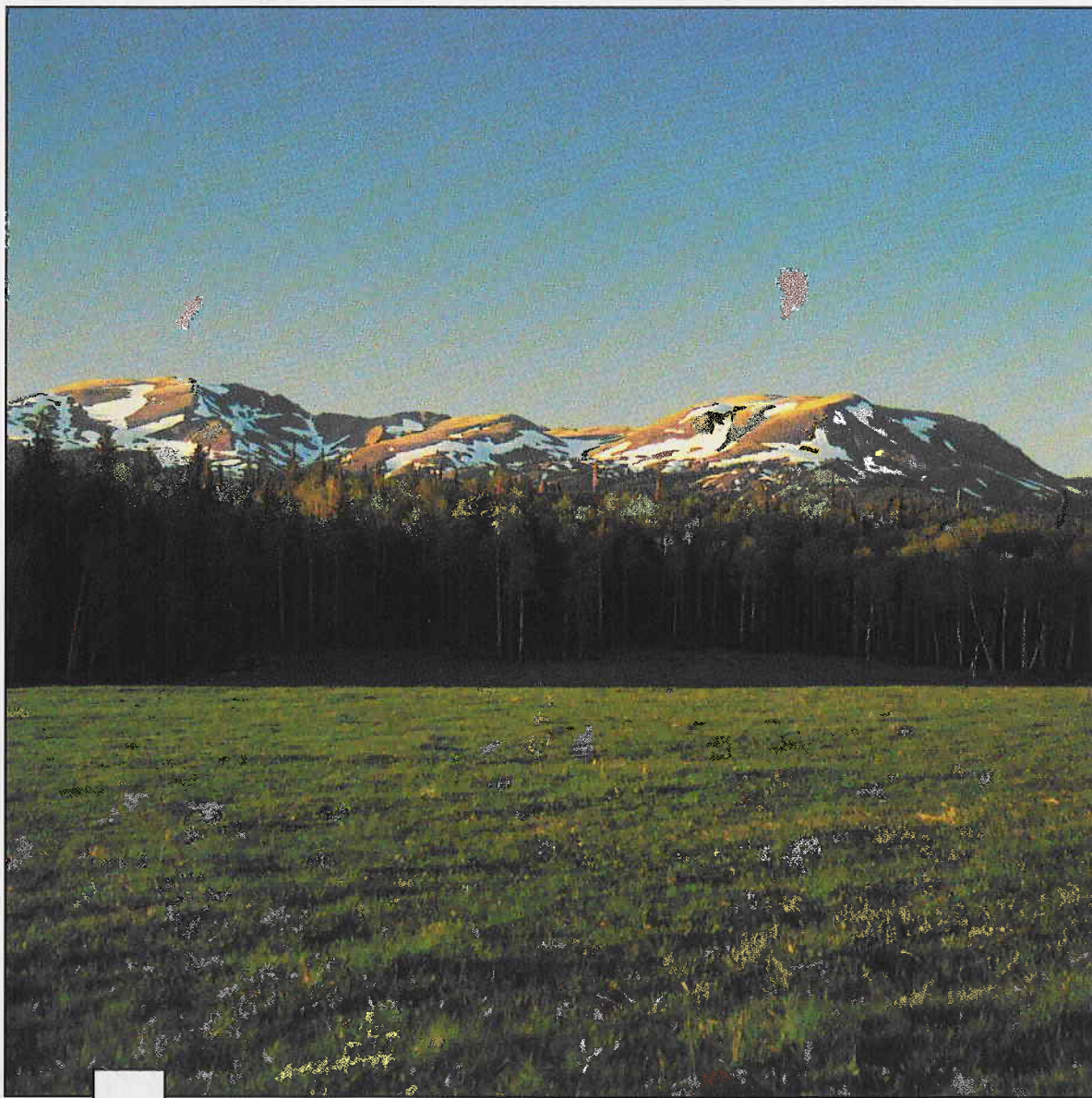


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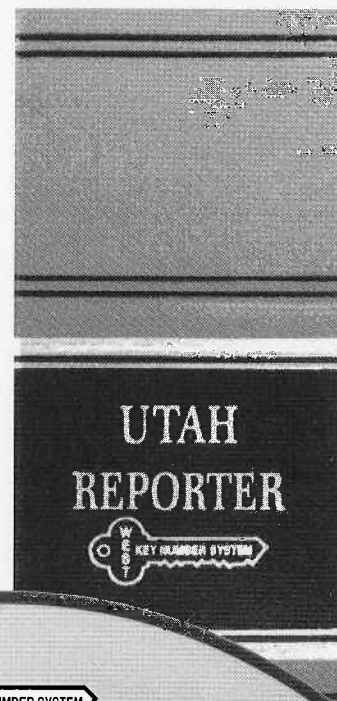
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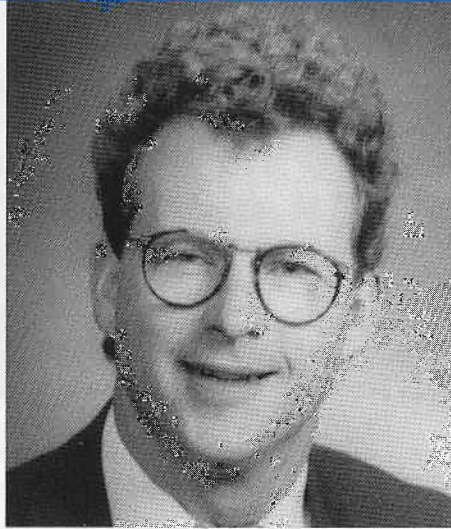
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COVER: Delano Peak, Tushar Mountains, Beaver County, by Phillip E. Lowry of Howard, Lewis & Petersen.

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How Professional are We?

By Paul T. Moxley

This past month I have attended three bar conferences which were all very interesting and informative. I find from fellow bar junkies from different jurisdictions that they are encountering issues similar to ours. I am also finding that many good programs sponsored by other Bar Associations are available which can assist Utah lawyers at very small or no cost. For example, the Association of Business Trial Lawyers of Northern California has developed a guide to professional practice with the goal to "eliminate unnecessary conflict and to reduce the level of contentiousness and stress in the resolution of legal disputes." "The Guide" presents many good ideas which could answer many of the questions the public is voicing with lawyers and the legal profession.

The Association of Business Trial Lawyers (ABEL), as a voluntary association, does not intend these guidelines to provide a basis for further litigation, or for sanctions or penalties. While some of the guidelines are based upon statutes or existing rules of professional conduct, others go beyond any requirement of current law. Lawyers are encouraged to apply the spirit of the Guide, as appropriate, in circumstances that are not specifically addressed

in any of its guidelines.

Nothing in this Guide is intended to inhibit a lawyer's zealous representation of his or her client's interests. The Guide is, however, based on the belief that zealous representation is compatible with professional and civil conduct.

ABEL encourages firms and individuals to adopt the Guide as their own. As part of that commitment, firms are also encouraged to subscribe to the voluntary inter-firm resolution process discussed below.

ABEL GUIDELINES

1. A lawyer must work to advance the lawful and legitimate interests of his or her client. This duty does not include an obligation to act abusively or discourteously. Zealous representation of the client's interests should be carried out in a professional manner.
2. A lawyer should not engage in derogatory or prohibited conduct on the basis of race, religion, gender, sexual orientation or other immutable characteristics of any person.
3. A lawyer should not behave in an offensive, derogatory or discourteous manner even when his or her client so desires. If necessary, a lawyer should advise the client that civility and courtesy are not signs of weakness.
4. The client's best interests are often

served by alternatives to litigation. A lawyer should consider the possibility of settlement or alternative dispute resolution in every case and, when appropriate, bring such alternatives to the client's attention.

5. A lawyer should be punctual and prepared for all court appearances so that all matters may commence on time and proceed efficiently. Lawyers should treat judges, counsel, parties, witnesses, and court personnel in a civil and courteous manner, not only in court but in depositions, conferences and all other written and oral communications.

6. Where an alternative manner of service would not prejudice the client's legitimate interests, a lawyer should not use the timing and manner of service to embarrass or disadvantage the party or person on whom the papers are served.

7. A lawyer should consider opposing counsel's legitimate calendar conflicts when scheduling or postponing hearings, depositions, meetings or conferences, unless to do so would be contrary to the legitimate interests of his or her client. A lawyer should not arbitrarily or unreasonably refuse a reasonable request for extension of time. In considering a request for an extension of time, a lawyer may appropriately take into account the inter-

ests of his or client, whether there have been prior requests for extensions, the time required for the task, the nature of the adversary's scheduling difficulty, and whether the adversary will grant reciprocal reasonable requests.

8. Discovery is an important and appropriate litigation tool, and lawyers are expected to pursue such discovery as is appropriate in order to evaluate and establish the client's position in litigation. A lawyer should not, however, use discovery to harass opposing counsel or the opposing party or for the purpose of delaying the efficient resolution of a dispute. A lawyer should explore with opposing counsel alternatives to formal discovery that will achieve the same objective at lower cost. Lawyers should be willing to agree to mutual stipulations of genuinely undisputed facts.

9. Depositions are generally conducted by lawyers without direct judicial supervision and are frequently the most uncivil phase of litigation. A lawyer should take depositions only when actually needed to learn facts or preserve testimony, and should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

10. Written discovery should be limited to seeking such information and documents that a lawyer reasonably believes are necessary for the prosecution or defense of an action. A lawyer responding to written discovery or complying with court rules requiring disclosure should not employ artificially restrictive interpretations to avoid disclosure of relevant and non-privileged information or documents.

11. A lawyer's submissions to the court should be professional in tone. A lawyer should at all times strive to be concise and to state accurately the law, the facts and the parties' positions. Briefs and pleadings should not be written in an unnecessarily inflammatory style.

12. A lawyer should avoid personal attacks on other counsel, and should not comment adversely on the intelligence, integrity, motive or conduct of other counsel, except in the unusual circumstance when such matter is legitimately in issue. Even when the zealous representation of a client may necessitate allegations of wrongdoing on the part of an adversary or opposing counsel, a lawyer should review such allegations to ensure that they are

justified. A lawyer should bear in mind that such statements frequently are unpersuasive and serve only to increase the level of combativeness.

13. A lawyer should not seek judicial sanctions against a party or opposing counsel without first conducting a reasonable investigation and unless the lawyer is convinced that sanctions would be fully justified.

14. Every law firm's reputation is affected by the professional conduct of its lawyers acting in the name of the firm. Law firms should include the subject of professional and civil conduct in their programs for the training of new lawyers and continuing legal education. Law firms should also identify a lawyer within the litigation practice group to whom questions regarding compliance with this Guide (either by an attorney in the firm or by opposing counsel) may be addressed.

*"A guide to professional practice
has been developed to
eliminate unnecessary conflict
and to reduce the level of
contentiousness and stress in the
resolution of legal disputes."*

ABEL also encourages law firms subscribing to the principles of the Guide to confirm their willingness to participate in a voluntary inter-firm dispute resolution process where an opposing counsel whose firm has also subscribed to the principles of the Guide believes that there has been a violation of the standards set forth in the Guide or other applicable rules of professional conduct.

Participating firms would each designate an experienced member of the firm for this purpose. The designated lawyer would be available to receive, investigate and assist in the resolution of complaints of unprofessional or uncivil conduct. ABEL believes that the process would be facilitated if complaints were presented by a disinterested member of the complaining law firm. The goal of the process would be to resolve differences by inter-firm discussion, and the intervention of disinterested and responsible members of each firm, rather than through escalating abrasive behavior on each side and

motions and counter-motions for sanctions.

If requested by both sides, ABEL will provide at no cost a disinterested mediator to assist in the consensual resolution of the dispute.

The Utah Bar Commission is going to review whether adopting guidelines for our lawyers will be of assistance to promoting professionals in our Bar.

Another consequence of meeting with the Bar Associations is the request for cooperative efforts. In this regard our Bar has been approached by the Bars of Washington, Alaska, Idaho and Oregon about entering an agreement whereby being admitted into any one of these Bars would automatically result in admission in the other state Bars. The concept is based on the premise that these states have similar Bars and that many of us practice in these jurisdictions and reducing problems about admission will benefit us, our clients and the delivery of legal services. There are many obvious obstacles to this issue, but we are engaging in a dialogue along these lines and will keep you informed.

CONCLUSION

As the tree buds appear in my front yard on this rainy day when my column is fourteen days overdue at the bar offices, I daydream about the spring and soon having forty percent of my working time available for pursuits other than Bar work. Before my "year" is over we have our Salt Lake City business meeting on April 28, a Quality Control Conference in May and a regular barrage of meetings, telephone calls, etc. Give your Bar commissioners and me your thoughts on any and all issues and do what you can in your work to promote the interests of lawyers, the delivery of legal services and benefitting our community.

