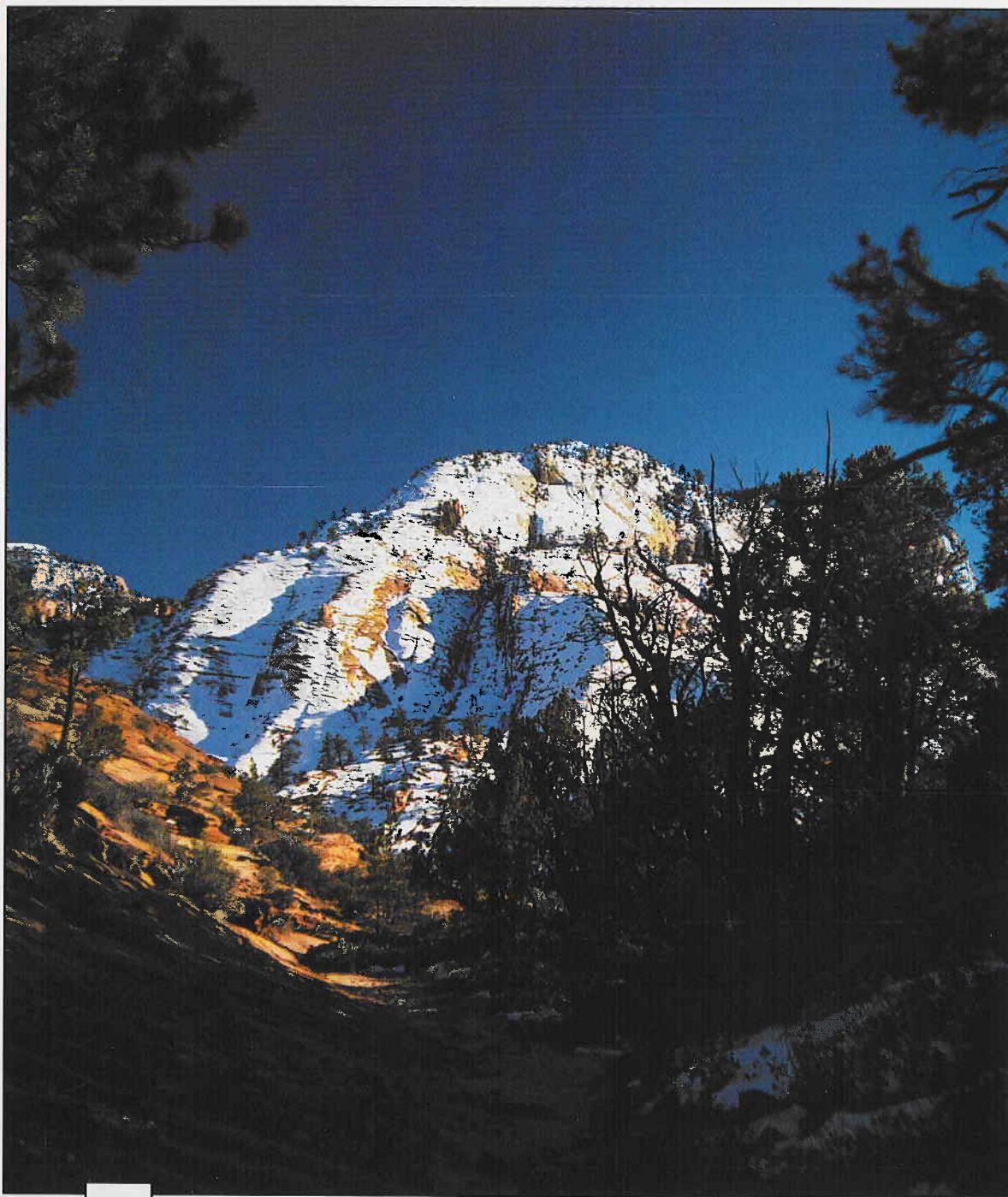


UTAH BAR JOURNAL

Vol. 8 No. 2

February 1995



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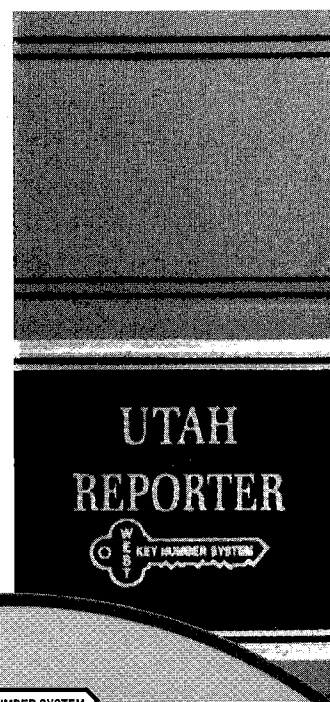
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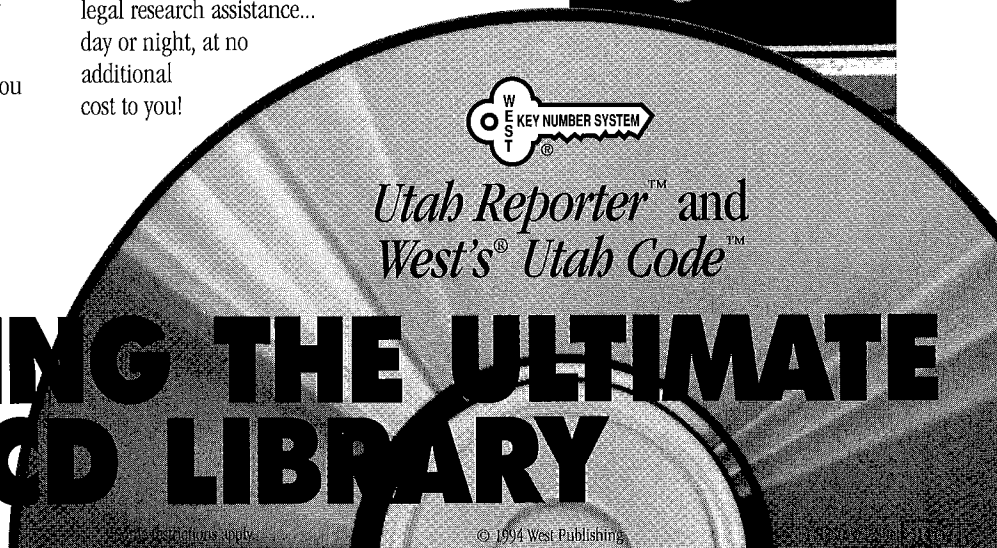
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The *Utah Bar Journal* is published monthly, except July and August, by the Utah State Bar. One copy of each issue is furnished to members as part of their State Bar dues. Subscription price to others, \$30; single copies, \$4.00. For information on advertising rates and space reservation, call or write Utah State Bar offices.

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LETTERS

Dear Editor:

A State Bar that handles discipline is inherently incompatible with a State Bar that promotes the general welfare and reputation of lawyers and respect for the law.

The whole theory behind the unified Bar is fatally flawed. An organization which emphasizes discipline, the negative side of lawyers, has an almost impossible task to also emphasize the good side of lawyers and the law.

While it sounds nice to have a disciplinary structure run solely by lawyers, this is no longer the case in light of citizen participation in the Utah Board of Bar Commissioners and in the Utah Bar disciplinary process.

We should take a page out of the doctors' book and give discipline to the Utah State Department of Business Regulations or to some other entity completely separate and apart from the Utah State Bar. The regulation of Utah attorneys should be comparable to the regulation of Utah physicians. Such a move would be less

expensive than the current system and it would leave a voluntary Bar to promote the interests and reputation of the legal profession and the law completely free from the negative attributes of discipline as administered by the integrated Utah State Bar.

Brian M. Barnard
Attorney at Law

Dear Editor:

The other day I was with a group of people and heard them commenting on a case where the lawyer was attempting to do what his client wanted him to do, but he was being chastised by the State Bar, the Supreme Court and the Attorney General's office. They seemed quite concerned that a man could not plead guilty, waive his right to appeal, but instead the State had to pay a lot of money out to do what the defendant did not want to do. They were incensed. But they were really incensed when it was pointed out the State was going to spend further taxpayers money and State time pos-

sibly penalizing the attorney who tried to do what his client wanted. I really did not understand what it was all about and did not get involved in the heated discussion.

This morning on Good Morning America they reported the case and the gentleman who covers court trials for Good Morning America explained the case, how the Supreme Court had castigated Elliott Levine, how the Attorney General (feeding at the Public trough) was highly incensed over Mr. Levine's conduct and that the bar was probably going to discipline Mr. Levine who is not going along with the Good Old Boys Club, but is trying to do what he feels is right with the client.

It's a wonder why the Supreme Court, the Attorney General's office and the State Bar think we attorneys are dishonest. Come off it. Leave him alone.

Richard L. Tretheway
Attorney at Law

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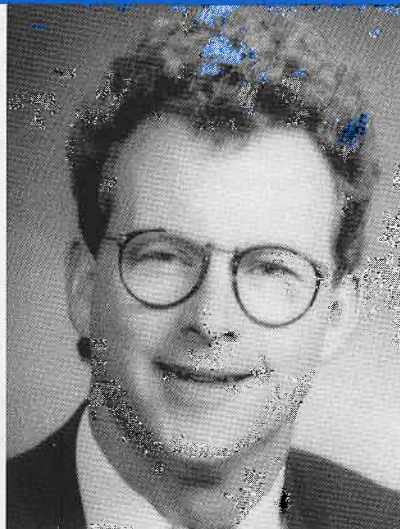
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PRESIDENT'S MESSAGE



Mid-term Plus Report

By Paul T. Moxley

This column is being written on a snowy January morning while I contemplate my New Year's resolutions with the understanding that few changes will be forthcoming. Many meetings need to be attended, billable hours must be accumulated, Christmas and college bills must be paid and routines must be reestablished after the holidays. Now, getting back to the routine . . .

QUALITY CONTROL CONFERENCE

The Board of Bar Commissioners has scheduled a quality control conference for May 6, 1995. Dean Barry R. Vickrey of the University of South Dakota School of Law will moderate the program that will focus on professional development with an emphasis on balancing business and professional development. Dean Vickrey is a former member of the ABA standing Committee on Lawyer Competence and has functioned as a facilitator at many similar functions in different states. Major issues relating to each facet of lawyer competence will be discussed and it is anticipated that steps will be established to improve lawyer competence in Utah. The ABA would like to see every state adopt a Quality Control Committee, but it is

doubtful that our Board will recommend such a measure. Our Bar consists of diverse members and understanding various demands is valuable by itself.

CHALLENGES TO THE MANDATORY BAR

A substantial amount of litigation has taken place around the country concerning mandatory bar associations and what activities are appropriate. This topic was extensively covered in the publication *Bar Leader* in its September-October, 1994 edition which is available at the Bar offices upon request. In *Keller v. State Bar of California*, 496 U.S. 1 (1990) the Court held that the First Amendment does limit the permissible uses of mandatory bar dues, adopting the analysis of its union shop cases:

"Here the compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity." 496 U.S. at 13-14.

The Court adopted the procedures developed in the union shop context for determining which activities were "chargeable," i.e., which may be funded with mandatory dues. 496 U.S. at 17.

The court refused to apply its standard to specific activities and acknowledged that there is no bright-line test for determining which activities are "chargeable."

"Precisely where the line falls between those State Bar activities in which the officials and members of the Bar are acting essentially as professional advisors to those ultimately charged with the regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of such goals, on the other, will not always be easy to discern." 496 U.S. at 15.

The court did not decide what other procedural safeguards may pass constitutional muster. 496 U.S. at 17.

The court refused to reach petitioners' additional claim that the First Amendment prohibits lobbying by an integrated bar. 496 U.S. at 17.

When our Bar encountered some financial difficulties a number of terms ago, our

state Supreme Court appointed a Task Force to study the Bar and subsequently entered a number of orders amending Rules for Integration and Management of the Bar.

The Utah Supreme Court has determined that certain programs must be carried out with subsidies from mandatory dues. These include discipline, admissions, Bar management, ULJC operations, public service programs under criteria approved by the Court, legislative activities as regulated by the Court, fee dispute arbitration, client security fund, bar directory, *Bar Journal* and annual meetings. The Supreme Court also adopted the Task Force's recommendation that Annual meetings be attractive and affordable to all members and should be self-supporting so far as practicable.

With respect to legislative activities, criteria should be established consonant with the U.S. Supreme Court's decision in *Keller v. State Bar of California* that such activities be germane to regulating the legal profession and improving the quality and availability of legal services. The court should also establish criteria for funding public service programs from mandatory dues to enable the Bar and its members to meet the public service obligations of the legal profession.

ROLES AND RELATIONSHIPS ACCORDING TO THE UTAH SUPREME COURT

The Supreme Court has also directed the organization and function of the Bar officers. It has declared that the Commission should act as a corporate board of directors, in a long term planning and policy making role. The Executive Director should act as the Bar's chief operating officer. A management consultant may be retained, at the Commission's discretion, to provide specific structural and procedural guidelines to implement the relationship and roles between the Commission and the Executive Director. The consultant should periodically review the guidelines and propose changes as necessary.

Bar officers should report to the Court and Bar members at least annually on:

the Bar's financial condition and annual budget; proposed changes in the Bar's Articles of Incorporation and Bylaws, the rules of integration, and other regulatory rules; the Commis-

sion's efforts to increase the use of the ULJC and reduce operating deficits; and the Commission's efforts to improve membership knowledge of, and participation in, Bar programs and functions.

The following shall be disclosed to Bar members by the Commission, and shall be subject to Court review on petition:

- annual budget;
- dues amounts;
- establishment of new programs to be funded in whole or in part by mandatory dues;
- changes in the Bar's Articles of Incorporation and Bylaws; and
- the occurrence of any debt or obligation of \$50,000 or more for a period longer than the current fiscal year.

PUBLIC SERVICE OBLIGATIONS

The Utah Supreme Court has also recommended that mandatory dues provide the financing necessary to carry out the public service obligations of the members of the legal profession as officers of our system of justice. In the absence of Bar organized and sponsored programs to promote the availability of legal services to the public, the Utah Supreme Court may find it necessary to implement alternative means to meet the needs of the public.

POLICY QUESTION

As I have previously mentioned, if the projections of the Budget and Finance Committee are accurate, \$238,000 of unreserved cash will be available at the end of the fiscal year 1995. The Board has been discussing Bar dues and examining closely the reports of the Budget and Finance Committee. Hearings are being held on this topic at Board meetings if sufficient members are interested. We also have scheduled a business meeting for Salt Lake City for April 28, 1995 and are soliciting the views of members on this topic of Bar dues.

As part of the examination of this question, the Board is scheduling a special

meeting for March 17, 1995 and will conduct a hearing on the question about what programs our Bar should be maintaining. Some of the members of the Court's Special Task Force will participate in that dialogue including: Judges James Z. Davis, Judge Pamela T. Greenwood, James Clegg, Ray O. Westergard and David Nuffer.

A NATION UNDER LAWYERS

Professor Mary Ann Glendon of Harvard Law School has written a book called *A Nation Under Lawyers*. She takes out after the legal profession skewering "judicial Caesars, courtroom Rambos and classroom Rimbauds" for accelerating the deterioration of political discourse. She states that most American lawyers rely on business clients for their bread and butter. Today's lawyers, particularly those in large firms, face a fiercely competitive market as business clients shop around for legal services rather than establish cozy relationships with a single law firm. Without long-term relationships with their lawyers, cost-conscious clients have become less interested in paying for wise counsel or sound legal architecture. Increasingly, they turn to lawyers for one-time crisis management in high-conflict settings: litigation, bankruptcies, takeovers. The result is unparalleled stress and despondency in the bar, as over-worked lawyers vie for clients and swaggering gunslingers carry off the fattest fees.

We observe that the developments that Professor Glendon refers to are occurring in Utah also. That, together with the fact that we are growing geometrically (we have had a 16% increase in the number of lawyers the past four years) but solutions are hard to come by. What is the solution?

Any suggestions, fellow officers of the Court?

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First Let's Kiss All the Lawyers, Part 3

By Steven M. Kaufman

Three times is a charm. I'm sure you have heard the old adage before, but this old adage means a great deal to me, as this is the third anniversary of my commissioner's report, and my third opportunity to write about one subject near and dear to my legal heart. As I type these thoughts on my trusty computer, by the way, the same computer I composed the two previous commissioner's reports, and thereby my lucky computer, I can't help but think of the almost eighteen years I have practiced law amongst the best and greatest, lawyers and judges alike. You might say, or at least quietly mutter, that I must be a sick individual to keep puttering away at this same issue year in and year out, the issue of enjoying and rejoicing at having the opportunity to be part of what I consider to be a grand and noble legacy, a club of men and women who daily partake of delicious food for thought, who daily wake up to a new challenge, for the law and lawyering always presents a new challenge.

If I had my druthers, I'd take a few moments everyday and verbally slap every lawyer who suggests that we, as lawyers, are sorry sorts or unlucky to have chosen the law as our life's pursuit. Bah humbug, I say to those of you, a month now since the holiday season has passed, who still exemplify the nasty, boring attitude that

all lawyers must be just that, nasty and boring. Maybe, I'm too altruistic, or just too much of a happy guy, but for the life of me, I still can't quite figure out why we, in this wonderful legal community, can't work toward getting along. You ask me why I keep pressing this issue? Well, first it is a subject that has lost its way throughout the hallways and callways, in our courthouses, telephones, conference rooms, and yes, even in our senses. Senses? Hey, I can smell an upset, aggravated lawyer two floors above me in the courthouse or one telephone ring away. The smell is harsh and heavy, uncooperative and tedious, aggressive to the max. I think a great deal more can be resolved if the smell is cooperative, a touch more on the light side, and aggressive but not overbearing. If I could invent a new scent for us it would have these qualities and smell good, too.

I had a lawyer call me a few months ago when one of my clients had killed himself and his ex-wife, and my face was on the news several times because I had been his lawyer. He asked me if I was okay, if I needed someone to talk to, because he had also been through this experience, and needed a shoulder. I told him that I really appreciated his concern, as it was an interesting twist, I thought, that a busy lawyer would take the time and effort to call me

and see if I was handling the situation okay. I thought that this was remarkable of him to show a caring, let me help you, attitude toward me. Obviously, the families of these individuals needed this same attitude from others, but who ever heard of a lawyer doing this for his fellow professional. Yes, we are a profession which has within its membership people who care; sometimes, we just don't know how to share those feelings. And his call to me made me feel good. Imagine, a feel good phone call from a lawyer! Miracles do happen, and the best part of that often stated thought is that we, lawyers and judges alike, have the ability to cause a miracle or two, and show those who would badmouth our profession that we are caring.

Moving on, caring means to me not only helping our clients to achieve their legal goals to the best of our ability within the bounds of the law, but also doing work within our Bar to show other lawyers how to best facilitate a sense of cooperativeness between us. We are all busy trying to win a case, draft a document, close a deal, get a new client, pay a bill, or a myriad of other things to maintain our practices. Pressures are real, stress follows. As were those lawyers and judges before me lovingly referred to as "Bar junkies," I have

now personally taken on the same title, and take it happily. A Bar junkie, as I am sure you know, but in case you don't, is someone who enjoys spending time doing things for or on behalf of his or her Bar membership. The experience is enlightening, informative, network friendly, and best of all, worthwhile. I must admit that it is not cost effective as far as the rest of my firm believes, at least from the receipt book definition. But, from the experiences of life definition, it can be defined. As a Bar Commissioner, my first three years have been filled with information and comradeship I never would have known otherwise. Although some of the all day meetings and 7 a.m. meetings I have attended can and do interfere with my everyday practice, the benefits I receive much more outweigh the time. I see the other Bar Commissioners, our Bar President, and the Bar staff show a great deal of work ethic, and perform these extraordinary functions for their membership happily, again and again. Why? Who knows, other than they, too, are Bar junkies, desiring to make our Bar the best, the most productive, the most user friendly. Driving to SLC from Ogden two or three times a week has become common for me, a situation I enjoy because lawyers, and lawyers who become judges, are my favorite people. Most of the

lawyers I know, now I said most, are people I am proud to know and consider friends. Yes, friends. You don't have to act like aggressive, crazy people to join our ranks or even remain in them. It really is not that difficult to show cooperation and comradeship, it just takes an appropriate mindset and desire to act human toward each other. If we act human, maybe our clients will, and maybe, just maybe, cooperation will rear its gorgeous head and bite off the head of dis-sention. Sorry, but I had to write that. One way to learn to be happy as a lawyer and enjoy the fruits of this great profession is to volunteer, join a committee or section, or at the very least, somehow become more involved with your Bar, either on a local or statewide basis. Put together a committee of smilers who can attempt to put a happier face on those who have the grumpy face. I, for one, get very tired, very, very, tired, of the grumpers. How about you?

I really like the opportunity of writing this column, even if I actually intended on having it done and to the printer about August. Mind you, this article did not have to be completed until now, but some sort of situation arises periodically where I am thrust into thinking about the grumpers and thumpers, the grabbers and crabbers, those lawyers who haven't got a clue what cooperativeness means, and then I have more I want to say, so I wait to write the article,

and now time is up. I admit that there are only a small portion who fit into this category, but as long as I am aware of even one person like this, I will be forced to write this type of article.

I know you might prefer an article about how to do this or how to do that, but I feel my particular duty, at least today, is to reiterate the importance of getting along, being civil toward each other, smiling even if it hurts, and learning to cooperate with each other daily and through Bar volunteerism. I am hoping that I have touched upon an issue that causes a few of my colleagues to rethink their position in the legal highway of life. Legal highway of life? Well, it just flowed out as I was typing this. If I get the opportunity to do this column again, and I sincerely hope I do, maybe I can convince you to give another lawyer at least a small smooch, if not a kiss. Shakespeare would be proud, and so would I. I can say with true conviction that I love being a lawyer, a Bar Commissioner, and a smiler. See you at the mid year Bar convention next month or at the annual Bar convention in San Diego, or maybe across the table of cooperativeness on a Bar committee. If I do, throw me a kiss, or better yet, kiss a lawyer for me. Next year, Part Four?

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In Search of Exhibit "A"

By Brent R. Armstrong

It happened again. Almost every week it happens. There seems to be a mystical regularity to this experience. Almost every lawyer has had the experience. We keep inflicting it on each other — I COULDN'T FIND EXHIBIT "A"!

The incoming mail had been opened and neatly stacked on my desk. Among the many seminar announcements and book promotional brochures were some pleadings from Fred, opposing counsel in the XYZ case. It was a Motion for Summary Judgment with a related Memorandum in support of the Motion.

We had been expecting the Motion to come in — especially after our client had botched his deposition last month. Maybe there really was no factual dispute in this case after all. Nevertheless, since I wanted to see what the other side was claiming, I slid the memorandum out of the stack of mail and started to read.

The memorandum was easy to read. The arguments flowed well and my eyes cruised along. Opposing counsel had referred to a document — a real estate contract — which, supposedly, was "... marked as Exhibit 'A' attached hereto." How many times in my career had I read that phrase? How many times had I used that phrase?

That real estate contract was the pivotal document in the XYZ case — if such a document existed, that is. I flipped to the last page of the memorandum hoping to find Exhibit "A". It wasn't there. In fact, there were no exhibits with the memorandum. Exhibit "A" must have become detached when the mail was opened, I thought.

I called for my secretary: "Ann," I said, "Did you see the exhibits to the memorandum we just received in the XYZ case? They aren't with the pleadings." "No," she replied, "Everything that was in the envelope is on your desk."

My desk was covered with stacks of files, notes, and numerous projects in process. Maybe Exhibit "A" somehow got

BRENT R. ARMSTRONG has practiced law since 1971. During that time, he has been a partner in the Salt Lake City law firm of Parsons Behle & Latimer (2 years) and Sutter Axland Armstrong & Hanson (18 years). He now operates his own firm. He is a former President of the Salt Lake Estate Planning Council and a former Chairman of the board of the Mountain States Pension Conference (now the Western Pension Conference — Salt Lake Chapter). He has been a speaker, on over 60 occasions, at conferences and seminars relating to taxation, employee benefits and estate planning, business and real estate transactions, ERISA litigation and employee benefits.

mixed up with those other papers. Not probable, though. I just knew I didn't disturb the "neatly-stacked" incoming mail! Furthermore, it was unlikely that Exhibit "A", though not attached to the memorandum, was on my desk somewhere.

Yet, I had to be sure. Carefully, going page by page, file by file, I sifted through everything on my desk. It took longer than I expected.

Among all those stacks there on my desk I found three different documents labeled "Exhibit "A".

Maybe one of these was the real Exhibit "A"! One was a legal description for some property in Weber County. I didn't think that was the correct Exhibit "A" since I was looking for a real estate contract — not just a legal description. The second Exhibit "A" was an affidavit. The third Exhibit "A" was a copy of a warranty deed but the parties to the deed weren't the same parties as those subject to Fred's Motion. Hope faded.

Frustration took over. Exhibit "A" simply wasn't to be found. Hoping for a miracle, I shouted: "Would the real Exhibit "A" please stand up?!" Nothing moved. I couldn't find Exhibit "A". The memorandum didn't make sense without it. We had to find it. The quicker the better. Our response to the Motion was due in five days!

Then it hit me! Perhaps Exhibit "A" was never enclosed with the memorandum when Fred mailed it. That was it!

I grabbed the phone and quickly called for Fred. His secretary answered. "Linda," I inquired, "We received the Motion for Summary Judgment you sent us on the XYZ case, but no Exhibit "A" was enclosed. Do you still have it there?" She put me "on hold" while she checked. A few minutes later, she came back on the phone: "I can't find it right now. I know we had it, and I remember copying it but I just can't see it. I'll have to look for it and call you back." "Fine," I said.

Several hours went by. No call back. The next day came and passed. Still no call back from Linda or Fred. We called again. They were still looking for Exhibit "A." Now they couldn't find it!

The next day we again called for Fred. Since Fred was out, we talked with Linda. She was embarrassed. Still no sign of Exhibit "A." We asked her whether she had attached a copy of Exhibit "A" to the original copy of the memorandum filed with the Court. "A grand idea," she exclaimed. "I'll just get a copy from the Court and send it to you." That sounded workable.

Another day passed. Linda called again. She sounded forlorn. "We called the clerk's office," she said, "and there was no Exhibit "A" with the Court's copy either." She was becoming distraught. "I've looked everywhere here and just can't find it," she exclaimed, "and I don't know where else to look."

I then asked to speak with Fred. "Fred," I said, "Could you help us find Exhibit "A" to the memorandum with your Motion for Summary Judgment? We never got one with your Motion. The Court never got one either!" Fred was perplexed. "We had it here," he replied. "But both Linda and I have looked the place over and just can't turn it up."

Well, they didn't find it for a few days.

Finally, after some tracing, they obtained another copy of the real estate contract from their client, marked it as Exhibit "A," and furnished it to us and the Court.

Fred's Motion in the XYZ case is illustrative of a recurring problem in law practice — missing exhibits. All lawyers are vulnerable to this illness. It is common practice for us to refer to other documents as "exhibits" to the document we are currently drafting. All too often, however, the exhibit documents are either not assembled, or not copied, or not properly identified, or just not attached as described.

Sometimes, an exhibit document doesn't even exist yet but is awaiting the scrivener's pen or the computer's print-out. But the failure to attach the proper exhibit documents can be maddening to other affected parties and can cause significant waste of time for all concerned.

In the "old days," before the advent of computerized word processing, it was even more convenient than it is today for lawyers to refer to "exhibits" for legal

descriptions of real property, tables of financial data, or other information. Using exhibits allowed us to avoid repetitive and time-consuming re-typing of documents in some cases. Nowadays, wordprocessing software allows for easy insertion of such data directly into documents — thereby avoiding the "missing exhibits" problem altogether in some situations.

Separate "stand-alone" documents usually cannot be inserted into the base document. In these situations, the exhibit system must be used.

How can we minimize the problem of missing exhibits? Here are some ideas:

1. Include in each document (at the end or another place in the document) a list of all the exhibits to that document. This could apply whether the document is a pleading or another legal document. In this way, a checklist is provided both for the attorney and for the attorney's staff to identify which documents are to be exhibits and should be attached.
2. Where pleadings are filed electronically and there are exhibits to the pleadings, first scan the exhibits onto disk and send them in the data transfer as part of the pleadings.
3. If exhibit information is short and not a self-standing, separate document, include this data within the document itself, rather

than have it prepared as an exhibit. For example, legal descriptions have to be typed eventually (in most cases), and we might as well type the legal description in the body of the document, rather than refer to the legal description as an exhibit. In these circumstances, there would be no exhibit which could become detached from the main document.

4. As an office practice, as each document comes out of word processing conduct a "search" routine on the computer to identify each place the word "exhibit" is used in the document. This would help in preparing the list of exhibits and in cross-checking to make sure each exhibit has been prepared.

5. Put a heading or label on each exhibit document to indicate the name and date of the base document — the document to which it is an exhibit. Then, if the exhibit document does get separated from the base document, it will be easier to identify and locate the base document.

Although these steps may be helpful in minimizing the problem of the "missing exhibit", they will not totally prevent the problem. Diligence and attention to the problem is still required of attorneys and their staff to avoid succumbing to the "missing Exhibit 'A'" illness.

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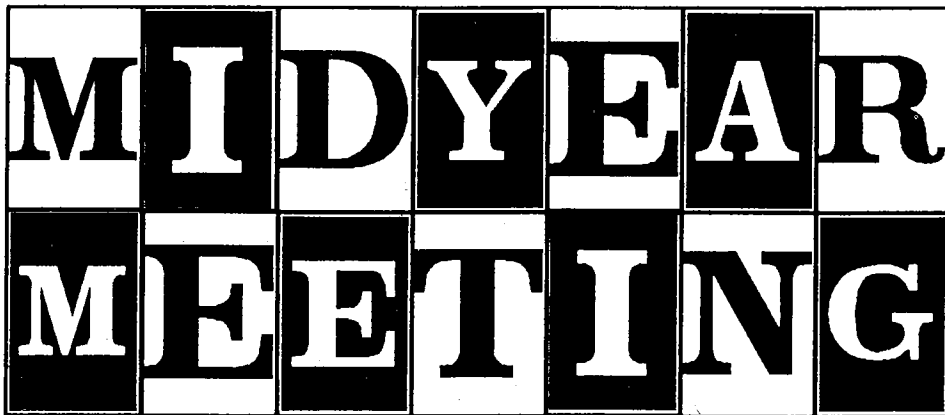
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Finding Utah Legislative Intent

By James G. McLaren

The Utah Supreme Court has often expressed its view that its primary responsibility in construing legislation is to give effect to the underlying intent of the legislature.¹ Despite this clear warning, many attorneys do not brief the issue of legislative intent in appropriate cases. An attorney will appear unprepared to the court if he or she is unable to answer oft-asked questions; "What did the legislature mean by this?" or "What was the evil the legislature sought to remedy?" I have heard appellate counsel tell the court that "no record exists indicative of legislative intent" or that they "have gone through the record and found nothing." Subsequently, routine checks by court staff of house and senate debates have uncovered language that clarifies legislative intent. Counsel either did not research legislative intent or did so ineffectively. This article explains the fundamentals of researching Utah legislative intent.

One should first determine whether briefing the issue of legislative intent is appropriate. If the language of the statute is unambiguous, the court will not look beyond the plain language of the statute to discern legislative intent.² However, when statutory language is ambiguous, briefing the issue of legislative intent may be crucial to a particular construction of a statute. When a legislative history exists, the courts do not hesitate to use it. Indeed, "courts must conclude from the context and history of statutes the most likely intent of the legislature in drafting and adopting the statute."³

In *Hansen v. Salt Lake County*, 794 P.2d 838, 842-45 (Utah 1990), the Supreme Court reviewed the evolution of legislative amendments and compared the changing language. The Court also quoted the floor debates of the house and senate. Remarks from the house were also quoted in *State v. Russell*, 791 P.2d 188, 191 (Utah 1990). The Court noted that "[t]he legislative intent in changing the wording



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of the aggravated robbery statute in 1975 is clarified by the records of the debates in both the house and the senate." There are other recent cases indicating the reliance upon house and senate debates by both the Supreme Court and the Court of Appeals.⁴

In view of this reliance upon legislative history to discern intent, it is important to be able to find the history if one exists. There is a logical progression in finding records that reveal legislative intent. I shall explain using a specific example.

An issue arises over a working mother whose husband grew marijuana in the basement. Will she lose her home under Utah Code Annotated section 58-37-13(1) (i)? This statute provides:

(1) The following are subject to forfeiture, and no property right exists in them:

(i) all warehousing, housing and storage facilities, or interest in real property of any kind used, or intended for use, in producing, cultivating, warehousing, storing, protecting, or manufacturing any controlled substances in violation of this chapter, except that:

(i) any forfeiture of a housing, warehousing, or storage facility or interest in real property is subject to the bona fide security interest of a party who could not have known in the exercise of reasonable diligence that a violation would take place on the property;

(ii) an interest in property may not be forfeited under this subsection if the holder of the interest did not know of the act which made the property subject to forfeiture, or did not willingly consent to the act; and

(iii) unless the premises are used in producing, cultivating, or manufacturing controlled substances, a housing, warehousing, or storage facility or interest in real property may not be forfeited under this section unless cumulative sales of controlled substances on the property within a two-month period total or exceed \$1,000. . . .

Let us say that I am interested in subsection (1) (i) (ii) dealing with willing consent to the act. The wife in question knew the husband was growing marijuana but did nothing about it. I want to find the legislative intent behind the language "willingly consent." To that end, I follow these steps:

1. At the end of the statute the legislative history annotation shows that this section was rewritten by the 1987 amendment, 1987 Utah Laws chapter 87 section 2.

2. Chapter 87 of Laws of Utah shows that language in question was part of H.B. No. 79, "Seizure of Property in Illegal Operations," by Henry J. Dickamore. The

bill was passed on February 23, 1987. The debates of the house and senate at the second or third reading of the bill are what I am seeking.

3. I go to the House Journal, Utah 1987. In the House Bills page index (page 1068), I find the following entry:

HB79

<i>Title:</i>	Seizure of Property in Illegal Operat'ns
<i>Intro and Read:</i>	139
<i>Rules Com.:</i>	240
<i>Read (2):</i>	285
<i>Read (3):</i>	A-322
<i>Trans to Senate:</i>	391
<i>[Rec'd and Signed]:</i>	879
<i>Action by Gov.:</i>	3/16/87
<i>Other :</i>	O-285 O-323 O-348 R-389 A-389

O=other action, R=reconsideration, A=amended

This entry shows that the second reading action is found on page 285 and the third reading action on page 322. On page 285 of the House Journal I find that the second reading occurred on January 22, 1987. Page 322 reveals that the third reading occurred on January 27, 1987, and that H.B. 79 failed to pass on a roll call vote. The "other action" on page 348 was a vote to reconsider a substitute H.B. 79. An amended bill was passed by the house as noted in pages 389-90.

The dates of the senate debates are found in a similar manner. Using the house bills page index in the Senate Journal, I find that second and third readings took place on February 23, 1987, with Senator Carling proposing the motion to pass the bill.

So far I have consulted only the Utah Code Annotated, the Laws of Utah, and the House and Senate Journals. If your firm does not have these readily available, they are in the Utah Room of the Supreme Court library. Armed with the bill number and the dates on which the second and third readings occurred, I can go to the house and senate administrative offices and ask to hear the records of the debates.

4. The house debates on H.B. 79 start on

record #1 of the January 22, 1987 morning session. The record sleeve index shows where on the record the debate starts. I can adjust the machine to play the record at any given point. I do the same for the senate debate which is found on record #95, side 2. I take verbatim notes of the debates where relevant.

5. The Office of Legislative Research and General Counsel, located on the fourth floor of the Capitol Building, can provide further assistance. However, lawyers should be specific about the legislation they wish to research. Vague enquiries may not elicit the desired response. In the example, I have House Bill 79, "Seizure of Property in Illegal Operations," passed in 1987. The Office of Legal Research provided the following source documents:

"Use the floor debates, bulletin, committee reports, and pre-enactment amendments to clarify and argue the issue of legislative intent in appropriate cases when the statute is ambiguous."

a. Interim Study Committee Reference Bulletin — Published annually, this provides a summary of studies and recommendations requiring action. The report gives summaries of background information and proposed legislation, lists reference sources and states what action was taken by the legislative committee. The bulletin is indexed by the subject, therefore my bill name provided the information necessary to find the "Seizure of Property" entry on pages 95-96. The entry read:

I. Background Information

The federal Racketeering Influences and Corrupt Organizations (RICO) Act statutes allow federal agents to confiscate real property that is used to further criminal activity. The Drug Enforcement Agency frequently seizes yachts, luxury automobiles, airplanes, and houses that are used by criminals in drug production and trafficking.

In Utah, individuals convicted of serious drug-related crimes are often sent to prison and later released with

their wealth intact. In order to remove the economic incentives of drug crime, the committee reviewed a bill which allows seizure of property used for or obtained through criminal means.

II. Committee Action

Information was provided to the committee by law enforcement officials and local prosecutors. All agreed that more must be done to incarcerate drug pushers. One of the greatest hindrances to enforcement, however, is the tremendous cost to police departments in buying drugs to catch drug pushers. It takes a great amount of the police department's funds to focus on the larger drug dealers. An ounce of cocaine can cost \$2,000, and at least that much money is needed to attract a sale from only a medium-sized dealer. Law enforcement officials reported that the proposed legislation would generate revenue to help them combat drug trafficking more effectively.

The committee voted its approval of this bill.

III. Proposed Legislation

Draft bill, "Seizure of Property in Illegal Operations," would require individuals involved in illegal drug activity to forfeit real property either used in illegal activity or gained from it. Profits from property seizure would be returned to law enforcement agencies for future drug enforcement.

The entry describes the rationale behind the bill, the evil the bill was intended to cure, and, from a defense perspective, profiles the type of criminal the legislature intended to deter and punish.

b. Under "Reference Sources," the entry also lists another source document that is available on microfiche at the Office of Legislative Research, the Judiciary Interim Committee minutes of October 15, 1986. These minutes reveal that the bill was originally introduced as H.B. 96. The Judiciary Interim Committee Minutes discuss concerns over the forfeiture of real property and the need to prevent people convicted of drug crimes from being released from jail with their wealth intact. The proceeds (including homes) derived from drug activities

should be confiscated to remove the economic incentives of drug crime.

c. A letter of November 24, 1986 is in the legislative history of the bill. It reveals that Representative Hollingshaus requested changes to the original bill as introduced by Representative Dickamore. One requested change was for a provision "for the protection of the interests of the spouse and children."

d. The Office of Legislative Research may also have amendments and substitutions to bills. In this case, original language in the bill was amended by a substitute bill as follows: "a housing, warehousing or storage facility or interest in real property may not be forfeited under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent," was changed to "an interest in property may not be forfeited under this subsection if the holder of the interest did not know of the act which made the property subject to forfeiture, or did not willingly consent to the act."

The information from all sources should now be synthesized. The amendment above quoted is placed in perspective by the debate in the House of Representatives.⁶ During the debate Representative Lewis expressed his concern that a "flaw" in the original bill as intro-

duced by Representative Hollingshaus had carried into the new bill. He asked if a spouse who was a joint owner was protected. He noted that "(a) wife and children could not be left out because a husband was using the house for illegal drug activities." Representative Bradshaw asked, "if a husband is growing marijuana in the basement does that mean the mother loses that home?" Representative Dickamore replied, "Sometimes we like to feign ignorance or lack of knowledge . . . [I]f she can prove to the court she was totally ignorant of that particular activity . . . the court then could protect her interest in that house . . . in the case of joint ownership." Representative Bradshaw was not satisfied. "[T]here may well be a situation where the wife knows it's going on and can't do anything about it." Representative Lewis also noted that until this due process concern was perfected "we cannot pass this bill."

A plausible interpretation of legislative intent may now be argued. Was the language of the bill changed to address the concern that a spouse who acquiesces in the drug activity should not necessarily lose his or her home? The legislature did not wish to impose Representative Dickamore's requirement that a spouse be "totally ignorant" of the drug activity, thus the language "or did not willingly consent to the act"

was added.

The legislative history of any given act may provide persuasive argument that should be briefed to appellate courts. Use the floor debates, bulletin, committee reports, and pre-enactment amendments to clarify and argue the issue of legislative intent in appropriate cases when the statute is ambiguous. These sources can provide background information, arguments for and against proposed amendments, and individual viewpoints of legislators, all of which may tell us why the bill was passed.

¹See *American Coal Co. v. Sandstrom*, 689 P.2d 1, 3 (Utah 1984); *Christensen v. Industrial Comm'n*, 642 P.2d 755, 756 (Utah 1982); *Millett v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980); *Johnson v. State Tax Comm'n*, 17 Utah 2d 337, 339, 411 P.2d 831, 832 (Utah 1966).

²*Allisen v. American Legion Post No. 134*, 763 P.2d 806, 809 (Utah 1988); *P.I.E. Employees Federal Credit Union v. Bass*, 759 P.2d 1144, 1151 (Utah 1988).

³*State v. McCovey*, 803 P.2d 1234, 1235 n. 9 (Utah 1990); *State v. Tillman*, 750 P.2d 546, 569 (Utah 1987).

⁴See *Western Coating Inc. v. Gibbons & Reed*, 788 P.2d 503, 505 (Utah 1990); *State v. Stromberg*, 783 P.2d 54, 60 (Utah App. 1989); *Gleave v. Denver and Rio Grand Western R.R. Co.*, 749 P.2d 660, 672 (Utah App. 1988).

⁵This statutory language may not be regarded as particularly ambiguous, however, the statute has a history that serves the main purpose of this article.

⁶HOUSE OF REP., 47th LEGISLATURE, DAY 16, Jan 27, 1987, Record 1, side 1, and Record 2, side 2.

⁷I note that the substitute House Bill No. 79 was drafted before the January 27 debate. However, the roll call vote apparently considered the original bill; the substitute bill was passed later.

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Utah Dispute Resolution: A Community Mediation Program

By Marlene W. Lehtinen, Project Director

Ms. B purchased a used travel trailer from Mr. H with the intention of towing it to Yellowstone Park for a late summer vacation. When she got home she showed it to a neighbor who noticed that the rear lights were not working. When he looked at the trailer more closely, he found that the electrical wiring was defective and that in order for the rear lights to operate the wiring would need to be replaced. He estimated that the wiring job would cost about \$800. Having just purchased the trailer, Ms. B could not afford this additional expense, but without rear lights she could not legally, or safely, tow the trailer down the street, let alone to Yellowstone. When Ms. B called Mr. H to explain the situation, he claimed that she had purchased the trailer in "as is" condition and that, even though he knew how to fix the wiring, it was not his responsibility. Besides he was leaving on vacation himself and would be out of town for several weeks. At this point, Ms. B became very upset and began to berate Mr. H. In response, Mr. H refused to discuss the matter anymore and hung up on Ms. B.

Ms. B. was especially angry about the possibility of missing the trip to Yellowstone because she had recently learned that she had a terminal illness. She believed this might be her last opportunity to make such a trip. Her stress had caused her to respond in an unproductive and hostile manner. When she spoke of her problem to a friend, the friend said "Why don't you call Utah Dispute Resolution. I heard that they can help people with problems like yours." Ms. B called Utah Dispute Resolution (UDR). After hearing about the situation, UDR offered to call Mr. H, explain that they had been contacted by Ms. B, and ask if he would be willing to come to the Law and Justice Center where a trained mediator would help them work out a solution. When con-



MARLENE W. LEHTINEN is Project Director for Utah Dispute Resolution. She worked on behalf of the Utah State Bar to develop the grant proposal that led to the creation of Utah Dispute Resolution and served as the grant's principal investigator. Dr. Lehtinen is an Associate Professor in the Department of Sociology at the University of Utah where she teaches classes in criminal justice and family. She received her Ph.D. from The Ohio State University (1972). She serves on the Alternative Dispute Resolution Committee of the Utah State Bar.

tacted, Mr. H, although somewhat skeptical of what would be accomplished, agreed to the mediation. UDR scheduled the mediation within the week.

At the mediation, both Ms. B and Mr. H described what had happened from each of their perspectives. The mediator encouraged them to talk and listen to each other. The atmosphere that the mediator created allowed Ms. B to feel comfortable discussing her medical condition. Mr. H was shocked to learn that Ms. B had a terminal illness. He said, "Now I can see why you

were so upset. Why didn't you tell me before?" Ms. B said that she had not wanted to discuss her illness in a business situation, but that she felt differently in the mediation. The mediator encouraged Ms. B and Mr. H to consider how the situation might be resolved. After some discussion it was determined that Mr. H knew how to fix the wiring and would do the work, but was not willing to pay for the materials and parts that would be needed. When Ms. B asked how much these items might cost, Mr. H estimated no more than \$75, which Ms. B agreed to pay. Since Ms. B was anxious to leave on her trip, Mr. H agreed that he could delay his trip a day or two so that he could do the work as soon as possible. The mediator wrote this agreement that she had helped them to develop and Ms. B and Mr. H signed it. Ms. B and Mr. H left the Law and Justice Center to go to an auto parts store where they would get the necessary materials to repair the trailer.

Mediating this problem through UDR had allowed Ms. B and Mr. H to resolve their problem quickly, confidentially and at no cost. If the case had gone to court, it would have taken much longer, there would have been fees, and Ms. B's medical condition, if disclosed, would have become part of the public record. More importantly, whatever the outcome, it is highly unlikely that Ms. B and Mr. H would have felt as positively about each other as they did after the mediation.

BACKGROUND

Shortly before dedication of the Utah Law and Justice Center in 1988, a grant request was submitted to the federally-funded State Justice Institute in Alexandria, Virginia on behalf of the Utah State Bar that proposed the creation of a neighborhood dispute resolution program at the Law and Justice Center. As stated in the proposal, the purpose of the grant was

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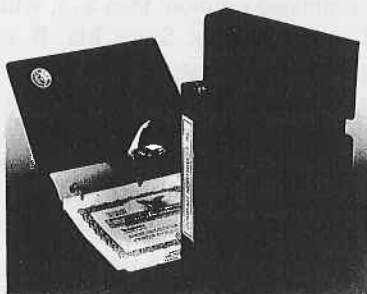
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to develop and operate a dispute resolution program that provided mediation services to the community at no charge. Although available in many other states at the time, Utah had no program providing free mediation services. Following several rounds of revision and resubmission of the proposal, funds were given to the Bar in 1991 under a two-year grant for this purpose. Dr. Marlene Lehtinen was Principal Investigator for the grant. Utah Dispute Resolution (UDR) first began to offer services late that year. For nearly three years, UDR has been providing mediations at the Law and Justice Center at no charge to those who request that their disputes be mediated.

*"... UDR [Utah Dispute
Resolution] has been providing
mediations at the Law and
Justice Center at no charge to
those who request that their
disputes be mediated."*

UDR conducts mediations for individuals as the result of both "self-referrals" and referrals by various agencies. In addition, UDR began offering its services in the Murray Small Claims Court in November 1991 and in the Salt Lake City Small Claims Court in January 1992. UDR has also provided mediation services in several other small claims courts including those in Provo, Orem, and Logan. UDR's long-term goal is to develop a statewide system of "satellite" centers, administratively supported by the "hub" at the Law and Justice Center. This unique and innovative design permits the cost-effective delivery of quality mediation services to smaller population centers that are geographically distant from the hub. Small claims courts are ideal satellite locations for the provision of services, but UDR is also able to conduct mediations in other settings at the satellite locations.

UDR is a community mediation program. These programs, sometimes referred to as community justice, neighborhood justice centers, or dispute settlement centers, allow disputants to mediate their differences rather than taking them to court for adjudication. Mediators are usually volunteers

who are trained, but have no power to impose a disposition. Typically the cases handled by these programs involve small civil matters, although minor criminal charges are sometimes accepted. Individuals who utilize these services are frequently those with on-going or prior relationships, such as landlords and tenants, consumers and merchants, employers and employees, and others, such as friends, neighbors, and family members.

BENEFITS OF MEDIATION

Mediation provides a number of advantages. It allows disputing parties to develop their own solution to the problem with the aid of a neutral third party trained to facilitate this outcome. With mediation, individuals are able to address underlying causes of the dispute and fashion their own agreement. As a result, those who mediate are often much more satisfied with the process than those who litigate. In addition, rates of compliance tend to be higher with mediated agreements than with court-imposed decisions.

These higher levels of satisfaction and compliance were found to be the case for UDR clients in an independent evaluation conducted as part of the grant. The evaluator interviewed a random sample of UDR's clients and a random sample of persons with similar cases who had gone through court, a total of 280 individuals. Both groups were interviewed three months after the mediation or court experience. Significant differences were found between the two groups, with UDR clients being much more likely to be satisfied with the process than those who had gone to court. Persons who had mediated were also much more likely to say it was working out well than those who had gone to court, reducing the likelihood that those with mediated agreements would need to return to the courts. Finally, persons who had mediated were much more likely to say that they would use that approach again than were those who had been to court.

Another advantage of mediation is that by mediating a dispute, individuals may learn skills that allow them to handle future disputes more effectively. Even if an agreement is not reached through mediation, the process itself is generally useful in that it helps parties narrow the focus of the dispute and clarify issues.

An important benefit that is unique to

community mediation programs is that they improve people's access to justice. This is accomplished by providing low- and middle-income individuals who cannot afford legal counsel, but do not qualify for legal aid, with a forum for the resolution of disputes. UDR has done this as well. The independent evaluator found that those who mediated their disputes had lower income levels than those who had gone to court.

Mediation programs are often cited for their ability to help reduce court backlogs and delays by relieving the court of cases that belong elsewhere, freeing up time and resources to handle those cases that require litigation. This benefit, however, is of less value in Utah, where case processing times have actually gotten shorter in the last five years.

Mediation is especially useful when disputants have ongoing relationships such as neighbors, friends, family members, landlords and tenants, or employers and employees, since it aids in the preservation of that relationship, something at which the courts are less effective. Mediation provides a forum for individuals to resolve these conflicts in a setting more appropriate than the courts.

NASTY NEIGHBORS: A CASE STUDY

The following is an example of a case in which mediation was much more effective in preserving prior relationships than the courts could be. A conflict between two men who lived next door to one another had escalated to the point that virtually everyone in the neighborhood had become involved. Initially, Mr. W accused Mr. N of failing to return some tools that he had borrowed to repair his roof. Mr. N claimed that he had returned the tools and that Mr. W must have lent them to someone else or lost them himself. Mr. W then told everyone in the neighborhood that Mr. N was a liar and a thief. Shortly thereafter, Mr. N's car was vandalized. The car had been spray painted with graffiti and the windows smashed. Mr. N called the police and told them to arrest Mr. W for the damage to his car. Mr. W said that he had not done the damage. Mr. W's son told police that he had seen members of a local gang doing the damage, but that he was afraid to do anything. He said that he would not identify the gang members for

fear of retaliation, but that he didn't want his Dad to be accused of something he didn't do.

Things went from bad to worse at this point. Soon everyone in the neighborhood was taking sides, believing either Mr. W or Mr. N, and bad relations developed between those who took opposite sides. The women in the neighborhood who had been friends in the past were now hostile to one another. They also were ordering their children not to interact with certain other children. What had been a pleasant neighborhood had become a hostile environment that seemed to some like a "powder keg about to explode."

Mr. N's wife heard about UDR where she worked. She called and described the situation, asking if anything could be done. Although this was an unusually complicated situation, UDR arranged to have Mr. and Mrs. W and Mr. and Mrs. N come to the Law and Justice Center for a mediation. Remarkably, on the scheduled evening, a total of twenty-six adults and children arrived. Although most would not be directly involved in the mediation, they said they wanted to be there to emphasize how badly the situation was affecting everyone in the neighborhood.

"... Those who mediate are often much more satisfied with the process than those who litigate."

At the mediation, the mediator asked all of the parties to describe the situation from their perspective. As the session progressed he encouraged Mr. W and Mr. N to consider how the situation could best be resolved. At one point, he asked Mr. W to list the tools he believed that Mr. N had kept. Mr. W did this, but volunteered that he no longer needed most of the tools in any case. Mr. N then agreed to replace the tools that Mr. W still used. Mrs. W and Mrs. N agreed that they wanted to reestablish relations themselves and also wanted to involve all of the neighbors. When the mediator asked them to consider ways that this could be accomplished, they developed the idea for a joint picnic to which the entire neighborhood would be invited. At the conclusion of the mediation, Mr. W and Mr. N were planning

a fishing trip and Mrs. W and Mrs. N were talking about the picnic menu. As the twenty-six neighbors were leaving the Law and Justice Center, arrangements were already being made for the picnic.

Mr. W and Mr. N were called three months later as part of the independent evaluation. Both were enthusiastic about the benefits of the mediation. The earlier hostility had been replaced with friendliness and camaraderie. Not only do the neighbors interact positively with one another again, but they have formed a neighborhood watch group to prevent any more vandalism by the gangs that have increasingly made a mark in the surrounding areas.

Obviously this case did not belong in the courts. If Mr. W had been told that he would not be getting all of his tools back, he would have been unhappy. If Mr. N had been told to replace any of Mr. W's tools, he would have been unhappy. Neither would have had any interest in reestablishing relations with each other or with the rest of the neighborhood. The UDR mediator had worked effectively with the parties so that they could come to an agreement with which they could happily comply.

MODEL DEVELOPMENT

Following the Bar's receipt of the grant from the State Justice Institute, much work was necessary before mediation services could begin. Extensive research was done to develop and refine the model that would be used. Various community mediation programs across the country were consulted, with particular emphasis on those that were bar-affiliated, and site visits were made to three of these programs.

Eighteen justice system representatives and community leaders provided direction and feedback as members of a Task Force. These dedicated individuals provided input on program direction, case referral sources and mechanisms, and community relations. Task Force members included representatives from the State Court Administrator's Office, Second and Third District Courts, Utah State Bar, Salt Lake County Attorney's Office, Salt Lake City Police Department, Salt Lake County Sheriff's Office, American Arbitration Association, J. Reuben Clark Law School at Brigham Young University, Department of Commerce, Salt Lake City Mayor's

Office, as well as several attorneys who utilize ADR in their practice.

UDR is located at the Utah Law and Justice Center, which was specifically designed to house ADR programs. The building's design features a dignified atmosphere, as well as its affiliation with the Bar, provide individuals who are having their disputes mediated at the Law and Justice Center with confidence that ADR is not second-class justice.

VOLUNTEER MEDIATORS

UDR could not operate without its dedicated and skilled volunteer mediators. The first group of mediators were trained and certified by the Center for Conflict Resolution (CCR) in October 1991. CCR, a highly-respected mediation program located in Chicago, Illinois, sent three trainers to Salt Lake City for the 32-hour training. Since then UDR has conducted its own training to add new mediators. UDR receives frequent requests from individuals who would like to become volunteer mediators.

There are 24 individuals on UDR's panel of volunteer mediators. Although they have various backgrounds, there is a strong legal orientation. There are eight attorneys, six law school students in their second or third year and one law student in the first year, a paralegal, and a case administrator for the American Arbitration Association. In addition, there are four social workers, the owner of a large business, a university professor, and a minister.

PROGRAM OPERATION

Two third-year law students share a half-time Program Manager position, which involves intake work and the scheduling of mediations. As word of UDR's existence spreads and the list of referral agencies grows, the number of calls is steadily rising.

Since November 1991, UDR has mediated nearly five hundred cases, with a growing caseload each year. During the second quarter of 1994, 20 percent more cases were mediated than during the same quarter in 1993. The types of disputes mediated have included consumer-merchant, land-

lord-tenant, family disputes, neighbor-neighbor, auto accidents, and others. UDR is generally able to schedule mediations within ten days of requests. Disputes are resolved approximately eighty-five percent of the time, a figure slightly higher than the national average and a tribute to the skills of UDR mediators.

With the completion of the grant in March 1993, UDR made the transition from public to private funding. Fundraising was carried out, resulting in financial support for the program from various private foundations, corporations, corporate foundations, and associations. Fundraising efforts are continuing.

CONCLUSION

UDR provides an important and unique service that is locally unavailable elsewhere. It provides the many benefits of mediation as well as the specific advantages of community mediation programs. UDR is a significant resource for its clients, the referral agencies, and the community.



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Valentine's Day*

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The Mid-Year Meeting Committee extends its gratitude to the following sponsors for their contributions in making this a successful and enjoyable Mid-Year Meeting. Please show your appreciation for their donation by visiting the exhibitor tables and supporting these firms and businesses:

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1995 Mid-Year Meeting Program

2:00 p.m. **Trapshoot Tournament** - *Green Valley Skeet & Trap Range*

Ervin R. Holmes, VanCott, Bagley, Cornwall & McCarthy

6:30 p.m. **Reception** - *Holiday Inn Lobby*

Richard H. Thornton, Jardine, Linebaugh, Brown & Dunn

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11 **A Step-By-Step Guide for Recognizing Intellectual Property Issues** - *Hilton Inn*
Grant R. Clayton, Thorpe, North & Western

7:00 p.m. **Dinner** - *Holiday Inn Sabra Rooms*
Speaker: Frank Layden, President, Utah Jazz

10:15 - 10:30 a.m. **Break** - *Hotel Lobby*

SATURDAY, MARCH 4, 1995

7:00 a.m. **Fun Run** - *Snow Canyon*

SPONSORED BY: Capitol Court Reporters
Utah Trial Lawyers Association

7:00 a.m. **Utah Trial Lawyers Association Breakfast** - *Hilton Inn*

10:30 - 11:20 a.m. **Breakout Sessions:** (1 each)

7:30 a.m. **Registration/Continental Breakfast** - *Hotel Lobby*

9B **QBVII Continued** - *Sabra ABC*

SPONSORED BY: Prince, Yeates & Geldzahler
Snell & Wilmer

10B **Real Estate Fundamentals Continued** - *Sabra FG*

8:10 - 9:00 a.m. **Breakout Sessions:** (1 each)

12 **Where to Start if Your Client Wants to Franchise His Business** - *Hilton Inn*
Jeffrey C. Swinton, Stoker & Swinton

6 **Hidden Traps in Collection Law** - *Hilton Inn*
Keith A. Kelly, Ray, Quinney & Nebeker

11:20 - 11:35 a.m. **Break**

7 **Impact of Divorce on Children** - *Sabra FG*
Dr. Patricia Esplin, Assistant Director of Counseling & Development, Career & Learning Services, BYU

11:35 - 12:25 p.m. **Breakout Sessions:** (1 each)

9C **QBVII Continued** - *Sabra ABC*

8 **Civil Litigation: Dissecting the Expert Witness** - *Sabra ABC*
Joe Zear, Partner, KPMG Peat Marwick

13 **Changes In Health Care Law Will Impact Every Lawyer, Ready or Not** - *Sabra FG*
Don B. Allen, Ray, Quinney & Nebeker

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

14 **Current Issues in State and Local Taxation** - *Hilton Inn*
K.C. Jensen, Parsons Behle & Latimer

9:00 - 9:25 a.m. **Break** - *Hotel Lobby*

12:25 p.m. **Meetings Adjourn**

SPONSORED BY: Christensen, Jensen & Powell

1:00 p.m. **Mountain Biking Tour**

9:25 - 10:15 a.m. **Breakout Sessions:** (1 each)

9A **QBVII Movie & Discussion** - *Sabra ABC*
Presented by: Salt Lake County Bar

10A **Real Estate Fundamentals on Buying, Leasing and Financing Property** - *Sabra FG*
David K. Broadbent, Prince, Yeates & Geldzahler

THURSDAY, MARCH 2, 1995

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

SPONSORED BY: Jones, Waldo, Holbrook &
McDonough
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FRIDAY, MARCH 3, 1995

7:30 a.m. **Registration/Continental Breakfast - Hotel Lobby**

SPONSORED BY: First Interstate Trust Division

8:00 a.m. **Opening General Session - Sabra Rooms**
Welcome and Opening Remarks
Paul T. Moxley, President
J. Randall Call, Chair, 1995 Mid-Year Meeting

8:10 a.m. **The Change in Billing Practice - Ethics Driven or Client Driven: Father Paul Donald White - Sabra Rooms (1)**

SPONSORED BY: Parsons Behle & Latimer

9:00 - 9:25 a.m. **Break - Hotel Lobby**

SPONSORED BY: Ray, Quinney & Nebeker

9:25 - 10:15 a.m. **Breakout Sessions: (1 each)**

1A **Sexual Harassment Law Update - Hilton Inn**
Janet Hugie Smith, Ray, Quinney & Nebeker
Lisa A. Yerkovich, Ray, Quinney & Nebeker
Michael E. Blue, Ray, Quinney & Nebeker

2 **The Use of Computers in the Courtroom - Sabra FG**
Presented by: The Litigation Section

3 **Alternative Dispute Resolution in the 90's: The New Rules Governing Court Annexed ADR - Sabra ABC**
Hon. William B. Bohling, Third District Court
Diane Hamilton, ADR Director,
Administrative Office of the Courts

Richard B. McKeown, Parker, McKeown & McConkie

Richard H. Schwermer, Administrative Office of the Courts

Hardin A. Whitney, Moyle & Draper

10:15 - 10:30 a.m. **Break - Hotel Lobby**

SPONSORED BY: Rollins Hudig Hall of Utah, Inc.

10:30 - 11:20 a.m. **Breakout Sessions: (1 each)**

1B **Recent Developments in ADA Case Law - Hilton Inn**
participants as listed in session 1A

4 **Legislative Update - Sabra FG**
John T. Nielsen, VanCott, Bagley, Cornwall & McCarthy

5 **Court Consolidation - Sabra ABC**
Hon. Bryce K. Bryner, Seventh District Court
Hon. J. Philip Eves, Fifth District Court
Hon. Gordon J. Low, First District Court
Hon. Jon M. Memmott, Second District Court
Hon. David L. Mower, Sixth District Court
Hon. Michael R. Murphy, Third District Court
Hon. Boyd L. Park, Fourth District Court
Hon. A. Lynn Payne, Eighth District Court
Moderator - Hon. Michael D. Zimmerman, Utah Supreme Court

11:20 - 11:35 a.m. **Break - Hotel Lobby**

11:35 - 12:25 p.m. **Forepersons of the Rodney King Juries - Sabra Rooms (1)**

Robert Almond, Foreperson, Los Angeles Federal Jury

Dorothy Bailey, Foreperson, Simi Valley Jury
Moderator - Timothy B. Anderson, Jones, Waldo, Holbrook & McDonough

12:00 noon **Golf Clinic - Sunbrook Golf Course**

12:25 p.m. **Meetings Adjourn for the Day**

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

2:00 p.m. **Tennis Tournament - Green Valley Tennis Courts**

Commission Highlights

During its regularly scheduled meeting of October 28, 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 September 23, 1994 meeting.
2. Paul Moxley reported that the luncheon with section and committee chairs went very well and that Chief Justice Michael Zimmerman addressed the group.
3. Moxley reported that 208 new lawyers were admitted to the Utah State Bar during the October Admissions Ceremony.
4. The Board discussed generally the issue of allowing attorneys permission to bypass court security and deferred any action at this time.
5. Charles R. Brown reported that on October 21 the Utah State Bar acquired the remaining one-half interest of the Law & Justice Center building from the Law & Justice Center, Inc. He distributed a summary sheet and reviewed the terms of the purchase agreement.
6. Moxley announced that he has asked Judge James Z. Davis to head up a speakers' bureau and to solicit speakers.
7. The Board voted to present an annual award to a member of the Minority Bar and the Women Lawyers of Utah and to refer this to the Awards Committee.
8. Moxley indicated that he has asked the Courts & Judges Committee Chairs, Scott Daniels and Phil Fishler, to have their committee review the issue of unfavorable press regarding judges and to propose the best way to respond to such press.
9. The Board voted that at the April, 1995 Bar Commission meeting in Salt Lake City, attorneys of our Bar be invited to meet with the Bar Commission for the purpose of presenting to it their views, comments, suggestions or recommendations concerning programs, functions, activities, the budget, or organizational matters of the Utah State Bar or legal profession.
10. The Board engaged in general discussion on judicial openings and notices of such, illustrated the selection process, and discussed the slimness of the pool of candidates in some areas of the state.
11. The Board voted to join an amicus brief with the Florida Bar.
12. John Baldwin referred to the Bar Programs Report on page 16 and reviewed some of the items.
13. The Board voted to authorize John Baldwin to hire a pro bono coordinator for a one-year commitment.
14. International Section Chair, E. Scott Lee, and P. Christian Anderson appeared to present for Bar Commission approval a proposed rule for licensing of foreign legal consultants. The Board voted to approve adopting the rule as proposed with four amendments.
15. Character & Fitness Committee Chair, Tom Billings, reviewed the committee's recommendations regarding the temporarily suspended mental health questions on the Bar Examination application. He explained the committee's research in contacting almost every other jurisdiction, meetings with health care providers, and comments received from the ADA. He indicated that a number of federal decisions have been made on either side of the issue.
16. The Board voted to approve the Board amendments the modified question on the Bar Examination application replacing 15, 16 and 21 and to defer action on modifying questions 13 and 14.
17. Craig Mariger on behalf of the Ethics Advisory Opinion Committee, appeared to discuss two ethics opinions for Bar Commission approval. The Board voted to approve Ethics Opinions Nos. 151 and 125 as proposed by the Committee.
18. Young Lawyers Division President, David Crapo, reported that about 150 new lawyers attended the New Lawyers Reception. Crapo also reported that work is continuing on various projects including an affiliate outreach program called "Child First."
19. The Board received a report on the Domestic Violence Program by the Delivery of Legal Services Committee Chair, Keith A. Kelly, and Anne Milne, Executive Director, Legal Services and Stuart Ralph, Assistant Director. Keith Kelly distributed a report to the Commission advising on the status of current and planned pro bono projects and requested the Bar Commission's assistance in recruiting volunteers from law firms.
20. Chief Disciplinary Counsel, Steve Trost, reported that last week he attended an ABA meeting in Chicago and was appointed as a member of the ABA Commission on non-lawyer practice.
21. Trost reported that he met with the Advertising Committee at the invitation of Chair Ron Schiess and the committee is concerned with the pervasiveness of aggressive advertising permitted under existing rules.
22. Trost requested guidance from the Board regarding a request from *The Deseret News* to have access to the Office of Bar Counsel's database of information on attorney discipline files. The Board voted to have Steve Trost and Paul Moxley work together to come up with an appropriate response to this request.
23. The ABA Delegates' Report was postponed.
24. The Board voted to request the Client Security Fund Committee to prepare a summary and history of Fund activity and to submit it along with recommendations for future operations to the Bar Commission for review and consideration.
25. Budget & Finance Committee Chair Ray Westergard reviewed the financial reports for September.
26. Paul Moxley suggested that the issue of a dues rebate as well as the LAU affiliation issue, Foreign Legal Consultants Rule, and pro bono program should be presented to Bar members for input through a *Bar Journal* notice.

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

Discipline Corner

DISBARMENTS

On December 7, 1994, the Third Judicial District Court disbarred **C. Dean Larsen** from the practice of law effective January 27, 1994, for violating Rule 8.4(b), committing a criminal act adversely reflecting on honesty. The effective date of his disbarment is the date he was placed on interim suspension. In or about December of 1990, Mr. Larsen was convicted of the crime of theft, a Second Degree Felony, which conviction was confirmed by the Utah Court of Appeals on February 7, 1992. On or about June 22, 1990, Mr. Larsen was convicted of eighteen counts of securities fraud and was sentenced to incarceration in the Utah State Prison for a term not to exceed three years. Those convictions were affirmed by the Utah Supreme Court on or about December 17, 1993. The Order of Disbarment further provides that as conditions precedent to seeking readmission to the Bar, Mr. Larsen must make restitution to all affected parties as required by the court in connection with his criminal convictions, pay all fines and costs as directed by the court in the criminal cases, and reimburse the Client Security Fund for any sums that may be paid by the fund as a consequence of his professional misconduct.

SUSPENSIONS

On or about November 22, 1994, pursuant to a Discipline by Consent and Settlement Agreement, the Third District Court ordered that **Martin V. Gravis** be suspended from the practice of law effective February 1, 1995. The Court ordered that Mr. Gravis serve three (3) one year terms of suspension, to run concurrently, with all but sixty (60) days of each term stayed provided that Mr. Gravis successfully completes a one year term of supervised probation for each suspension, also to run concurrently. Any violation of the terms of probation will result in his serving the full remaining periods of suspension to run consecutively. This action was taken for Mr. Gravis' violation of Rule 1.2(a) – SCOPE OF REPRESENTATION (three counts), Rule 1.3 – DILIGENCE (three counts), Rule 1.4(a) – COMMUNICATION (two counts), Rule 8.4(c) – MISCONDUCT (two counts) and Rule 8.4(d) – MISCONDUCT by failing

to properly represent clients on appeals taken in criminal matters, by failing to communicate the status of the cases to the clients, by misrepresenting the status of cases to clients and, through neglect, wasting valuable court resources.

PUBLIC REPRIMANDS

On December 14, 1994, a Third District Court Judge entered a public reprimand against **Richard J. Rimensberger** for violating Rule 1.8(c) of the Rules of Professional Conduct of the Utah State Bar, which prohibits an attorney from preparing an instrument giving the lawyer or a person related to the lawyer any substantial gift from a client, including a testamentary gift, except where the client is related to the donee. The Judge imposed the reprimand pursuant to a discipline by consent negotiated between Mr. Rimensberger and the Office of Attorney Discipline.

In the discipline by consent, Mr. Rimensberger admitted that from about July 1971 until April 1993, he had acted as attorney for the decedent, and in that capacity drafted in excess of thirty wills and codicils for her. At the decedent's request, beginning with the will that Mr. Rimensberger drafted for her in March 1973 and continuing thereafter, he and members of his family were included as beneficiaries in decedent's wills. Mr. Rimensberger was not related by blood or marriage to the decedent.

In mitigation, the Court found that Mr. Rimensberger had no prior disciplinary record; that he had a very close personal relationship with the decedent; that he exercised no undue influence over the decedent in obtaining the testamentary gifts for himself and members of his family, but was merely complying with the decedent's requests for him to do so; that the value of the testamentary bequests to Mr. Rimensberger and members of his family was less than 6% of the value of decedent's estate; that he did not charge the decedent a fee for professional services in most of the wills he drafted for her, but performed those services as a personal favor to decedent; and that he cooperated with the Office of Attorney Discipline during the disciplinary proceeding.

On or about December 6, 1994, pursuant to a Discipline by Consent and Settlement Agreement, the Third District Court entered an Order of Discipline Publicly Reprimanding **Robert B. Hansen** and placing him on

probation for a period of eighteen (18) months. The terms and conditions of his probation are: for the first three (3) months of probation, Mr. Hansen shall be placed on inactive status with the Utah State Bar and prior to returning to active status, he shall 1) attend the Utah State Bar Ethics School, 2) have a licensed member of the Utah State Bar supervise his work for the remaining fifteen (15) months of probation, and 3) commit no violations of the Rules of Professional Conduct during the probationary period. This action was taken for Mr. Hansen's violations of Rule 1.1 – COMPETENCE, Rule 1.3 – DILIGENCE and Rule 8.4(d) – MISCONDUCT by failing to properly represent a client in a personal injury case. Mr. Hansen agreed to allow a deposition to be used as trial testimony, even though he had not attended or read the deposition. The court found that Mr. Hansen's health problems were significant mitigating factors.

On November 3, 1994, **John Riley** and the Office of Attorney Discipline stipulated to a public reprimand before a Third District Court Judge. The discipline by consent was based upon findings by United States District Judge David Sam in litigation captioned *Automobile Assurance Financial Corp. v. Syrett Corp.*, Case No. 90-C-0224-S (D. Utah, June 23, 1993).

Judge Sam found that during the time Respondent represented certain individual and corporate clients, he also acted on behalf of a person whose interests were adverse to those clients. Acting under the direction of that person, Respondent took certain steps that resulted in that person's financial gain, and concurrent loss to Respondent's clients.

Based upon Judge Sam's ruling, Respondent and the Office of Attorney Discipline agreed that Respondent had violated Rules 1.7(b) (conflict of interest), 1.8 (a) (conflict of interest), 8.4(b) (misconduct), and 8.4(c) (misconduct) of the Rules of Professional Conduct of the Utah State Bar. In mitigation, the parties agreed and the Court found that Respondent had no prior disciplinary record with the Bar; Respondent realized no pecuniary benefit to himself; Respondent had fully cooperated with the Bar in its investigation; and Respondent settled his differences with his former clients, who asked the Court and the Bar for leniency in any discipline

imposed on Respondent.

In addition to the public reprimand, Respondent agreed to attend the Bar's next Ethics School at his own expense.

ADMONITIONS

On November 28, 1994, an attorney was Admonished upon the recommendation of a Screening Panel of the Ethics and Discipline Committee for violating Rule 1.2(a), Scope of Representation, Rule 1.3, Diligence, and Rule 1.4(b), Communication. The attorney was retained in July, 1993, to enforce the terms of a divorce decree. The amount to be collected was \$700.00. When the defendant could not be located for personal service the attorney took no further action on the case. Rules 1.2(a) and 1.3 were violated in that the attorney neither provided the services nor withdrew from the case. Rule 1.4(b) was violated when the attorney failed to respond to many of the client's requests for information regarding the status of the case.

An attorney was Admonished pursuant to a discipline by consent for violating Rule 8.4(b) of the Rules of Professional Conduct of the Utah State Bar. This rule prohibits a lawyer from committing a criminal act that adversely reflects on the attorney's fitness. The attorney earlier entered a plea to a criminal charge of patronizing a prostitute. There were significant mitigating circumstances, and the attorney cooperated with the Office of Attorney Discipline during its investigation.

REINSTATEMENTS

On November 23, 1994, **Richard J. Culbertson** was reinstated to practice law.

CLARIFICATION

The David J. Smith of Cedar City who was disbarred on October 31, 1994 should not be confused with the David J. Smith of Draper, Utah employed as General Counsel for Schaeffer Industries in Lindon, Utah.

Pursuant to the provision of Section 162 (e) (3) of the Internal Revenue Code of 1986, as enacted pursuant to the Omnibus Budget Reconciliation Act of 1993, no income tax deduction shall be allowed for that portion of each member's annual dues for 1994 and subsequent years allocable to lobbying expenditures. The portion of 1994 annual dues allocable to lobbying expenditures was .76%.

Scott M. Matheson Award

In 1991, the Law-Related Education and Law Day Committee of the Utah State Bar presented the first annual Scott M. Matheson Award to Greg Skordas and the law firm of Van Cott, Bagley, Cornwall and McCarthy. The second annual award went to Ogden attorney Barry Gomberg and the law firm of Fabian and Clendenin. Kevan F. Smith and the law firm of Ray, Quinney and Nebeker received the award in 1993, and the 1994 award went to Kim Luhn and the law firm of LeBoeuf, Lamb, Greene and MacRae. Currently, the committee is accepting applications for the fifth annual Scott M. Matheson Award.

PURPOSE: To recognize a lawyer and a law firm who have made an outstanding contribution to law-related education for youth in the State of Utah.

CRITERIA: Applications will be accepted on behalf of individuals or law firms who have:

1. Made significant contributions to law-related education for youth in the State of Utah, such contributions having been recognized at local and/or state levels.
2. Voluntarily given their time and resources in support of law-related education, such as serving on planning committees, reviewing or participating in the development of materials and programs, and participating in law-related education programs such as the Mentor/Mid-Mentor Program, Mock Trial Competition, Conflict Management Program, Volunteer Outreach, Judge for a Day, or other court or classroom programs.
3. Participated in activities which encourage

effective law-related education programs in Utah schools and communities, such programs having increased communication and understanding between students, educators, and those involved professionally in the legal system.

APPLICATION PROCESS: Application forms may be obtained from and submitted to the:

Scott M. Matheson Award
Law-Related Education and
Law Day Committee
Utah Law & Justice Center
Box S-10, 645 South 200 East
Salt Lake City, Utah 84111
Phone: 322-1802

Included in the application should be a cover letter, a one page resume, and the application form. The form describes the following criteria to be used by the selection committee in evaluating the applicant:

- materials which demonstrate the applicant's contributions in the law-related youth education field;
- copies of news items, resolutions, or other documents which evidence the applicant's contribution to law-related education for youth;
- a maximum of two letters of recommendation.

All materials submitted should be in a form which will allow for their easy reproduction for dissemination to members of the selection committee. Applications must be postmarked no later than March 15, 1995.

Supreme Court Seeks Attorney to Serve on Professional Conduct Advisory Committee

The Utah Supreme Court is seeking applicants to fill a vacancy on the Advisory Committee on the Rules of Professional Conduct. Interested attorneys should submit a letter indicating their interest and qualification to Brent M. Johnson, 230 South 500 East #300, Salt Lake City, Utah 84102. Letters must be received no later than February 20, 1995. Questions may be directed to Mr. Johnson at (801) 578-3800.

Post-Judgment Interest

Pursuant to Utah Code Ann. § 15-1-4, the post-judgment interest rate for judgments entered between January 1, 1995 and December 31, 1995 is 9.22%. This rate does not apply to judgments based on contracts specifying some other interest rate agreed upon by the parties or to judgments for which a statute specifies another rate of interest.

Volunteer Lawyers Help Pro Se Litigants Obtain Protective Orders

Mary Jane Ciccarello, Utah Legal Services

Volunteer lawyers participating in the Domestic Violence Victims' Clinic to Assist Pro Se Litigants ("DVC") have helped approximately 200 persons resolve domestic violence issues since the clinic began last August. DVC is a joint effort of the Third Judicial District Court, the Delivery of Legal Services Committee of the Utah State Bar, Utah Legal Services, and the Legal Aid Society of Salt Lake. Volunteer lawyers are present as friends of the court at the regularly scheduled protective order hearings in the Third Judicial District Court. Volunteers assist pro se litigants who desire help in understanding the hearing process, the nature and consequences of the protective order, and how to convey their positions to the court. Volunteer lawyers may also help the parties mediate a settlement and present the parties' arguments or settlements to the court. Volunteer lawyers acting in this role never become counsel of record for the pro

se litigants.

Utah Legal Services and the Utah State Bar provide malpractice insurance to cover volunteer lawyers when they participate in the clinic. All volunteers receive training before actually participating in DVC. Training sessions are held once a month in the Law & Justice Center, 645 South 200 East, Salt Lake City, from 5-7 p.m. They are free of charge and provide each volunteer with two hours of MCLE credit. Upcoming training sessions will be held on the following Wednesdays: **February 15; March 15; April 19; May 17; and June 21.** For further information or to volunteer, please contact Mary Jane Ciccarello, Acting DVC Coordinator, at 328-8891, ext. 345, or Maud Thurman, Utah State Bar, at 531-0977.

DVC thanks the following lawyers for having assisted pro se litigants through the protective order process since August 1994:

Jane Allen	Peggy Hunt	Bill Robbins
Jim Backman	Randy Johnson	Jeanne Robinson
Brock Belnap	Lon Jenkins	Connie Rupp
Nelda Bishop	Ron Jorgensen	Jane Semmel
Patricia Christensen	Jim Karkut	Linda Smith
Mary Jane Ciccarello	Keith Kelly	Dana Swenson
Mary Cline	Rob Latham	Jeannette Swent
Greg Constantino	Robert Lohead	Barbara Townsend
Scott Daniels	Mona Lyman	Mary Shea Tucker
Clare Russell Davis	Janet Martineau	Margaret Wilson
Len Eldridge	Russell Minas	Mike Zody
Jennifer Falk	Cathy Roberts	

Thanks also to the **Women Lawyers of Utah** who have adopted DVC as the group's pro bono project and to the law firms of **Fabian & Clendenin** and **Parsons Behle & Latimer** for having hosted training sessions for volunteer lawyers. And a very

special thank you to **Stewart Ralphs**, Executive Director of the Legal Aid Society of Salt Lake, and **Patricia Frank**, the Domestic Violence Victim Assistance attorney for Legal Aid, for having conducted the monthly training sessions.



A family left homeless by fire, a heart attack victim who needs CPR, a child who needs emergency first aid... Disaster has many faces.

Strike back. Give to your Red Cross today.



WE SAVE YOU TIME.

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Administrative Office of the Courts

Position Recruitment

Position: Utah State Court Administrator

Location: Administrative Office of the Courts, Salt Lake City

Type of Position: 1 Full-time Exempt, with benefits

Closing Date: March 1, 1995

Annual Salary: \$83,650

Duties: Under the general direction of the Chief Justice and the Utah State Judicial Council, the state court administrator is responsible for the administration of all the non-judicial activities of the state court system. Working closely with the Chief Justice the state court administrator is responsible to:

- implement the standards, policies, and rules established by the council;
- supervise and ensure the proper administration of state judicial budget and fiscal management system, human resources system, and other divisions in support of a variety of management functions;
- direct the work of non-judicial employees through direct supervision of district court executives and other administrators;
- maintain liaison with governmental and other groups that have interest in the administration of the courts;
- perform other related duties as outlined in the code of Judicial Administration, or by the Chief Justice or the Judicial Council.

Required Qualifications: Master's degree in judicial administration, public administration, law, business administration or related field plus six (6) years of directly related experience, or any equivalent combination of education and experience. Considerable knowledge of court procedures and court services, and professional ability and experience in public administration is required.

Application Procedure: Applications may be obtained from the Administrative Office of the Courts, and may be accompanied by a resume.

The Utah State Courts is an Equal Opportunity Employer. The courts comply with all state and federal laws prohibiting unlawful discrimination, and provide reasonable accommodation to disabled individuals as required by the ADA.

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 attorneys 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.

Health Law Available From West!

West Publishing announces a new release within West's Practitioner Treatise Series entitled *Health Law*. This two-volume set provides a comprehensive overview of the laws affecting America's health care delivery system and its practitioners.

The area of health law has broadened in recent years to include Medicare, antitrust, HMO liability, federal regulations, death, medical malpractice, and a multitude of scientific and technical advancements. *Health Law* is the first publication to present all of these issues under one title. This publication takes a comprehensive and analytic approach to health law issues, making it an information source for anyone associated with the health care field.

Health Law addresses the health law

concerns of lawyers who specialize in health care and medical malpractice; administrators in health maintenance organizations, managed care organizations, and hospitals; lawyers who handle antitrust actions for those organizations; and health care insurers. Authors Furrow, Greaney, Johnson, Jost and Schwartz are professors of law, and renowned authors on the topic of health law. They bring their individual expertise together in their analyses and commentaries throughout the treatise.

United States District Court for the District of Utah

Public Notice

Appointment of New Magistrate Judge

The United States District Court for the District of Utah, under the authority of the Judicial Conference of the United States, seeks applicants for the position of United States magistrate judge with the duty station in Cedar City. This is a part-time federal judicial officer position with an initial term of appointment for four years, subject to reappointment by the court for successive four-year terms. The appointee will be able to engage in private practice subject to the provisions of the Conflict of Interest Rules for Part-time Magistrate Judges as adopted by the Judicial Conference of the United States, copies of which are available from the Clerk of Court at the address noted below. The duties of the position anticipate a broad range of legal and judicial skills and abilities. The primary duties include administering oaths and affirmations; taking acknowledgments, affidavits, and depositions; issuing criminal complaints, warrants of arrest and summons, conduct initial appearance proceedings, arraigning defendants, accepting pleas, conducting trials, imposing sentences, and accepting forfeitures in petty offenses; and performing such other duties, not inconsistent with law, as authorized and directed by any judge of this court. The duties may entail periodic travel to nearby cities and federal installations for the purpose of conducting court.

JURISDICTION

The jurisdiction of United States magistrate judges is set forth in 28 U.S.C. §636.

GENERAL QUALIFICATIONS

To be qualified for appointment an applicant must:

- (1) Be a member at the time of appointment in good standing of the bar of the highest court of the State of Utah or the highest court of another state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least 5 years (with some substitutions authorized);
- (2) Be competent to perform all the

duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;

- (3) Be fewer than seventy years of age; and

- (4) Not be related by blood or marriage to any district judge of the court.

AVAILABILITY AND SALARY

As noted above, the existing vacancy is a part-time position whose duty station is Cedar City. Applicants for the position should be prepared to assume the duties of it effective May 3, 1995. The current salary for the part-time position is \$10,230 per annum.

OFFICE

Part-time U.S. magistrate judges normally are not provided government-furnished chambers or office space or equipment. It is anticipated that they will operate out of their own space. They are reimbursed for actual and necessary expenses incurred in the performance of their duties.

SELECTION PROCESS

A Merit Selection Panel composed of attorneys and others in the community will review all applications and recommend to the district judges of the Court in confidence those persons whom it considers best qualified for the position. The Court will review the qualifications of the candidates and make the appointment, following an FBI file investigation and IRS tax check of the finalist who is selected as the prospective appointee. The selection panel and the Court will give due consideration to all qualified candidates, including women and members of minority groups.

APPLICATION PROCESS

Application forms, copies of the Conflict of Interest Rules, and additional information on the position may be obtained from:

Markus B. Zimmer, Clerk of Court
United States District Court
150 Frank E. Moss United States Courthouse

350 South Main Street
Salt Lake City, Utah 84101

Applications prepared and submitted as nominations by a party other than the applicant will not be considered. Completed application forms and supporting documentation must be received no later than the close of business on Friday, February 17, 1995. All applications will be kept confidential and will be reviewed only by members of the Merit Selection Panel and the district judges of the Court. The panel's deliberations will remain confidential.

Solicitations on a Book on Judges A.H. Ellett and Willis W. Ritter

Gentlepersons:

Either alone or with one or two other lawyers I intend to have a book published concerning the deceased judges named above.

I would like the book to reflect every aspect of their judicial acts and hence would like to invite all of our members who practiced before them to send me an account of any experiences – positive or negative – they had with either or both, that they think would be appropriate for inclusion in such a book.

Yours Truly,
Robert B. Hansen
838 18th Avenue
Salt Lake City, Utah 84103
(801) 322-1796

To Utah State Bar:

To everyone who participated in the 5th Annual Lawyers and Court Personnel Food & Clothing Drive for the Less Fortunate –

Thank You!

Leonard & Toby



Mid-&Year Meeting

March 2-4, 1995
St. George, Utah

Hope to see you there!

Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the Bar for the cost of \$5.00. Fourteen opinions were approved by the Board of Bar Commissioners between January 1, 1988 and March 11, 1993. For an additional \$2.00 (\$7.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1995.

ETHICS OPINIONS ORDER FORM

Quantity		Amount Remitted
_____	Utah State Bar Ethics Opinions	_____
		(\$5.00 each set)
_____	Ethics Opinions/Subscription list	_____
		(\$7.00)

Please make all checks payable to the Utah State Bar.
Mail to: Utah State Bar Ethics Opinions, ATTNE: Maud Thurman,
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

Nominees Sought for Thurgood Marshall Award

WASHINGTON, D.C., Jan. 5 — The American Bar Association's Section of Individual Rights and Responsibilities seeks nominations for the 1995 Thurgood Marshall Award.

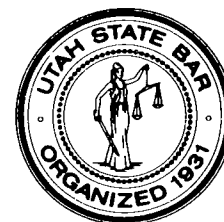
Established in 1992, the award recognizes long-term contributions by members of the legal profession to the advancement of civil rights, civil liberties, and human rights in the United States. Last year, the award was presented to civil rights attorney Oliver W. Hill, of Richmond, Va. A law school classmate of Justice Marshall, Hill was part of the litigation team in the seminal school desegregation cases encompassed in the U.S. Supreme Court's landmark 1954 opinion, *Brown v. Board of Education*. The 1993 awardee was the Judge Frank M. Johnson, Jr., of the U.S. Court of Appeals for the Eleventh Circuit. Justice Marshall himself received the inaugural award in 1992.

Nominees should be judges or duly licensed members of the bar in good standing, with a history of substantial and long-term contributions to furthering civil rights, civil liberties, or human rights in the United States. In exceptional circumstances, a non-lawyer may be considered.

The award will be presented at the Thurgood Marshall Award Dinner, sponsored by the Individual Rights Section, on Saturday, Aug. 5, during the 1995 ABA Annual Meeting in Chicago.

The Thurgood Marshall Award Committee for 1994-95 is chaired by James E. Coleman, Jr., and its members include Elaine R. Jones, Estelle H. Rogers, Judge Cruz Reynoso, and Philip A. Lacovara.

The submission deadline is March 15, 1995. To request a nomination package or more information about the nomination process, contact the Section office at 202/331-2279.





Elections Open for Offices in the Young Lawyers' Division

By David J. Crapo, President

The Young Lawyer Division of the Utah State Bar now has over 1,500 members. A significant number of our members participate in Division activities and thereby render valuable community and *pro bono* services to the citizens of this state. As officers of the Division, we are extremely appreciative of the time and effort that is put in by the members of the Division to make these service projects so successful.

Inasmuch as the 1995 election of officers will be held in April, I thought it would be appropriate to set forth the election procedures and guidelines several months in advance so any young lawyers interested in running for office could adequately prepare to participate in the elections.

April marks the opening of elections for the Young Lawyers' Division for the 1995-96 year. Nominations for the offices of President-Elect, Secretary and Treasurer open on Thursday, April 6, 1995. These officers carry out the activities of the Division. Their duties include:

PRESIDENT-ELECT:

The President-Elect position requires a

three-year commitment: one year as President-Elect, one year as President of the Division, and one year as Past President of the Division. The President-Elect is a member of the Executive Council and chairs the Long-Range Planning Committee. The President-Elect acts as President in the absence of the President. The President-Elect attends Bar Commission meetings when the President is unable to attend. The President-Elect automatically succeeds to the office of President of the Division during the 1996-97 year. The President-Elect also performs other duties as may be delegated by the President and serves as a liaison with the President to the National Young Lawyer's Division.

SECRETARY:

The Secretary of the Division serves a one-year term of office. The Secretary keeps minutes of all meetings, sends out notices of meetings, prepares agendas and serves as an administrative assistant to the President. The Secretary also is a member of the Executive Council and supervises and serves as a liaison to two or more committees of the Division. The Secretary may also perform other duties as may be delegated by

the President.

TREASURER:

The Treasurer chairs the Finance Committee of the Division, prepares an annual budget, submits quarterly financial reports to the Executive Council and handles all financial matters of the Division under the direction of the President. The Treasurer is a member of the Executive Council and also supervises and serves as a liaison to two or more committees of the Division. The Treasurer may also perform other duties as may be delegated by the President.

Below is a summary of the election rules.

1. The President-Elect, Secretary and Treasurer are elected by the general membership of the Division. The Division is currently comprised of approximately 1,500 young lawyers in Utah.

2. A nominee for any office must be a member in good standing of the Utah State Bar.

3. Eligibility for the office of President-Elect terminates at the adjournment of the ABA Annual Meeting following the candidate's 34th birthday. Eligibility for the office of Secretary or Treasurer terminates at the adjournment of the ABA Annual

meeting following the candidate's 36th birthday. If a candidate is over the applicable ages but admitted to a state Bar for less than three years, the candidate is still eligible to run for office.

4. Nominations for the offices are being accepted from Thursday, April 6, 1995 through Friday, April 14, 1995. Any qualified person wishing to be elected may be nominated by a petition bearing the signatures of three members of the Division who are in good standing. Nominations must be received by the current President of the Division, David J. Crapo, Holme Roberts & Owen LLC, 111 East Broadway, Suite 1100, Salt Lake City, Utah 84111, by 5:00 p.m. on April 14, 1995. The current President, David J. Crapo, also serves as the election judge. Nominations should be hand-delivered or mailed to be received by April 14, 1995.

5. Each nominee must submit a written statement which contains the candidate's

biography, qualifications and platform ("Platform Statement"). The Platform Statement should be submitted to the President in final form, ready to be photocopied, by 5:00 p.m. on Tuesday, April 17, 1995. The Platform Statement will not be retyped by the election judge if it is not in final form. The contents of any Platform Statement submitted will not be disclosed to other candidates by the election judge prior to 5:00 p.m. on April 17, 1995. The Platform Statement should not exceed a one-sided single page of 8-1/2 x 11 inch paper. No changes to the Platform Statement will be allowed after 5:00 p.m. on April 17, 1995.

6. Officers are elected by secret ballot by all members of the Division. Ballots will be counted and election results announced on Thursday, May 11, 1995.

7. Each candidate may obtain one mailing list of the Division's membership, which will be provided by the Division.

8. The new officers of the Division will

take office at the 1995 Annual Meeting of the Utah State Bar.

9. A copy of the complete Election Rules can be obtained from David J. Crapo, Holme Roberts & Owen LLC, 111 East Broadway, Suite 1100, Salt Lake City, Utah 84111.

ELECTION TIMETABLE

Nominations Open	April 6, 1995
Nominations Close	April 14, 1995
Platform Statements Filed	April 17, 1995
Platform Statements and Ballots Mailed	April 20, 1995
Balloting Begins	April 20, 1995
Election Results Announced	May 11, 1995

We encourage all young lawyers to participate in the upcoming elections.

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IS PLEASED TO ANNOUNCE THAT

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R. WILLIS ORTON
(FORMERLY OF CALLISTER, NEBEKER & MCCULLOUGH)

AND

RASHELLE PERRY

HAVE JOINED THE FIRM.

MR. MOSIER WILL CONTINUE HIS PRACTICE IN THE AREA OF BANKRUPTCY AND BUSINESS REORGANIZATION AND RELATED MATTERS.

MR. ORTON WILL CONTINUE HIS PRACTICE IN THE AREAS OF BUSINESS LAW AND COMMERCIAL LITIGATION.

MS. PERRY WILL PRACTICE IN ESTATES, COMMERCIAL TRANSACTIONS AND LITIGATION.

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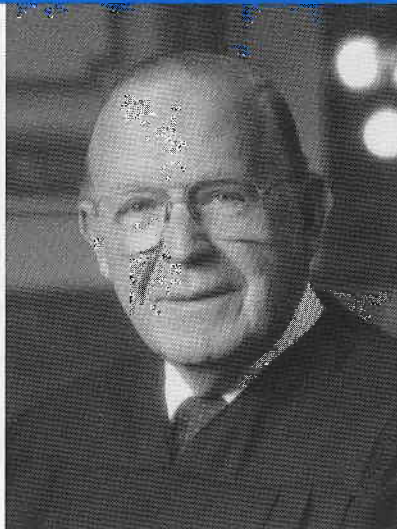
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Professionalism Before the Courts

By Justice Richard C. Howe

Any discussion of professionalism before the courts should start with an examination of the Rules of Professional Conduct. These are now conveniently contained in the volume on Court Rules of the Utah Code Ann. Lawyers should become familiar with them and occasionally review them to insure that their conduct is always consistent with the rules. The preamble to the rules points out that a lawyer is representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. This preamble continues to state that in the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibility to clients, to the legal system, and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts.

Many of the complaints which are received by the Office of Disciplinary Counsel of the Utah Bar, which eventually may reach the Supreme Court, involve violations of rule 1.3 on diligence and rule 1.13, safekeeping of client's property.

JUSTICE HOWE attended Granite High School and received his Bachelor of Science Degree and Law Degree from the University of Utah. His first job after graduation was serving as a law clerk to Justice James H. Wolfe of the Utah Supreme Court. There, Justice Howe gained an interest in and understanding of appellate work.

Following his stint with the Court, Justice Howe served a short time as Judge of the Murray City Court and then opened his own private practice as a sole practitioner. His practice was general, but real estate sales, conveyances and title work dominated his practice. During his 26 years of practice, he took time away to serve in the Legislature for 18 years — 12 years in the House where he became Speaker for 2 years, and 6 years in the State Senate. He sponsored bills to create the state court administrator and the judicial council, and to convert the city courts into circuit courts.

He was appointed to the Supreme Court by Governor Matheson in December 1980. He recently finished a six-year term as Associate Chief Justice.

Because the typical lawyer represents many people at the same time in different cases or different matters, many lawyers find it difficult to keep everything moving as their clients expect them to do. I learned early in my practice that when a client engages you for certain work, that work does not become your property to complete when it is most

convenient. Many a married couple have waited forty years to have a Will drawn, but once they decide to proceed, they expect the lawyer to complete it within a brief time period. The same is true with litigation. Clients often do not understand the pipeline through which cases must flow. They become dissatisfied when everything is not being done by the lawyer to bring the case to final resolution.

As to rule 1.13, some of our critics have stated that a license to practice law is a license to steal. Nothing could be further from the truth. However, great trust is placed in lawyers, not only to use their skill in resolving disputes or in drafting documents, but also to safely keep funds that are recovered in the process. No lawyer at any time has any right to use money which rightfully belongs to the client or to delay in remitting the money to the client. Several lawyers have been disbarred in the past few years because they "borrowed" clients' money which had been recovered in a personal injury suit and used it for personal purposes. There is no possible excuse for this conduct, and lawyers who cannot keep their hands off clients' money should not be allowed to practice.

Rules which deal with a lawyer's obligation to and conduct before the court are

rule 3.1 (lawyer shall not bring or defend a proceeding on a frivolous basis); rule 3.3 (lawyer shall not make a false statement of material fact or law to a tribunal, and, in an ex parte proceeding, shall inform the tribunal of all material facts known to the lawyer, whether or not the facts are adverse); rule 3.4 (lawyer shall be fair to opposing party and counsel); and rule 3.5 (lawyer shall not communicate ex parte with a judge, juror, or prospective juror except as provided in the rule).

A lawyer's professionalism is enhanced by conduct in his or her practice which exceeds the minimum required by the Rules of Professional Conduct. I shall here only be able to briefly touch upon a few things. I left private practice fourteen years ago to become a judge. Invariably, when I see lawyers with whom I used to practice, I ask them "How goes the practice these days?" Many times the answer is, "It's not as fun as it used to be." As the membership of the Utah State Bar continues to increase, the familiarity which lawyers once had with each other in Utah is becoming less and less. There are a number of simple things that lawyers can do to make the practice more enjoyable and to minimize the necessary stress which arises in the practice. Keep your word with other lawyers, even if it's only given orally. Chief Judge David K. Winder of the United States District Court for Utah recently told some new admittees to the Bar:

The expedient or shortsighted lawyer who fails to fulfill verbal understandings with other lawyers, who presents dubious evidence, who deals loosely with the record, or who misleads judges is quickly pegged. In our Bar and every Bar there are certain lawyers who achieve the enviable and priceless status of a good name. That status is developed gradually by word of mouth from judges in the privacy of their gatherings and from lawyers in theirs. And unlike the litigation you will be handling, be aware that once the verdict of your professional peers is in, there is no formal due process, no rebuttal, no appeal from that verdict.

There are often occasions for lawyers to extend courtesies to other practitioners. Court conflicts, vacations, illness, and

temporary loss of secretarial help often require a lawyer to ask opposing counsel for an extension of time. Be generous in doing this when you can do so without seriously prejudicing your client's case, which usually does not happen. Make a telephone call before defaulting an opposing attorney who is delinquent in meeting a deadline. Don't become a "hired gun" for your client and mistakenly assume that you must be obstinate with opposing counsel in order to further your client's interest. Promote compromises when it is appropriate. I once represented a husband in a divorce case. The wife's attorney and I were able to agree on the terms of settlement. However, her attorney insisted that the case go to trial because he could earn a larger fee (which would ultimately be paid by my client). That was not what I call professionalism.

"The public perception of lawyers is not the best. There is not much you can do about it except to conduct yourself so that if our profession is judged by you, the impression will be favorable."

We should not over estimate the merits of our client's case. As a young lawyer, I was intimidated by an older, more experienced lawyer who told me simply that his client was all right, and my client was all wrong. He was very convincing. We went to trial. As it turned out, the party on the other side was much less sure of the facts than his lawyer had represented to me. The judge who tried the case found that the testimony of the plaintiff who was suing my client was vague and uncertain in important details, and ruled in our favor. My respect for that lawyer diminished because he had tried to intimidate me by overstating his case. I found early in my practice that a young lawyer who is well-prepared can generally stand up well to experienced lawyers who sometimes practice "by the seat of their pants."

Lawyers should do all that they can to promote respect for the judicial system. When I once lost a case, my client told me that he thought the judge had been bribed

by the other side. I was shocked by the suggestion. I tried to assure him that the judge was capable and honest, but in this case I thought he had erroneously ruled. Even though I was disappointed in losing the case, I wanted to dispel the notion of my client that bribery is common in the judicial system.

In closing, I want to say a few things about a lawyer's personal life. The public perception of lawyers is not the best. There is not much you can do about it except to conduct yourself so that if our profession is judged by you, the impression will be favorable. You may be the only lawyer some members of the public ever come in contact with. Lawyers should personally live within the law, not above the law. Thus, pay parking tickets and honest obligations promptly. Pay taxes, and write only "good" checks. Refrain from "smart aleck" conduct. Take interest in community affairs — serve on committees in your community, including the PTA. You do not necessarily have to always be the leader. Be willing to serve in the trenches.

Be proud to be a lawyer. History is replete with lawyers who made significant contributions to their country, state, community, and church. In the pursuit of your profession, emphasize service to others. Physicians are held in high regard because they assist sick people in becoming well. Similarly, lawyers regularly help people who have problems and sometimes are experiencing mental pain and distress. Great rewards will come to you as you render service. There will be a feeling of satisfaction and accomplishment far exceeding the monetary compensation you will be paid when you lift burdens and help reshape lives. This great feeling of satisfaction and contentment that comes from a job "well done" is perhaps one of the most intangible things Rudyard Kipling was referring to when in making a commencement address, he cautioned the graduates against being too preoccupied with wealth, status, or glory. Someday he said, "You will meet a man who cares for none of these things. Then you will know how poor you are."



UTAH BAR FOUNDATION



Hon. Bruce S. Jenkins speaking to Utah Bar Foundation luncheon guests



The Utah Bar Foundation held its annual luncheon meeting in December at the Law & Justice Center. Guests included former trustees, Utah Bar Commissioners, Bar officials, Utah and Federal judiciary, grant and award recipients, and bank officers.

James Lee, Trustee Board President, welcomed the guests. Stephen Nebeker, Vice President, reported on the current status and continuing improvement of the financial condition of the Foundation. He explained the process by which funds are generated and made available for use by community agencies and expressed appreciation to all of those making it possible. He then presented final 1994 award payments to award recipients.

Secretary/Treasurer Jane Marquardt recognized John Renteria and Jennifer Turley as the Foundation's annual scholar-

ship winners and Alison Johnson and Barbara Sharp as the ethics award recipients. She then presented an appreciation plaque to former Trustee Ellen Maycock for her many years of service to the Bar Foundation.

Trustee Carman Kipp introduced honored speaker Hon. Bruce S. Jenkins, U.S. District Court for Utah. Judge Jenkins retired September 30th and took senior status with a reduced workload.

Judge Jenkins praised the Foundation for its many years of charitable accomplishments. He told the Utah Bar Foundation that America's courts are a success story, that Americans are the master of their government because their courts are independent of government. The justice process commands respect because it is based in core values, particularly the dignity of the individual.

The Utah Bar Foundation has provided

over \$1.4 million in grants for legal aid, legal education and other law-related services since 1983, when the Utah Bar Foundation initiated the Interest on Lawyer's Trust Accounts (IOLTA) Program. The Foundation was organized 31 years ago as a non-profit charitable Utah corporation. All active members of the Utah Bar are members and can make direct contributions and/or voluntarily participate in the IOLTA Program which generates funds for grants.

The 1994-95 Bar Foundation Board of Trustees and Officers are President James B. Lee, Vice President Stephen B. Nebeker, Secretary/Treasurer Jane A. Marquardt, Carman E. Kipp, Stewart M. Hanson, Jr., Joanne C. Slotnik, and Hon. Pamela T. Greenwood.



Trustee Jane A. Marquardt presenting plaque to former Trustee Ellen Maycock.



Guests Former Trustee Michael Keller and Kathy Dryer, Law-Related Education

Photo credit: Robert L. Schmid

CLE CALENDAR

ALI-ABA SATELLITE SEMINAR: CHOICE OF BUSINESS ENTITY FOR NEW AND OPERATING BUSINESSES

Date: Thursday, February 9, 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

NLCLE WORKSHOP — ESTATE PLANNING AND PROBATE

Date: Thursday, February 16, 1995
Place: Utah Law & Justice Center
Time: 5:30 p.m. to 8:30 p.m.
Fee: \$20.00 for members 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

NITA/LITIGATION SECTION TRIAL ACADEMY: PERSUASION SKILLS

Date: Friday & Saturday,
February 24 & 25, 1995
Place: Utah Law & Justice Center
Time: Friday — 8:00 a.m. to
6:30 p.m.
Saturday — 8:00 a.m.
to 12:45 p.m.
Fee: Pre-registration: \$275.00
Registration after 2/5/95:
\$325.00
CLE Credit: 12.5 HOURS, including 2
in ETHICS

***Due to the intensive participatory
nature of this program, the seminar will
be open to only 48 registrants.***

UTAH STATE BAR 1995 MID-YEAR MEETING

Date: Thursday, March 2 —
Saturday, March 4, 1995
Place: St. George Holiday Inn
Time: Meetings run from 8:00 a.m.
to 12:30 p.m. Friday and
Saturday
Fee: \$140.00 before 2/3/95
\$180.00 after 2/3/95
CLE Credit: 8 HOURS, including ONE
in ETHICS

NLCLE WORKSHOP — REAL PROPERTY AND LANDLORD TENANT LAW

Date: Thursday, March 16, 1995
Place: Utah Law & Justice Center
Time: 5:30 p.m. to 8:30 p.m.
Fee: \$20.00 for members of Young
Lawyers Division
\$30.00 for all others
CLE Credit: 3 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

APPELLATE PRACTICE SECTION SEMINAR

Date: Wednesday, March 29, 1995
Place: Utah Law & Justice Center
Time: 5:30 p.m. (time subject to
change)
Fee: TBD
CLE Credit: ~ 3 HOURS (subject to
change)

Watch your mail for brochures and mail-
ings 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.

CLE REGISTRATION FORM

TITLE OF PROGRAM

FEE

1. _____

2. _____

Make all checks payable to the Utah State Bar/CLE

Total Due

Name

Phone

Address

City, State, ZIP

Bar Number

American Express/MasterCard/VISA

Exp. Date

Signature

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

Registration Policy: 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.

Cancellation Policy: Cancellations must be confirmed by letter at least 48 hours prior to the seminar date. Registration fees, minus a \$20 nonrefundable fee, will be returned to those registrants who cancel at least 48 hours prior to the seminar date. No refunds will be given for cancellations made after that time.

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.

POSITIONS AVAILABLE

Attorney with excellent writing skills and academic credentials sought as Associate General Counsel for Utah Legislature. Experience required. Send resume and solo writing sample to M. Gay Taylor, Legislative General Counsel, 436 State Capitol, Salt Lake City, Utah, 84114. Applications accepted through March 1, 1995.

Attorney with 3+ years concentrated experience estate planning (wills, trusts, limited partnerships, buy-sell agreements, etc.). Salary plus profit-sharing. All inquiries confidential. Submit resume and cover letter to: Utah State Bar Journal — Box 8, 645 South 200 East, Salt Lake City, Utah 84111.

A prominent Salt Lake City litigation firm with an extensive trial and appellate practice has immediate need for associates with two to four years of experience, strong academic credentials and exceptional writing skills to assist with expanding trial practice for national clients. Salary competitive with other leading Salt Lake City firms. All inquiries will be kept confidential, if requested. Send resume to: Utah State Bar Journal Box #9, 645 South 200 East, Salt Lake City, Utah 84111.

POSITION ANNOUNCEMENT

Position: Law Clerk to the Honorable Judith A. Boulden
United States Bankruptcy Judge
Starting Salary: \$35,578 (JSP 11) to

\$42,641 + (JSP 12), depending on qualifications

Starting Date: Fall 1995

Application Deadline: February 15, 1995

— Interviews will not commence prior to March 1, 1995.

Qualifications: 1) One year of experience in the practice of law, legal research, legal administration, or equivalent experience received after graduation from law school. Substantial legal activities while in military service may be credited on a month-for-month basis whether before or after graduation;
OR

2) A recent law graduate may apply provided that the applicant has:

a) graduated within the upper third of his/her class from a law school on the approved list of the A.B.A. or the A.A.L.S.; or

b) served on the editorial board of the law review of such school or other comparable academic achievement.

Appointment: The selection and appointment will be made by the United States Bankruptcy Judge.

Preference may be given to the applicants who have taken bankruptcy related classes or who have commensurate experience.

Applicants should send resume and transcript. Applicants may be requested to provide a writing sample and references.

Applications should be made to:
JUDGE JUDITH A. BOULDEN
UNITED STATES BANKRUPTCY COURT
350 South Main Street, Room 330
Salt Lake City, Utah 84101

EQUAL OPPORTUNITY EMPLOYER

Benefits Summary

Employees under the Judicial Salary Plan are entitled to:

- Annual grade or within-grade increases in salary, depending on performance, tenure and job assignment.
- Up to 13 days of paid vacation per year for the first three years of employment. Thereafter, increasing with tenure, up to 26 days per year.
- Choice of federal health insurance programs.
- Paid sick leave of up to 13 days per year.

- Ten paid holidays per year.
- Credit in the computation of benefits for prior civilian or military service.

Equal Employment Opportunity

The court provides equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age or handicap.

About the Court

The United States Bankruptcy Court, District of Utah, is a separately-administered unit of the United States District Court. The court is comprised of three bankruptcy judges and serves the entire state of Utah. The Clerk's office provides clerical and administrative support for the court, which conducts hearings daily in Salt Lake City and monthly in Ogden.

OFFICE SPACE/SHARING

Small downtown Salt Lake City law firm specializing in tax, PSC work and business litigation has prime office space for 1 attorney, plus secretarial, covered parking, low overhead. Call Steve or Mike @ (801) 531-0441.

"Fully equipped, small firm has opening. Excellent location and view. No salary, but we will make overhead livable for right applicant." Call Sam King @ (801) 486-3751.

AFFORDABLE 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 and library. It can be remodeled to fit. For more information please call (801) 531-8300.

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

Two offices available in newly remodeled small office building, great Holladay location. Full services available, some overflow work. Will trade work for partial rent. Call (801) 484-3000.

OFFICE SPACE AVAILABLE – WEST VALLEY CITY, 3530 South 6000 West – May include sharing of expenses. Call Nadia or Mitch @ (801) 963-6558.

Money Making Law Offices: 1, 2, 3 +/- or 4 offices; \$450.00 - \$650 or \$2100.00 for 2,300 sq. feet; reception area; conf/lib.; plenty of parking; big sign, opportune location: Call Laura L. Boyer @ 964-6100.

SERVICES

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.

UTAH VALLEY LEGAL ASSISTANT JOB BANK: Resumes of legal assistants for full, part time, or intern work from our graduating classes are available upon request. Contact: Kathryn Bybee, UVSC Legal Assistant Department, 800 West 1200 South, Orem, Utah 84058 or call (801) 222-8489.

LEGAL ASSISTANTS — SAVING TIME, MAKING MONEY: Reap the benefits of legal assistant profitability. LA AU 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 LA AU Job Bank are available on request.

NEED RESEARCH HELP? Let me help you. I will do legal research on an hourly basis and leave you free to work on the more important aspects of your case. Member of the Utah Bar. I can also help draft pleadings or other papers. Call Todd Cannon @ (801) 567-0040.

WASHINGTON COUNTY CONSTABLE: Appointed to serve all legal process in that county. 13 years experience. Call (801) 674-3565, or write Jean Dickson, 2278 East 550 North, St. George, Utah 84770.

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 Ave., Salt Lake City, Utah 84105, (801) 485-4011.

OFFICE EQUIPMENT

TOSHIBA BD 7812 – COPY MACHINE – Auto feeder – Has been on service contract – \$400.00. Call Nadia or Mitch @ (801) 963-6558.



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645 SOUTH 200 EAST • SALT LAKE CITY, UTAH 84111

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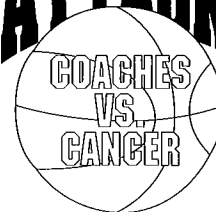
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COMPLETE CATERING

DAY OR NIGHT

FOR INFORMATION AND RESERVATIONS, CONTACT:
THE UTAH LAW AND JUSTICE CENTER COORDINATOR (801) 531-9077

THREE-POINT ATTACK



Coaches across Utah have teamed up with the American Cancer Society to raise funds for *cancer research, education, patient services*. Join the team by pledging a dollar amount for each 3-point shot your favorite college team makes. **Register today!**

**Put a full-court
press on cancer!**

**AMERICAN
CANCER
SOCIETY** 1-800-ACS-2345

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)

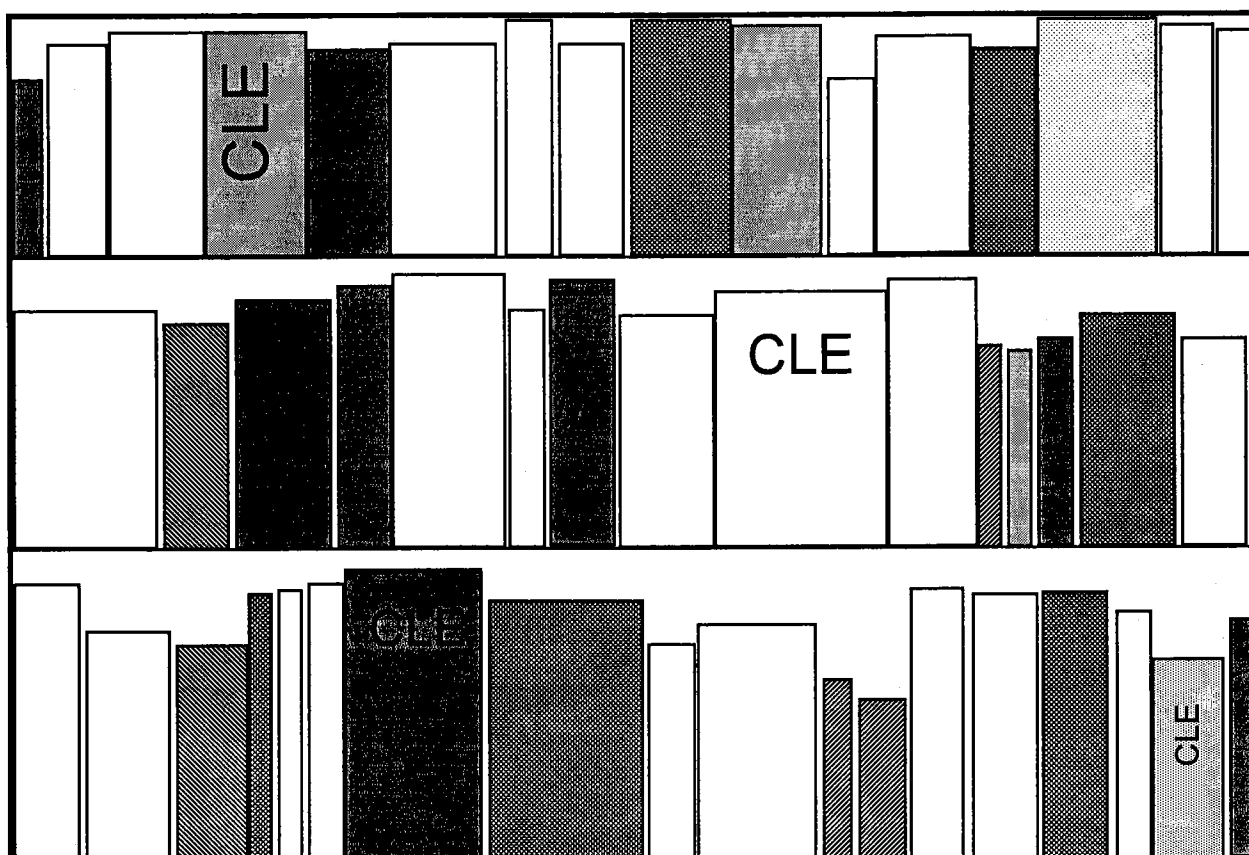
B. Writing and Publishing an Article. Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. An application for accreditation of the article must be submitted at least sixty days prior to reporting the activity for credit. No more than one-half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

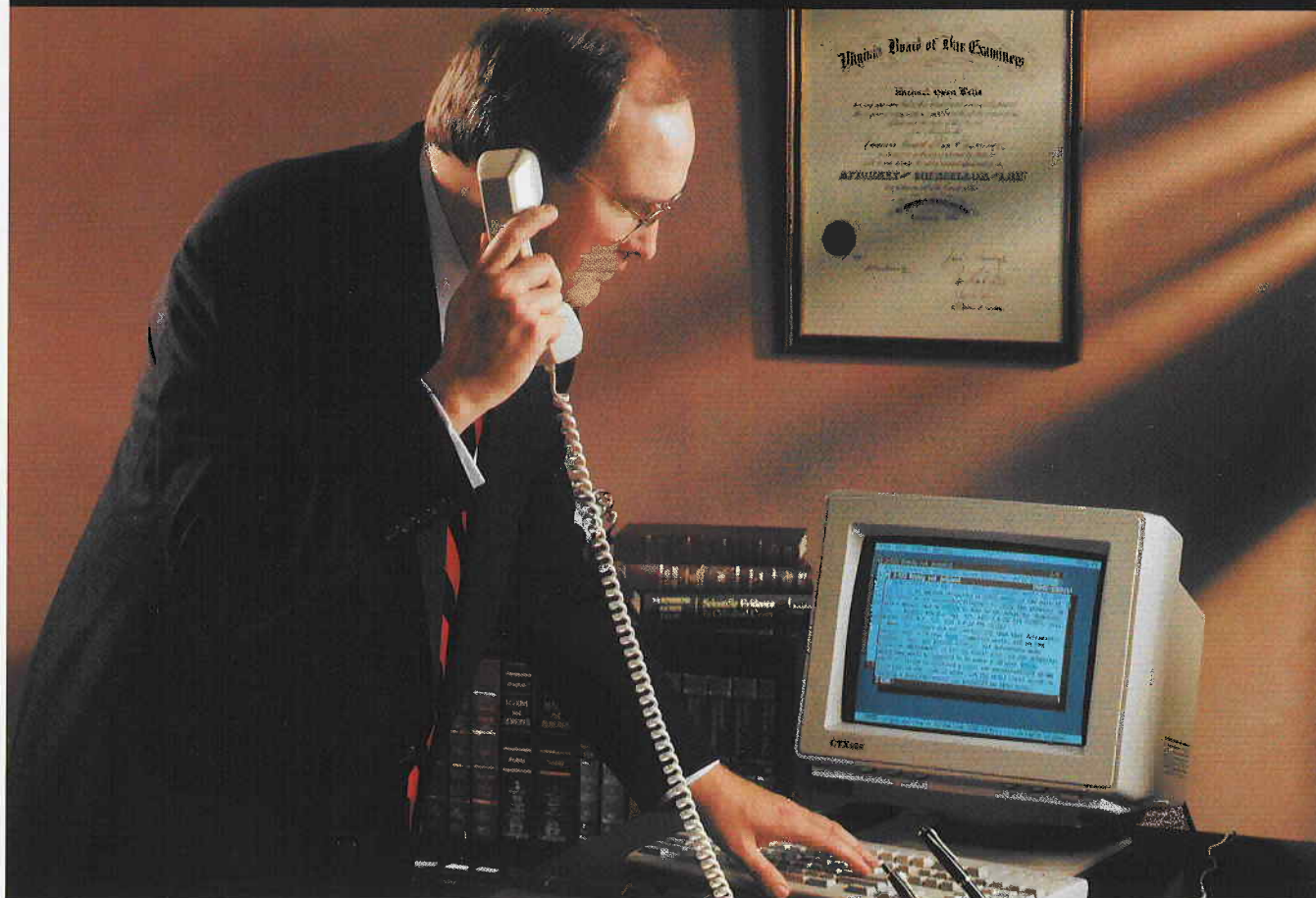


CLE PUBLICATIONS NOW AVAILABLE!

The Utah State Bar CLE Department is proud to present its new CLE Publications Library. The library contains over 200 titles from nearly 70 subjects from seminars dating back to 1962. Also included are materials from Utah State Bar Mid-Year and Annual Conventions.

Materials from this library are available to rent, at no charge, for up to one week. There are also a limited supply of copies for sale. Please call the CLE Department at (801) 531-9095, for a subject listing and more information.

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

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