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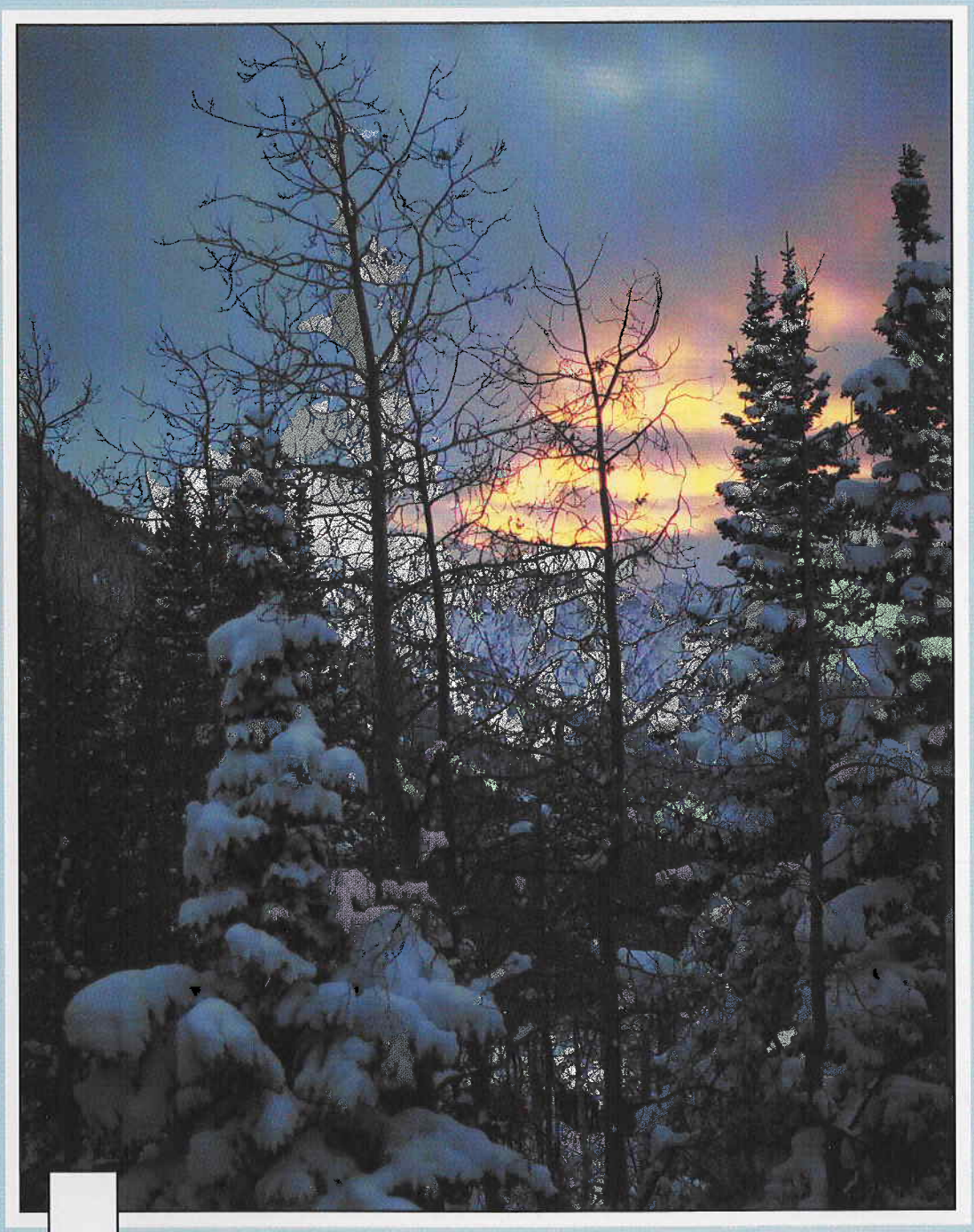

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Members of the Utah Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle 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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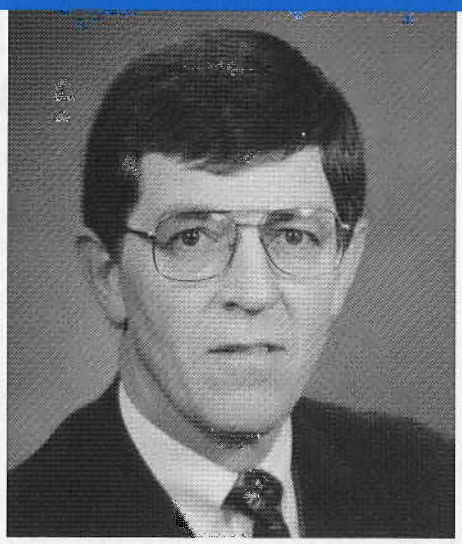


A View of the Utah State Bar – From the Outside

By Ray O. Westergard, CPA

Someone said "before you know where a person stands on an issue you need to know where they sit."

As a CPA, I meet or communicate with attorneys regarding client matters regularly. On several occasions I have testified in Court as a fact or as an expert witness. About five years ago I sat in a meeting with the Chief and Associate Justices of the Utah Supreme Court to discuss certain financial matters of the Utah State Bar. On this particular day, I sensed the concern of those in the meeting about the then current financial condition of the Bar. I listened to their questions relating to: Why was the Bar experiencing a financial crisis? Where was the Bar headed? Were there too many programs? Which ones were self-sustaining and which ones were draining? Was it a money problem and would an increase in dues take care of the problem? Those who sat across the table had final oversight responsibilities for the Bar and they were involved!

As a non-lawyer, I was impressed with the surroundings. I wondered what it must be like to sit on that side of the table. How did they get there? How long had they been there? Various lawyer jokes came to mind. Upon the conclusion of our meeting, I wondered if these jokes could be true of Utah lawyers. As my CPA associates and I left the meeting with our charge to help find answers, we were in awe of where we were and felt a sense of urgency towards the task at hand.

During the weeks that followed, we reviewed thousands of pages of records and met with the Executive Director and members of his staff (the paid workers), the Bar President, the Bar Commission, and others (the pro-bono workers). We listened to their positions, every day challenges, and to their suggestions. We soon found where they sat relative to the issues. They too were involved!

The Court listened to our findings, many of which were critical of the way things were being done or were not being done, and received our report and recommendations. In due time the Court approved an increase in Bar dues and at the same time charged the Bar to implement changes. These changes and others were implemented and followed.

A little over a year ago I received another call from the "Chief." This time the charge was to serve as one of two non-lawyers on the Bar Commission. Reflecting back to our critical report of a few years before, I was surprised at this invitation. Remembering the problems of the past, I was concerned about taking on a three-year assignment. However, I also remembered the commitment of the new Executive Director, his staff, and the elected officers of the Bar we worked with during the implementation period for the suggested changes. I accepted the new

RAY O. WESTERGARD is a CPA and a Partner in Grant Thornton, a national firm of accountants and management consultants. Mr. Westergard is a member of various professional organizations, including the American Institute of Certified Public Accountants and the Utah Association of Certified Public Accountants. Mr. Westergard currently serves on the Utah State Bar Security Advisory Committee, is chairman of the Bar's Finance Committee and in 1993 was appointed as one of the first two non-lawyers to serve as a member of the Board of Bar Commissioners. He was selected by the Utah Supreme Court in 1990 as a financial consultant to advise the Court and to assist Bar Management relating to financial matters of the Bar. Mr. Westergard has provided expert witness testimony in federal and state courts regarding various accounting and auditing matters, has provided testimony before the Public Service Commission in utility rate hearings, and consults with the Securities and Exchange Commission relating to accounting and auditing matters.

assignment based more upon the people who were serving than upon any clear understanding of the time requirements or demands of the job.

During the past 15 months, I have attended regular Commission meetings and met with interested members of the Bar in Salt Lake, Vernal, Logan, and Sun Valley. I have attended luncheons and/or dinners with the judiciary, committee and section heads, and past presidents of the Bar in addition to swearing in ceremonies and CLE sessions. I meet periodically with the Finance Committee and the outside auditors. I receive considerable material to review and telephone calls from interested parties (lawyers and non-lawyers) supporting various issues or people.

In summary, I see many committed, involved people interested in the Bar, its direction, its management, its financial well being, and services to its members. Many problems, including the financial difficulties of the past, have been addressed, dealt with, and successfully resolved. However, there are still concerns of Bar members to deal with, new issues and challenges to address, and more meetings to hold. Based upon what I see and hear from where I sit and the commitment to excellence of those who are involved, I am convinced things will continue to run well. As to your involvement with the Bar, where do you sit?

Custody and Visitation Rights in Utah

By Harry Caston

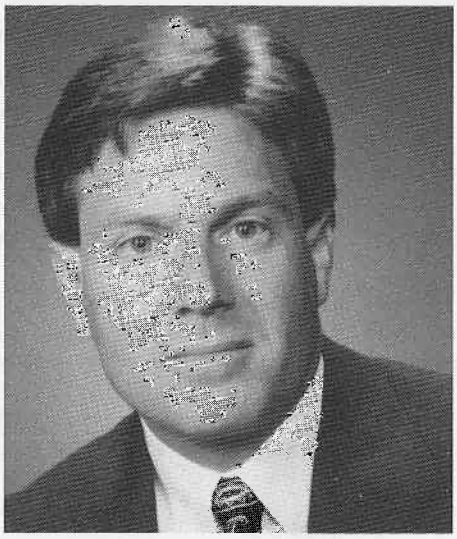
There are two types of custody arrangements: sole and joint. A sole custodian exclusively exercises parental rights, privileges, duties and powers and is responsible for the child. This responsibility includes the day-to-day care of, and the right to make all decision that affect, the child.

Joint custody, on the other hand, embraces various divisions of decision-making authority and differs from sole custody when the parties actually share the "rights, privileges, duties and powers of a parent."[1] Sharing may require each parent to be solely responsible for certain decisions or that both will be jointly responsible for all or at least some of the decisions affecting the children. In the latter situation, impasses can be resolved by allowing one of the parents ultimate decision-making power, or by resorting to mediation or alternative dispute resolution.

The joint legal custody provisions of the Utah Code also anticipate that one parent may be solely responsible for the children.[2] Although the custody arrangement would then be very similar, if not identical, to sole custody, there is great value in designating such an arrangement "joint legal custody." The value may be the avoidance of litigation and the creation of a mutually acceptable settlement. Another potential value is the reduction of bitterness between the parties and the increase of cooperation to advance the welfare of their children.

A popular misconception is that joint custody requires the child to spend equal time with each parent. Custody refers to decision-making rights and responsibilities, not time spent. Although an order of joint legal custody may provide for equal periods of physical custody, it is also possible that the child will reside with one parent and that the other parent will have visitation rights similar to a non-custodial parent.[3]

There are two methods to obtain an order of joint legal custody. The parties may stipulate to joint legal custody. Absent an agreement, the court may nevertheless determine that "both parents appear capable of implementing joint legal custody."[4] The court could order joint legal custody in disputed matters where one or neither of the parties seeks joint legal custody.



HARRY CASTON is a partner in the Salt Lake City law firm of McKay, Burton & Thurman where he practices in the areas of family law, and civil and criminal litigation. He received his B.S. degree from Franklin & Marshall College in Lancaster, Pennsylvania and his J.D. degree from the University of Bridgeport in Connecticut. Mr. Caston is a member of the Salt Lake County Bar Association, the Utah State Bar, and the Family Law Section Executive Committee. An avid photographer, he has eleven Utah Bar Journal *covers to his credit.*

Under either of these scenarios the court must first determine that joint legal custody is in the child's best interest.[5] Section 30-3-10.2 lists eight factors for the court to consider in making this determination. These factors include "whether the physical, psychological and emotional needs and development of the child would benefit from joint custody,"[6] whether the parents are able "to give first priority to the welfare of the child,"[7] and whether the parents possess sufficient maturity, willingness and ability to protect the child from conflicts that may arise between them.[8] As a practical matter, the court may not consider these factors where the parties have stipulated to joint legal custody. Moreover, in contested matters either or both of the parties could prevent an order of joint legal custody by convincing the court of their inability to cooperate.

SOLE CUSTODY

Divorcing parents may not be interested in, or appropriate candidates for, joint legal custody. To evaluate a client's claim for sole custody or in trying a custody dispute, the practitioner must know what factors the court will consider in awarding custody.

Custody disputes are resolved according to factors set forth by statute and case law. Section 30-3-10(1) of the Utah Code directs the court to make an order of custody "as it considers appropriate." Do not be fooled. The trial court does not have incredibly broad discretion to award custody in any manner and for any reason it deems appropriate.

What is appropriate depends upon, and is absolutely subservient to, the best interests of the child. Section 30-3-10(1) directs the court to consider a parent's "past conduct and demonstrated moral standards." These factors are relevant only to the extent that they have an effect on, or relate to, a child's best interest. If a parent's questionable behavior has no effect on the child's best interest or upon parenting ability, the behavior would have no bearing on, and no relevance to, the custody decision.[9]

In determining a child's best interest the court has the discretion to consider and weigh as the court deems appropriate the child's "desires regarding the future cus-

tody."[10] The court is also to consider "which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the non-custodial parent, as the court finds appropriate."[11]

The practitioner unfamiliar with divorce and its effects may look upon section 30-3-10(3) as an oddity. This section provides that "if the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent."

The uninitiated practitioner also might wonder why a person would voluntarily subject themselves to the emotional and financial costs of a custody dispute if that person did not really want custody. The somber reality is that divorce can bring out the worst in people. A parent not otherwise desirous may nonetheless be motivated to seek custody for any number of reasons, including vengeance, a misplaced pleasure in making the other party miserable, the financial benefit of child support, or the fear of being perceived as an uncaring parent. A strategically minded (but ill-advised) litigant might dispute custody just to obtain a bargaining chip.

Imagine the court's dilemma if the parent who fared better on the statutory and case law factors did not truly desire custody. Section 30-3-10(3) relieves the court of this dilemma. The court may determine that a party's motivation other than a true desire for custody outweighs that party's superior performance on the statutory and case law factors.

Before reviewing the oft-mentioned case law factors, some historical perspective is required. Prior to 1986, a combination of statutory enactments and judicial precedent created and maintained a strong preference in favor of awarding custody to mothers. Fathers could obtain custody of children under ten-years of age only by demonstrating that their wives were immoral, incompetent or otherwise improper. This test was replaced by a preference in favor of mothers when all other factors were equal. A 1969 legislative enactment referenced a natural presumption that the mother was best suited to care for young children. In 1977, the Utah legislature eliminated any and all statutory presumptions in favor of mothers. Without statutory support, the courts kept gender bias alive. Until 1986, the courts "continued to recognize the judicial preference for the mother in child custody matters where all other things are equal."[12]

The judicial preference in favor of mothers was eliminated in *Pusey v. Pusey*, 728 P.2d 117 (Utah 1986), when the court declared: "We believe the time has come to discontinue our support even in dictum, for the notion of gender-based preferences in child custody cases." This decision eliminated what had been the foremost factor in custody determinations. New factors for determining custody were needed. The *Pusey* court identified a non-exclusive list of what it referred to as "function-related factors." These factors are: (a) the identity of the primary caretaker during the marriage; (b) the identity of the parent with greater flexibility to provide personal care for the child; (c) the identity of the parent with whom the child has spent most of his or her time pending the custody determination if that period has been lengthy; and (d) the stability of the environment provided by each parent.

"Until 1986, the courts 'continued to recognize the judicial preference for the mother in child custody matters where all other things are equal.'"

In *Hutchinson v. Hutchinson*, 649 P.2d 38 (Utah 1982), the court identified two categories of function-related factors. The first category of factors relates to "the child's feelings and special needs." These factors are: (a) the preference of the child; (b) keeping siblings together; (c) the relative strength of the child's bond with one or both of the prospective custodians; and (d) when appropriate, the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted.

The second category of factors identified by the *Hutchinson* court "relate primarily to the prospective custodian's character or status or their capacity or willingness to function as parents." These factors are: (a) moral character and emotional stability; (b) duration and depth of desire for custody; (c) ability to provide personal rather than surrogate care; (d) significant impairment of ability to function as a parent through drug use, excessive drinking, or other cause; (e) reasons for having relinquished custody in the past; (f) religious compatibility with the child; (g) kinship, including in extraordinary circumstances, stepparent's status; and (h) financial condition.

Not all of the above factors will apply in every case. Broad discretion allows the court to determine which factors will apply and the weight each factor will receive. Given the fact-sensitive nature of divorce, the court also retains the discretion to consider any other function-related factors.

FINDINGS OF FACT

A custody determination will be overturned only when the court has abused its broad discretion or committed manifest injustice. Despite this broad discretion, a large number of cases have been remanded due to insufficient findings. In reviewing these cases, the offending omission is the absence of what I shall refer to as "foundational findings." The foundational findings support the findings on the statutory and case law factors. For example, one of the statutory factors that a court may consider is which (if either) of the parents would promote continuing contact with the other parent. A finding that the court considered that particular factor and determined that one parent would likely promote continuing contact would not be sufficient — there must be a foundational finding. Perhaps the court was persuaded by certain testimony that during the pendency of the divorce, the temporary custodian did not promote contact with the other party.

To be sufficient and to avoid the unpleasant possibility of remand, the findings should include: (1) the statutory and case law factors or any other factors the court considered; (b) how each of the parties fared on these factors relative to each other; and (c) the basic foundational findings as to *why* the parties fared as they did on the factors the court considered.

CUSTODY EVALUATIONS

In custody disputes, the court may be aided by an expert witness. These experts

are referred to as custody evaluators. The custody evaluator examines the parties and their children and renders an opinion as to which custody arrangement would serve the children's best interest.

In other types of litigation, each party may obtain its own expert and the outcome may be a function of which party's expert is the most persuasive. Custody disputes are different. Under Rule 4-903 of the Code of Judicial Administration, each party will not have his or her own custody evaluator. Assuming that both parties reside within the court's jurisdiction, one custody evaluator will be appointed. Performance of the custody evaluation itself and the individual who performs the evaluation may be stipulated to by the parties. If the parties are unable to agree to a custody evaluation, the identity of the evaluator, or how the evaluation is to be paid for, these issues may be presented to the court by way of an order to show cause.

Rule 4-903 sets forth the minimum educational and professional requirements of custody evaluators. Social work evaluations must be performed by licensed social workers. Psychological evaluations must be performed by licensed psychologists. Psychiatric evaluations must be performed by a licensed physician who specializes in psychiatry. The educational background of the professional chosen to conduct the evaluation will depend on the issues, claims and defenses presented in a particular case. If mental fitness is an issue, the evaluation should be performed by a psychiatrist. If psychological profiles of the parties or the children are desired, a psychologist would be an appropriate custody evaluator. If mental fitness is not an issue and psychological profiles are not required, a social worker may be the appropriate choice.

Custody evaluators may vary not only in their professional and educational background, but in the manner in which they conduct the evaluation. Some evaluators, regardless of their professional qualifications, may visit the parties and their children in their homes. Other custody evaluators may only visit with the parties and their children in the evaluator's office. Some custody evaluators will contact and speak with collateral references. Some will not.

Regardless of whether the custody evaluator is a social worker, psychologist or psychiatrist, and regardless of the custody evaluator's particular style, Rule 4-903(3) sets forth the factors that the custody evaluator must consider. These factors are practically identical to the function-related factors set forth above.

The custody evaluator is also authorized to consider "any facts that he, the parties or the court deems important." The court is not bound to follow the recommendation of the custody evaluator, nor is the recommendation entitled to any presumptive validity. The results of the evaluation do not affect or shift any burden of proof. If the evaluation is rejected, the court should state the reason for rejecting the recommendation.[13]

VISITATION

The Utah State Legislature greatly advanced the interest of children of divorced parents by enacting the visitation guidelines of section 30-3-32, Utah Code Ann., et seq. The visitation guidelines recognize that the best interest of the child requires that parents are entitled to "frequent, meaningful and continuing access."[14] The visitation guidelines consist of three components — the minimum visitation schedule of section 30-3-35, the advisory guidelines of section 30-3-33, and the provisions that address visitation where there is no bond between the non-custodial parent and the child.

"The visitation guidelines recognize that the best interest of the child requires that parents are entitled to 'frequent, meaningful and continuing access.'"

The highly-detailed section 30-3-35 establishes the minimum visitation to which the non-custodial parent is entitled should the parties be unable to agree on a visitation schedule. The minimum visitation schedule applies to school-age children, ages 5-18, beginning with kindergarten.[15]

The advisory guidelines serve several functions. One of these functions is to augment the minimum visitation schedule. Parents are instructed to give "special consideration" to allow a child to attend family functions such as funerals, weddings, reunions, religious holidays, and other important ceremonies that otherwise conflict with visitation.[16] Visitation may be increased or altered as required by a parent's work schedule.[17] Parents are instructed to permit and encourage telephone contact, and uncensored mail privileges.[18] Based on the presumption that parental care is superior to surrogate care, custodial parents are encouraged to allow the non-custodial parent, if otherwise willing and able, to provide childcare.[19] For non-custodial parents of children who have not yet reached school age, the minimum schedule is to be altered so as to provide "shorter visits of greater frequency."[20]

The advisory guidelines require the custodial parent to provide information to the non-custodial parent. The non-custodial parent is to receive "notice of all significant school, social, sports, and community functions in which the child is participating or being honored." Notification is to be provided "within twenty-four hours of the custodial parent receiving notice of these events."[21] A non-custodial parent is also to be allowed direct access "to all school reports, including pre-school and daycare reports, and medical records."[22] The non-custodial parent is to be immediately notified of a medical emergency.[23] Each parent is to supply the other parent with a current address and telephone number,[24] and provide notice of any change of address or telephone number within twenty-four hours.[25] The custodial parent is also to provide the name, address, and current telephone number of all surrogate care providers.[26]

Other provisions of the advisory guidelines instruct as to how visitation is to commence and conclude. The non-custodial parent is to pick up and return the child at times specified in the decree of divorce. The custodial parent must have the child ready for visitation. The custodial parent must be home when the child is returned from visitation, or make alternate arrangements.[27] Another provision of the advisory guidelines codifies the prohibition against withholding visitation or child support due to "a parent's failure to comply with a court-ordered visitation schedule."[28]

The introductory language of section

30-3-33 states that the advisory guidelines are "*suggested* to govern all visitation arrangements."[29] This language is misleading. The advisory guidelines and the minimum visitation schedule are not merely suggestions. The visitation guidelines and the minimum visitation schedule are presumed to be in the child's best interest.[30] The presumption may be rebutted by demonstrating the existence of any of the following factors by a preponderance of the evidence: (a) visitation would endanger the child's physical health, or significantly impair the child's emotional development; (b) substantiated allegations of child abuse; (c) absence of parenting skills or inability to provide adequate food or shelter during visitation; (d) the preference of a mature child who has decided that the visitation should not take place; (e) incarceration of the non-custodial parent; (f) or any other criteria found by the court to be relevant to the best interest of the child.

In some circumstances, an emotional bond may not have formed between a non-custodial parent and the child. For example, the parents may never have shared a common residence; or, the parents may have divorced or separated and for whatever reasons, visitation has not taken place. Where an appropriate parent-child bond has not formed between the non-custodial parent and the child, section 30-33-36 instructs the parents as well as the court to "gradually reintroduce an appropriate visitation plan for the non-custodial parent."

Section 30-3-36 remedies another common occurrence — the refusal of either parent to inform the other of travel plans that involve the child. Section 30-3-36 requires the parent traveling with the child to inform the other parent of the dates of travel, destinations, where a child or parent can be reached, and the name and telephone number of a third person who would be aware of the child's location. Section 30-3-36(3) looks unfavorably upon unchaperoned travel for children under the age of five.

Imagine a non-custodial parent's surprise when he or she appears at the custodial parent's home to pick up the child for visitation, only to find that the custodial parent and the child no longer live there. Section 30-3-37(1), as well as section 30-3-33(12), prevent such an occurrence. A parent is to "provide reasonable, advance written notice of the intended relocation to the other parent" when that parent moves either from the state of Utah or 150 miles from an address that is set forth in the decree of divorce. Section 30-3-37 addresses other issues that arise when a party moves from Utah or 150 miles from the residence specified in the decree of divorce. In such instances, the minimum visitation schedule would become unworkable. Section 30-3-37 allows the court, either on its own motion or upon motion of the parties, to "make appropriate orders regarding the visitation and costs for visitation transportation." The factors the court may consider in reviewing visitation, and in determining the division of visitation transportation costs, are set forth in section 30-3-37(3)(a)-(d). These considerations are: (a) the reasons for the move; (b) the cost or difficulties caused by the move; (c) the ability of both parents to incur these costs; (d) "any other factors the court considers necessary and relevant." In contrast, section 30-3-37(4) states that upon motion of either party, the court "may order the parent intending to move to pay for the cost of transportation for (a) at least one visit per year with the other parent; and (b) any number of additional visits as determined by the court."

"A well-repected domestic relations attorney tells prospective clients that their lives are like a sinking ship."

To reconcile the provisions of section 30-3-37(3)(a)-(d), with section 30-3-37(4), I propose Caston's Rule of Visitation Costs Caused By Relocation — regardless of how the parties fare on the factors of section 30-3-37(3)(a)-(d), the party who has moved should be completely responsible for the transportation costs of at least one visit per year. On the brighter side for the non-custodial parent who has moved, section 30-3-37(5) allows uninterrupted visitation for a minimum of thirty days provided the visitation is in the best interest of the child.

CONCLUSION

A well-respected domestic relations attorney tells prospective clients that their lives are like a sinking ship. The attorney emphasizes that regardless of how well he does his job, the client's life will, at least to some degree, always wear the effect of the divorce. His job is to minimize the damage.

Similarly, the statutes and judicial decisions discussed above serve as damage control. The statutes and decisions minimize the effect of divorce on children by divining the custodial and visitation arrangement that will be in the child's best interest.

[1]Utah Code Ann. § 30-3-10.1(1) (1989).
[2]*Id.* § 30-3-10.1(2).
[3]*Id.* § 30-3-10.1(4).
[4]Utah Code Ann. § 30-3-10.2(1)(b) (Supp. 1994).
[5]*Id.* § 30-3-10.2(1).
[6]*Id.* § 30-3-10.2(2)(a).
[7]*Id.* § 30-3-10.2(2)(b).
[8]*Id.* § 30-3-10.2(2)(g).
[9]*Roberts v. Roberts*, 835 P.2d 193 (Utah Ct. App. 1993).
[10]Utah Code Ann. § 30-3-10(1) (Supp. 1994).
[11]*Id.* § 30-3-10(2).
[12]*Nielson v. Nielson*, 652 P.2d 1323 (Utah 1982).
[13]*Sukin v. Sukin*, 842 P.2d 922 (Utah Ct. App. 1992).
[14]Utah Code Ann. § 30-3-32(2)(a) & (b) (Supp. 1994).
[15]*Id.* § 30-3-35(1).
[16]*Id.* § 30-3-33(4).
[17]*Id.* § 30-3-33(7).
[18]*Id.* § 30-3-33(13).
[19]*Id.* § 30-3-33(14).
[20]*Id.* § 30-3-33(3).
[21]*Id.* § 30-3-33(10).
[22]*Id.* § 30-3-33(11).
[23]*Id.*
[24]*Id.* § 30-3-33(15).
[25]*Id.* § 30-3-33(12).
[26]*Id.* § 30-3-33(15).
[27]*Id.* § 30-3-33(6).
[28]*Id.* § 30-3-33(9).
[29]*Id.* § 30-3-33 (emphasis added).
[30]*Id.* § 30-3-34(2).

Vignettes of the Late Chief Judge Willis W. Ritter

By William T. Thurman, Sr.

In early 1961, based on recommendation of Senator Frank E. Moss, President John F. Kennedy nominated me for the position of United States Attorney for the District of Utah. This was a great honor and I appreciated the recognition by both.

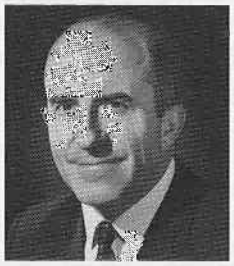
After being confirmed by the United States Senate, I was sworn into office on April 10, 1961 before the late Willis R. Ritter, Chief Judge of the United States District Court for the District of Utah. Prior to that I regarded the office of Chief Judge with due respect and considerable awe. As time wore on I nearly wore out having to deal with Judge Ritter. However, I managed to retain my respect for the position but found it difficult to have the same feeling towards the Chief Judge himself.

In succeeding years, I experienced increasing disillusionment and disappointment with the manner in which he conducted himself and the business of the Court. I often wondered how it was possible under our system of checks and balances for him to say and do the things he did with no accountability. Although his court orders and decisions were subject to appellate review, there were numerous situations in which his insensitive remarks and conduct towards members of the legal profession and federal government agencies never appeared of record and therefore escaped scrutiny by a higher tribunal.[1] To be sure he was at all times subject to impeachment but such procedure was so cumbersome, time consuming and costly that in over 200 years of our nation's existence very few Federal Judges have met that fate.

All of this aside, it is interesting to consider a number of events that took place centering on Judge Ritter during my years as United States Attorney.

I.

Within a few weeks after I took office, he called me to his chambers and congratulated me upon being appointed and indicated that now it would be possible for the Court and the United States Attorney's Office to cooperate with each other. I soon found out what he meant by "cooperate." He went on to indicate that he needed more space and since my office was just down the hall from his chambers on the same floor, he felt it would be appropriate for the United States Attorney's Office to be vacated in order to satisfy his space demands. He took me on a tour of several different rooms adjacent to his chambers containing files, library and numerous paintings which he said had been given to him by the artists. He was very proud of those art works and rightly so for they were outstanding. After we returned to his chambers he again brought up the subject of space and I told him that I would check with the Department of Justice in Washington. He indicated that it would be well for me to pay more attention to his Court than to the Department. When I discussed his request with the Department, it let me know that I was not to vacate any space to anyone even including Judge Ritter. I informed the Judge of the Department's position and of course he was displeased. I thought it was very strange that he would make the request in the first place inasmuch as he already had the tier of several large adjacent rooms containing all those file cases, books and paintings.



WILLIAM TAFT THURMAN graduated from the University of Utah (A.B.) and George Washington University Law School (J.D.) in the nation's capital. After several years service as a government attorney in Washington, he returned to Salt Lake and served as Chief Civil Deputy in the Office of County Attorney, Frank E. Moss. He later became United States Attorney for the District of Utah under appointments by Presidents Kennedy and Johnson. As United States attorney, he served over eight years during the tenure of the late Chief Judge Willis R. Ritter of the United States District Court in Utah, where he represented the United States on a daily basis in civil and criminal matters before the Court as administered by Judge Ritter. Mr. Thurman is a former President of McKay, Burton & Thurman and is a member of the Utah State Bar, American Bar Association and Bar of the United States Supreme Court. Currently he is of counsel to the McKay firm.

II.

During a first appearance before Judge Ritter to argue a motion, I cited decisions of United State District Courts from other jurisdictions. That was the last time I did that. He gave me to understand that he knew as much as any other district court and that the only rulings that counted with him were those of the Federal Circuit Court of Appeal and the United States Supreme Court.

III.

On one occasion, I requested my secretary to accompany me to take notes while

I addressed the Court. After I had proceeded for a short time he interrupted and inquired what she was doing in the courtroom. I told him she was taking notes to assist me in preparing an order for him to sign. He informed me that no one could take notes in his court except the official reporter and attorneys and that I was thereafter to leave the secretary back in the office when I appeared before him. In reflecting upon his advice, I concluded that it was probably correct and that a lawyer should be able to remember what was taking place or make his own notes during the proceeding.

IV.

At the time I assumed office, there was an assistant whom I had previously known. He impressed me as reasonably qualified and although he would soon be leaving the office, I felt that as long as he was there he could adequately perform the duties assigned to him. For some reason unknown to me, Judge Ritter evidently had a dim view of this assistant and ordered me never to let him appear in the Judge's court again. This was not the first time he issued such an order. Several years later, another assistant was subjected to the same proscription backed up by an order in the Judge's own handwriting. At once, these two attorneys became of no value to the United States Attorney's Office in conducting its affairs before Judge Ritter.

V.

The Department of Justice filed an anti-trust suit against El Paso Natural Gas Company. The case was assigned to Judge Ritter. Four attorneys from the Anti-Trust Division in Washington represented the United States. Gregory H. Harrison of Brobeck, Phleger & Harrison, a prominent law firm in San Francisco represented the defendant, El Paso. The government attorneys brought with them three secretaries and six or eight file cases full of records and documents. The trial lasted about three weeks. Many witnesses were called and numerous documents entered into evidence. It was a highly complicated lawsuit. However, after both sides rested and submitted the matter, Judge Ritter promptly ruled from the bench

> Judgment will be for the defendant in this case. Prepare the findings and conclusions and judgment . . . I shan't write an opinion.

Harrison submitted 130 findings of fact and one conclusion of law all of which Judge Ritter adopted verbatim. The Government took a direct appeal to the United States Supreme Court. Justice William O. Douglas wrote the court opinion in which Judge Ritter was reversed and directed to order divestiture without delay. The opinion cited with approval the remarks of Judge J. Skelly Wright of the Court of Appeals of the District of Columbia wherein the latter opined that it is the mandate of Rule 52 (FRCP) that the court shall find the facts specifically and state separately its conclusions of law. In commenting on findings prepared by counsel, Judge Wright added that

> . . . when these findings get to the Courts of Appeal, they won't be worth the paper they are written on as far as assisting the Court of Appeals in determining why the Judge decided the case.

"Not everyone was upset with Judge Ritter. He had his admireres."

To my knowledge, Judge Ritter never expressed his reaction to this admonishment by the Supreme Court.[2]

VI.

The United States filed an action against the Box Elder County Utah Assessor protesting the assessment of property owned by the United States in possession of Thiokol Corporation. I went to Brigham City to argue the matter before Judge Lewis Jones of the First District Court of that County. During a recess, Judge Jones called me into his chambers and asked, "what are you going to do about Judge Ritter?" When I asked him what he meant, he said that at different times a State Highway Trooper had reported to Judge Jones that he had stopped an automobile traveling through the County at excessive speeds and after the car was flagged down, the driver asked the officer, in effect, "do you know who I am?" When the officer said he did not, the driver said in substance "I am Judge Willis W. Ritter of the United States Federal Court and I am on my way to Idaho." Whereupon the officer gave Judge Ritter the benefit of the doubt and let him go. Judge Jones was concerned because this experience had been repeated several times and he felt something should be done to stop it. I told Judge Jones that I did not know what to suggest and that in any event I had my own concerns in relation to Judge Ritter. Judge Jones didn't have a solution either.

VII.

Several national parks located in Southern Utah were confronted with out-of-state visitors violating traffic regulations. The park officials asked me to prosecute them. I asked Judge Ritter about this. His answer was I should never bring something like that into his court. He stated, in effect, "no one is going to make a traffic court out of my forum." He seemed indignant to think that I would even call such matter to his attention. Inasmuch as the Commissioner (predecessor of Magistrate) did not have authority in those days to hear and rule on such offenses, I had to tell the park officials that there wasn't anything I could do to help them. They muttered something like "a fine way to run a government."

VIII.

Not everyone was upset with Judge Ritter. He had his admirers. One time when I was in Denver on an appeal and afterwards was leaving the courthouse, a man came up and identified himself as George Templar. I recognized him as one of the members of the panel on the appeal. He stated that he was a Federal District Court Judge in Kansas, was well acquainted with Judge Ritter and had nothing but the highest of praise for him. I asked him what was the basis for his opinion. Judge Templar replied that at various times he had found it necessary to recuse himself from certain matters in his court and that Judge Ritter had accommodated him by coming all the way from Utah to Kansas to preside in these matters. Judge Templar also said that he would be pleased if Judge Ritter would come to Kansas again.

IX.

There were times when several weeks

passed without a law and motion day before Judge Ritter. There was no court rule requiring it. When it was to take place, my secretary would receive a call from the Judge's secretary, announcing that the law and motion calendar would be called the next day commencing at 10:00 a.m. We would notify the United States Marshall and ask if he would bring all of the federal prisoners whose cases were pending to court at the appointed hour. The United States Attorney's Office became a scene of hectic activity, as we strove to assemble all the files for each case, both criminal and civil and notify witnesses and their counsel. In some instances, the United States would have 30 to 40 cases to present. It took considerable doing to coordinate everything so that all matters could be made ready on such short notice and presented to the court in an orderly manner. But once Judge Ritter took the bench, he acted with incredible speed and efficiency in disposing of all items by noon or shortly thereafter. It was on these occasions that the courtroom took on the appearance of a mass meeting. Attorneys, clients, prisoners, guards, court personnel and the public filled nearly every available seat and standing area. It may not have been an ideal judicial setting but it was eventful and interesting and we got the work done.

"[H]e indicated that there were certain people who would like to see him 'out of here' but that the only way that could happen would be for them 'to carry me out feet first.'"

X.

The first time I heard any rumor to remove Judge Ritter from office came from himself. One day in court he quoted a historical source to the effect that if a person intends to shoot the king he better be sure of his aim. Later, he indicated that there were certain people who would like to see him "out of here" but that the only way that could happen would be for them "to carry me out feet first."

XI.

In *Sowards*,[3] the government condemned certain mineral rights near Vernal, Utah. The jury awarded the owner $21,000 and the United States appealed. The Tenth Circuit reversed and remanded for a new trial. *Sowards* held that Judge Ritter showed a hostile attitude towards the United States throughout the trial and that it was error for him to give the following instruction

> You ladies and gentlemen of the jury and the court are sitting here . . . between the owners of mineral rights . . . on the one hand, and all the power and majesty of the Government of the United States of America, the most powerful government, the most wealthy government in the world.

At the second trial before a different judge, the jury awarded $32,270 and $5,000 severance damage. The United States again appealed and the Tenth Circuit again reversed and remanded for a third trial. This second appellate decision[4] held that it was error for the trial court to refuse to allow the government's expert witness to testify as to his knowledge of

sales of similar coal in the area and that it was reversible error to permit the owner to testify that the coal "was worth at least a dollar a ton in place, because coal of similar quality sold for $10 a ton."

No third trial was ever held because negotiations took place resulting in settlement for $10,000 as just compensation as per judgment signed by Judge Ritter on February 3, 1967.[5]

XII.

Two local Salt Lake attorneys represented the plaintiff in a securities fraud action before Judge Ritter. While trial was pending, two alleged mobsters, friends of the defendant, came to Salt Lake from Arizona. They went to the home of one of the attorneys and knocked on the door. When the attorney opened the door, one of the mobsters asked if he were an attorney representing the plaintiff in the lawsuit and upon being informed that he was, the mobster swung on him with considerable force and then both of them departed. When they went to the other attorney's address they were unable to find him. This incident was called to the attention of Judge Ritter who summoned me to chambers. He indicated that no one was going to interfere with proceedings in his court and get away with it. He then ordered me to prepare an information charging the two individuals with obstruction of justice. The FBI conducted an extensive search for the two mobsters and eventually they were captured, transported to Salt Lake, arraigned before Judge Ritter and brought to trial in his court. It seemed that I could do no wrong at trial in prosecuting the two defendants. The defense could do little that was right. The defendants were found guilty and sentenced. Their attorney, whose office was just across the street from the courthouse, filed notice of appeal but to Judge Ritter's evident satisfaction, the appeal was filed one day late and the sentenced was carried out.

XIII.

Judge Ritter was a stickler for perfection. He expected superior performance by the attorneys coming to his Court. On one of my early appearances, I carried with me only the customary yellow legal pad. He noticed this and asked if I hadn't brought some volumes of the code or other law books with me. I indicated that all I had was the yellow pad. Thereupon he chastised me for the omission and indicated that he could always tell a good lawyer by whether he brings any book to court. Thereafter I never failed to take a volume or two of the United States Code or a Federal Reporter with me.

He had a keen sense of humor. A local con-man was testifying in another criminal case. He had on a pair of dark sunglasses. Even so he presented a menacing appearance. Judge Ritter asked him if the sunglasses were necessary indoors and, if not, he would like to see his face because he always liked to see a person's eyes while testifying. The witness obliged and removed his glasses. He looked worse without the glasses. When Judge Ritter saw this, he said, in effect, "put them back on."

XIV.

The Judge had the potential of being a warm and compassionate jurist. Several times in criminal matters, unkempt and threadbare defendants appeared before him. The Judge would question the defendant closely about his family, home and background. Sometimes the defendant would tell such a distressing story and make such a fervent appeal for mercy that the Judge would relent and let him go with a warning not to get into trouble again followed by a kindly assurance that he was confident the defendant would mend his ways for the better.

Judge Ritter was recognized as having a brilliant legal mind. He could quickly cut through the most complex matters and get to the main issues that eluded even the best of attorneys. It was a belief among many members of the legal profession that he would have gone further up the judicial ladder if he had developed a more judicial temperament.

A number of eminent practitioners at Bar told me that they had to decline to represent clients where it appeared that their legal problems would probably come before Judge Ritter for disposition. A prominent senior Bar member with a distinguished record as a successful practicing attorney came to my office. He stated that he had just been appointed by Judge Ritter to represent a defendant in a criminal matter. He also indicated that he hadn't practiced in the criminal field for many years and was apprehensive that if he responded to the appointment, the Judge would berate him for poor performance in carrying out the representation. I understood his dilemma and suggested that he consider associating a younger attorney more familiar with criminal law or going to the Judge and explaining his predicament. I only mention this to illustrate the trepidation that some attorneys felt in appearing before Judge Ritter.

XV.

I respected Judge Ritter for his considerable legal talent. Yet, I always entertained the hope that he would match his vast legal knowledge with the exercise of more moderation in his conduct on and off the bench. While it was literally a trying experience to appear before him, it was professionally rewarding to practice in his Court.

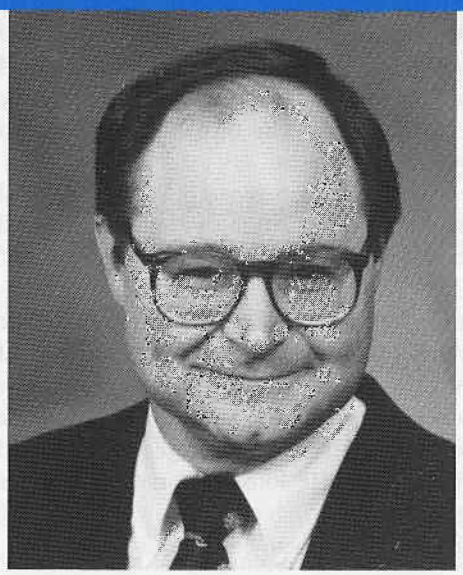
[1]Article III of the United States Constitution encapsulated him with a protective shield of life tenure during good behavior with no diminishment in compensation during continuance in office.

[2]376 U.S. 651, 12 L. Ed. 2d 12, 84 S. Ct. 1044 (1964).

[3]*United States v. Sowards*, 339 F.2d 401 D. Utah (1964).

[4]*United States v. Sowards*, 370 F.2d 87 D. Utah (1966).

[5]According to final entry by the District Court Clerk in case entitled "*United States v. Leland Sowards, et al.*, Case No. C96-62" filed in the Clerk's Office of the United States District Court, Central Division, District of Utah.



Effective Lawyer Preparation and Participation in Mediation: From a Mediator's Perspective

By James R. Holbrook

JAMES R. HOLBROOK is a senior litigator in the firm of Callister Nebeker & McCullough. He has mediated nearly 150 disputes and is an adjunct professor of law at the University of Utah where he teaches the ADR course. He is a member of the Utah Judicial Council's ADR Committee and the ADR Development Committee of the U.S. District Court for Utah.

EFFECTIVE PREPARATION FOR MEDIATION

1. *Explain the mediation process* to your client:

(a) Mediation is a private, voluntary process in which a neutral third person helps the parties in negotiating a settlement of their dispute.

(b) The mediator has no authority to decide any issue or to impose a settlement agreement upon the parties, nor will he or she make any findings of fact or (at least not in classical mediation) independently assess the value of the case or any of its issues. If your client wants a case evaluation, the more appropriate ADR process is early neutral evaluation.

(c) The mediator represents none of the parties. Through the use of probing questions, the mediator will encourage the parties to examine their dispute from all relevant perspectives. The mediator will not give legal advice or offer a legal opinion on any issue in the case.

(d) Explain the similarities and differences between and among negotiation, mediation, arbitration and litigation. Most clients do not understand exactly what mediation is or how it works.

2. Explain that "winning" in mediation means resolving the mutual problem with the opponent. The objective of mediation is to *reach a "win-win" agreement* with the opponent. "Win-win" means fulfilling both your client's needs and those of your opponent.

3. Your client and the opponent must both *agree to participate in mediation*. Occasionally, they may have a contract or other pre-dispute written agreement containing a mediation clause; usually, however, they must agree to mediate after the dispute has already occurred. Typically, both sides agree on a service provider which arranges the mediation, helps the parties choose an experienced mediator, and sets mediation ground rules.

4. Spend sufficient time with your client to *get to know your client's needs*, wants, priorities, expectations, power, style, settlement authority, negotiating range, and deadline(s).

5. Spend sufficient time with your client to get to *anticipate your opponent's needs*, wants, priorities, expectations, power, style, settlement authority, negotiating range and deadline(s).

6. *Good preparation is critical.* Identify the cause of the dispute. Analyze its emotional, legal and economic issues. Determine what will happen if the dispute does not settle. Conduct all necessary relevant factual discovery and legal research. Brainstorm with your client possible "win-win" solutions of the mutual problem.

7. Before the mediation, *acquire and exchange* with the opponent adequate,

accurate, *objective information* about the dispute and its issues.

8. Break up complex issues into relevant component parts, e.g., the issue of "damages" may contain many different components only a few of which are really in dispute.

9. Do a thorough *best case/worst case/average result ("bell curve") analysis* with your client:

(a) If this case (or a specific issue in the case, such as comparative negligence) were tried ten times to ten different juries, what is the best result you would expect to get and how many times out of ten would that occur?

(b) If this case were tried ten different times, what is the worst result you would expect to get and how many times out of ten would that occur?

(c) If this case were tried ten different times, what would you expect to be the average of the ten results?

10. Do a thorough *cost/benefit/risk ("CBR") analysis* with your client. CBR analysis enables the lawyer and client to assign certain probabilities to the likelihood of the occurrence of various events. CBR analysis typically involves the use of MBA-school-style decision trees and probability assignments, plus other calculations of risk and cost exposure.

11. Determine who will be present at the mediation. Typically a client decision maker and counsel attend and participate in the mediation. Determine the *settlement authority* of those who will represent the client.

12. Determine *who should make the first movement* at the mediation. Typically, there has been some pre-mediation settlement negotiations in which one party made the last offer and deserves a counteroffer at the time of the mediation.

13. Agree with your opponent about *where and when to have the mediation* and how any administrative costs and the mediator's fees are to be shared by the parties.

14. The opening joint session generally is the point at which the mediator first learns about the factual and legal circumstances surrounding the parties' dispute. Agree about whether the parties will submit any *information to the mediator prior to the mediation*, and whether such information should be exchanged between the parties or submitted confidentially by the parties directly to the mediator.

15. *Prepare an opening statement* similar to that made at the beginning of trial. The opening statement should cover liability, damages, and any other critical issue.

EFFECTIVE PARTICIPATION IN MEDIATION

What to Expect:

1. The mediator frequently begins a mediation with an explanation of the joint session and private caucuses, what is the role of the mediator, the confidentiality provisions, the mediator's fee, and the agreement to mediate.

2. The parties and counsel typically will sign the agreement to mediate, if this has not occurred prior to the mediation.

3. In the *opening joint session*, each party to the dispute is given the opportunity to make an uninterrupted presentation.

(a) Rather than introducing evidence or making formal proffers of proof during these presentations, the parties simply talk about the dispute and the pertinent facts and relevant law. Thus the presentations are somewhat similar to a lawyer's opening statement at trial.

"The objective of mediation is the reach a 'win-win' agreement with the opponent."

(b) Although the mediator will normally allow questions after each presentation, a party is free to decline to respond, and the mediator will prevent any question and answer period from becoming overly aggressive or competitive.

4. The opening joint session normally is followed by a series of *private caucuses*. Typically, the mediator will hold two or more of such caucuses with each party, and will move back and forth between the caucus rooms as long as the parties continue to make movement toward settlement.

"DO'S" IN THE INITIAL JOINT SESSION

1. Display a problem-solving attitude and a commitment to try to resolve the mutual dispute.

2. Encourage informality and productive "venting".

3. Employ empathetic listening and feed-

back skills. Empathetic listening helps an upset opponent to move beyond the emotional aspects of the dispute, thereby enabling the opponent to focus on the economic aspects of the dispute and its possible resolution.
4. Reinforce positive feelings; redirect negative feelings.
5. Focus on mutual needs fulfillment.
6. Be clear, accurate, and complete in your opening statement.
7. Ask necessary, helpful questions without being aggressive.

"DO'S" IN THE PRIVATE CAUCUSES

1. Tell the mediator relevant confidential information. Relevant ideas and information must be shared by the parties during the course of the mediation.

(a) At the close of each caucus, the mediator will discuss with the party what information must or must not be disclosed to the other side, as well as what information may in the mediator's discretion be disclosed. Only information authorized for disclosure will be revealed to the other party.

(b) Have the mediator discuss with you "this-for-that" disclosure of relevant confidential information at the appropriate time.
2. Make a credible first offer if it is your turn to make a counteroffer.
3. Agree on easy issues; bracket difficult ones until later.
4. Disclose and appeal to objective standards, e.g., published jury verdict analyses.
5. Educate and motivate opponents with their own self-interest. Self-interest is a very powerful persuader; threats or use of adverse data are usually less powerful and may be counterproductive. Appeal to your opponent's self-interest to motivate helpful movements or compromises.
6. Be professional: deal effectively with a difficult opponent. If you have more negotiating power, the difficult opponent must deal with you eventually.
7. Try to make a counter proposal that builds upon an earlier proposal of the opponent. Try to identify the "inner logic" of a feasible solution.
8. Be flexible: flexibility enhances creativity which increases the probability of a successful resolution.
9. The mediator (in separate, private, confidential caucuses) will try to get each party to do a risk analysis of the dispute by asking each party to articulate the various strengths and weaknesses of the parties' respective positions, as well as the costs and risks of various alternatives to a negotiated agreement.

"DON'TS" FOR LAWYERS AND CLIENTS IN MEDIATION

Ø During the joint session, **don't** talk about prior settlement negotiations.
Ø **Don't** make settlement demands during the opening joint session.
Ø **Don't** interrupt your opponent's opening statement.
Ø **Don't** "throw gasoline on the fire."
Ø **Don't** expect the opponent to be "nice."
Ø **Don't** demand to mediate in your office.
Ø **Don't** make "take-it-or-leave-it" demands.
Ø **Don't** force the other side to move first if it is your turn to make a counteroffer.
Ø **Don't** make your first demand irrationally high.
Ø **Don't** set arbitrary deadlines.
Ø **Don't** be tactically difficult; don't walk out of a productive mediation in order to posture more power than you have.
Ø **Don't** make new demands and increase the size of old demands as the mediation proceeds.
Ø **Don't** participate in mediation if you have no authority to settle or no authority to make needed movement toward settlement, unless you disclose that to your opponent before the mediation starts.
Ø **Don't** renege on earlier agreements.
Ø **Don't** draft the first written settlement agreement so as to substantively change the handshake deal reached in mediation.

AFTER THE MEDIATION

1. Offer to draft the first written agreement. Typically, the mediator will not draft the settlement documents.
2. Negotiate any needed changes to the draft. Move quickly to get a final, executed, written settlement agreement.
3. If the dispute is not resolved in mediation, determine whether the mediator should stay involved to help the parties in future negotiations, either by telephone or in additional mediation sessions.

LETTERS

Editor:

The October issue of the *Utah Bar Journal* included an informative article on recent changes in the management of the Utah Bar Foundation. Its new president, James B. Lee, is referred to throughout as "Mr. Lee." Its immediate past president, Ellen M. Maycock, is referred to as "Ellen." I congratulate you on this refreshing departure from mere political correctness, obviously intended to help us all feel more comfortable in dealing with women on a more casual, more informal, breezier and less serious basis. Anything making the practice of law less serious is greatly to be applauded. So when Mr. Lee's term expires, and in the interest of gender equity, perhaps you could refer to him as — what? — James, Jim, Jamie, Jack, or whatever.

Sincerely,
Thomas N. Thompson

STATE BAR NEWS

Commission Highlights

During its regularly scheduled meeting of September 23, 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 August 26, 1994 meeting.
2. Paul Moxley welcomed Charles R. Brown to the Commission. Chief Justice Michael Zimmerman swore in Brown as a member of the Board of Bar Commissioners.
3. Paul Moxley reported on his recent trip to Moab and expressed interest in pursuing public relations in outlying areas.
4. Moxley also solicited speakers and ideas on creating a speakers bureau.
5. Dennis Haslam briefly reviewed the minutes of the recent Long-Range Planning Committee meeting.
6. Chief Justice Michael Zimmerman appeared and updated the Bar Commission on the status of the court commissioner issue.
7. Moxley reported that the Bar Commission's Executive Committee has been discussing quality control issues and the possibility of doing a special meeting some time in the new year.
8. Moxley indicated that he has been talking with the Administrative Office of the Courts and suggested that the Bar form a committee to create an institutional policy on dealing with matters involving the judiciary in the press.
9. The Board voted to approve the resolution honoring deceased Bar member Brett F. Wood's family.
10. Scott Lee, Chair of the International Law Section, appeared to review a proposed rule to license foreign legal consultants. The Bar Commissioners asked questions, expressed concerns about the list of specifications of practice for international consultants and postponed further discussion until October's meeting.
11. The Board voted to approve the July 1994 Bar Examination candidates to be sworn into the Utah State Bar at the Admissions Ceremony on October 18, 1994.
12. Baldwin indicated that the licensing cycle was completed, distributed a list of Bar members suspended for non-payment of fees, and explained the multiple attempts made by Bar staff to contact members regarding their licensing fees.
13. Baldwin referred to the Bar Programs Summary report in the agenda and reviewed some of the items.
14. The Board voted to approve the CMA settlement agreement.
15. The Board voted to authorize a lawsuit against Lawrence Jacobsen and Paul Robbins.
16. Budget & Finance Committee Chair, Ray Westergard, reviewed the monthly financial reports. Westergard reported on the Budget & Finance Committee's review of the 1993-94 Bar audit prepared by Deloitte & Touche. The Board voted to accept the Deloitte & Touche audit and publish it in the next available *Bar Journal*.
17. ABA Delegate, Reed L. Martineau reported on the outcome of ABA resolutions at the recent ABA Annual Meeting in New Orleans.
18. David Crapo, Young Lawyers Division President, reported on recent division activities. He invited all Bar Commissioners to the new lawyers orientation on October 5 and reported that the "Street Law" series has begun.
19. Denise Dragoo distributed and reviewed a proposed response to LAAU's recommendation for creation of a legal assistants division. Board members suggested members of the Bar have a chance to comment and Paul Moxley indicated that his Bar Journal President's Message next month will address the issue and invite Bar member comment.
20. J. Michael Hansen reviewed recent Judicial Council actions and discussions including the funding problems with the Court Complex. He answered questions and recommended the Bar Commission take a position on the justice court judges issue. The Board voted that the Bar take the position that it doesn't want justice court judges to be given exclusive jurisdiction of B and C misdemeanors.

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.

The Appellate Operations Task Force Reports to The Supreme Court and the Judicial Council

By Alan Sullivan

In May 1994, the Utah Supreme Court created the Utah Appellate Operations Task Force and charged it with the responsibility to analyze and recommend solutions to two problems facing the appellate courts of Utah: (1) the large and growing backlog of cases awaiting consideration in the Utah Court of Appeals; and (2) the allocation of jurisdiction between the Supreme Court and the Court of Appeals after the consolidation of district and circuit courts. Made up of judges, lawyers, court staff and interested citizens, the task force met throughout the summer and completed its study in mid-August. It recommended implementation of a three-part program:

• The judges of the Court of Appeals should be given procedural tools to allow a significant increase, over time, in the number of appeals that the court is able to decide. The task force recommended specific changes to Rules 24, 29, 30, and 31, *Utah Rules of Appellate Procedure*, to (a) establish a presumption that civil cases will be decided without oral argument and by brief memorandum decision, and (b) require counsel to request and justify the need for oral argument and a full opinion.

• One judge and two law clerks should be added to the Court of Appeals in 1996. Contingent upon a continued need, another judge with law clerks should be added in 1998. A central staff attorney and two clerical staff should be added by July 1, 1995.

• The Court should initiate a three-year pilot program of mediated settlement conferences similar to successful programs in United States Sixth and Tenth Circuit Courts of Appeals.

The task force found that the Utah Court of Appeals has worked diligently to increase its case disposition rate by over 6% per year since 1990. During that same period, however, the rate of new appeals and transfers from the Supreme Court has grown at an average of over 10% per year. The inevitable result of such a disparity is a backlog of cases awaiting consideration by the Court of Appeals. Because of the priority given criminal cases, the backlog currently consists of civil cases. As the problem grows, however, it will spread to criminal cases as well.

The task force found that during the first half of 1994, the parties to civil appeals pending before the Court of Appeals waited, on average, nine months from the completion of briefing until oral argument could be scheduled, and an additional two months to oral argument itself. The average age of a civil appeal at disposition after oral argument is now over 18 months. Projections by the task force show that if the current trend continues to the year 2000, both of these averages will almost double. The task force concluded that the current backlog of cases is too large and that projected future case ages will be intolerable. To deal with the current backlog and with projected growth in the Court of Appeals' case load, the task force concluded that the court system should act now to increase Court of Appeals' capacity to dispose of cases fairly, responsibly and efficiently.

Appeals from the circuit courts to the Court of Appeals constitute about 170 cases annually. Many of these are criminal cases, which upon court consolidation will be appealed to the Supreme Court as judgment of the district court. The task force recommended against changing the present jurisdictional scheme to redirect these cases to the Court of Appeals. Rather, the task force recommended that the Supreme Court automatically transfer these cases to the Court of Appeals. The task force recommended a modest change to Rule 9, Utah Rules of Appellate Procedure, regarding docketing statements to assist the court in identifying these cases.

MEMORANDUM

NOTICE OF PETITION FOR REINSTATEMENT

Elizabeth Joseph has filed a Petition for Reinstatement to Practice Law with the Sixth Judicial District Court, Kane County, Civil No. 940600070. Ms. Joseph was suspended from the practice of law for one (1) year by the Utah Supreme Court effective December 31, 1991. In accordance with Rule 25 of the Rules of Lawyer Discipline and Disability individuals desiring to support of oppose this Petition may do so within 30 days of the date of the publication of this edition of the Bar Journal by filing a Notice of Support or Opposition with the Sixth Judicial District Court. It is also requested that a copy be sent to the Office of Attorney Discipline, 645 South 200 East, Salt Lake City, UT 84111.

Court of Appeals Responds to Appellate Operations Task Force Report Recommendations

By Marilyn M. Branch, Clerk of the Court

As described in the preceding article by Task Force Chairman Alan Sullivan, the Appellate Operations Task Force has recommended that the Court of Appeals increase its dispositions of cases at issue by use of more judge-authored, brief memorandum decisions, issued after consideration by a three-judge panel but typically without oral argument. While the judges of the Court of Appeals urge approval of the implementing changes to the Utah Rules of Appellate Procedure suggested by the Task Force, they believe the findings of the Task Force are so compelling as to necessitate immediate action to reduce the case backlog. Accordingly, the Court of Appeals will implement certain changes in its day to day operations in an effort to increase dispositions in a fair and responsible manner, consistent with the latitude presently provided it under the Utah Rules of Appellate Procedure.

As defined in the report of the Appellate Operations Task Force, a "fully reasoned opinion" is one in which the grounds for the decision are fully explained, the facts of the case are presented in detail, and the applicable law is authoritatively reviewed. Consistent with the recommendations of the Task Force, commencing January 1, 1995, the Court of Appeals will dispose of appeals by published, fully reasoned opinion after oral argument only in those cases involving the development of the law, significant constitutional issues, complex issues of law or issues of important or broad public impact. Cases which do not meet the foregoing criteria but which require a judge-authored rather than per curiam disposition, will be disposed of by an unpublished memorandum decision usually without oral argument. In this regard, as of January 1, 1995, the Court of Appeals will dispense with a formal Rule 31 calendar and will ordinarily treat cases which in the past would have been placed on that calendar by memorandum decision without oral argument.

As with a case placed on the court's oral argument calendar, memorandum decision cases will be decided by a panel of three judges. The memorandum decisions will be authored by a named judge and will include the grounds for the result, albeit in summary terms. On a rotating basis, judges will be meaningfully involved in the important screening process by which cases are earmarked for either oral argument or memorandum disposition.

The court is confident that with the time saved by writing fewer full opinions and hearing argument in fewer cases, its overall number of dispositions will increase markedly. The judges of the Court of Appeals would like to take this opportunity to commend the Task Force members for their hard work and dedication, and thank them for their constructive recommendations.

MEMORANDUM

NOTICE OF PETITION FOR REINSTATEMENT

Clayne I. Corey has filed a Petition for Reinstatement to Practice Law with the Third Judicial District Court, Civil No. 940906771. Mr. Corey was suspended from the practice of law on June 28, 1993, by the Utah Supreme Court, for violating Rule 1.3, Diligence, 1.4(a) Communication, Rule 1.5(a), Fees, and Rule 1.13(b), Safekeeping of Property. In accordance with Rule 25 of the Rules of Lawyer Discipline and Disability individuals desiring to support or oppose this Petition may do so within 30 days of the date of the publication of this edition of the Bar Journal by filing a Notice of Support or Opposition with the Second Judicial District Court. It is also requested that a copy be sent to the Office of Attorney Discipline, 645 South 200 East, Salt Lake City, UT 84111.

Notice

The Utah State Bar is accepting applications to fill a staff position to administer a program to facilitate pro bono services voluntarily provided by members of the Bar. The position will oversee a one-year project intended to encourage and recruit lawyers to volunteer to represent those on waiting lists of Utah Legal Services and Legal Aid of Salt Lake City, and to participate in the Third District Court's Pilot Domestic Victims Assistance program.

Applicants should be aware that the Bar is currently soliciting comments from Bar members regarding their support or criticisms of the project and that the project is currently authorized by the Bar Commission as a one-year pilot which may be continued past that year depending upon its success.

Resumes should be sent to John C. Baldwin, Executive Director, 645 South 200 East, Salt Lake City, UT 84111. Applicants should be familiar with the legal profession and the Utah Bar membership, be highly self-motivated with excellent written and oral communication skills, and committed to public service. Applications will be accepted through December 30th.

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.

The State Court-Annexed ADR Program

By Diane Hamilton and Marcella Keck

In the 1994 session, Utah's legislature passed a bill mandating the Judicial Council to implement a program utilizing Alternative Dispute Resolution (ADR) in the state courts. The program will be implemented by Judicial Council and Supreme Court rules beginning January 1, 1995. It is a state-wide program by design, but will only be administered in the Third and Fifth Districts until July, 1997.

All civil cases filed in the state court after January 1 will automatically be referred to ADR; parties will be notified by court clerk and may choose mediation or non-binding arbitration. The Administrative Office of the Courts is compiling a roster of professional mediators and arbitrators in both districts, and potential clients and their attorneys may choose a provider from this roster to perform ADR services.

The legislature directed the Judicial Council to create certification standards for providers in the program. Those standards mirror existing voluntary certification requirements. Providers must have 30 hours of training and 10 hours of experience to be included on the list. The Judicial Council has not limited the number of names on the roster, nor is there a specific educational prerequisite for mediators. Mediators will include individuals of various professional backgrounds and expertise. Arbitrators must be a member of the Utah State Bar in good standing for ten years. Providers set their own fees, and fees are paid by the disputants. There are provisions for impecunious parties.

Mediations are directed to occur within 45 days of referral; arbitrations within 120. Parties may opt-out of the program at any time by agreement or one party may request that the case be maintained on the trial calendar. To terminate participation in the program, parties and counsel must certify that they have viewed a video prepared by the Administrative Office of the Courts informing them about ADR, and then certifying that "no program will lead to a more just, speedy, or inexpensive resolution of the disputes than proceeding to trial."

The first draft of procedural and administrative rules governing this program was completed in mid-October, and was mailed to all members of the Utah Bar on October 31. Some other highlights of the proposed rules include:

- The program applies to all contested civil matters filed after January 1, 1995 except small claims, cohabitant abuse, involuntary mental commitment, juvenile court matters, extraordinary writs, and bail bond forfeitures.
- All matters will be referred to mediation unless parties elect non-binding arbitration or non-participation in the program.
- Parties have the right to select their own ADR provider and will be responsible for the provider's fees.
- ADR proceedings will be confidential and will be treated in a manner similar to confidential settlement conferences.
- ADR providers will be bound by ethical guidelines which are set out in the procedural rules.
- Discovery is stayed until the parties can convene to determine together the parameters of discovery.
- If parties are unable to reach a negotiated settlement, the court is notified, and the case is referred back to litigation. When an arbitrated decision is rendered, the parties may refuse the decision and resume litigation.
- The goal of the program is to encourage the use of ADR to the extent that it serves the interests of the involved parties. It is not intended to supplant traditional litigation, only to supplement it, and provide more choice and flexibility in the resolution of legal disputes.

For further information about the program or about serving as a provider, please contact Diane Hamilton (ADR Director) or Richard Schwermer at the Administrative Office of the Courts (801) 578-3800.

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 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!

Notice to ADR Providers

On December 1, 1994, the Administrative Office of the Courts will begin accepting applications from those interested in serving as ADR providers for the state court-annexed ADR program. The application period runs until December 15, 1994. An application form and a copy of qualification standards can be obtained through the AOC by calling Diane Hamilton at 578-3984 or at the AOC office, 230 South 500 East.

Division of Corporations and Commercial Code Fee Changes

Effective July 1, 1994, the Utah State Legislative Appropriations Committee has allowed a limited fee increase for some services offered through the Division of Corporations and Commercial Code.

The fee increase is a means of funding new imaging enhancements to Datashare, thus benefitting all customers of the Division. Datashare will provide customers with higher quality documents in a shorter amount of time by generating desired documents directly from our computers.

In addition, our research shows that even with the increase, our services are still offered at fees below those charged by other surrounding states for similar services.

Following is a list of the specific fee changes:

1. Articles of Incorporation for:
   - Profit $75
   - Non-Profit $30
   - Foreign $75
2. Requalification/Reinstatement of Corporation $60
3. Certificate of Limited Partnership $75
4. Articles of Organization for Limited Liability Company $75

Following you will find an inclusive list of all current services and fees offered through our Division. We ask you to please pass this information on to anyone you feel could benefit from knowing about these changes.

Thank you for your continued support to the Division of Corporations and Commercial Code.

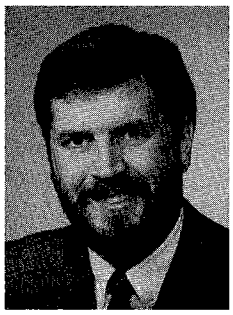
Schedule of Fees – Effective July 1, 1994

Articles of Incorporation/ Organization/Certificates	
Profit	$75
Non-Profit	30
Foreign	75
Limited Partnership	75
Limited Liability	75
Requalification/Reinstatement	
Profit	$60
Non-Profit	30
Foreign	60
Limited Partnership	50
Limited Liability	50
Voluntary Dissolution or Withdrawal	
Profit	Free
Non-Profit	Free
Foreign	Free
Limited Partnership	Free
Limited Liability	Free
Merger/Amendment/ Domestication	
Profit	$35
Non-Profit	20
Foreign	35
Limited Partnership	35
Limited Liability	35
Change of Officer or Registered Agent/Amended Annual Report	
Profit	Free
Non-Profit	Free
Foreign	Free
Limited Partnership	Free
Limited Liability	Free
Annual Report	
Profit	$15
Non-Profit	10
Foreign	15
Limited Partnership	15
Limited Liability	15
Late Annual Report Penalty	
Profit	$10
Non-Profit	10
Foreign	10
Limited Partnership	10
Limited Liability	10
Lists – Varies depending on service provided.	
Photocopies	$0.30 per page
Certified Copies	$10
Certification of Status	$10
Certification of Good Standing	$10
Long Form Good Standing	$20
Certification of Existence/ Non Existence	$10
Corporation Search	$10
Universal Name Search	Free
DBA Registration	$20
DBA Renewal	$20
DBA Amendments/Cancellations	Free
Limited Liability Partnerships (LLP)	$20
Limited Liability Partnerships Renewal	$20
Limited Liability Partnerships Amendment/Cancellations	Free
Trademark Registration	$20
Trademark Assignments	$5
Trademark Cancellations	Free
Summons & Complaint	$10
Out of State Mortists	$5
Business Name Registration/ Reservation	$20
Collection Agency Registration	$30
Notary Public Commission	$15
Notary Public Bond Rider	$5
Duplicate Notary Public Certificate	$5
UCC-1 with SS# or Federal ID#	$5 per debtor name
UCC-1 without SS# or Federal ID #	$10 per debtor name
Attachments per page	$1
UCC-3 (Assignment, Amendment, Continuation & Partial Release)	same as UCC -1
Termination	Free
UCC-II Copy Request	$10 per debtor name + 30¢ per page
UCC-II Information Request	$10 per debtor name
CFS-1 Must have SS# or Federal ID#	$10 per debtor name
CFS-3 Must have SS# or Federal ID# (Assignment, Amendment, Continuation & Partial Release)	$10 per debtor name
Termination	Free
CFS-2 Information Search	$5 per ID#
CFS-2 Copy Request	$10 per ID# +30¢ per page
Microfiche copy for registrants	$25 per year
Magnetic Media	$0.30 per minute CPU time
Telecopier (FAX)	$5 first page + $1 per additional page
Transmittal	
DATASHARE (Remote Computer Access)	
Base Fee	$10 per month
On-line usage fee	$0.10 per minute
Good Standing Certification	$5
UCC Request for Information	$5
UCC Individual Record Certification	$2
Expedited Same Day Service	$25 per document

Utah Judicial Conference 1994 Annual Awards

Joseph Novak
AMICUS CURIAE AWARD

Immediately after being admitted to the Utah State Bar in 1953, Joseph Novak began practicing before the Utah State Courts, United States District Court and the Tenth Circuit Court of Appeals. He was a special assistant to the Attorney General. He served on the Salt Lake County Bar Association Executive Committee for five years, and served as an alternate member of the Utah State Board of Pardons. He has served as the President of the Utah State Bar Association, and President of the Western States Bar Conference. This year he was the recipient of the prestigious Lawyer of the Year Award. Joseph Novak has served as the Chairman of the Utah Judicial Council Committee on Judicial Performance Evaluation for the past six years, and in this capacity has worked diligently to increase the efficiency, quality, and accountability of the judicial process.



Colin R. Winchester
JUDICIAL ADMINISTRATION AWARD

Colin Winchester has been a leader in the field of court administration for many years. He began his court career in 1985 providing counseling and representation to private individuals and businesses. He served as the Enoch City Attorney for two years, and also held the conflict of interest contract for indigent criminal defendants in Iron County. As General Counsel for the Administrative Office of the Courts he has served as an instructor on substantive, procedural, and ethics courses to judges, attorneys, and court employees. He has been involved in the implementation of Federal and State legislation and regulations. Colin also published a binder of Judicial Ethics Opinions, which is updated annually and distributed to judges and law libraries. He has provided legal counseling and representation to the Utah Judicial Council, Boards of Judges, Supreme Court Advisory Committee, many other committees and task forces, Judges, Commissioners, and court employees. Colin is directly responsible for annually drafting and publishing the amendments to Utah Code of Judicial Administration. As General Counsel for the Administrative Office, Colin answers legal questions and addresses legal issues on a statewide basis in the interest of the State of Utah judicial system. He has a remarkable ability of finding the time to be available, and to manage every situation in a professional manner.

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. Any 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.

Request for Comments

The Utah State Bar Commission is seeking comments regarding proposals under consideration to:

(1) Create a Legal Assistants Division of the Bar;

(2) Begin a project to coordinate pro bono services voluntarily provided by members of the Bar;

(3) License foreign legal consultants; and

(4) Provide a credit or reduction of licensing fees.

The proposals regarding the Legal Assistants Division and the program to encourage voluntary pro bono services were outlined in the November 1994 *Bar Journal* by Paul Moxley in his President's Message.

The proposal to license foreign legal consultants was made at the request of the International Section and would permit certain qualified foreign-licensed lawyers a limited authority to provide specific legal advice regarding the laws of their country and would allow Utah lawyers with access to reciprocity in some foreign countries. A copy of the rule to license foreign legal consultants is available at the Bar Office.

The financial conditions giving rise to the credit or reduction proposal are outlined by Paul Moxley in this *Bar Journal.*

Those wishing to express opinions regarding these proposals may submit their comments in writing or may request to appear before the Commission at its meeting on January 27, 1995. Please send all comments or requests to appear to John C. Baldwin, 645 South 200 East, Salt Lake City, UT 84111.

Financial Statements – Year Ended June 30, 1994

TO ALL BAR MEMBERS:

The following pages summarize the financial results for the Utah State Bar (the Bar), the Client Security Fund, and the Bar Sections for the year ended June 30, 1994. The Bar's financial statements were audited by the national accounting firm, Deloitte and Touche, and a complete copy of the audit report is available upon written request. Please direct these to the attention of Arnold Birrell. The 1993 results and 1995 budget figures are provided for informational and comparison purposes only.

The statements provided include a Balance Sheet and Statement of Revenue and Expenses. To help you better understand the information being reported, included below are notes of explanation on certain items within the reports. Should you have other questions, please feel free to contact Arnold Birrell or John Baldwin.

CASH AND OTHER CURRENT ASSETS

The bottom portion of the Statements of Revenues and Expenses provides an explanation of how the Bar's Cash is being used. After allowing for payment of Current Liabilities and providing certain reserves, the Bar's unrestricted cash balance is $0 at June 30, 1994 and projected to be $234,514 at June 30, 1995.

NET RECEIVABLES FROM THE LAW AND JUSTICE CENTER

The receivable balance at June 30, 1994 was $429,586. The Bar has entered into a preliminary agreement with the Utah Law and Justice Center to purchase the Center's 50% interest in the land and building and improvements, and the Center's furniture and equipment. When the sale is complete, the Bar will apply the receivable balance as the down payment toward the purchase price. The balance will be carried in a note payable to the Center with an interest rate of 10%. Principal and interest payments on the note payable will equal amounts paid by the Bar to subsidize the Center's future operating losses.

PAYMENT OF DEBT

During the year ended June 30, 1994 the Bar made several principal pre-payments on the mortgage. As a result, the mortgage balance was paid off in April, 1994.

DEFERRED INCOME

As of June 30, 1994, the Bar had collected $549,843 in 1995 Licensing Fees and Section Membership Fees. These fees have been classified as Deferred Income since they pertain to the 1995 fiscal year.

REVENUE OVER EXPENSES

The Revenue Over Expenses in the actual amount of $466,735 for 1994 and the budgeted amount of $223,673 for 1995 reflect the Board of Commissioners' and current management's commitment to exercising sound fiscal policies in the management of the Bar's funds. Current plans are to continue the present policies to provide the funds necessary for debt retirement, to make necessary capital expenditures, provide replacement and contingency reserves, and to maintain a reasonable fund balance.

SUMMARY

In summary, the Bar continues to be financially sound. The computer system that came on line during the 1992 fiscal year enables the Bar's staff to provide information to callers immediately in most cases. Since January, 1993 we have been tracking CLE hours which are printed on the Bar Journal labels.

UTAH STATE BAR

BALANCE SHEET

As of June 30, 1994 (with 1993 totals for comparison only)

ASSETS	1993	1994
CURRENT ASSETS:		
Cash and short term investments	$ 1,115,251	$ 1,080,296
Receivables	41,551	43,839
Prepaid expenses	7,411	14,992
Total current assets	1,164,213	1,139,127
NET RECEIVABLE FROM LAW AND JUSTICE CENTER	379,534	429,586
PROPERTY:		
Land	316,571	316,571
Building and improvements	1,324,574	1,324,574
Office furniture and fixtures	355,796	354,994
Computer and computer software	161,711	179,731
Total property	2,158,652	2,175,870
Less accumulated depreciation	(706,632)	(793,729)
Net property	1,452,020	1,382,141
TOTAL ASSETS	$ 2,995,767	$ 2,950,854
LIABILITIES AND FUND BALANCES		
CURRENT LIABILITIES:		
Accounts payable and accrued liabilities	266,426	$ 226,620
Deferred income	447,142	549,843
Long-term debt--current portion	136,929	0
Total current liabilities	$850,497	$776,463
LONG-TERM DEBT	437,614	
Total liabilities	1,723,586	776,463
FUND BALANCES:		
Unrestricted	1,474,470	1,922,594
Restricted:		
Client Security	55,476	78,737
Other	177,710	173,070
Total fund balances	1,707,656	2,174,394
TOTAL LIABILITIES AND FUND BALANCES	$ 2,995,767	$ 2,950,854

STATEMENT OF REVENUES AND EXPENSES

For the year ended June 30, 1994 (1993 actual and 1995 budgeted for comparison only)

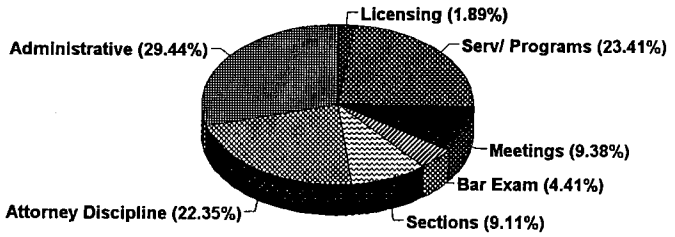
	1993	1994	1995 Budget
REVENUE:			
Bar examination fees	$ 188,008	$ 185,877	$ 122,400
License fees	1,466,220	1,526,145	1,525,374
Meetings	238,835	209,432	177,405
Services and programs	313,469	331,286	360,130
Section fees	205,313	175,318	13,000
Interest income	38,213	38,310	33,000
Other	103,029	115,512	230,315
Total revenue	$ 2,553,087	$ 2,581,880	$ 2,481,624
EXPENSES:			
Bar examination	$ 97,624	$ 111,241	124,046
Licensing	41,798	35,456	29,821
Meetings	207,549	173,645	208,862
Services and programs	448,492	441,325	589,250
Sections	201,669	145,054	10,767
Office of Bar Counsel	494,420	533,792	558,412
General and administrative	651,473	602,909	658,622
Other	69,509	71,723	80,203
Total Expenses	2,212,534	2,115,145	2,257,951
REVENUE OVER EXPENSES	$ 340,553	$ 466,735	$ 223,673
Add Non-Cash Expenses Depreciation	110,784	121,694	110,663
Cash from operations	451,337	588,429	334,336
ACTUAL AND PLANNED USES OF CASH			
Mortgage Payments(LJC - 1995)	$ (424,954)	$ (574,543)	$ (56,444)
Capital Expenditures	(44,001)	(51,815)	(30,000)
Change in A/P	86,119	(39,806)	
Change in A/R	(32,313)	(52,340)	
Change in PPD Expenses	9,296	(7,581)	
Change in Deferred Income	(96,640)	102,701	
Bar's Support of LJC			
INC. (DEC.) IN CASH	(51,156)	(34,955)	247,892
BEGINNING CASH	1,166,406	1,115,250	1,080,295
ENDING CASH - TOTAL	1,115,250	1,080,295	1,328,187
DEDUCT:			
Deferred Income	(447,142)	(549,843)	(549,843)
Restricted Fund Cash	(233,291)	(249,930)	(243,830)
Reserves	(300,000)	(280,522)	(300,000)
UNRESTRICTED CASH AT JUNE 30	$ 138,417	$ 0	$ 234,514

UTAH STATE BAR

Financial Results and Projections

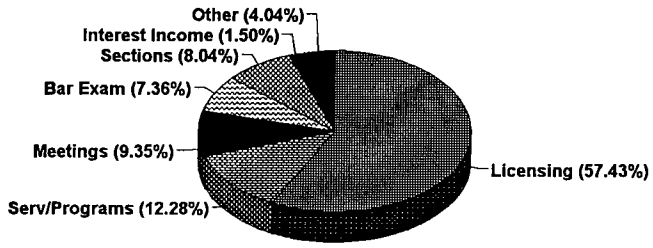
EXPENSES BY CATEGORY

For the Year Ended June 30, 1993



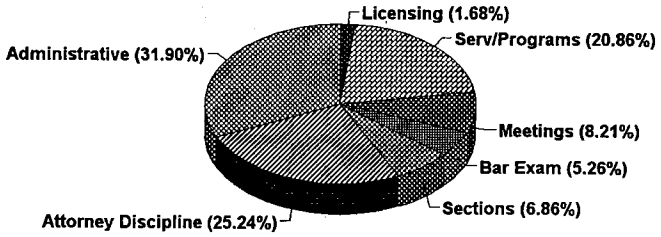
REVENUES BY SOURCE

For the Year Ended June 30, 1993



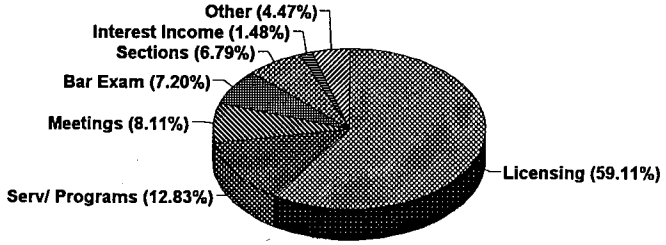
EXPENSES BY CATEGORY

For the Year Ended June 30, 1994



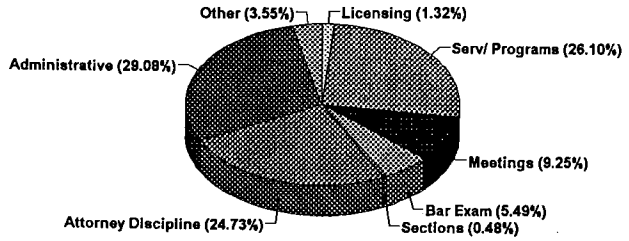
REVENUES BY SOURCE

For the Year Ended June 30, 1994



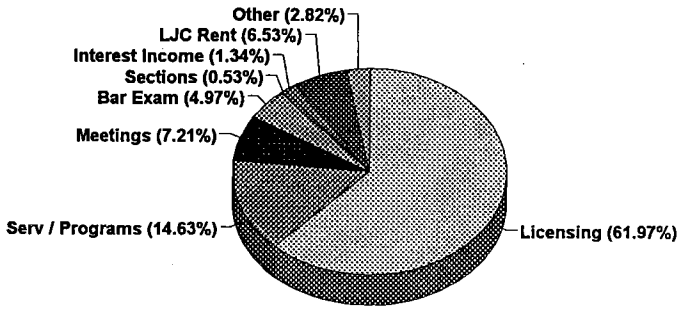
EXPENSES BY CATEGORY

BUDGETED - 1995



REVENUES BY SOURCE

BUDGETED - 1995



Profile of J. Philip Eves

By Derek P. Pullan

BACKGROUND

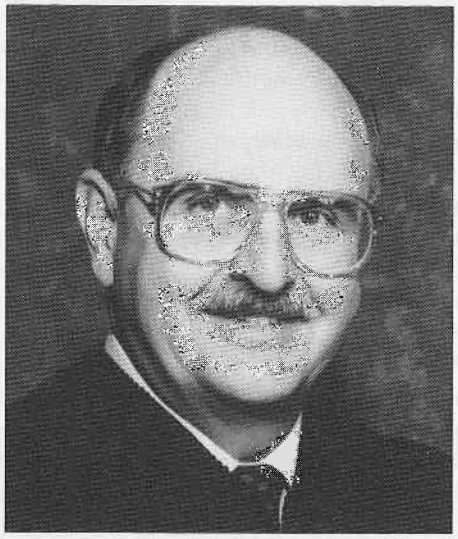
Governor Norman H. Bangerter appointed J. Philip Eves to the Circuit Court bench in 1985. Eighteen months later, Eves' name was one of three submitted to Bangerter to fill a vacancy in the Fifth District Court. The other two candidates were invited to Salt Lake for an interview, but Eves was not. "I thought to myself," said Eves, "well, there goes that job." However, on April 15, 1987, Governor Bangerter appointed Eves to the vacant post. Bangerter had remembered interviewing him for the circuit court vacancy and had elected to forego a second interview.

Judge Eves' career path has been guided by a desire to help people resolve their problems. After trying his hand at coaching and psychology, he chose law enforcement, reasoning that the best way to help people is to be "right out there on the street." But after five years as a police officer in Arcadia, California, he decided to go to law school. "My primary motivation was to become a prosecutor, to champion the cause of down-trodden victims and argue for the punishment of those who committed crimes." After graduating from the University of California at Davis Law School, he was hired by Woody Deem as a deputy prosecutor for Ventura County.

Five years later, Eves moved to Cedar City to open his own practice. Utah was a natural choice. "I always knew I wanted to practice on my own and what better place to do it than in Utah, my home state?" He was legal counsel to several communities and public defender for Beaver and Iron counties. His appointment to the circuit bench in 1985 was an outgrowth of his early desire to pursue a career that helped people. He realized that "it is the decision of the judge that has the greatest influence on people and the resolution of their problems."

LEGAL VIEWS

In Judge Eves' opinion, the criminal justice system has been "refined to the point that it can serve its purpose well" but it suffers from a lack of resources. "The problem is that skilled prosecutors and public defenders are overwhelmed by volume and cannot give to each case the care it deserves. Resources on both sides are limited as are those of the rest of the system."



Judge J. Philip Eves
Fifth District Court

Appointed:	Ninth Circuit Court, November 20, 1985, and Fifth District Court, April 15, 1987 by Governor Norman H. Bangerter.
Law Degree:	University of California, Davis.
Practice:	1973-78 — Ventura, California District Attorney's Office. 1978-85 — Private practice in Cedar City, Utah, including criminal defense and prosecution, general civil and trial practice. City attorney for three towns.
Activities:	Member of State Task Forces on Common Court Boundaries and State-Wide Warrant System. Currently in second term on Judicial Council and Chair of the Policy and Planning Commission. Presiding Judge of the Fifth District.

In his third year as Chair of the Policy and Planning Commission for the Judicial Council, Judge Eves has an appreciation for the complexity of the judicial system. "It is difficult to define the 'right direction' let alone to decide whether we are advancing that way. It is a massive undertaking to change the system. It is an institution that does not yield well to change. You have to give up something to gain something and only time will tell whether you have made an improvement or not." Eves believes that court consolidation was a positive change, allowing the system to better allocate its resources. The *Ohms* decision, on the other hand, troubles him. "It's a 3-2 decision, and I tend to agree with the dissenters. The commissioner system was designed to allow the judiciary to manage its affairs more efficiently."

CAREER

When he left the Ventura County Prosecutor's Office to start his practice in Cedar City, Judge Eves swore he would not take criminal defense or divorce cases. Immediately, both cases walked through his door. It was not long before he had been appointed public defender for two counties. His work in criminal defense changed his views dramatically. "I realized that in defending the accused, even if he or she is in fact guilty of the crime charged, there is much that must be done to protect the fairness of the process."

As a judge, he has come to see a "third side" to every case. "The prosecutor argues zealously for the interests of the state, the defense attorney for the accused. The judge is left to decide — objectively, even-handedly, and unemotionally."

For Judge Eves, the most enjoyable part of his job is the time he spends in court and his association with lawyers and court personnel. The least enjoyable is the administrative work.

ADVICE FOR NEW ATTORNEYS

Judge Eves has three rules for new attorneys:

1. Be Prepared. "You hear it all the time in law school, but it takes on new meaning when you walk into court. One fault of many attorneys is they do not know their case. They expect the judge to render a decision when the evidence is incomplete."
2. Be Punctual.
3. Understand What You Have to Prove. "You cannot walk into court with a stack of evidence, drop it in the judge's lap and expect him or her to sort it out. That is an

inefficient and ineffective way to try any case."

Questions concerning procedure in Judge Eves' court may be directed to him, his secretary, Carolyn Smitherman, or the clerk.

PERSONAL INTERESTS

Judge Eves is interested in sports. He plays basketball, lifts weights, golfs and walks to stay fit. He also loves music, performing in the Parowan Community Theater and Choir. He has also been a member of the Southern Utah Choir. He is very active in his church and sings in the church choir.

Judge Eves is an avid reader of novels and periodicals. One of his favorite sets of books is the *Horatio Hornblower Series* by C.S. Forester. Set in the late 1700's, the books chronicle a young man's adventures and his progression from cabin boy to admiral in the Royal British Navy.

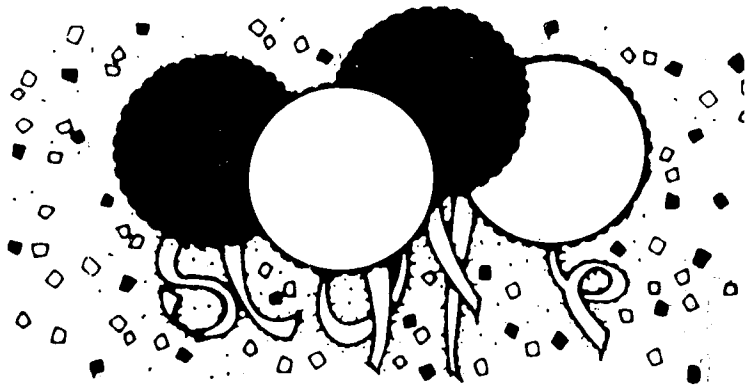
Judge Eves has been married to Karen Eves for nearly thirty years and is the father of five children. He has spent hours at sporting, scouting, and school events in support of his children.

MCLE REMINDER
31 Days Remain

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

On December 1, 1994, 31 days will remain 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.



Happy New Year!

Court-Annexed Mediation: Thirteen Questions

By Judge William B. Bohling

During the first week of November the Administrative Office of the Courts mailed out approximately 5000 copies of proposed Rule 4-510 of the Code of Judicial Administration and proposed Rules 101-104 of the Utah Rules of Court-Annexed Alternate Dispute Resolution. These rules implement the court-annexed alternative dispute resolution program (hereafter "Program") enacted by the 1994 legislature (now codified as 78-31b-1-13). The Judicial Council has published the proposed rules pursuant to Rule 2-203 of the CJA for public comment during the forty-five day period that ends mid-December.

The Program will be introduced in the Third and Fifth Districts only, effective January 1, 1995. It will be applicable with limited exceptions to all new civil cases filed in these districts, but is entirely voluntary, as contemplated within the spirit and the letter of the legislation. The intent of these rules is to be lawyer-friendly as well court and client-friendly. The comment period is the first test of these objectives.

The bill provided for two ADR processes, mediation and nonbinding arbitration. Under proposed Rule 4-510 (6) (A), cases will automatically be referred to mediation and remain there unless either party opts out. Because of the potential for relitigating a case submitted to nonbinding arbitration, it is anticipated that few parties will opt into nonbinding arbitration. Should the parties desire to participate in binding arbitration, they need only opt out of the Program and file a written agreement signed by the parties and counsel with the clerk of the court to submit the case to binding arbitration (see proposed CJA Rule 4-510 (6)(A)(iii)). They will then proceed under the 1985 Utah Arbitration Act (78-31a-1-20). Thus realistically the Program is a court-annexed mediation program, and the remainder of this article will proceed on this assumption and will not otherwise address arbitration.

A number of questions have been raised about the Program and about the proposed rules. This article is an attempt to address some of these questions, though I do not pretend to know all of the answers, and can certainly only speak for myself.

1. Since no significant backlog exists in the state court system for handling civil litigation and more than an ample number of lawyers are available to represent parties before the courts, why fix what ain't broke?

Concededly, the state court system is doing about as well as any court system in the country in keeping its dockets current and there are about as many lawyers here per capita as anywhere in the country to service the public's needs. Nevertheless,

JUDGE WILLIAM B. BOHLING was appointed to the Third District Court in June 1993 by Governor Michael O. Leavitt. He received his law degree from the University of Utah College of Law in 1968. He also received an M.A. in economics from Texas Tech University in 1977 and an LL.M. from the University of Michigan in 1978. Judge Bohling was a trial attorney with the United States Department of Justice Antitrust Division from 1968 to 1971, and a law professor at Texas Tech University School of Law from 1973 to 1978. He was in private practice in Salt Lake City from 1971 to 1973 and from 1979 until his appointment to the bench, and was named the Utah State Bar's Distinguished Lawyer of the Year in 1993. Judge Bohling presently serves as the chair of the Judicial Council's Alternative Dispute Resolution Committee.

from the public's perspective the present system is less than perfect. Perhaps most importantly is the wide-spread perception that most members of the public cannot afford to hire a lawyer to handle their civil disputes. The legislature and judicial council believe that court-annexed mediation may offer some help. It has two advantages over the present system: the process facilitates the speedy and inexpensive resolution of disputes. If parties are willing to give mediation a serious try, a mediator normally can get the job done in one three-hour session for under $500. This just does not happen in litigation. Moreover, instead of turning control of a dispute over to the lawyers to present, and ultimately to a judge to decide, the parties have hands-on involvement in the process and necessarily are required to take responsibility for resolution reached. The process thus empowers the parties and assists them in reaching real peace with each other, something the courts cannot offer.

2. Will not this Program result in the reduction of legal fees and if so, why should the profession support it?

If the program works, it will indeed result in the aggregate loss of legal fees paid by civil litigants in the state. One explanation given for the legal profession's poor reputation is the public's perception that lawyers are more in the business to maximize their revenues than serve their clients. If the Program reduces legal fees then the profession has a duty to support it, in the words of Wilford Brimley, because it is the right thing to do. Moreover, many believe that a lot of legal work goes undone because of public distrust of lawyers. It may be that in demonstrating a lawyers real concern in her client's best interest, some of this work will find its way in the door. Finally, a mediation industry is under development in the state which does not include lawyers. To some extent the profession can either join the parade or stand in its path and risk being run over by it.

3. Since almost all cases settle, what is the point of adding this new layer of court bureaucracy to facilitate an outcome that is going to happen anyway?

Implicit in the legislation is the assumption that the use of a professional mediator at the initial stages of the litigation will facilitate settlement at less expense to the parties and less costs to the courts than the present system. There has probably been sufficient nationwide experience in the use of mediation to confirm this assumption. It is difficult to appreciate the contribution a skilled mediator can make in getting a case to settle if one has not seen one in action. As a credible, objective, experienced outsider, a mediator serves as a reality check to a party's specious, fanciful and exaggerated claims. At times a mediator may assume the role of a diplomat, counselor, analyst, or therapist. In short a mediator can be a great resource and ally in resolving disputes and normally well worth her fees. I have observed some excellent mediators at work and have become a believer.

4. If a party remains unconvinced and desires to opt out of the Program, what must the party do?

To opt out of the Program a party must do four things:

- review the ADR videotape prepared by the Director Dispute Resolution Programs ("Director");
- discuss the merits of proceeding under the Program or not with her counsel (if she has counsel);
- execute a certificate with her counsel that the party has reviewed the videotape, discussed the Program with counsel and concluded that *"no good faith basis exists to believe that participation in the ADR program will lead to a more just, speedy or inexpensive resolution of the dispute than proceeding to trial;"* and
- file the certificate with the clerk of court.

5. Many cases require some discovery and occasionally a preliminary ruling from the court before settlement becomes a viable possibility. How does the program accommodate these needs?

Rule 101(b) states that the mediator may allow the parties to conduct limited discovery. The thought is that the parties may agree at the outset to the production or exchange of certain key documents or information and include this activity as part of the preparation for the mediation conference. It is strictly voluntary and not enforceable by the mediator or the court. If either party does not consider this to be sufficient, the party may without prejudice opt out as discussed above. The program does not accommodate applications to the court for preliminary rulings. If either party considers this essential, the party should opt out. Once the preliminary rulings or demanded discovery have been obtained, the parties may request the court to refer the case back to the Program as provided under the Rule 4-510 (7).

6. If a party desires to have an old case referred to the program, what must the party do?

Rule 4-510 (5) provides that any party may move the court for an order referring the case to the Program. Upon making such a motion, including a designation of the ADR process (mediation or nonbinding arbitration) to be used, the court is required to hold a hearing within thirty days. To shortcut this procedure the parties should submit a stipulation and proposed order to the court for the referral. It is a safe bet the court will skip the hearing and enter the order.

7. What risks does a party assume in participating in mediation that her efforts will prejudice her in the litigation that may follow?

None. The beauty of mediation, and its hallmark, is confidentiality. All offers are privileged as settlement offers. Under Rule 103 the process is private, the motions, memoranda, exhibits, affidavits and other communications are not included in the court's file or communicated to the judge, and under Canon IV the mediator is bound ethically to maintain the confidentiality of all mediation proceedings. The only caveat is, as in any settlement negotiation, a party cannot purge from the mind of the other party anything the party heard during the mediation.

8. Since the skill and experience of a mediator obviously makes a great difference in the likelihood of settling a case, what assurance is there that a party will be assigned a competent mediator?

The Director's roster of certificated mediators includes most of the experienced mediators in the state. By stipulation the parties may select any of them or even a protem mediator who is not on the roster so long the protem mediator consents to be bound by the rules. If the parties cannot agree, each can eliminate up to one-half of the mediators on the roster. Under Canon II once a mediator is appointed, either party may blackball the appointed mediator and require the appointment of yet another. If after exercising all of these projections a party is yet unsatisfied, the party may opt out of the

Program. In short, no party will find itself forced into a mediation with a mediator with whom the party is not satisfied.

9. How much can a party expect to pay to mediate a case under the Program and how are the finances handled?

The parties pay the mediator's fee as disclosed in her resume on file with the Director. The finances are handled directly with the mediator. Most mediation's will cost under $500 unless the parties have selected a particularly costly mediator. The rules do not allow only one party to pay for the mediator on the assumption that such a situation would impair the mediator's duty of impartiality. If one party cannot afford to pay for a mediator but one has been selected, the mediator has the option to proceed pro bono or withdraw. If she withdraws the Director will have the responsibility to find a mediator willing to conduct the mediation pro bono.

10. Once a party has decided to give mediation a try, explain the procedure and the party's obligations under the Program.

If the parties elect not to opt out of the Program, their first job is to select a mediator. Ideally, the parties will confer and select one from the Director's roster. If this does not work then they proceed according to the procedure under Rule 4-510 (11)(C). Once selected the mediator will call a premediation conference which must occur within ten days. Its purpose is to schedule the mediation conference within forty-five days and set the ground rules for the mediation. At the premediation conference, the mediator may discuss exchanging discovery or disclosure statements. (These are normally short one to three page summaries outlining the parties' position on liability and damages.)

11. Once a party has elected to participate in mediation, has the lawyer's job ended until the mediation has either been successfully or unsuccessfully concluded?

This is one of the most misunderstood aspects of mediation. The lawyer has a great opportunity to assist her client in preparing for the mediation. The mediator may require that the parties submit disclosure statements under Rule 101 (b). Whether required or not, counsel should consider preparing such a document and offering to provide it to the mediator. At worst it will facilitate the client's understanding of the case. Working with a client on a convincing opening statement to be given at the beginning of the mediation conference is another service a lawyer should consider. Also, an almost universal process in much of tort and commercial mediation is the development of risk assessment models using bell-curve and decision-tree techniques. Preparing these models with the client in advance and having them available at the mediation conference again will likely be a benefit. There is one caution. The essence of mediation is not advocacy but compromise. In preparing for the mediation the lawyer should be sure to have this in mind.

12. What is the procedure and consequences if a party changes her mind once she has begun mediation and wishes to get?

Either party may call off the mediation at any time by notifying the other party and the mediator and filing the Rule 4-510 (C)(6)(ii) certificate. The party does have an obligation to cancel the mediation conference on a timely basis or be subject to sanctions for failure to attend under Rule 101 (h).

13. How can any attorney become a certified mediator under the Program?

The pool of certified mediators is open. In other words, anyone willing to meet the training and experience requirements will be certified. Basically under Rule 4-510 (B) a certified mediator is required to complete 30 hours of training and 10 hours of experience to qualify. Also, to recertify annually she must have conducted six mediations in the previous year, and must agree during the year to do three pro bono mediations and complete six hours of continuing mediation training. In order to obtain the necessary experience, a mediator may notify the Director of her desire to volunteer to conduct pro bono mediations. Participating in the pro bono pool is an excellent way to conduct the necessary mediations to certify and also to obtain valuable mediation experience. Once a mediator is added to the Director's roster, the Director will publish her qualifications, experience, areas of specialization and rates to all civil litigants. She will then be in competition with all other certified providers.

MEMBERSIP CORNER

CHANGE OF ADDRESS FORM

Please change my name, address and/or telephone and fax number on the membership records:

Name (please print) _____

Firm _____

Address _____

City/State/Zip _____

Phone _____ Fax _____

All changes of address must be made in writing and NAME changes must be verified by a legal document. Please return to: UTAH STATE BAR, 645 South 200 East, Salt Lake City, Utah 84111-3834; Attention: Arnold Birrell.

The Second Computer Revolution

By David Nuffer

Less than 15 years ago IBM introduced its first personal computer. Since that date computers have appeared everywhere, and have now largely replaced dedicated word processors in law offices. We are in the middle of a second computer revolution which will make equally great changes for lawyers. Those who have become accustomed to using computers to create documents, analyze numbers, retrieve data or perform research will find many new uses for computers.

This second computer revolution is a result of several converging forces. Taken separately, these forces have made changes in the industry. But now as these forces combine, the result will be greater than the sum of the parts. Networking, CD ROM data storage, new computer processors, and a new theory of software are combining to change the way we work.

Networking is the process by which computers are linked together. Most commonly, this is done to share printers or data. An expensive laser printer can be shared by many users thus reducing the "per user" cost of hardware. In law offices where more expensive printers are used for better print quality or to add features such as multiple paper trays to print letterhead, second sheets and envelopes, sharing a printer makes economic sense.

DAVID NUFFER was admitted to the Utah State Bar in 1978. He is a member of the St. George law firm Snow, Nuffer, Engstrom, Drake, Wade & Smart and focuses his practice in the areas of real estate and natural resources law. In addition to being a member of the Utah State Bar he is also a member of the Southern Utah Bar Association and the Arizona State Bar. He attends COMDEX every year in Las Vegas, but does not own any plastic pocket pencil protectors.

Network computers can also share data. An attorney can edit a draft at his desk which has been typed by a secretary. Multiple users can access a single database in order to evaluate potential conflicts of interest, obtain client information such as addresses and phone numbers, or access master form documents. The existence of networks has suggested new forms of software and hardware which can more easily integrate and cooperate.

Data storage on compact disk (CD ROM) is another factor in the second technological revolution. CD ROMs can hold enormous amounts of data such as the entire body of Utah case law and annotated code. The presence of such massive quantities of information has led to a demand for greater tools to access that information.

Computer processors for the last decade have been based on similar design theories. **New computer processors** based on different theories of operation enable computers to do much more. The new processors can handle input from sources other than the keyboard. They will be able to evaluate and respond to speech and handwriting. Thus, computers can more easily handle applications integrated with other office equipment such as dictation equipment and telephones.

The convergence of these technologies — networking, data storage on CD ROMs, and more powerful processors has led to a new generation of software. Early computers worked in response to technical programs, in lines of code input by the user. Personal computers worked on single task functions such as word processing or number crunching. Now, computers will work as people work using handwriting, typing and voice. The ability of new computers to use large volumes of information processed at high speed, in the context of a network with others, has led to a new generation of software. Some of this software is called "groupware" meaning that it is intended to facilitate people working together. Among these types of software are:

Databases: large reservoirs of information accessible from a network by multiple users. They have been around

in one form or another but are now becoming commonplace and used for telephone directories, client and adverse party information, etc.

Electronic mail: Instead of having notes and memos typed and phone message delivered in writing, all such interoffice communications can be delivered from computer to computer by electronic mail. The messages can be printed if desired. Most software systems allow a person with a portable computer or home computer to access the office mail system from a remote location. Branch offices can communicate automatically with each other by electronic mail.

Calendaring software allows publication of a calendar across a network. A secretary, paralegal and attorney can access each other's calendar information and if necessary, modify and update it. Calendaring software can control use of conference rooms and schedule meetings.

Fax software is now becoming available across work groups to allow shared fax directories, and to allow many computers to share one fax modem. Some fax software allows for central data storage and logging for billing purposes.

Work flow software visually charts projects. At a minimum, this software can allow central posting and reading of notes pertaining to an ongoing project, and can also provide for resource scheduling.

White board software allows users across a computer network to view and write on a "white board" that appears on each screen so they can all see the same visual aid without being in the same location. The communication may be across an interoffice network or across multiple locations.

Conferencing software is similar to white board software, but also allows individual comments to be posted and read over time. This requires typing by participants, but it also allows for so-called "virtual meetings" in which none of the participants are actually present at the same time. Comments are exchanged serially on specific points of discussion.

Document management software allows centrally stored documents to be retrieved by multiple users. In the "paperless" office, mail is scanned into an image storage system, and made available to those who should receive it. Documents created on-site are indexed and available as well.

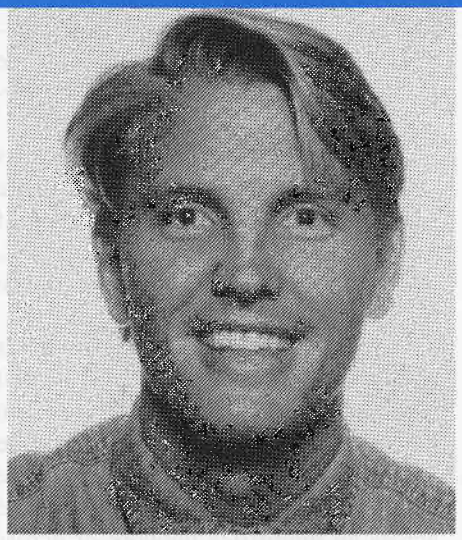
Obviously, the groupware frontier is moving ahead. What should a lawyer do in light of this second technological revolution?

First, buy the new processors. Don't buy a bargain machine with an outdated 386 or 486SX processor if you want to see it meet your needs 3-5 years in the future.

Second, buy software that can group. You may not be using the group feature of the software at the present time, but as you buy software, ask whether it can work with other computers on a network.

Third, buy a basic network setup for your personal computers from a reputable dealer with sound service. Don't buy printers for everyone but share them. Implement the basics of electronic mail, scheduling and central data storage. Increased efficiencies will pay for the cost of the networking.

Finally, as is the case with every new style of dress or tie, don't be the first to invest in any particular technology, but don't be the last.



When Are We Going to Face It – We're All In This Together

By Marty Olsen
President-Elect, Young Lawyers Division

As I stepped out of a courtroom recently, I was savagely attacked. The attack came without warning; hence, I was unable to immediately secure any viable defense implements, let alone refuge in the wide open halls of justice. In the name of professional courtesy, I yielded to the attack by the feral beast who stocked me, devoured me and spit me out. Upon the return of my faculties, I attempted to respond to opposing counsel's senseless attack; however, much to my dismay, it had begun its victory walk and merely muttered "see you in court counselor." Immediately, I pondered that we were already in court and that nobody had ever called me counselor before, however, those thoughts were quickly dashed as the beast turned around to survey the attack scene one last time, young lawyer flesh still fresh in its teeth.

During my brief career, I have marveled at the almost innate hostility that abounds in this profession.[1] It's not just opposing counsel's continual interruptions and barely audible snide comments during oral argument or a finger in your face as you attempt a dignified exit from the courtroom, but it's also the insulting letters, the contemptuous telephone calls and messages, and the occasional, yet ever popular, motion for Rule 11 sanctions. Moreover, it's the way that attorneys treat judges and the way that judges treat attorneys. Granted, we are indeed players in a unique profession, after all, what do doctors, accountants or stock brokers have to fight about? Nevertheless, the nature of our profession should not, in and of itself, justify our often indiscriminate behavior.

Inasmuch as it has probably been a couple of weeks since you've reviewed the Preamble to the Rules of Professional Conduct, allow me to recount one particularly pertinent portion thereof. "A lawyer should demonstrate *respect* for the legal system and for those who serve it, including judges, *other lawyers* and public officials." (Emphasis added). Although the word "respect" conjures up any number of conceivable meanings (that's what law school teaches us after all), for purposes of this article, focus on the more conspicuous, namely consideration, regard, courtesy and plain and simple niceness.

As referred to previously, one possible explanation for the pervading lack of respect among lawyers is that advocacy, by its nature, breeds a certain level of hostility or conflict. It may be difficult for an attorney to strike that perfect balance between zealous advocacy and respect for opposing counsel. After all, chances are that a client's perception of the legal system is oftentimes grounded in courtroom drama wherein opposing counsel commonly assail each other, and following any court proceeding, snatch their brief cases

MARTIN N. OLSEN • Graduated from the University of Utah College of Law, May 1991. Judicial clerkship, Leonard H. Russon, Utah Court of Appeals. Associate, Olsen & Olsen, areas of practice include: family law, child advocacy, real property law. Citizens Representative to Subcommittee on Criminal and Juvenile Justice to evaluate current juvenile system and recommend possible changes. Chair, Needs of Children Subcommittee on legislative tracking of children's issues. Volunteer Guardian Ad Litem, Third District Court. President-Elect, Young Lawyers Division of Utah State Bar.

and march out of the courtroom, pausing only to exchange cold stares. Further, it's no secret that a client's ultimate satisfaction with their attorney may be directly related to the volume of demeaning correspondence directed at opposing counsel. Based on the foregoing, even a hint of civility toward opposing counsel may risk the attorney's hero status in the eyes of a client.

Another conceivable explanation for our derisive behavior lies in the often thankless nature of the profession. As a general rule, we do not necessarily sustain life or make clients millions of dollars. Rather, justice commonly rewards no one; thus, our role in such system often goes unappreciated. This, in addition to a constant horde of attorney jokes, certainly affects our ultimate demeanor and attitude toward the profession.

Far be it from me, a young attorney, to resolve all the pitfalls of an ageless profession; however, one thing is certain: we cannot lose sight that we are first and foremost professionals — in fact, some may argue that we are professionals in the noblest sense of the term. That being the case, the time has come for each of us to do our part to introduce a new level of civility and respect into the profession. It's time to purge ourselves of the burdensome grudges against other attorneys and judges amassed over the years. It's time to understand that the behavior of judges and other attorneys cannot be taken personally since, in most cases, they are simply striving to serve their intended purpose in the system. It's time to say something nice about another attorney or judge. Most importantly, it's time to recognize that we are all in this together, perhaps for the long haul, and that ultimately it is incumbent upon each of us individually to exhibit an elevated respect for one another in an effort to make the whole experience as pleasant and satisfying as possible.

[1]This should not be construed to mean that my limited experience in this profession has been principally negative. On the contrary, I have associated with attorneys and judges who dignify the profession, who make a concentrated effort to exhibit courtesy and respect for other attorneys and judges, and who make me proud to be an attorney.

211 Attorneys Sworn-In At October Admissions Ceremony

By Gretchen C. Lee

On Tuesday, October 18, 1994, 211 bar applicants gathered in the rotunda of the State Capitol to be sworn in as members of the Utah State Bar. The Honorable Michael D. Zimmerman, Chief Justice of the Utah Supreme Court, welcomed the candidates. Remarks were given by Hon. Dee Benson, U.S. District Court and Hon. Richard C. Howe, Utah Supreme Court. Paul T. Moxley, President of the Bar, made the motion for admission and John C. Baldwin, Executive Director of the Bar, presented the applicants. The oath was administered by Markus B. Zimmer, Clerk for the U.S. District Court. The newest members of the Bar were then recognized for their achievement by a warm round of applause given by those friends and family members in attendance.

The Young Lawyers Division extends it's congratulations to the Bar's newest members!

Congratulations and Welcome to New Young Lawyers

By Lisa Rischer

It's that time of year again when we are privileged to congratulate and welcome an enthusiastic group of new Young Lawyers recently successful in their bar exam endeavors. On October 5, 1994, the Young Lawyers Division hosted a reception in honor of these new Young Lawyers. For many, it was the first brave venture back into the Law and Justice Center since walking out of the bar exam last July.

In spite of perhaps painful and all-too-recent memories (or nightmares) associated with the facility, the reception was very well attended. Who knows whether such overwhelming attendance of the event resulted from a valuable opportunity to learn about the bar and the Young Lawyers Division, or from the promise of free food.

In addition to eating and socializing, the new young lawyers were privileged to hear briefly from several speakers including John Baldwin (Executive Director of the Utah State Bar), Stephen Trost (Office of Bar Counsel), Dennis Haslam (President-Elect of the Utah State Bar), Monica Jergensen (Continuing Legal Education Coordinator), John Adams (President of the Salt Lake County Bar Association) and David Crapo (President of the Young Lawyers Division). For the most part, each speaker congratulated and welcomed the group to the practice of law and explained the function of his or her respective organization or program. The speakers encouraged new Young Lawyers to get involved in their county and state bar organizations and to call on the organizations for information and guidance as needed. Some speakers cautioned new Young Lawyers against the pitfalls of unethical conduct and invited new practitioners to call on the office of Bar Counsel in the event they were uncertain as to the appropriate course of conduct in a particular situation.

Several speakers discussed the ever popular and informative mandatory CLE program for new lawyers and the YLD passed out bright blue wallet-size schedules for easy reference. Monica Jergensen (CLE coordinator) and Steven Shapiro (YLD New Lawyer CLE Committee Chair) introduced themselves to the group as contact/resource people in case of new lawyer CLE questions or problems.

David Crapo introduced the YLD officers and executive council and explained a little bit about the function and future plans of each of the YLD committees. For those who may have forgotten, or are otherwise unaware, the YLD committees include: Bar Journal, Diversity in Legal Profession, Membership Support Network, New Lawyer CLE, Law Day, Community Services, Law Related Education, Needs of the Elderly, Pro Bono, Needs of Children, Consumer Credit

The YLD President invited the new Young Lawyers to take an active role in YLD and to sign up for the various committee(s) in which they were interested.

Following the speeches and introductions, the reception again turned to socializing and many of the new Young Lawyers took the opportunity to talk with the various YLD committee chairs and to

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Utah Bar Foundation Presents Grants to Utah Law-Related Education Project and Catholic Community Services

Norma Matheson, Board member, and Cheryll May, President, Utah Law-Related Eduction Project, receiving check from Joanne S. Slotnik, Bar Foundation Trustee.

Photo credit: Rolf Kay

The Utah Bar Foundation awarded grants, scholarships and ethics awards in 1994 totaling over $180,000. Two of the recipients recently received payments on those awards.

This year the Foundation will provide a total of $30,000 to the Utah Law-Related Education Project making a total of $230,000 since the first grant was awarded in 1985.

In her presentation, Ms. Slotnick said, "The Bar Foundation has been a consistent and long-time supporter of the project. The new conflict mediation program for young people has taught students the value of resolving differences peacefully. It is one more example of their work to provide young people with citizenship skills needed to participate in our society."

The Utah Law-Related Education Project also conducts mock trial competition throughout Utah, provides legal mentors to schools, and participates in the new Salt Lake County Youth Services "LEAP" program to provide early intervention for minor delinquent offenders under age 14.

The funds received by the Catholic Community Services (CCS) will be used in its Immigration Program to assist low-income individuals and families with legal representation, advocacy and information regarding immigration issues.

This year, the Foundation will provide a total of $21,000 to the Catholic Community Services Immigration Program making an overall total of $83,500 since the first grant was given in 1987.

In her presentation, Judge Pamela T. Greenwood said, "As the sole accredited low-income immigration legal service provider in Utah, the program has been successful in unifying families. The Foundation is pleased that continued funding has allowed the organization to expand services throughout Utah."

Since 1985, the Utah Bar Foundation has provided more than $1.4 million in grants to Utah individuals, agencies and programs which provide free or low-cost legal aid, legal education and other law-related services.

Utah lawyers assist in these projects by giving individual donations to the Foundation and by participating in the Interest on Lawyers Trust Account (IOLTA) Program where interest from their trust accounts is directed to the Utah Bar Foundation.

Msgr. Fitzgerald, Executive Director of Catholic Community Services, receiving check from Hon. Pamela T. Greenwood, Bar Foundation Trustee.

Photo credit: Robert L. Schmid

CLE CALENDAR

ALI-ABA SATELLITE SEMINAR: ACCOUNTING FOR LAWYERS

Date: December 8, 1994
Place: Utah Law & Justice Center
Time: 9:00 a.m. to 4:00 p.m.
Fee: $249.00 *(To register call 1-800-CLE-NEWS)*
CLE Credit: 6.5 HOURS

THE FUNDAMENTALS OF FRANCHISING

Date: Wednesday, December 14, 1994
Place: Utah Law & Justice Center
Time: 8:30 a.m. to 12:30 p.m.
Fee: $35.00 for section members, $50.00 for non-section members
CLE Credit: 4 HOURS

YEAR END ETHICS SEMINAR

Date: Thursday, December 15, 1994
Place: Utah Law & Justice Center
Time: 2:00 p.m. to 5:00 p.m.
Fee: TBD
CLE Credit: 3 HOURS ETHICS CREDIT

LAST MINUTE VIDEO CLE & NLCLE CREDIT

Date: Wednesday & Thursday, December 28 & 29, 1994
Place: Utah Law & Justice Center
Time: 8:00 a.m. to 5:00 p.m.
Fee: Full day = $50.00
Half day = $25.00
(minimum charge of $25.00)
CLE Credit: 9 HOURS, including 3 HOURS ETHICS per day (3 hours of NLCLE credit will be shown each day from 11:00 a.m. to 2:00 p.m.)

**** Please note: A maximum of 12 hours of video CLE credit can be applied toward your requirement of 27 hours. (Utah State Board of CLE — Regulation 4(d) – 101.)*

THE BANKRUPTCY REFORM ACT OF 1994

Date: Tuesday, January 10, 1995
Place: Utah Law & Justice Center
Time: 8:00 a.m. to 4:30 p.m.
Fee: $135.00 for Bankruptcy section members
$150.00 for non-section members
CLE Credit: ~ 7 HOURS

NLCLE WORKSHOP – DOMESTIC RELATIONS

Date: Thursday, January 19, 1995
Place: Utah Law & Justice Center
Time: 5:30 p.m. to 8:30 p.m.
Fee: $20.00 for member of Young Lawyer Division
$30.00 for all others
CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: 1995 UPDATE-IMPLEMENTING THE CLEAN AIR ACT

Date: Thursday, February 16, 1995
Place: Utah Law & Justice Center
Time: 10:00 a.m. to 2:00 p.m.
Fee: $155.00 *(To register call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

ALI-ABA SATELLITE SEMINAR: COPYRIGHTS & TRADEMARKS LAW FOR THE NON-SPECIALIST

Date: Thursday, March 23, 1995
Place: Utah Law & Justice Center
Time: 9:00 a.m. to 4:00 p.m.
Fee: $249.00 *(To register call 1-800-CLE-NEWS)*
CLE Credit: 7 HOURS

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 Jergensen, CLE Coordinator, at (801) 531-9095.

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sign up (on a completely voluntary basis of course) for the committee or committees of their choice.

All in all, the attendance at this year's reception was exceptional and the interest and willingness to serve on the various YLD committees exhibited by the new Young Lawyers was outstanding. Thanks to the efforts of the YLD Membership Support Network Committee, chaired by David Bennion and Jeff Williams, and the Bar staff, the reception went off without a hitch. YLD looks forward to an exciting and productive year and warmly welcomes the membership and assistance of the new Young Lawyers.

CLE REGISTRATION FORM

TITLE OF PROGRAM — FEE

1. _____ _____
2. _____ _____

_____ Total Due

Make all checks payable to the Utah State Bar/CLE

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.

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

Library for sale. The following sets are current as of Nov. 1, 1994: **Pacific Reporter, 2d** series, vols. 1-873 (plus paperback vols. 874-879 and vol. 880 part 1). **Shepards** Utah and Pacific Reporter Citations, West's **Pacific Digest** (all three sets since 1850). **American Jurisprudence** 2d (full set of 83 volumes). **Moore's Federal Practice** (2d ed) full set. **United States Code Service** (full set). **Utah Code Annotated** (full set). Contact Michael J. Wilkins, (801) 578-3900. All or part. No reasonable offer refused.

LAW BOOKS FOR SALE. Complete set of Bankruptcy Reporter, Bankruptcy Digest and United States Code Annotated. Updated through October 1994. Please call Matt or DeNece at (801) 531-1555.

Due to the death of my father, a distinguished attorney, I find it necessary to sell much of his LAW LIBRARY. If interested, please call Ralph Chipman at: 484-2244 or 533-0333.

POSITIONS AVAILABLE

Twenty-Five Lawyer Salt Lake City Law Firm is seeking a litigation associate with 2-4 years experience. Submit resume to P.O. Box 3810, Salt Lake City, Utah 84110-3810, Attention: Firm Manager.

POSITIONS SOUGHT

Dependable attorney with five years litigation experience in large and small firms seeks part-time or contract work at reasonable rates. Call Monica at (801) 538-0618.

Experienced attorney with exceptional writing skills in civil and criminal litigation seeks 15 to 30 hours/week position or short-term assignments. Academic honors: Order of the Coif, Phi Kappa Phi, Moot Court, assistant law review editor. Experience: Tort and commercial litigation; civil and criminal appellate writing as COA clerk and staff attorney. Previous areas of research and practice: probate, wills and trusts, contracts, personal injury, civil procedure, product liability, and UCC. Licensed in Colorado; passed Utah bar and license anticipated 12/94. Initial rate is $30.00/hour; no benefits required. Call M. Boudreau @ (801) 466-6531.

Attorney seeks contract work in Salt Lake. Strong writing, computer skills. Reasonable rates. Box 681993, Park City, UT. 84068, (801) 355-0616.

OFFICE SPACE/SHARING

CHOICE OFFICE sharing space available for 1 attorney with established law firm. Downtown location near courthouse with free parking. Complete facilities, including conference room, reception room, library, kitchen, telephone, fax, copier, etc. Secretarial services and word processing are available, or space for your own secretary. Please call, (801) 355-2886.

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

DELUXE OFFICE SHARING SPACE in a class A office building. Downtown location, close to courts. Single or multiple office suites, with or without secretary space. Complete facilities available including: receptionist, conference rooms, library, Westlaw, telephone, fax, copier and parking. Please call: Ronald Mangone at (801) 524-1000.

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 work processing available. For more information please call (801) 531-8300.

Prime downtown attorney office space available in Kennecott building. Five attorney offices with 15' ceilings, fully wood paneled, with three secretarial stations and large conference room. $3,700 per month, or best offer. Call Lynn @ (801) 355-5300.

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.

SERVICES

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. (801) 531-0331. Resumes 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. Sixteen years experience. Immediate service available. Robert Olson C.A.G.A. (801) 580-0418.

QUALIFIED DOMESTIC RELATIONS ORDERS — Struggling with that QDRO? Rori H. Rooker will draft and secure final approval of your client's QDRO. Ms. Rooker has extensive experience, having drafted and secured approval of QDROs for plans administered by Chrysler, DuPont, Hercules, the U.S. Air Force, and others. Consequently, Ms. Rooker can draft and secure approval of QDROs much more efficiently and quickly than attorneys less familiar with the process. Ms. Rooker will take all steps necessary to secure final approval of the QDRO for a flat fee, ranging from $300.00 to $500.00. You may contact Ms. Rooker at KIRKHAM & ROOKER: (801) 531-0900.

CHILD SEXUAL ABUSE — EVIDENCE EVALUATION: Statement Validity Assessment (SVA). An objective method for determining the validity of child statements and interviewer quality – time saving and concise – advanced graduate training. Bruce M. Giffen, M. S. Investigative Specialist – 1270 East Sherman Avenue, Salt Lake City, Utah 84105. (801) 485-4011.

MISCELLANEOUS

Wanted: Attorneys to judge student competitors in ATLA's regional trial advocacy competitions. Great opportunity to help law students prepare to be trial lawyers while serving on scoring panels composed of local lawyers and judges. The Competition is scheduled for February 24–26, 1995. Please call C. Richard Henriksen, Jr. or Stephen J. Buhler for further information at (801) 521-4145.

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)

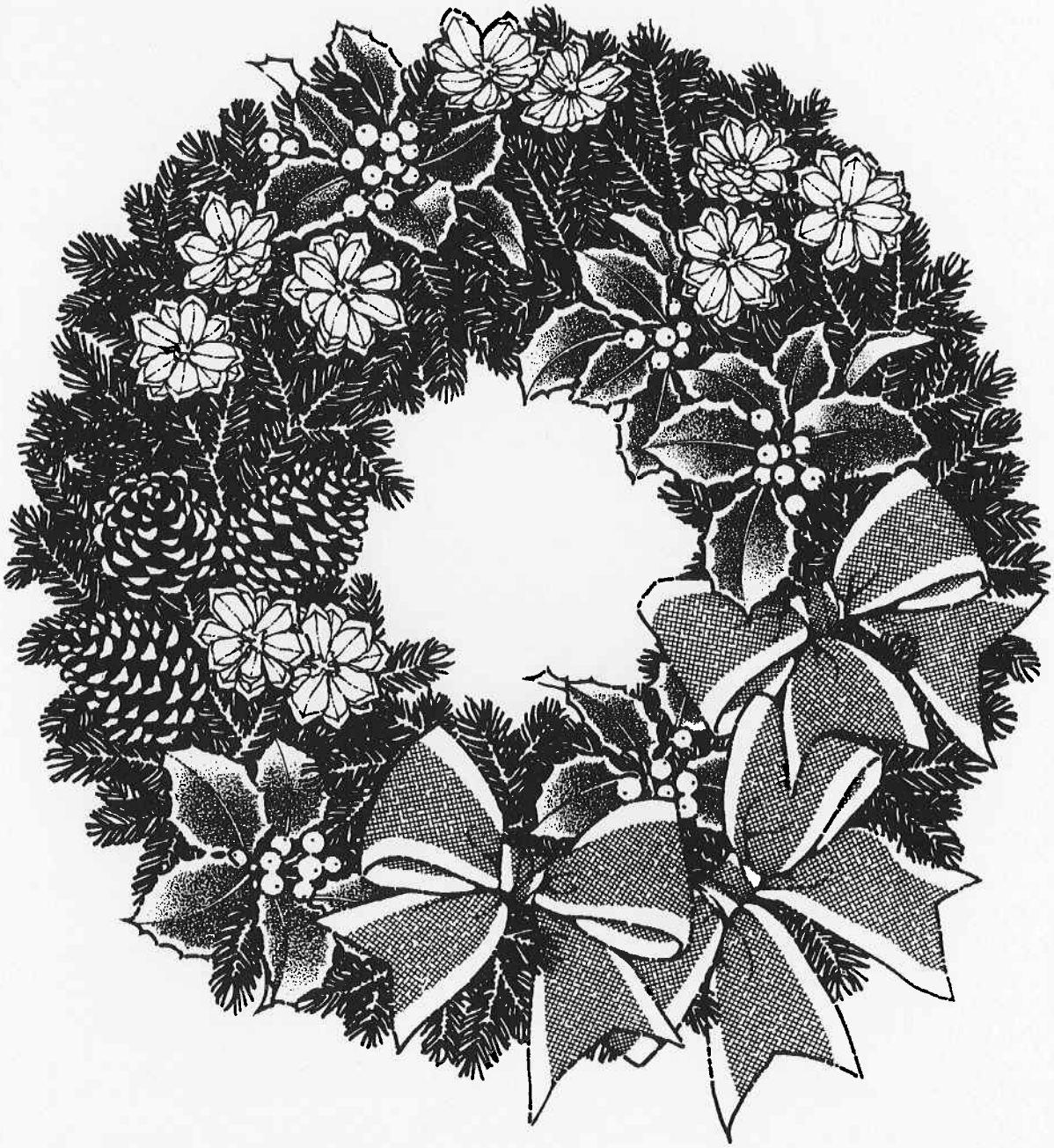
B. Writing and Publishing an Article. Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. An application for accreditation of the article must be submitted at least sixty days prior to reporting the activity for credit. No more than one-half 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.



Season's Greetings

from the UTAH STATE BAR

Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111

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P. O. BOX 45898
SALT LAKE CITY UT 84145-0898
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