generally be argued that interest should be calculated at the higher of the rate stated in the note or the legal rate on at least that amount, if any, that the refusing purchaser's bid exceeded the purchase price ultimately paid. Additionally the trustee need not accept any bid of the refusing purchaser at the subsequent sale. The trustor or his successor in interest has the right to direct the order in which the property is sold if it consists of more than one lot or parcel which can be sold to advantage separately.

"The Trustee's Deed conveys the trustee's title and all right, title, interest and claim of the trustor. . . ."

POSTPONING THE SALE

The person conducting the sale may, for any cause she considers expedient, postpone the sale for up to 72 hours from the time of the original sale by public declaration at the time and place last appointed for the sale. No other notice is required. The statutory language appears to allow multiple postponements by such public declaration. Also, if the last hour of the postponement falls on a Saturday, Sunday or legal holiday, the sale may be postponed until the same hour of the next day which is not a Saturday, Sunday or legal holiday. If the sale is not to be conducted within 72 hours of the time set in the Notice of Trustee's Sale (subject to the rule on Saturdays, Sundays and holidays), it must be cancelled and renoticed in the same manner as required for the original sale.

PAYMENTS

The purchaser at the sale must pay the price as directed by the trustee. Sometimes the purchaser is allowed 24 hours to secure the exact amount since the success-

UTAH LEGAL SERVICES, INC. PRESENTS MONDAY BROWN BAG SEMINARS

Utah Legal Services, Inc. announces that each Monday it will conduct free brown bag seminars on various legal topics. These topics will be published each month in the *Utah Bar Journal*. The seminars will begin promptly at noon and end at 1:00 p.m. The Utah State Bar has donated the space in the Utah Law and Justice Center (645 South 200 East) so seating is limited. All those who desire to attend must contact Gerre Ron at 328-8891 ext. 311 or 1-800-662-4245 one week in advance. One hour CLE credit for attendance, three hours as a speaker. (Topics are subject to change without notice.)

The topics for November and December are:

NOVEMBER

November 7 – Small Claims Court
November 14 – Medical Bills: Whose Fault to Pay? Is it the Medical Provider, Medical Carrier, Debt Collector, or the Patient?
November 21 – Child Support
November 28 – Personal Injury Claims for Low Income Clients

DECEMBER

December 5 – Immigration, Family Ramification & Asylum Basics
December 12 – Overview of Financial Assistance Programs: AFDC & GA
December 19 – Overview of Homeless Legal Issues
December 26 – Holiday – Christmas

ful bid may not be known until the sale is actually struck off. Payment is generally required to be made by cashiers check or other equally reliable funds. Another common practice is to have interested parties appear at the sale with incremental cashiers checks for immediate tender or perhaps a single cashier's check for a minimum amount subject to augmentation by personal check at the sale or additional certified funds within a reasonable time. The matter is truly discretionary with the person conducting the sale and the same person is likely to use a different procedures in different situations. The beneficiary may bid up to the amount owed to her without producing actual funds since that amount would ultimately be paid back to her anyway. This practice is commonly referred to as "credit bidding." However, if the beneficiary bids more than the amount owed under the trust deed and note, cash or its equivalent must be tendered for the difference. Proceeds of the sale must be applied in the following order: payment of costs and expenses of exercising the power of sale and of the sale, payment of the obligation secured by the trust deed, and the balance, if any, to payment of the person or persons legally entitled thereto. The trustee may (and generally should) deposit the balance of proceeds after satisfying the beneficiary, with the county clerk of the county in which the sale took place. The trustee is thereby relieved of further responsibility therefor, and the county clerk deposits the funds with the county treasurer subject to the order of the district court of the county.

Upon payment of the purchase price, the purchaser is entitled to a deed (the "Trustee's Deed") which the trustee must execute, acknowledge and deliver. The Trustee's Deed may contain recitals of compliance with the requirements of the Utah Trust Deed Statute relating to the exercise of the power of sale and sale of the property including recitals concerning any mailing, personal delivery, and publication of the Notice of Trustee's Sale, and the conduct of sale. This is advisable since the recitals constitute prima facia evidence of such compliance and are conclusive evidence in favor of a bona fide purchaser and encumbrances for value without notice to the contrary. The Trustee's Deed conveys the trustee's title and all right, title, interest, and claim of the trustor and his successors in interest and of all persons claiming by through, or under them, including all such right, title, interest and claim that the trustor or his successor acquired subsequent to execution of the trust deed. In other words, trust deeds in Utah pass after-acquired title much the same as warranty deeds. With the exception of a 120-day right of redemption imposed by federal law exclusively in favor of the United States, there is no right of redemption in any party following a properly processed non-judicial sale. The IRS can be persuaded to release its right of redemption. Appropriate circumstances generally involve sales of which the IRS has received proper notice and property in which its lien attaches to no equity. The specific procedures to be used in obtaining a release are beyond the scope of this article. See IRS Publication 487 (Rev. 12-89), entitled "How to Prepare Application Requesting the United States to Release its Right to Redeem Property Secured by a Federal Tax Line."

DEFICIENCY ACTION

In the event that the proceeds of the sale (whether in the form of cash or credit bid) are insufficient to satisfy the obligation for which the trust deed and property served as security, an action (often referred to as a "deficiency action"), may be commenced to recover of the remaining balance. The action must be brought within three months after the sale and set forth the entire amount of the indebtedness which was secured by the trust deed, the amount for which the property sold and its fair market value on the date of sale. Recovery for the deficiency will be limited to the amount by which the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney fees, exceeds the fair market value of the property as of the date of sale. Thus, unlike deficiency pursuant to a non-judicial sale is not increased by a relatively low purchase price at an uncompetitive sale. This affords the trustor considerable protection and is an important justification for allowing the entire private power of sale process to proceed without judicial supervision absent specific complaint. The prevailing party (not just the beneficiary) in a deficiency action is entitled to recover costs and reasonable attorney fees incurred in the action. This affords the trustor further protection with regard to vexatious or erroneous deficiency actions. Since the court must make a factual determination as to the fair market value of the property on the date of sale, it behooves the beneficiary to obtain adequate evidence of value at or about the time of sale.

CONCLUSION

There is obviously much more to be said regarding trust deed foreclosures. Further, numerous related areas of the law significantly impact non-judicial foreclosures. These areas include, but are certainly not limited to, federal bankruptcy, environmental concerns, assignment of rents and receiverships. Practitioners must take care in dealing with both the detailed non-judicial foreclosure procedure itself, as well as the related laws which may apply.

Change in Appellate Procedure — Extensions and Default

By Marilyn M. Branch, Esq.
Clerk of the Court, Utah Court of Appeals

The Board of Appellate Court Judges recently approved certain policies and procedures with respect to extensions and defaults with an eye to making such policies and procedures uniform as between the State's two appellate courts. Based upon the Board's recommendations, the Utah Supreme Court and the Utah Court of Appeals intend to implement the following policies and procedures:

Time extensions. Effective: immediately

For Briefs. Pursuant to Rule 26(a), Utah R. App. P., the parties, by written stipulation submitted to the court, may extend the filing deadline for each brief for no more than 30 days in civil cases and 15 days in criminal cases. As set forth in the rule, a motion for enlargement of time need not be submitted with the stipulation. Please be advised that upon submission of a stipulation which complies with Rule 26(a), the extension is automatic. No order extending the time will be issued, even if one is submitted by the parties.

Other than the Rule 26(a) extensions by stipulation, requests for enlargement of time for the filing of briefs must be made by motion in strict compliance with the terms of Rule 22(b), Utah R. App. P., including the "good cause" requirement of such rule. Please note that, unless exigent circumstances exist and are alleged, the motion for enlargement of time must be filed prior to the expiration of the time for which the enlargement is sought. Motions are granted in 30 day increments. Any request which would result in a cumulative extension of more than 60 days beyond the original due date is strongly disfavored and is granted only upon a showing of emergency circumstances.

For Other than Briefs. All requests for enlargement of time for matters other than the filing of briefs must be by motion. Again, strict compliance with the requirements of Rule 22(b) is required, including the "good cause" standard. Such extensions are granted in 15 day increments.

Default Policy. Effective: January 1, 1995

In the past, both appellate courts have provided written notice to an appellant when the appellant has failed to timely file the docketing statement required under Rule 9(a), Utah R. App. P., or the appellant's brief required under Rule 26(a), Utah R. App. P. Notice is hereby given that the Utah Supreme Court and the Utah Court of Appeals will discontinue the practice of providing such notice of default prior to dismissing the appeal. The rationale for the change is that the rules clearly establish the applicable time frames and provide for reasonable extensions. Also, counsel are in a better position to monitor their compliance with the rules than are court personnel. Beginning January 1, 1995, in cases pending before either the Utah Supreme Court or the Utah Court of Appeals, upon appellant's failure to file either the docketing statement or appellant's brief within the time allotted under Rules 9(a) and 26(a), respectively, or as may be extended by court order, the court, without prior notice, shall enter an order dismissing the appeal.

In Forma Pauperis Chapter 7 Bankruptcy Filings

On October 27, 1993, the Congress enacted legislation requiring the Judicial Conference of the United States to study the effect of waiving the filing fee in Chapter 7 bankruptcy cases for debtors who are unable to pay the fee in installments. The District of Utah was selected as one of the six federal judicial districts to participate in the study. The other participating districts are the Southern District of Illinois, the District of Montana, the Eastern District of New York, the Western District of Tennessee, and the Eastern District of Pennsylvania.

The program will commence October 1, 1994 and run for a period of three years. During this time, individuals who are unable to pay the Chapter 7 filing fee either in full when filing the petition or in installments may apply to the court for waiver of the fee. The court will review the application using a general indigency standard similar to that used by the district courts in determining in forma pauperis eligibility. If the court approves the application, the debtor will be allowed to proceed without paying the fee. If the court denies the application, the debtor must pay the fee in full or in installments.

Soon after the completion of the three-year program, a report will be submitted to the Congress describing the costs and benefits of the program. This information will allow the Congress to consider whether the program should be implemented nationwide.

Additional information about the fee waiver program is available from:

William Stillgebauer
Clerk of Court
350 South Main Street, Room 301
Salt Lake City, Utah 84101

Commission Highlights

During its regularly scheduled meeting of August 26, 1994, held in Salt Lake City, the Bar Commission received the following reports and took the actions indicated.

1. The Board approved the minutes of the July 29, 1994 meeting.
2. Paul T. Moxley reviewed a letter he wrote to the editors of *The Salt Lake Tribune* and *The Deseret News* in response to recent press on Judge David Young. Moxley asked the Board to consider (1) if the bar is the appropriate body to respond to this type of issue in the future; (2) if perhaps a response from the Administrative Office of the Courts would be more appropriate, or (2) if there should be some set plan of response. Denise Dragoo volunteered to look into the issue and present some ideas at a future meeting.
3. Moxley took this opportunity to remind Commissioners about the *Keller* decision and distributed a copy of the decision for review. Executive Director John C. Baldwin briefly highlighted *Keller* noting that *Keller* points out that mandatory Bars may not use dues for non-regulatory programs without court approval and that the Utah Supreme Court had implemented an order permitting dues expenditures for regulatory and certain non-regulatory programs.

   Baldwin also indicated that the only rebate Utah currently administers is for legislative lobbying and that this year about six Bar members have requested a rebate.
4. Moxley reported on the National Conference of Bar Presidents (NCBP) meetings during the ABA Annual Meeting in New Orleans.
5. Moxley announced that the October 28, 1994 meeting would be rescheduled to Salt Lake City and the May 26, 1995 meeting would be held in Provo.
6. Paul Moxley reported on actions taken by the Executive Committee and on the recent meeting he and Dennis Haslam had with Chief Justice Michael Zimmerman. He summarized a recent meeting he attended at the governor's office in conjunction with the State's Centennial.
7. Steve McCaughey, President of the Association of Criminal Defense Attorneys, and Joan Watt, Chief of the Appellate Division of Legal Defenders, appeared to review the issue of legal defense for "death row" inmates.
8. The Board voted to authorize the Bar Commission's Executive Committee to receive names and make appointments to a committee which would study the issue of how to provide legal representation to individuals on "death row."
9. Charlotte L. Miller, Chair of the Attorney Discipline Study Committee, reported on the recent meeting of the committee. She indicated that surveys have been sent out and encouraged return of the surveys.
10. Executive Director, John C. Baldwin, distributed a copy of the Bar Programs Monthly Activity report and briefly reviewed some of the items. He reported that he and Dennis Haslam are working on creating a position description for a pro bono coordinator and that once it is drafted it would be presented to the Board for review and comment.

    Baldwin indicated that the Long-Range Planning Committee (now chaired by Dennis Haslam) will be meeting. He confirmed that all Bar Committee Chair appointments have been made and committee assignment letters would be going out shortly to Bar members.

    John Baldwin also reported that the Chair of the Law & Justice Center Board has sent a letter to about 80 major contributors explaining the Center's work and the transfer of the building's interest to the Bar. Baldwin noted that closing would take place shortly.
11. Budget & Finance Committee Chair, Ray O. Westergard, referred to the financial reports in the agenda and reviewed the July financial statements.
12. J. Michael Hansen, Bar Commission representative on the Judicial Council, reported on the recent Judicial Council meeting.
13. Fran Wikstrom expanded on Mike Hansen's report on the Appellate Court Operations Task Force.
14. The Board voted to authorize the Executive Committee to appoint a committee consisting of interested Bar Commissioners, practitioners, U.S. attorneys and members of the private bar to make a recommendation back to the Bar Commission regarding the Justice Department's policy on the appropriateness of *ex parte* contacts.
15. Chief Disciplinary Counsel, Stephen Trost, reported on litigation.
16. Steve Trost also indicated that the Collection Task Force has concluded its final report on collection practices, and the Board directed Trost to prepare a *Bar Journal* article which would lay out the Committee's final recommendations. The Board voted to approve publishing the guidelines in the next *Bar Journal.*
17. David J. Crapo, Young Lawyers Division President, reported on current division activities including a program for junior high and high school students that teaches them about their rights.
18. Steven M. Kaufman, on behalf of Client Security Fund Committee Chair, presented the committee's report. The Board voted to approve a fund payout of $10,630.00 which would leave a balance of $83,432.30.
19. Denise Dragoo reported on her review of a proposal by the Legal Assistants Association of Utah for affiliation.
20. Paul Moxley reported on the status of Court Commissioners.
21. Craig Snyder commented that the Bar needs to see what consolidation will look like without commissioners; how the changes in family court will fit in; that the effective date of consolidation not be moved up; and that the Bar should take the position of its members.

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

Discipline Corner

ADMONITIONS

1. On August 24, 1994, the Ethics and Discipline Committee of the Utah State Bar admonished an attorney for conduct unbecoming a member of the Utah State Bar. The admonition was issued for a violation of Rule 4.2, Communication With Person Represented By Counsel. In about 1983, the attorney was hired by a firm as an "associate attorney and consultant" for specific litigation. When this litigation was apparently concluded, the law firm representing the defendant, (a governmental entity) filed a lawsuit against the defendant regarding a fee dispute. Subsequently, the defendant filed a counterclaim against the law firm, the attorney, the attorney's wife, and others. The attorney, on behalf of himself and in a capacity where the attorney appeared to be representing his wife, corresponded directly with the defendant's governing body. The defendant, and, therefore, the members of the governing body, were represented by counsel. The letter concerned matters that were part of the ongoing litigation.

2. An attorney was Admonished by a Screening Panel of the Ethics and Discipline Committee for lack of diligence in resolving a dispute on behalf of a client regarding the amount of a medical lien. The client's personal injury case was settled in July, 1992. Between July, 1992, and February, 1993, the attorney failed to negotiate a settlement of the medical lien. During this time the attorney did not respond to phone calls or requests for information from the client. The Panel found that the attorney violated Rule 1.3, Diligence and Rule 1.4(a)(b), Communication, of the Rules of Professional Conduct.

3. On May 24, 1994, the Chair of the Ethics and Discipline Committee Admonished an attorney pursuant to the terms of a Discipline by Consent for violating Rule 1.4(b), Communication, of the Rules of Professional Conduct. The attorney was retained in 1981 to assist a client with a Worker's Compensation claim. The case took a number of years to conclude due to the client's youth and his desire to return to work. Consequently, there were periods of time when the case was in abeyance while the client made attempts at rehabilitation. There was no evidence that the attorney communicated with the client between 1986 and 1989. It was during this period of time that it was determined the client could not return to work. An Admonition was deemed appropriate since the client was drawing social security benefits during this period of time and suffered no financial harm.

4. On February 24, 1994, a Consent Award of Arbitrator was entered wherein an attorney was ordered to pay $5,000.00 to a client as part of the Bar disciplinary process. The attorney violated Rule 1.3, Diligence, of the Rules of Professional Conduct by failing to timely designate experts in a civil action wherein the attorney's clients were defendants. Consequently, the court granted a motion for summary judgment against the clients. The Bar complaint was resolved with a Discipline by Consent wherein the attorney was admonished and agreed to make restitution to the clients in the amount determined by arbitration.

5. On June 28, 1994, the Chair of the Ethics and Discipline Committee approved a recommendation of a Screening Panel that an attorney be Admonished for violating Rule 1.1, Competence, and Rule 1.4(a)(b), Communication, of the Rules of Professional Conduct. The attorney was retained in 1990 to represent a client in a medical malpractice action. In July, 1991, the attorney failed to appear at a scheduling conference and in October, 1991, failed to appear at the client's deposition. In December, 1991, summary judgment was entered against the client when the attorney failed to present expert testimony. Additionally, between July, 1990 and July, 1991, the attorney did not keep the client reasonably informed as to the status of the case.

6. On August 24, 1994, an attorney was admonished for violating Rules 1.1, Competence and 1.7(b), Conflicts, of the Rules of Professional Conduct of the Utah State Bar. The Respondent represented both the complainants and the natural grandmother of a minor child the complainants were seeking to adopt, during the adoption proceeding. The interests of the complainants and the grandmother were adverse, and became even more adverse when the grandmother tried to prevent the adoption. Respondent also failed to file the adoption proceeding in the proper county, and failed to follow the Utah Code in obtaining the natural mother's relinquishment of her parental rights. In the process, Respondent gave the complainants incorrect advice regarding the natural grandmother's rights with regard to the minor child. It was only when complainants retained substitute counsel that the conflict was resolved and the adoption was finalized.

SUSPENSIONS:

1. On July 5, 1994, Virginius Dabney was suspended from the practice of law for thirty days, ordered to complete 160 hours of pro bono legal services prior to December 31, 1994, to attend the Utah State Bar Ethics School within one (1) year, to teach one (1) hour of ethics as a seminar for Worker's Compensation attorneys within one (1) year of the date of the entry of the Order of Discipline and to pay the costs of the disciplinary action. This action was taken pursuant to a discipline by consent for violating Rules 1.3, Diligence, 1.14(d), Terminating Representation, and 8.4(c), Misrepresentation of the Rules of Professional Conduct. This sanction was deemed appropriate in view of the fact that it could not be established that the client had suffered any harm.

The complaint stemmed from a fee dispute wherein a client alleged Mr. Dabney had agreed to represent him in a Worker's Compensation case on a pro bono basis. Mr. Dabney disputed this allegation. However, an Administrative Law Judge found in favor of the client. The Judge further found that Dabney had submitted a signature page, previously signed by the client, on a proposed settlement document providing for attorney's fees, that Dabney had made misrepresentations to his client regarding the status of the case, and had threatened to withdraw from the case at a critical point unless the client agreed to pay a fee.

2. On September 13, 1994, Fred Wasilewski was suspended from the practice of law for one year.

Mr. Wasilewski abandoned two clients when he relocated to Sacramento, California in November of 1991. Both clients retained Mr. Wasilewski to commence wrongful termination cases, one paying a $2500 retainer and the other a $1500 retainer. After leaving the State of Utah, Mr. Wasilewski failed to protect his clients' interest and failed to refund the retainers.

As part of a Discipline By Consent, accepted by the Third District Court, Mr.

Wasilewski refunded the retainers in full and admitted to violating Rules 1.13(b), Safekeeping Property and 1.14(d), Terminating Representation.

3. On October 4, 1994, D. John Musselman was suspended for three years from all appellate practice, publicly reprimanded, ordered to attend the Utah State Bar Ethics School and pay costs.

Mr. Musselman was charged with neglecting eight appeals from April of 1991 through July of 1992 and Interim Suspension from appellate practice on August 6, 1992. Summary Judgment was entered on the underlying charges by the Third District Court for violating Rule 1.3, Diligence, of the Rules of Professional Conduct.

Thereafter a Sanctions Hearing was held and the district court issued a Memorandum Decision on September 16, 1994. In mitigation the Court considered the heavy caseload of Mr. Musselman due to the disintegration of the firm that was awarded the public defender contract for the Fourth Judicial District. Accordingly, Mr. Musselman was given credit for the time served on Interim Suspension with the balance to be served upon entry of the order.

DISBARMENTS:

1. On July 13, 1994, the Third Judicial District Court disbarred William R. Shupe from the practice of law for violating Rule 8.4(b), Committing a Criminal Act, of the Rules of Professional Conduct. This was based upon his conviction in the United States District Court for the District of Utah on January 15, 1993, of violating 18 U.S.C. 1014 by knowingly providing false credit information and false income information in a credit application to the University of Utah Credit Union, on or about January 1990, for the purpose of influencing the actions of this federally insured financial institution. Mr. Shupe was convicted upon his plea of guilty. His sentence included two years probation, four months in a halfway house in California, restitution of $10,288.00 to the University of Utah, restitution to the Bank of Delaware in the amount of $4,347.00, and he is required to perform 150 hours of community service.

2. On September 17, 1994, Douglas M. Brady was disbarred from the practice of law pursuant to an order entered by the Second Judicial District Court on August 18, 1994. Mr. Brady was disbarred for violating Rules Rule 1.1, Competence, Rule 1.3, Diligence, Rule 1.4(a), Communication, Rule 1.14(d), Declining or Terminating Representation, Rule 8.1(b), Failing to Respond to a Lawful Demand for Information From a Disciplinary Authority, and Rule 8.4(c), Misrepresentation, of the Rules of Professional Conduct of the Utah State Bar. On or about September 25, 1991, Respondent was retained to represent a client in a personal injury case arising from a auto accident. Thereafter, he provided no meaningful legal services. Mr. Brady misrepresented to his client that he was actively working on her case when in fact he was not. His client's case was subsequently dismissed for failure to prosecute and could not be refiled. Mr. Brady was admitted to practice law in 1981. In aggravation the Court considered six Formal Complaints that had issued against him since his admission, three of which resulted in prior suspensions from the practice of law for conduct similar to that for which he was disbarred.

Women Lawyers 1994 Autumn Retreat

A congenial and convivial time was had by nearly 70 women lawyers at the Women Lawyers of Utah 1994 Annual Autumn retreat, which was held on September 30 – October 1, 1994 at the Cliff Lodge at Snowbird. On Friday evening, following a social hour and dinner, Kayleen Simmons of The Simmons Group spoke about a pilot program she began a year ago called "People Helping People," a mentorship program aimed at getting women off welfare through mentoring by volunteer working women. She then presented an exercise used in the mentor workshop on overcoming attitudes that limit success, focusing on the context of providing legal service.

Saturday morning began with an early-morning nature walk to Alta led by Elizabeth King. Dr. Kate Lahey, the WLU 1994 Woman Lawyer of the Year, gave the keynote speech at breakfast, drawing on her own experience in discussing mentor relationships.

Kate Lahey, Woman Lawyer of the Year

The final presentation was a seminar on "The Power of Self: The Utilization of Knowledge of Personality to Communicate." Dr. Emily Rosten, a psychologist and counselor, used the Myers-Briggs Type Indicator test in the seminar. After taking the test, each participant was given the unique opportunity of being placed in a group with other individuals having the same personality and asked to solve a problem. A spokeswoman for each group reported to the whole on her group's solution and the process the group implemented in arriving at that solution.

The WLU retreat was organized by Elizabeth Conley, Lisa Davis, Jennifer Falk, Elizabeth Jones, Monica Pace, Laura Scott, and Shannon Stewart. WLU sincerely thanks the following firms and company for their contribution and support in making the WLU 1994 Annual Autumn Retreat a thorough success:

Parsons Behle & Latimer
Kimball, Parr, Waddoups, Brown & Gee
LeBoeuf, Lamb, Leiby & Macrae
Ray, Quinney & Nebeker
Van Cott, Bagley, Cornwall & McCarthy
Sinclair Oil
Giauque, Crockett, Bendinger & Peterson
Jones, Waldo, Holbrook & McDonough
Janove & Associates
Wood Spendlove & Quinn
Prince, Yeates & Geldzahler

Attorneys Needed to Assist the Elderly

Needs of the Elderly Committee Senior Center Legal Clinics

Attorneys are needed to contribute two hours during the next 12 months to assist elderly persons in a legal clinic setting. The clinics provide elderly persons with the opportunity to ask questions about their legal and quasi-legal problems in the familiar and easily accessible surroundings of a Senior Center. Attorneys direct the person to appropriate legal or other services.

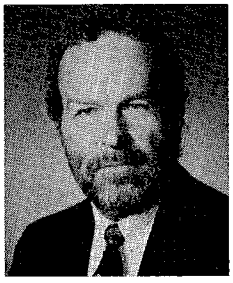
The Needs of the Elderly Committee supports the participating attorneys, by among other things, providing information on the various legal and other services available to the elderly. Since the attorney serves primarily a referral function, the attorney need not have a background in elder law. Participating attorneys are not expected to provide continuing legal representation to the elderly persons with whom they meet and are being asked to provide only two hours of time during the next 12 months.

The Needs of the Elderly committee instituted the Senior Center Legal Clinics program to address the elderly's acute need for attorney help in locating available resources for resolving their legal or quasi-legal problems. Without this assistance, the elderly often unnecessarily endure confusion and anxiety over problems which an attorney could quickly address by simply directing the elderly person to the proper governmental agency or pro bono/ low cost provider of legal services. Attorneys participating in the clinics are able to provide substantial comfort to the elderly, with only a two hour time commitment.

The Committee has conducted a number of these legal clinics during the last several months. Through these clinics, the Committee has obtained the experience to support participating attorneys in helping the elderly. Attorneys participating in these clinics have not needed specialized knowledge in elder law to provide real assistance.

To make these clinics a permanent service of the Bar, participation from individual Bar members is essential. Anyone attorney interested in participating in this rewarding, yet truly worthwhile, program are encouraged to contact: John J. Borsos or Lisa Christensen, 370 East South Temple, Suite 500, Salt Lake City, Utah, 84111, (801) 533-8883; or Joseph T. Dunbeck, Jr., Parsons, Davies, Kinghorn & Peters, 310 South Main Street, Suite 1100, Salt Lake City, Utah 84101, (801) 363-4300.

Charles R. Brown Appointed to Utah State Bar Board of Commissioners



(Salt Lake City) Salt Lake City attorney Charles R. Brown has been appointed to a three-year term on the Utah State Bar Board of Commissioners. He will represent the Third District of Salt Lake, Summit and Tooele Counties.

Mr. Brown is a partner in the firm of Hunter & Brown where his practice focuses on tax issues and litigation. He received his juris doctor from the University of Utah College of Law (1971) and studied in the post-graduate legal program at George Washington University's National Law Center.

Mr. Brown filled a one-year term on the Board of Bar Commissioners in 1992, and served as Vice Chairman of the Special Task Force on Solo and Small Firm Practice. He is currently Chairman of the Bar's Standing Committee on Small Firm Practice.

Mr. Brown serves on the Board of Salt Lake City School Volunteers, Inc. and is an adjunct member of the Intermountain Association of CPA's.

The commissioners serve on the 13-member Bar Commission which licenses, disciplines, and provides continuing legal educational programs for Utah's 5,800 resident and non-resident attorneys.

Fifth Annual Lawyers & Court Personnel Food & Winter Clothing Drive for the Homeless

Please mark your calendars for this annual drive to assist the homeless. Once again, local shelters have indicated shortages in many food and clothing items. Your donations will be very much appreciated in alleviating these conditions. Even a small donation of $5 can provide a crate of oranges or a bushel of apples.

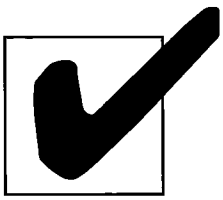
Drop Date:	December 16, 1994 7:30 a.m. to 6:30 p.m.
Place:	Utah Law & Justice Center 645 South 200 East Salt Lake City, Utah
Selected Shelters:	Traveler's Aid Shelter School The Rescue Mission Utahns Against Hunger Community Services Council (Food Bank)

For more information and details on this drive, watch for the flyer or you can call Leonard Burningham or Sheryl Ross at 363-7411 or Toby Brown at 521-5800.

Volunteers are needed who would be willing to take the responsibility of reminding members of their firms of the drop date and to pass out literature regarding the drive at the firm where they are employed.

Please share your good fortune with those who are less fortunate!

Don't forget to cast your vote on November 3rd



Review of Office of Attorney Discipline

The Board of Bar Commissioners of the Utah State Bar has appointed a committee to review the Office of Attorney Discipline ("OAD"). The Committee's mission is as follows:

1. Review the functions performed by the OAD, including disciplinary actions, general counsel assignments, admissions review, etc.

2. Analyze the current budget of the OAD in comparison to the budget of the past years, and budget needs of the future.

3. Review the perception of the OAD by others.

4. Analyze the efficiency and effectiveness of the OAD.

5. Report to the Bar Commission the findings of the Committee and make recommendations as to future priorities in the use of the resources of time, energy and finances.

Although the other departments of the Bar Office were reviewed as part of the Supreme Court's Task Force in 1991, the OAD was not reviewed and the Bar Commission believes a review would be helpful for future planning.

The members of the Committee are:

Charles R. Brown
HUNTER & BROWN
47 West 200 South, #300
Salt Lake City, Utah 84101
(801) 532-3000
(801) 537-7347

Dale A. Kimball
KIMBALL, PARR, WADDOUPS, BROWN & GEE
185 South State, #1300
Salt Lake City, Utah 84111
(801) 532-7840
(801) 532-7750 (fax)

Jane A. Marquardt
MARQUARDT, HASENYAGER & CUSTEN
2408 Van Buren Avenue
Ogden, Utah 84401
(801) 621-3662
(801) 392-2543 (fax)

Charlotte L. Miller, Chair
JB'S RESTAURANTS, INC.
1010 West 2610 South
Salt lake City, Utah 84119
(801) 974-4353
(801) 974-4385 (fax)

Robert L. Stolebarger
HALEY & STOLEBARGER
175 South Main Street, #1000
Salt Lake City, Utah 84111
(801) 531-1555
(801) 328-1419

Fran M. Wikstrom
PARSONS, BEHLE & LATIMER
201 South Main, #1800
Salt Lake City, Utah 84111
(801) 532-1234
(801) 536-6111 (fax)

We will contact a variety of people through meetings or surveys in order to gather information about experiences with the OAD. In October, we sent surveys to the following groups:

- Clients and others (non-lawyers) who have filed complaints with the OAD
- Lawyers who have filed complaints with the OAD
- Lawyers who have been respondents to complaints
- Lawyers who have served on screening panels
- Judges before whom members of the OAD have appeared
- Lawyers who have represented the Utah State Bar

For each of the above, only individuals who would have fallen within the group in 1993 or 1994 will receive a survey. For those of you who have or will receive a survey, please take the time to complete the survey and return it.

Since every member of the Bar will not receive a survey, we want to encourage each member of the Bar to write to or contact a member of the Committee if you have any information that you believe would be helpful to us in completing our mission. Such information may include:

- Timeliness of the OAD's responsiveness
- Competency of members of the OAD
- Professionalism of members of the OAD
- Thoroughness of members of OAD in addressing issues
- Helpfulness of OAD to you
- Discretion and judgment of the members of the OAD

We are interested in both positive and negative experiences. It would be helpful if you identified the capacity in which you have interacted with the OAD and the members of the office with whom you have interacted. We are interested in all types of interaction — a casual question, help with a section or committee, continuing legal education, discipline matters, etc. The OAD performs many more services than attorney discipline and we want to be certain we receive information about all of its roles.

Written input is preferred so that your information will be shared accurately with the Committee members. Also, we prefer that you identify yourself, so that any follow-up that may be needed is available; however, if you feel strongly about maintaining anonymity please go ahead and send information anonymously to one of the Committee members. Whether or not you request anonymity, your name and your written comments or survey will not be provided to anyone outside of the Committee. The information you give us will not be available to anyone in the OAD.

This is an opportunity for every Bar member to provide useful information that can help improve your Bar.

Thank you for your help.

Committee to Review The Office of Attorney Discipline

Making a Difference in Three Hours Domestic Violence Victims' Clinic to Assist Pro Se Litigants

By Mary Jane Ciccarello
Utah Legal Services

Volunteer lawyers are needed to participate in the Domestic Violence Victims' Clinic to Assist Pro Se Litigants ("DVC"). DVC is a pilot project that began in Salt Lake City on August 22, 1994. DVC is a joint effort of the Third Judicial District Court, the Delivery of Legal Services Committee of the Utah State Bar, Utah Legal Services, and the Legal Aid Society of Salt Lake. The main goal of the project is for volunteer lawyers, along with other community volunteers, to assist pro se litigants in resolving domestic violence issues. If the pilot project proves successful, the project organizers plan on establishing similar clinics throughout the state.

Domestic violence is a problem we cannot ignore. In the Salt Lake area, the Legal Aid Society assists approximately 1,000 clients a year in obtaining protective orders under the Cohabitant Abuse Act. Legal Aid provides this assistance free of charge to anyone, regardless of income. But many more victims of domestic violence appear daily in the Third Judicial District Court attempting to obtain protective orders on a pro se basis. These pro se litigants need help in getting through the legal process. DVC provides this help.

Volunteers assist pro se litigants in the following ways:

Courthouse Clinic: Pro se litigants who appear at the courthouse are directed to an office where they can learn about the protective order process and be helped by DVC volunteers. The Volunteers help people complete pleadings for ex parte orders as well as go through the process of filing, obtaining the assigned judge's signature, and making sure the order gets to the sheriff's office for proper service on the opposing party.

Volunteers staff the clinic on Mondays from 1 p.m. to 4 p.m. At each clinic, there are present at least two volunteers, a non-lawyer volunteer and a supervising attorney.

Mediation Assistance: Volunteer lawyers commit to being present at the regularly scheduled protective order hearings before the Domestic Relations Commissioners. These hearings occur three days a week, Mondays at 9 a.m. and 10 a.m., Tuesdays at 10 a.m., and Wednesdays at 2 p.m. and 3 p.m. The volunteer lawyers acts as friends of the court and do not represent either party at the hearings. Volunteers do assist people understand the hearing process, the nature and consequences of the protective order, and how to convey their positions to the court. Volunteer lawyers can also help opposing parties mediate settlements. Finally, volunteers can present the parties' settlements and/or arguments to the court.

Such a structure allows volunteer lawyers to provide much needed legal assistance without having to make long-term commitments to a pro bono project. The volunteers may choose to help people either at the initial ex parte stage or at the final protective order hearing stage. The volunteer lawyers never become counsel of record for the pro se litigant.

Utah Legal Services and the Utah State Bar provide malpractice insurance to cover volunteer lawyers when they participate in the project. All volunteers receive training before actually participating in DVC. Training sessions are held once a month in the Law and Justice Center in Salt Lake City. Legal Aid Society lawyers provide the training. The training is free and provides each volunteer with two hours of MCLE credit. Upcoming training sessions will be held on:

Wednesday, October 26,
from 5 p.m. to 7 p.m.;
Wednesday, November 16,
from 5 p.m. to 7 p.m.;
Wednesday, December 14,
from 5 pm. to 7 p.m.

If your group or law firm is interested in DVC, training sessions can be held in your offices. For further information, please contact Mary Jane Ciccarello, Acting DVC Coordinator, at 328-8891, ext. 345, or Maud Thurman, Utah State Bar, at 531-9077. So far DVC has been very successful. We can continue to make a positive impact on our community with your generous help.

MCLE Reminder 61 Days Remain

For attorneys who are required to comply with the even year Compliance cycle.

On November 1, 1994, there will remain 61 days to meet your Mandatory Continuing Legal Education requirements for the even year compliance cycle. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a 27 hour total.

Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your Certificate of Compliance should list programs you have attended to meet the requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance form for your use is included in this issue. If you have any questions, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

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BANKING AND FINANCE
Jeffrey M. Jones, Chair 531-8400

BANKRUPTCY
Joel T. Marker, Chair 521-4135
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Kirk A. Cullimore, Chair 566-1400

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Robert Wright, Secretary 531-2000
Marji Hanson, Treasurer 532-1234

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H. Reese Hansen 7/96
Steven M. Kaufman 7/95
Lee E. Teitelbaum 7/96
E. Russell Vetter 7/95

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D. Richard Smith 7/97
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Robert F. Babcock 7/96

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Hon. William B. Bohling	7/96
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*Len Eldridge	7/96
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Lloyd A. Hardcastle	7/95
Benson L. Hathaway, Jr.	7/96
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Larry R. Keller	7/96
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*Marlene Lehtinen	7/95
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Macoy A. McMurray	7/95
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Martha M. Pierce	7/95
*Richard Riecke	7/97
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Clifford C. Ross III	7/97
Gayanne K. Schmid	6/97
Richard H. Schwermer	7/95
Cherie P. Shanteau	7/97
Karen M. Small	7/97
Lawrence E. Stevens	7/95
Keith E. Taylor	7/96
David W. Tundermann	7/95
E. Russell Vetter	7/96
Elizabeth S. Whitney	7/96

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Val R. Antczak	7/95
J. Michael Bailey	7/95
David M. Bennion	7/95
Darrel J. Bostwick	7/95
David K. Broadbent	7/95
Toby J. Brown	7/95
Jeffrey R. Burbank	7/95
J. Randall Call	7/95
Elizabeth S. Conley	7/95
Jonathan A. Dibble	7/95
Lisa A. Jones	7/95
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Jonathan E. Johnson III
Richard G. Johnson, Jr.
Lloyd R. Jones
Norman B. Jones
Jeffrey R. Kelly
Karen B. Kreeck
Robert O. Kurth, Jr.
Catherine L. Labatte
Maxmillian P. Lammers, Jr.
Jennifer P. Lee
Margaret P. Lindsay
Albert W. Marchetti
Hugh M. Matheson
Gary A. McGinn
Robert V. McKendrick
Michael R. Medley
Joseph L. Morton, III
Michael T. Moss
Mark E. Myers
Ronald K. Nichols
Randy E. Nonberg
Paul H. Olds
Kenneth Parkinson
Julia R. Pettit
Marianne Polkowski-Burns
Bruce M. Prtichett, Jr.
Mark C. Quinn
John P. Rasmussen
William R. Rawlings
Michael D. Ream
Eric S. Reeder
Jonathan W. Richards
Jane C. Roberts
John C. Rooker
Christian J. Rowley
Steven C. Russell
Francisco R. Sanchez
Gayanne K. Schmid
Jane Semmel
Carvel R. Shaffer
Elizabeth A. Shaffer
Philip F. Simon
Mark G. Simons
Eric C. Singleton
William B. Skiff, II
Catherine L. Smith
Richard G. Smurthwaite
Harold T. Stevenson
Derek L. Stotts
Keven J. Stratton
John C. Sumner
Paula P. Taylor
Wanda M. Therolf
Cindy Wagstaff
Stephen R. Waldron
Valerie M. Warner
Richard A. Watts
Patricia S. Williams

July 1994

John D. Alex
Curtis B. Anderson
Michael S. Anderson
Matthew G. Bagley
Steven K. Baker
John H. Barlow
Daren R. Barney
Jeannette L. Barney
Steven K. Barton
Thomas R. Barton
Shirlene Bastar
Donald J. Baxter Jr.
Suchada P. Bazzelle
Brenda J. Beaton Clifton
Frank A. Berardi
Brent Berkley
Kenneth A. Bills
Stephen T. Black
Michelle R. Blomquist
Mary E. Boudreau
Gary R. Brinton
Sally J. Brown
William B. Brown
Heidi A. Buchi
Richard R. Burke
Byron F. Burmester
Malcolm B. Burt
Lauralyn H. Cabanilla
Frank N. Call
Scott P. Card
Charles B. Carlston
Su J. Chon
Cathleen Clark
Eliot M. Cohen
Tara Collins
Gregory M. Constantino
Clark R. Cordner
Michael J. Cragun
Jerry W. Crist
Edmund T. Crowley
Brian D. Cunningham
Ralph W. Curtis
Ralph Dellapiana
Brett J. DelPorto
Cameron S. Denning
Michael W. Devine
Michael P. Devoy
Kimberly J. Dickinson
Michael D. DiReda
Lisa L. Dray
Edward F. Dresch
Scott S. Driggs
James R. Duzan
Christopher W. Edwards
Susan H. Eisenman
Len R. Eldridge

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Tuesday Night Bar is One Opportunity to Promote Positive Image of the Legal Profession

By Marji Hanson
Treasurer, Young Lawyers Division

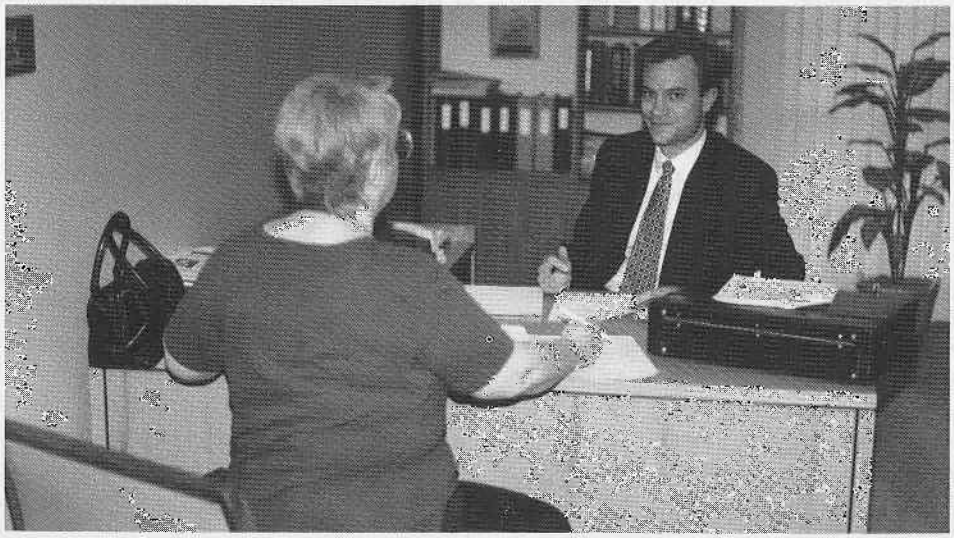
Every Tuesday night, six volunteer attorneys meet at the Law and Justice Center to donate their time and expertise in a legal advice and referral program known as Tuesday Night Bar. The Pro Bono Committee of the Young Lawyers Division ("YLD") sponsors Tuesday Night Bar with administrative help from Bar Association staff members. Each volunteer lawyer commits to attending one Tuesday Night Bar session every other month during a twelve-month period. On average, the total time commitment for each volunteer is less than twenty hours stretched over a one-year period. Each year, the cumulative effect of fifty lawyers each donating twenty hours means that over a thousand people receive no-cost legal counseling that literally is not available from any other source.

I chose to highlight the Tuesday Night Bar program as the topic of my first contribution to the Barrister section because, right now, the volunteer rosters are being established for next year. Jeffrey J. Hunt, an associate attorney with Kimball, Parr, Waddoups, Brown & Gee, is the chairperson of the YLD Pro Bono Committee. Jeff is in the process of soliciting participation in the program for the upcoming year. Jeff comments that, "although this program is in its sixth year of operation, I am surprised by the number of lawyers who are unaware of its existence. On the other hand, after the program is described to a potential volunteer, we usually get a positive response."

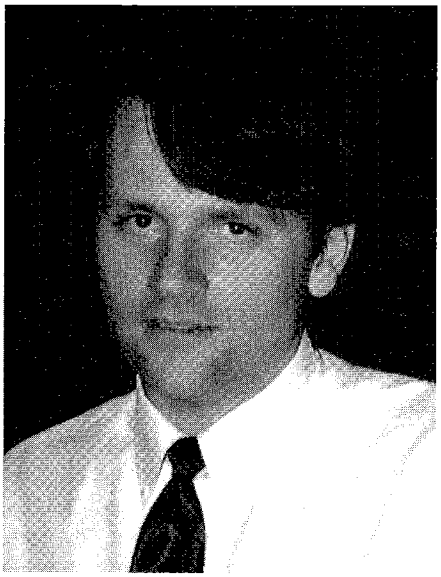
Sometimes lawyers are reluctant to volunteer because they feel that their own specialty practice area limits their usefulness in the program. Julie K. Morriss, a registered patent attorney practicing with Trask, Britt & Rossa and a veteran Tuesday Night Bar volunteer, sees the issue from a different perspective. Julie concludes that "I've enjoyed my participation in Tuesday Night Bar precisely because it gives me a chance to think about problems unrelated to intellectual property. The problems people bring to Tuesday Night Bar may seem insurmountable to them, but in most cases, common sense and minimal legal training are enough to start them towards a solution." In the past three years, Julie has talked to people with questions about a variety of legal problems such as name change petitions, real property disputes, custody modifications, and collection actions. Julie adds, "One night I did get to talk to a musician with a copyright question."

Other lawyers are reluctant to participate because they find it discouraging not to be able to solve the myriad problems people present at Tuesday Night Bar. As Jeff Hunt reminds us, "the important thing to remember about Tuesday Night Bar is that you are not there to represent anyone. Your role is to determine whether they need to hire an attorney to solve their problem and refer them to the appropriate agency if they meet the income requirements or to the Lawyer Referral program as needed." However, in many cases, the volunteer lawyer can actually devise solutions and resolve problems. A lawyer might coach someone through what to expect at a small claims court hearing or recommend mediation through Utah Dispute Resolution. The most valuable advice many people receive is the volunteer attorney's opinion about whether they need to retain a lawyer to represent their interests. Volunteer lawyers can agree to represent

MARJI HANSON joined the firm in 1993 and concentrates her practice on bankruptcy related matters and commercial litigation. She received her B.A. in Marketing in 1981 and J.D. from the University of Utah in 1990. She served as a judicial law clerk to United States Bankruptcy Judge Judith A. Boulden from September 1991 to August 1993. Before beginning her clerkship, Marji was an associate attorney at the law firm of Hansen Jones & Leta. Marji chairs the Pro Bono Sub-committee of the Utah State Bar Young Lawyers Division and is a member of the Young Lawyers Division Executive Committee. She has been a seminar speaker before the Bankruptcy Section of the Utah State Bar. Prior to attending law school, Marji was a project manager for AT&T Information Systems in San Diego, California.



people they come into contact with at Tuesday Night Bar only if they agree to representation on a pro bono basis. Similarly, a volunteer attorney may not refer someone to an attorney with whom the volunteer lawyer shares an economic association.



New lawyers are encouraged to participate even though they often protest that they are not yet experienced enough to offer advice outside the scope of their experience. "Sometimes the problems people bring to me seem to come out of left field," comments William J. Stilling, a licensed pharmacist and an associate specializing in health law at Parsons Behle & Latimer. Bill was starting his second year of practice when he first volunteered for Tuesday Night Bar. "I often have to look to the Utah Code or occasionally ask one of the other volunteer attorneys for direction, but it always seems like my instincts are right and my initial response is usually confirmed. There is a great sense of camaraderie among the attorneys who volunteer and rely on each other's specialized knowledge." Bill feels that Tuesday Night Bar challenges him to think creatively and also gives him an opportunity to develop his interviewing and assessment skills. Bill strongly recommends participation in Tuesday Night Bar: "It's an opportunity for new lawyers to simultaneously give service to the community and to improve their professional skills."

Conversely, just because Tuesday Night Bar is sponsored by the YLD, more senior attorneys should not feel that they are ineligible for participation. Although the State Bar is actively involved in all aspects of community service, Tuesday Night Bar is one of the most highly visible, long-term programs sponsored by our bar association. The stated purpose of the Tuesday Night Bar program is to assist the public in determining their legal rights. Thousands of people in Utah have been given the opportunity to talk to an attorney who is willing to listen, explain the justice system and offer advice at no charge. People leave Tuesday Night Bar with sincere gratitude for the volunteer lawyer's service and an improved outlook about the legal profession in general. Tuesday Night Bar is a direct and substantive method for promoting and enhancing a positive image of the legal profession within our community.

The Tuesday Night Bar program is not advertised or promoted in any overt way, but Bar staff members fill the weekly appointment schedule with people who heard of the program through word-of-mouth. There is an increasingly unmet need for affordable legal services. There is no doubt that as legal fees continue to rise, more and more people fall into the gap created by the lack of affordable legal services. Although your participation in Tuesday Night Bar will not completely fill the gap, the program goes a long way toward demonstrating your willingness to recognize the problem and to become a part of the solution. Call Jeff Hunt at 532-7840 to volunteer your services and to participate in one of the most valuable programs sponsored by your State Bar Association.

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Lynda P. Faldmo
Timothy M. Farrell
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Larry E. Hazen
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Butch L. Johnson
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Aaron E. Reynolds
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Jeanne M. Robison
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Curtis L. Wenger
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Gary R. Williams
Thomas D. Williamson
Michelle N. Wilson
Anthony J. Witkowski
Judith L. Wolferts
David S. Wood
Dianna R. Woolsey
Therese E. Yanan
R. Joe Zeidner

CASE SUMMARIES

By Clark R. Nielsen

ETHICS, PROFESSIONAL CORPORATIONS ACT

An attorney sued her former law firm to force repurchase of her stock in the law firm or, in the alternative, to dissolve and liquidate the corporation. The issue involves interpretation of the Professional Corporations Act. The Utah Supreme Court affirmed the trial court's dismissal of her claims because the licensed attorney continued to qualify under the Utah Professional Corporation Act to hold shares in the corporation. Still a licensed attorney, the plaintiff was not "disqualified" under the statute and the firm was not required to repurchase her shares.

The Court reaffirms the rule of statutory construction not to infer substantive terms that are not already there into the text of a statute. Interpretation of a statute must be based on the language used. The court has no power to rewrite the statute to conform to an "unexpressed intention."

The dissent by Justice Durham argues that to construe the Professional Corporation Act to require the attorney to maintain a stockholder status with the former law firm was untenable from an ethical perspective and created ethical mischief with the parties. The lawyer is potentially in a conflict of interest position with her former law firm. The majority responds that the claimed ethical tensions are merely hypothetical and do not affect the statutory interpretation. If and when ethical problems arise, they should be dealt with at that time.

Berrett v. Purser & Edwards, 240 Utah Adv. Rep. 4 (June 2, 1994) (J. Howe, and Js. Stewart and Durham dissenting)

TAXATION, UTAH SALES FOR CORPORATE TAX PURPOSES

Rocket motor parts sold to Lockheed by Hercules are Utah sales within this State, subject to Utah franchise tax liability. Hercules is Lockheed's subcontractor, building solid fuel rocket motors for the Trident missile. The motors are manufactured at Bacchus and shipped to Lockheed and the United States, in other states. Hercules also provides supervision and support for the assembly activities.

The Supreme Court affirmed the Court of Appeals determination that the rocket motors are sold in Utah and therefore taxable as Hercules' income. The Court's decision involves an interpretation of the Uniform Division of Income for Tax Purposes Act (Utah Code Ann. § 59-7-317-318). Because the property sold was delivered and shipped within the State, Utah sales was properly included in the calculation of Hercules' franchise tax liability. The subsequent out of state installation of the goods sold in this State does not affect the local nature of the sale.

Utah is not responsible for taxes improperly imposed by other jurisdictions. Whether or not other states improperly tax sale or transaction is irrelevant to whether Utah's tax is proper. The decision of the Court of Appeals is affirmed.

Hercules, Inc. v. Utah State Tax Comm'n, 240 Utah Adv. Rep. 28 (June 10, 1994) (C.J. Zimmerman)

CONSTRUCTION CONTRACT, CHALLENGE TO THE EVIDENCE

The State Department of Transportation appealed a judgment of $721,000.00 for additional compensation for work the plaintiff performed under a highway construction contract. The plaintiff had to incur additional costs and expenses of construction because the Department of Transportation had changed the location of a work area after the work had commenced and modified the work to be required under the contract.

The State's arguments on appeal were basically a challenge to the evidence before the trial court. However, the State failed to meet an appellant's burden of marshaling the evidence and showing that the evidence supporting the trial court's findings was inadequate as a matter of law. The Court opined that the judgment and findings below are supported by substantial evidence. The mere fact that the court may have an opinion as to the merits of the case does not necessarily indicate that the judge is prejudiced for or against the parties. (NOTE: Based upon the opinion, and without having reviewed the briefs of the parties, it would appear that the State should never have appealed this case on these issues.)

Procon Corp. v. Utah Dept. of Transp., Utah Ct. App. 920758-CA (June 17, 1994) (J. Greenwood, with Js. Bench and Billings)

ALIMONY, CHILD CUSTODY

The award of child custody to the wife was affirmed by the court of Appeals based upon the wife's history and interest in maintaining her role as the primary care giver and the finding that the wife would not have much of a relationship in the role of a visiting parent. The husband's history of visitation was compatible with and based on recreational activities and he expressed a willingness to maintain that relationship. Affirming a $550.00 alimony award, the court opined that when the payor-spouse's resources are adequate, *alimony need not be limited to only basic needs*, but should also consider the recipient's "station in life."

(NOTE: In *Bingham v. Bingham*, 236 Utah Adv. Rep. 29, 31 (J. Orme) that Court of Appeals panel held that alimony should be limited to the "reasonable needs of the spouse." *See also* the article, "Recent Twists and Turns . . .", by D. Dolowitz in July's *Utah Bar Journal*, regarding the "needs of the spouse" element of alimony. Judge Orme, the author of *Bingham*, concurred only in the *Rosendahl* result as to alimony and attorneys fees, which suggests a disagreement with the "station of life" language. The two cases need not be inconsistent depending upon one's semantic interpretations of "basic needs" and "reasonable needs." Also significant, the financial circumstances of the Binghams and the Rosendahls appear widely disparate.)

Rosendahl v. Rosendahl, Utah Ct. App. 930318-CA (June 7, 1994) (Js. Davis, with Js. Billings and Orme)

SETTLEMENT AGREEMENT, CONTRACT ENFORCEMENT

Defendant appealed the judicial enforcement of the settlement agreement in an open account dispute. The defendant argued that the parties were in the midst of negotiating a settlement when the trial court entered an order enforcing the settlement according to Deere's asserted terms.

As the franchisee of John Deere Company, the defendant defaulted on various obligations under the franchise agreement. Defendant also counter claimed, alleging that John Deere had breached the franchise agreement.

The defendant claimed that during the settlement it attempted to obtain a release from John Deere on all John Deere related matters, including a prior judgment in favor of Deere's financing arm. The trial court enforced the offer of settlement, as set forth in the letter of defendant's attorney, who made the settlement offer. After the letter had been accepted by John Deere by telephone, settlement documents were drafted. The defendant then wanted to enlarge the settlement to include a release from the prior judgment.

Basic contract principals affect the determinations of when an enforceable settlement agreement has been reached. The court affirmed the trial court's determination that the initial settlement agreement and meeting of the minds did not include the prior judgment, as evidenced by settlement drafts and the correspondence. While defendant claims the parties were still negotiating the settlement agreement, the court found that the settlement was actually reached earlier, even though the language of the final settlement documents had not been agreed upon. The parties had already entered into a binding agreement when the defendant subsequently changed its mind and attempted to enlarge the terms of the agreement. No "factual determination" was required because the appellate court was just as able to interpret the plan language of the correspondence as was the trial court. The court further held that Rule 4-504, Utah Code of Judicial Administration, did not prevent the court from enforcing a settlement agreement that had not yet been reduced to a written agreement. The language in the first two letters between the parties and the settlement document is unambiguous and does not support multiple means. They are clear and do not hint of missing terms.

Judge Bench dissented, claiming that the court should not have ruled as a matter of law without taking evidence on whether or not there was an agreement. The dissent opines that such a determination was fact sensitive and could not have been determined as a matter of law without trial. Where there has been no agreement signed by "the party to be charged" the parol evidence rule would not apply and extrinsic evidence should have been considered to determine whether an agreement had been reached and the terms of that agreement.

John Deere Co. v. A&H Equipment, Inc., Utah Ct. App. 920774-CA (June 9, 1994) (J. Greenwood, with J. Billings; J. Bench dissenting)

ATTORNEY DISCIPLINE

Under the old system of disciplinary hearings, the Board of Bar Commissioners initially recommended a public reprimand and six months probation for the attorney's unethical conduct. The Board later increased its recommendation to one of suspension for one year on the Bar's petition for reconsideration. The Supreme Court rejected the suspension recommendation and determined the public reprimand and six months' probation the appropriate discipline for the attorney's false statement to the Bankruptcy Court and failure to remit to his clients their rightful portion of settlement proceeds. The failure to remit to the client occurred in the midst of a fee dispute. The attorney's dishonesty and misrepresentations were somewhat mitigated because the issue was not properly presented to the disciplinary panel, who treated the case as a fee dispute, and not one of conversion of client proceeds.

Chief Justice Zimmerman reluctantly concurs in the result because of the prosecution's failure to focus on the attorney's more serious misconduct, specifically his misrepresentations to the California Bankruptcy Court. Had the hearing panel and the prosecutor focused on this misrepresentation, the court should have endorsed a more serious discipline. The importance of a lawyer's obligation of candor to the courts cannot be overstated. "Lawyers have an ethical obligation to be advocates for their clients, not to be their co-conspirators . . ." When cultural and economic pressures cause some lawyers to forget the distinction, such conduct should be punished harshly to serve as continuing notice to errant attorneys that the courts will not tolerate it. Lawyers are bound by rigid ethical standards designed to preserve the integrity of the adversary system.

In re Complaint against Don E. Cassity, 239 Utah Adv. Rep. 3 (Utah, May 18, 1994) (J. Howe)

ATTORNEY FEES, PREVAILING PARTY IN TRUST DEED DEFICIENCY

The trial court erroneously determined that the defendant debtors were the prevailing party in an action by the plaintiff to enforce a deficiency on a deed of trust. The trial court had concluded that the debtors were "the prevailing party" because the deficiency amount was less than 20% of the amount claimed.

Interpreting Section 57-1-32, which awards attorneys fees to the "prevailing party," in a deficiency action, the Supreme Court refused to defer to the district court's conclusion. The Court opined when there is a deficiency and a judgment is awarded to the plaintiff in any amount, the plaintiff is the prevailing party. The court limited its ruling to one of statutory construction in viewing the deficiency action statute where an action is required to recover the balance due. If there is any balance due, then the statute requires imposition of costs and attorneys fees.

First Southwestern Financial Services v. Sessions, 239 Utah Adv. Rep. 6 (Utah, May 19, 1994) (J. Durham)

Independent Auditors' Report

Board of Directors
Utah Bar Foundation
Salt Lake City, Utah

We have audited the balance sheets of Utah Bar Foundation (a non-profit organization) as of December 31, 1993 and 1992, and the related statements of revenue and support, expenditures and changes in fund balances, and changes in financial position for the years ended. These financial statements are the responsibility of the Utah Bar Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly in all material respects, the financial position of Utah Bar Foundation (a non-profit organization) as of December 31, 1993 and 1992, and the results of its operations and changes in financial position for the years then ended in conformity with generally accepted accounting principles. The supplementary information in the accompanying Schedules 1 and 2 has been subjected to the same auditing procedures and, in our opinion, is stated fairly in all material respects when considered in conjunction with the financial statements taken as a whole.

Wisan, Smith, Racker & Prescott
Salt Lake City, Utah
May 11, 1994

UTAH BAR FOUNDATION
(A Non-Profit Organization)
BALANCE SHEETS
December 31, 1993 and 1992

ASSETS	1993	1992
CURRENT ASSETS		
Cash	$ 40,785	$ 131,023
Receivables:		
IOLTA	1,071	6,215
Other receivables	44	—
Total Receivables	1,115	6,215
Other assets	136	—
Investments *(Note 2)*	567,088	503,762
TOTAL CURRENT ASSETS	609,124	641,000
PROPERTY AND EQUIPMENT *(Note 3)*	343	2,108
LAND HELD FOR RESALE	2,770	2,770
TOTAL ASSETS	$ 612,237	$ 645,878
LIABILITIES AND FUND BALANCE		
CURRENT LIABILITIES		
Accounts payable	$ 2,988	$ 1,578
TOTAL CURRENT LIABILITIES	2,988	1,578
FUND BALANCE – UNRESTRICTED	609,249	644,300
TOTAL LIABILITIES AND FUND BALANCES	$ 612,237	$ 645,878

Certain 1992 items have been reclassified to conform to the 1993 presentation.
The accompanying notes are an integral part of the financial statements.

UTAH BAR FOUNDATION
(A Non-Profit Organization)
STATEMENTS OF REVENUE AND SUPPORT, EXPENDITURES, AND CHANGES IN FUND BALANCES
Years ended December 31, 1993 and 1992

	1993	1992
REVENUE AND SUPPORT		
Interest on lawyers' trust accounts	$ 161,692	$ 231,432
Interest and dividend income	41,605	41,878
Member contributions	510	604
TOTAL REVENUE AND SUPPORT	203,807	273,914
EXPENDITURES		
Grants of funds *(Note 4)*	198,992	183,330
Wages	14,697	15,806
Office and administrative	6,014	6,608
Rent	4,755	4,755
Bank service charge	4,692	—
Meetings and food	2,590	3,100
Depreciation	1,765	2,160
Travel	936	1,535
Public relations	2,117	2,644
Membership dues	300	300
History writing project	2,000	1,711
TOTAL EXPENDITURES	238,858	221,949
Excess (deficiency) of revenue and support over expenditures	(35,051)	51,965
Unrestricted fund balances at beginning of year	644,300	592,335
Unrestricted fund balances at end of year	$ 609,249	$ 644,300

Certain 1992 items have been reclassified to conform to the 1993 presentation.
The accompanying notes are an integral part of the financial statements.

UTAH BAR FOUNDATION
(A Non-Profit Organization)
STATEMENTS OF CASH FLOWS
Years ended December 31, 1993 and 1992

	1993	1992
SOURCES OF CASH:		
Operations:		
Excess (deficiency) of revenue and support over expenditures	$ (35,051)	$ 51,965
Items not affecting cash:		
Depreciation	1,765	2,160
Cash provided (used by) operations	(33,286)	54,125
Decrease in IOLTA receivable	5,144	—
Decrease in accrued interest receivable	—	3,006
Increase in accounts payable	1,410	1,001
TOTAL SOURCES OF CASH	(26,732)	58,132
USES OF CASH:		
Increase in IOLTA receivable	—	(1,142)
Increase in investments	(63,326)	(52,373)
Increase in property and equipment	—	(205)
Increase in other accounts receivable	(44)	—
Increase in other assets	(136)	—
TOTAL USES OF CASH	(63,506)	(53,720)
INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(90,238)	4,412
CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR	131,023	126,611
CASH AND CASH EQUIVALENTS AT END OF YEAR	$ 40,785	$ 131,023

Certain 1992 items have been reclassified to conform to the 1993 presentation.
The accompanying notes are an integral part of the financial statements.

UTAH BAR FOUNDATION
(A Non-Profit Organization)
NOTES TO FINANCIAL STATEMENTS)
December 31, 1993 and 1992

NOTE 1 – SIGNIFICANT ACCOUNTING POLICIES

The accounting policies of Utah Bar Foundation conform to generally accepted accounting principles. The following policies are considered to be significant:

Company Organization

Utah Bar Foundation was incorporated in 1963 as a non-profit organization. As such, it is exempt from federal income tax under Internal Revenue Code Section 501(c)(3).

Income Recognition

The financial statements are prepared using the accrual basis of accounting. Revenues are recognized and reported when they are earned and when the amount and timing of the revenue can be reasonably estimated.

Utah Bar Foundation was organized to advance the science of jurisprudence, to promote improvements in the administration of justice and uniformity of judicial proceeding and decisions, to provide training courses for lawyers, to elevate judicial standards, to advance professional ethics, to improve relations between members of the Utah State Bar Association, the judiciary and the public, and the preservation of the American constitutional form of government, exclusively through education, research, and publicity.

Under the Interest On Lawyers' Trust Account (IOLTA) Program, implemented in 1984, the Foundation receives interest on member lawyers' trust accounts from the deposit of client funds that are nominal in amount or that are expected to be held for only a short period of time. The Foundation awards grants of these funds to promote legal education and increase knowledge and awareness of the law in the community, to assist in providing legal services to the disadvantaged, to improve the administration of justice, and to serve other worthwhile, law-related purposes.

Depreciation

Depreciation expense is computed principally on the straight-line method in amounts sufficient to write off the cost of depreciable assets over their estimated useful lives.

Normal maintenance and repair items are charged to expenditures as incurred. The cost and accumulated depreciation of property and equipment sold or otherwise retired are removed from the accounts and gain or loss on disposition is reflected in net revenue in the period of disposition.

Cash and cash equivalents

Cash equivalents are generally comprised of certain highly liquid investments with maturities of less than three months.

Fund accounting

The accounts of Utah Bar Foundation are maintained in six self-balancing funds according to their nature and purpose. The six funds are all unrestricted, which means that revenue and support for the funds is not restricted to a specific use by the contributors of such revenue and support. The funds are as follows:

IOLTA Fund — The IOLTA Fund is used to account for interest received on member lawyers' trust accounts and the awarding of grants of these funds.

Judicial History Fund — The Judicial History Fund is used to account for donations and expenses relating to the judicial history of the State of Utah.

Office Furniture and Equipment Fund — The Office Furniture and Equipment Fund is used to account for fixed assets owned by the Foundation.

Administrative Fund — The Administrative Fund is used to receive 5% of the annual IOLTA funds, to receive the interest on the IOLTA funds prior to allocation, and to pay the general and administrative expenditures.

Perpetual Endowment Fund - IOLTA — The Perpetual Endowment Fund is used to receive 10% of the annual IOLTA funds in order to accumulate a reserve to be held for future projects consistent with the purposes specified in the IOLTA program.

Perpetual Endowment Fund - Non IOLTA —This fund is used to receive all non IOLTA contributions and interest earned on those funds to be held for future projects consistent with the purposes specified in the Articles of Incorporation.

NOTE 2 — INVESTMENTS

Investments as of December 31, 1993 and 1992 are reflected at the aggregate lower of cost or market value and are summarized below:

	Cost	Market
IOLTA	$ 200,147	$ 200,249
Judicial History Fund	3,031	6,817
Perpetual Endowment Fund - IOLTA	212,868	227,863
Perpetual Endowment Fund - Non IOLTA	151,042	168,480
	$ 567,088	$ 603,409

	Cost	Market Value	Excess of Market Over Cost
Balance – December 31, 1993	$ 567,088	$ 603,409	$ 36,321
Balance – December 31, 1992	$ 503,762	$ 529,906	$ 26,144

NOTE 3 — PROPERTY AND EQUIPMENT

Property and equipment as of December 31, 1993 and 1992 are detailed in the following summary:

	Cost	Accumulated Depreciation	Net Book Value 1993	Net Book Value 1992
Furniture and equipment	$ 10,901	$ 10,558	$ 343	$ 2,108

NOTE 4 — GRANTS OF FUNDS

Grants of funds during the years ended December 31, 1993 and 1992 are listed below

	1993	1992
Legal Aid Society	$ 55,000	$ 50,000
Utah Legal Services, Inc.	41,582	35,000
Law-Related Education	30,000	30,000
Catholic Community Services	20,000	20,000
Legal Center for People with Disabilities	10,000	10,000
American Inns of Court	1,500	1,500
Utah Foundation	1,000	—
Ethics Awards	810	359
Community Service Scholarships	6,000	6,000
USB Young Lawyers - Victim Assistance	—	2,500
University of Utah - Loan Assistance	25,000	25,000
DNA People's Legal Services, Inc.	3,000	—
Women Lawyers of Utah	5,100	—
Utah Children - Publication	—	1,950
S.L. County Bar - Domestic Services	—	1,021
	$ 198,992	$ 183,330

NOTE 5 — COMMITMENTS

As of December 31, 1993, the Board of Trustees had approved a grant of $12,000 to the Women Lawyers of Utah, of which $6,900 had not been disbursed.

UTAH BAR FOUNDATION
(A Non-Profit Organization)
SUMMARY BALANCE SHEET BY FUND
Years ended December 31, 1993

	IOLTA Fund	Judicial History Fund	Furniture & Equipment Fund	Administrative Fund	Perpetual Endowment Fund- IOLTA	Perpetual Endowment Fund-Non IOLTA	Total Funds
ASSETS:							
Cash	$ 30,623	$ 8,724	$ —	$ 553	$ 129	$ 756	$ 40,785
IOLTA receivable	1,071	—	—	—	—	—	1,071
Other receivables	—	—	—	44	—	—	44
Other assets	19	—	—	—	23	94	136
Investments	200,147	3,031	—	—	212,868	151,042	567,088
Property and equipment	—	—	343	—	—	—	343
Land held for resale	—	—	—	—	—	2,770	2,770
TOTAL ASSETS	$ 231,860	$ 11,755	$ 343	$ 597	$ 213,020	$ 154,662	$ 612,237
LIABILITIES & FUND BALANCE							
Accounts payable	$ —	$ —	$ —	$ 2,988	$ —	$ —	$ 2,988
Funds balance	231,860	11,755	343	(2,391)	213,020	154,662	609,249
TOTAL LIABILITIES AND FUND BALANCE	$ 231,860	$ 11,755	$ 343	$ 597	$ 213,020	$ 154,662	$ 612,237

UTAH BAR FOUNDATION
(A Non-Profit Organization)
SUMMARY OF STATEMENT OF REVENUE AND SUPPORT, EXPENDITURES, AND CHANGES IN FUND BALANCES BY FUND
Years ended December 31, 1993

	IOLTA Fund	Judicial History Fund	Furniture & Equipment Fund	Administrative Fund	Perpetual Endowment Fund- IOLTA	Perpetual Endowment Fund-Non IOLTA	Total Funds
REVENUE AND SUPPORT							
Interest on lawyers' trust accounts	$ 159,469	$ —	$ —	$ 2,223	$ —	$ —	$ 161,692
Interest and dividend income	15,977	427	—	12	12,601	12,588	41,605
Member contributions	—	15	—	—	—	495	510
TOTAL REVENUE AND SUPPORT	175,446	442	—	2,235	12,061	13,083	203,807
EXPENDITURES							
Grants of funds	198,992	—	—	—	—	—	198,992
Wages	—	—	—	14,697	—	—	14,697
Office and administrative	15	—	—	5,999	—	—	6,014
Rent	—	—	—	4,755	—	—	4,755
Bank Service Charges	4,628	—	—	48	8	8	4,692
Meetings and food	—	—	—	2,590	—	—	2,590
Depreciation	—	—	1,765	—	—	—	1,765
Travel	—	—	—	936	—	—	936
Public Relations	—	—	—	2,117	—	—	2,117
Membership dues	—	—	—	300	—	—	300
History writing project	—	2,000	—	—	—	—	2,000
TOTAL EXPENDITURES	203,635	2,000	1,765	31,442	8	8	238,858
Excess (deficiency) of revenue and support over expenditures	(28,189)	(1,558)	(1,765)	(29,207)	12,593	13,075	(35,051)
Fund balance at beginning of year	286,951	15,506	2,108	(641)	149,154	191,222	644,300
Add transfers in	248	2,253	205	11,572	23,143	121	37,542
Deduct transfers out	(12,325)	(248)	—	—	(23,144)	(1,825)	(37,542)
FUND BALANCE AT END OF YEAR	$ 246,685	$ 15,953	$ 548	$ (18,276)	$ 161,746	$ 202,593	$ 609,249

Applicants Sought for Bar Appointments to Utah Legal Services Board of Directors

The Board of Bar Commissioners is seeking applications from Bar members for appointments to serve two-year terms on the Board of Directors of Utah Legal Service, Inc. The Board sets policies and establishes budgets for Utah Legal Services, which is a state-wide provider of legal representation of low income people in civil judicial matters.

Applications for Board representation from rural districts outside the Wasatch front and women and minority attorneys are particularly encouraged. Bar members who wish to be considered for appointment must submit a letter of application including a resume. Applications are to be mailed to John C. Baldwin, Executive Director, Utah State Bar, 645 South 200 East #310, Salt Lake City, UT 84111, and must be received no later than 5:00 p.m., on November 30, 1994.

Happy Thanksgiving from THE UTAH STATE BAR

CLE CALENDAR

BASICS OF INTELLECTUAL PROPERTY

Date: Friday, November 11, 1994
Place: Utah Law & Justice Center
Time: 8:00 a.m. to 4:30 p.m.
Fee: TBA
CLE Credit: 7 hours (subject to change)

EMPLOYMENT FOR CORPORATE COUNSEL

Date: Monday, November 14, 1994
Place: Utah Law & Justice Center
Time: TBA
Fee: TBA
CLE Credit: TBA

NLCLE WORKSHOP: NEGOTIATION AND EVALUATION SKILLS

Date: Thursday, November 17, 1994
Place: Utah Law & Justice Center
Time: 5:30 p.m. to 8:30 p.m.
Fee: $20.00 for Young Lawyer Division members
$30.00 for all others
CLE Credit: 3 hours CLE

SIMPLE PROBATE PRACTICE AND PROCEDURE

Date: Friday, November 18, 1994
Place: Utah Law & Justice Center
Time: 9:00 a.m. to 12:00 noon
Fee: $30.00
CLE Credit: 3 hours CLE
Presented by the Needs of the Elderly Committee of the Utah State Bar and Utah Legal Services.

Watch your mail for brochures and mailings on these and other upcoming seminars. Questions regarding any Utah State Bar CLE seminar should be directed to Monica Jorgensen, CLE Coordinator, at (801) 531-9095.

CLE REGISTRATION FORM

TITLE OF PROGRAM FEE

1. _____ _____

2. _____ _____

_____

Make all checks payable to the Utah State Bar/CLE Total Due

Name Phone

Address City, State, ZIP

Bar Number American Express/MasterCard/VISA Exp. Date

Signature

Please send in your registration with payment to: **Utah State Bar, CLE Dept., 645 S. 200 E., S.L.C., Utah 84111.** The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars. Please watch for brochure mailings on these.

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 lease 48 hours in advance. Returned checks will be charged a $15.00 service charge

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

Utah State Bar Policy on Viewing Videos at the Utah Law & Justice Center

1. Preferably one week notice should be given to either the CLE Coordinator or the Law & Justice Center Coordinator to ensure room and TV/VCR availability.
2. Hours for this service include normal business hours, Monday through Friday from 8:00 a.m. until 5:00 p.m.
3. Charges for this service will be as follows:
$15.00 room rental for 4 hours or less
$25.00 room rental for more than 4 hours
$5.00 per video

Payment will be required at the time of service. The Utah State Bar will no longer bill for this service.

4. **CLE credit will not be given to attorneys who do not pay.**
5. No more than 12 hours of CLE credit may be obtained through the use of video or audio tapes.

Utah State Bar Policy on Video Tape Rentals

1. To rent Utah State Bar video tapes, please contact the CLE Department for assistance. Reservations for tapes will be accepted, subject to availability.
2. Rental fees will be as follows:
$30.00 for the first tape and $10.00 for each subsequent tape, per week.

Video tapes may be rented on a weekly basis. Any tape that is returned late will be charged a late fee equal to the amount of the rental fee. (If the rental fee was $50.00, the late fee will also be $50.00)

3. Video tapes will be mailed to members of the bar who live outside of Salt Lake County only. No exceptions!
4. To obtain CLE credit for viewing tapes outside the Law & Justice Center, it is required that three attorneys be in attendance. Paralegals or legal support staff may not be counted as part of the three persons required to be in attendance.
5. No more than 12 hours of CLE credit may be obtained through the use of video or audio tapes.

Classified Ads

For information regarding classified advertising, please contact (801) 531-9077. Rates for advertising are as follows: 1-50 words — $10.00; 51-100 words — $20.00; confidential box numbers for positions available $10.00 in addition to advertisement.

CAVEAT — The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: May 1 deadline for June publication). If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

BOOKS FOR SALE

USED LAW BOOKS FOR SALE — Pacific Reporters, Pacific 2nd, including Digests; CJS; ALR 2nd through 5th; Proof of Facts 2nd and Third. All are complete sets up to date. Please call Jolene at (801) 637-1245.

For Sale – Michie's Forms on Disk. Never used. Hundreds of forms on CD-ROM. $995.00 retail. Make offer. Call Gary at (801) 531-9110

POSITIONS AVAILABLE

Small firm needs attorney with excellent credentials and 2 years experience in corporate work and litigation. Send resume to Box 7, Utah State Bar Journal, 645 South 200 East, Salt Lake City, Utah 84111. Please mark envelope "confidential".

CORPORATE ATTORNEY POSITION. KeyCorp, a regional bank holding company, is seeking an attorney with 3 to 7 years of experience for its Salt Lake City office. Commercial and banking background and strong academic credentials preferred. Some travel may be required. Competitive salary and full benefits. Send resume to: KeyCorp, Key Bank Tower, Suite 2011, 50 South Main Street, Salt Lake City, Utah 84144.

POSITIONS SOUGHT

Experienced Park City based trial lawyer seeks association with Salt Lake City personal injury/divorce firm. Call Thomas Howard. (801) 649-4660.

OFFICE SPACE/SHARING

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

"Class A office sharing space available for one attorney with established small firm. Excellent downtown location, two blocks from courthouse. Parking provided. Complete facilities, including conference room, reception area, library, telephone, fax, copier. Secretarial services included. Excellent opportunity. Please call Larry R. Keller or A. Howard Lundgren at (801) 532-7282."

Spacious office, all amenities, close to courts, very reasonable. Call (801) 322-5556.

Two offices available, top floor of the Brickyard Plaza. Freeway access, reserved covered parking, all amenities. Overflow work available, may trade for rent reduction. Call David Black, (801) 484-3017.

UTAH COUNTY. Deluxe office sharing space in Provo Jamestown Square complex available for one attorney with established law firm. Complete facilities including large private office, large reception area, conference rooms, support, fax telephones, copier, Excellent opportunity. Call (801) 342-6387.

New professional office space for two attorneys adjacent to Sports Mall. Share space and expenses with four other attorneys. Complete facilities, including large private office, secretarial services, reception area, conference room, limited library, fax, copier, telephones. Room for own secretary if desired. Call Jeri at (801) 263-0569.

SERVICES

QUALITY TRANSLATIONS. Let our team of legal translators apply their expertise to your legal and technical documents. We specialize in Spanish/English and English/Spanish translations. All work is edited by a member of the Utah Bar. Call Brian or Jaime at (801) 298-4707.

MISSING PERSONS LOCATED — Defendants, Heirs, Witnesses, Clients — ABSOLUTELY NO CHARGE IF PERSON IS NOT FOUND. Flat fee of $195.00. All work conducted by experienced private investigator/attorneys. (800) 755-2993 PST.

LEGAL ASSISTANTS — SAVING TIME, MAKING MONEY: Reap the benefits of legal assistant profitability. LAAU Job Bank, P.O. Box 112001, Salt Lake City, Utah 84111. (01) 531-0331. Resume of legal assistants seeking full or part-time temporary or permanent employment on file with LAAU Job Bank are available on request.

CERTIFIED PERSONAL PROPERTY APPRAISALS: Estate work, Fine furniture, divorce, Antiques, Expert Witness National Instructor for the Certified Appraisers Guild of America. 16 years experience. Immediate service available; Robert Olson C.A.G.A. (801) 580-0418.

MCLE Reminder

Attorneys who are required to comply with the even year compliance cycle, will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1994. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a combined 27 hour total. Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance for your use is included in this issue. If you have any questions concerning the MCLE requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

CONTINUING LEGAL EDUCATION

Utah Law and Justice Center
645 South 200 East
Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 FAX 9801) 531-0660

CERTIFICATE OF COMPLIANCE
For Years 19 _____ and 19 _____

NAME: _____ UTAH STATE BAR NO. _____

ADDRESS: _____ TELEPHONE: _____

Professional Responsibility and Ethics* **(Required: 3 hours)**

1. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

2. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

3. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

Continuing Legal Education* **(Required 24 hours) (See Reverse)**

1. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

2. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

3. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

4. _____
Program name _____
Provider/Sponsor Date of Activity CLE Credit Hours Type**

* Attach additional sheets if needed.

** (A) audio/video tapes; (B) writing and publishing an article; (C) lecturing; (D) law school faculty teaching or lecturing outside your school at an approved CLE program; (E) CLE program – list each course, workshop or seminar separately. NOTE: No credit is allowed for self-study programs.

I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the State of Utah including Regulation 5-103 (1) and the other information set forth on the reverse.

Date: _____ _____
(signature)

Regulation 5-103(1) Each attorney shall keep and maintain proof to substantiate the claims made on any statement of compliance filed with the board. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders or materials claimed to provide credit. This proof shall be retained by the attorney for a period of four years from the end of the period for which the statement of compliance is filed, and shall be submitted to the board upon written request.

EXPLANATION OF TYPE OF ACTIVITY

A. Audio/Video Tapes. No more than one-half of the credit hour requirement may be obtained through study with audio and video tapes. See Regulation 4(d)-101(a)

B. Writing and Publishing an Article. Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. An application for accreditation of the article must be submitted at least sixty days prior to reporting the activity for credit. No more than one-half of the credit hour requirement may be obtained through the writing and publication of an article or articles. See Regulation 4(d)-101(b)

C. Lecturing. Lecturers in an accredited continuing legal education program and part-time teachers who are practitioners in an ABA approved law school may receive 3 hours of credit for each hour spent in lecturing or teaching. No more than one-half of the credit hour requirement may be obtained through lecturing and part-time teaching. No lecturing or teaching credit is available for participation in a panel discussion. See Regulation 4(d)-101(c)

D. CLE Program. There is no restriction on the percentage of the credit hour requirement which may be obtained through attendance at an accredited legal education program. However, a minimum of one-third of the credit hour requirement must be obtained through attendance at live continuing legal education programs.

THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

Regulation 8-101 — Each attorney required to file a statement of compliance pursuant to these regulations shall pay a filing fee of $5 at the time of filing the statement with the Board.

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& Skip Trace Division

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Missing Person	Client-Anyone

LIMITED NATION-WIDE SKIP TRACE

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We require that a $75.00 file maintenance fee/expense advance be sent upon placement of this service, and this advance will start your investigation. When productive, a $275.00 discovery fee is billed as our total fee. If the search in unproductive, we'll either apply 100% of your expense advance to a more in-depth search requiring utilization of our unlimited cultivated sources *(upon your request)* or *we will be happy to refund 100% of your expense advance if you are able to find ***ANY*** investigation firm who is capable of finding your subject within 90 days from the date of our report.

If your desire is that a more in-depth search is not warranted in your case, then your maximum financial liability is the $75.00 file maintenance fee, no matter how much time has been spent by our agency in attempting to locate your subject. *No further fees will be billed under this search request unless authorized.*

Over the past 14 years, we have compiled a 83% success record for our clients. Some investigations, though, are more complex and may need advance procedures to uncover details which lead to the person who intentionally conceals their whereabouts.

**Limited Nation-wide Skip Trace Service Only*

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Specialists are assigned to uncover banking and savings accounts on your subject anywhere in the United States.

A $75.00 expense advance/file maintenance fee begins our search. When productive a $375.00 discovery fee is billed for our services, in which your $75.00 expense fee will be credited. If unproductive, your total liability is the $75.00 expense advance. No further fee will be imposed.

SAFETY DEPOSIT BOXES

We will attempt to located hidden assets and safety deposit boxes *anywhere* in the United States on your subject.

$125.00-$750.00 depending upon difficulty

COMPLETE ASSET SEARCH

Our team of experts will provide the most up to date financial analysis on your subject ***anywhere*** in the United States.

- ❑ **Real Estate Holdings**
- ❑ **Personal Property**
- ❑ **Aircraft**
- ❑ **Autos** ❑ **Boats** ❑ **UCC Liens**

$47.50 Per Hour

(4 Hour Minimum Required)

- Banking and Credit Report Information Not Included In This Fee -

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Investigations

Our specialists are trained to uncover facts on your subjects' behavior through surveillance and background investigations for use in court cases.

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- ❑ **Workman's Compensation**
- ❑ **Insurance Claims**
- ❑ **Personal Injury** ❑ **Civil Suits**

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We specialize in the location and recovery of property on a national level.

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Our staff is capable of obtaining credit information on your subject and providing you with a complete analysis of your subject's spending habits, net worth, or other indebtedness.

$50.00 - $250.00 Depending On Difficulty

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When expert service is required by professionals in the most delicate family law matters.

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For any situation, including premarital, investment decision, merger, acquisitional, association, political, pre-employment, post-hiring, advancement,

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	Credibility	**Associations**	**Trustworthiness**	
General: $275.00	**Habits**	**Financial Information**	**Loyalty**	General: $375.00
Extensive: $350.00 Minimum	Fees are determined by the nature, scope & complexity of the investigation. For in-depth assignments, call our offices for free consultation			Extensive: $500.00 Minimum

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Dallas, Texas 75240

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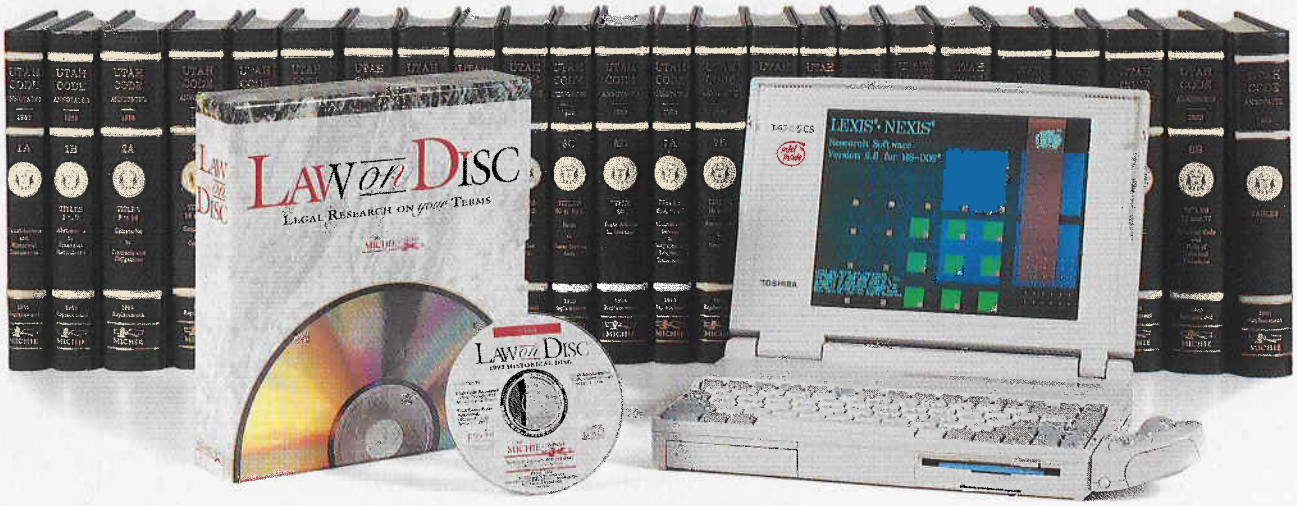

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645 South 200 East
Salt Lake City, Utah 84111

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