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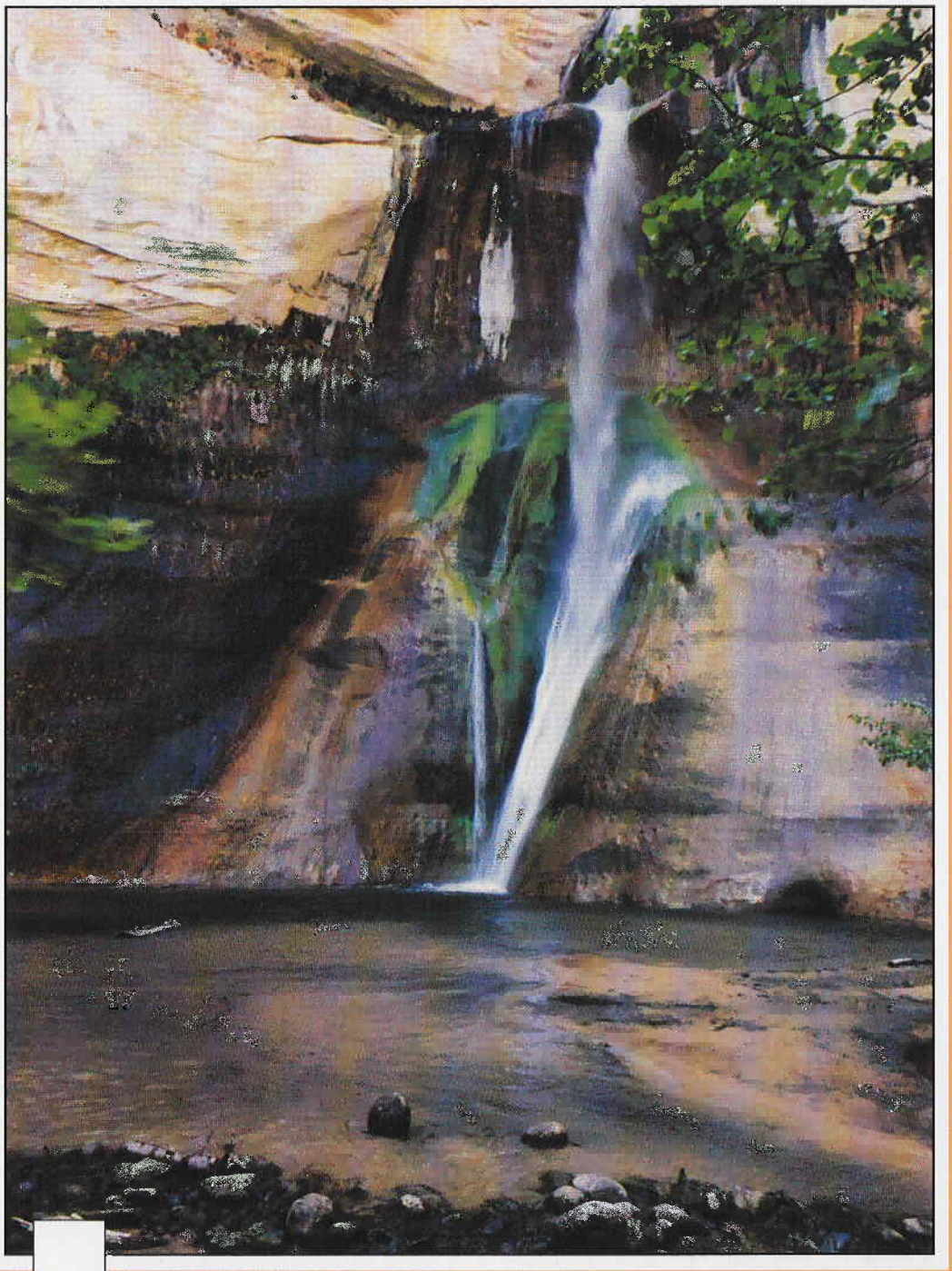

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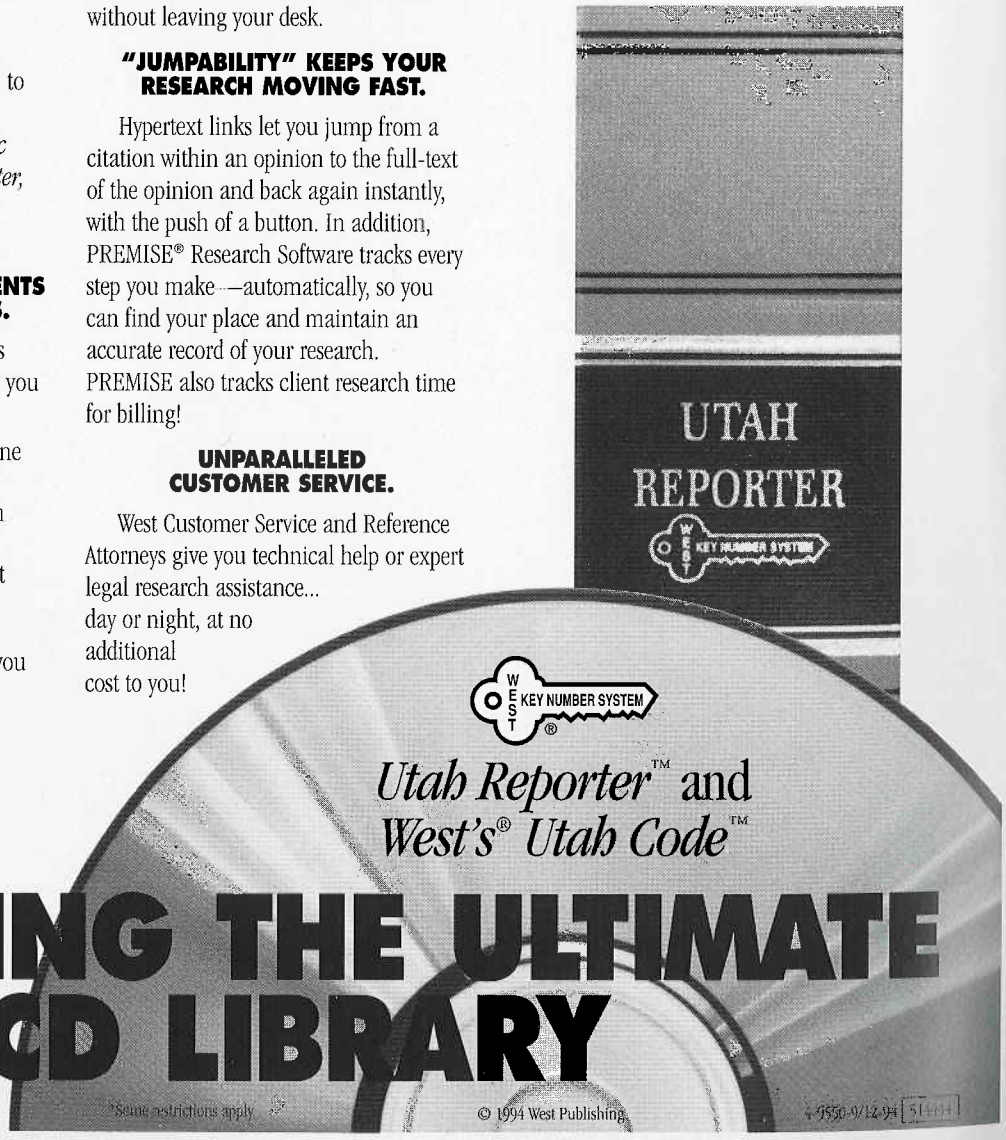

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COVER: Calf Creek Falls in Escalante, Utah by Reid Tateoka of McKay, Burton & Thurman.

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

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.

Surfing (the Net) in the Desert

By David Nuffer

You have probably heard enough about the Internet to make you turn right past this article BUT this article will offer some practical hints and an opportunity to comment on what the State Bar ought to do on the Net.

What is the Internet? The Internet is like a giant phone network for information. It is accessed by a computer. It is a communication medium that is going to be as essential as the fax machine.

What Does a Lawyer Need to Connect to the Internet? Internet connection requires a personal computer (of almost any type), a modem with the speed of 14k bps or higher (28.8 models are now available for around $200.00) and an account with an Internet service provider (usually $20–30 per month for moderate usage). The service provider will direct you to software you need.

What do you get on the Internet? The Internet has several basic types of services: The World Wide Web (WWW) is the most accessible (usable) means of obtaining information across the Internet. Pages on the Web are informative themselves or lead to further information, like a table of contents. But a Web page is different than a book index. In a book index, you must turn to a later page. To obtain further information on an item listed on a Web page, you simply "click" on it with the mouse of your computer. The new information appears. This is known as "hypertext." Web servers are available across the world. E Mail services are available across the Net. Electronic mail can be sent to anyone else on the Net, without long distance charges. FTP sites allow downloading information in bulk form, such as manuals and books.

Electronic Services Survey

Firm Information	Number
Attorneys	_____
Paralegals	_____
Secretaries	_____
Other Staff	_____

Computers	I have	Firm has (number)
No computer	_____	_____
386 computer	_____	_____
486 computer	_____	_____
Pentium computer	_____	_____
Macintosh computer	_____	_____
Other _____	_____	_____
Modem	_____	_____
Speed	_____	_____
Network	_____	_____
In House E Mail	_____	_____

Information Services	I have	Someone in firm has	Everyone in firm has
Datashare	_____	_____	_____
X Change	_____	_____	_____
Lexis	_____	_____	_____
Westlaw	_____	_____	_____
Compuserve	_____	_____	_____
AOL	_____	_____	_____
Prodigy	_____	_____	_____

Internet Services	I have	Someone in firm has	Everyone in firm has
Internet T1	_____	_____	_____
Internet Dial Up	_____	_____	_____
Internet E Mail	_____	_____	_____
WWW Client	_____	_____	_____
(Netscape, Mosiac)	_____	_____	_____
WWW Home Page	_____	_____	_____
FTP Client	_____	_____	_____
FTP Server			

Name _____ Phone _____

Firm Name _____ Fax _____

Firm Computer Guru _____ E Mail Address _____

Please mail this form to Utah State Bar 645 South 200 East SLC, UT 84111 or FAX to 531-0660

What are some sites of interest to Lawyers? This will seem like gobbledygook but once you have a Web browser, go to:

WWW Servers in Utah (list of all World Wide Web Sites in Utah) http://wings.buffalo.edu/world/www-ut.html

State of Utah Home page (list of State Web services) http://www.state.ut.us/

Lawyers Cooperative Publishing Company http://www.1cp.com/

Virtual Law Library http://www.law.indiana.edu/law/lawindex.html

West Publishing Company http://www.westpub.com/

What is the first step? Call a provider, get a connection, and play around with the software. Self education is the best way, and it is fun.

What should the Utah State Bar have on the Internet? President Dennis Haslam is forming a study committee to make recommendations about the use of the Internet by the Utah State Bar. Answers to the Electronic Services Survey will help evaluate the present involvement of Bar members in Internet and related services. Please contact Dennis Haslam or John Baldwin if you are interested in contributing to this study effort. Comments would be appreciated on any related subject, including the following discussion items:

- The Utah State Bar could use an Internet "page" to:

A. Provide a directory of Bar members which could be constantly updated.

B. List Bar officers.

C. List Section and Committee Chairs and information.

D. Provide a calendar of upcoming events.

E. Run Classified Ads.

F. Provide an Ethics Reference resource of "frequently asked questions."

G. Link to other legal resources.

- An FTP site for the Bar could:

A. Provide full text of Bar Bylaws, Rules, etc.

B. Provide full text of Ethics Opinions.

C. Archive Full Text of Bar Journal articles and CLE materials.

- The Bar could also implement an E Mail gateway on the Internet that would allow direct E Mail to Bar employees and officers.
- To pay for the cost of maintaining the page, the Bar could sell advertising. If you have comments on these subjects or other ideas about appropriate Bar Internet services, please note them on the response form, fax to the Bar offices (531-0660), or E Mail to:

david_nuffer@snewds.infowest.com.

certain penalties may not be imposed upon creditor if the violation in unintentional or the result of a bona fide error.

Rules of the Utah Department of Financial Institutions

In addition to the statutory provisions above, the Utah Department of Financial Institutions promulgates, under the Utah Administrative Code, certain Rules which may apply to some of the loans under the program. The following are particularly noted for further review:

R335-2 prescribes allowable terms and disclosure requirements for variable and adjustable interest rates in consumer credit contracts (applies only to Code Loans).

R335-3 interprets Section 70C-3-101(2)(c), clarifies the nature of the non-refundable prepaid finance charge on Code Loans, and sets out certain disclosure requirements. **Importantly, this rule states that such a prepaid finance charge is not a prepayment penalty.**

A Semi-Final Word on What's "In" and What's "Out"

May parties to a contract otherwise excepted from regulation under the Utah CCC nonetheless contract for application of the Utah CCC to such a transaction? For arcane reasons, such as calculation of interest rates on which to base compliance with disclosure requirements, a lender may find it advantageous to be *included* in the Utah CCC, even though a transaction would by its terms fall outside these consumer provisions.

More particularly for our purposes, the specific issue is whether parties to a transaction exempted from the Utah CCC by Section 70C-1-202(4), excepting from application of the Code "any extension of credit not secured by real property . . . in which the amount financed exceeds $25,000 . . .", can contract for application of the provisions of the Utah CCC.

The Uniform Consumer Credit Code ("UCCC"), from which the Utah CCC was originally derived, contains similar provisions with respect to the scope and applicability of the UCCC. Also excepted from coverage under the UCCC are "sales and loans . . . other than real property transactions, in which the amount financed exceeds $25,000."[5] Section 1.109 of the UCCC, however, provides that "[p]arties to a credit transaction . . . that is not a consumer credit transaction . . . may agree in a writing signed by them that the transaction is subject to the provisions of this Act . . . . If the parties so agree the transaction is a consumer credit transaction for the purposes of this Act."[6]

Although the author has been reliably informed that the above-referenced UCCC provision was specifically considered by the group that acted as advisers to the drafters of the Utah CCC, a provision similar to § 1.109 of the UCCC was not included in the final draft of the Utah CCC. This was not, however, because such a provision was determined to be undesirable under Utah law. On the contrary, the provision was omitted because the drafters and their advisers believed it to be redundant in light of general provisons of contract law which allow parties to include in their contracts any provisions not contrary to existing law or public policy.

"It is a fundamental principle of contract law that contracting parties "may incorporate in contracts any provisions which are not illegal or against public policy."

It is a fundamental principle of contract law that contracting parties "may incorporate in contracts any provisions which are not illegal or against public policy."[7] Incorporation of provisions of the Utah CCC into a private contract certainly is not illegal, and after extensive research on the issue, there appears to be no public policy of the state of Utah which would prohibit such incorporation.

Section 187(1), Restatement 2d Conflict of Laws 2d, provides that

> [t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.

Comment c to § 187 explains that this section provides a rule of incorporation by reference rather than rule of choice of law; since the parties could have explicitly included similar provisions in the contract, they may include such provisions by reference to extrinsic evidence, which may include, among other things, foreign law.[8]

By analogy, parties to a contract should be entitled to incorporate specific statutory provisions into their contract where those provisons pertain to matters within the scope of the parties' contractual capacity.

In light of the similar provisions found in both the Utah CCC and the UCCC, and based on general principles of contract and conflicts law, private parties should be allowed to contract to have provisions of the Utah CCC apply to their otherwise exempt transactions.

A Possible Practical Reason to "Opt In"

A related question is whether under Utah current law, regulation, and practice, a creditor may unilaterally change a specific term, such as the interest rate, of an **open-end** consumer credit contract, regardless of utilizing such means of assent as debit-ratification.

In general, such changes may be made with 15 days notice, assuming the creditor's full compliance with pertinent requirements for adequate contractual and disclosure under both State and federal law.

Arrival at this conclusion is based on several conversations with officials of the Utah Department of Financial Institutions and a review of both Utah statutory and regulatory provisions. There is apparently no present opinion of the State Attorney General in this regard.

As far as "industry practice" is concerned, the Utah Department of Financial Institutions is not aware of any institution it regulates that has presently adopted the practice of making this type of unilateral change.

The principal statutory provision on this point is 70C-4-102 U.C.A., in Chapter 4 of the Utah CCC, which reads in pertinent part:

> Notwithstanding the provisions of Section 25-5-4, a creditor may change any written term of an open-end consumer credit contract at any time while the agreement is in effect and apply the new term to the unpaid balance in the account, by giving not less than 15 days advance written notice of the change to all other parties who may be affected, but only if the contract expressly provides that the creditor may change terms of the agreement from time to time.

The cited Section 25-5-4 relates to the requirement that certain agreements be written and signed in order to be valid.

The remaining specific language in 70C-104-2 is straightforward:

- The term must be written to be subject to such a change.
- The contract must be an open-end consumer credit contract.
- The change must be made while the contract is in effect.
- The creditor must give 15 days advance notice.
- The notice must be in writing.
- The notice must be to all affected parties. This is somewhat less clear, but it is unlikely that there would be affected parties other than the borrower; if the lender is aware of such other parties, this fact should be taken into consideration.
- This provision may be relied upon only if the contract expressly provides that the creditor may change terms of the agreement from time to time.

Under the Rules of the Department, only Rule 335-2 appears to be relevant to this issue. It is noteworthy that Rule 335-2-4 covers variable and adjustable rate transactions and expressly permits a "change of any term of a variable or adjustable rate formula in an open-end consumer credit contract in accordance with Section 70C-4-102." Compliance with the index definition and disclosure provisions of Rule 335 should be monitored closely to assure compliance in turn with Section 70C-2-104.

As a practical matter, caution would dictate considering such other regulatory and public perception matters as Fair Lending compliance, possible negative publicity, or claims that such unilateral changes are unconscionable, especially as the changed terms (such as precipitous increase in the interest rate) could apply in a burdensome manner to outstanding balances of some borrowers who could not afford such increases.

In this context, as in nearly all others, it would be desirable to undertake due diligence to assure that both the contractual terms of the documentation of such transactions as well as the disclosure of the terms comply fully with the requirements of both State and federal law.

13 Nuts-and-Bolts Issues for the Lender

Fortunately for the author, in initiating the original inquiry, the client had prepared a 13-point memorandum, outlining a variety of operational issues that do not turn so intimately on the unique provisions of Utah law. By this point, the reader may be wishing for some discussion that goes beyond the niceties of first-versus-second mortgage consumer loans and open-end versus closed-end credit. In an effort to reinvigorate the reader's possibly flagging attention, the author offers the following:

"Licensing: A license from the Utah Department of Financial Institutions is required for lenders and originators of mortgage loans in the State."

1. **Licensing:** A license from the Utah Department of Financial Institutions is required for lenders and originators of mortgage loans in the State.

2. **Loan Amount/Terms:** There is no restriction on closed-end first mortgage loans (Title 70D).[9]

3. **Rate and Points:** There is no restriction on closed-end first mortgage loans (Title 70D).[10]

For second mortgage loans, 70C-3-101(2)(c) imposes a limit of 5% of the original principal amount as a non-refundable charge in the event of pre-payment; amounts in excess of the 5% are deemed to be earned proportionally over the loan term.[11]

4. **ARM and Balloon Loans:** Permitted, but *see* 70C-3-102, which applies to second mortgage loans: "If any scheduled payment of a . . . [loan] is more than twice as large as the average of all earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due if the creditor is still offering that type of credit and the debtor is credit worthy. . . ." I am advised by the Utah Department of Financial Institutions that, in practice, application of this provision is rare, but the law is on the books.

5. **Interest Calculation:** Simple interest is the prevailing calculation in Utah; 360 or 365 days may be used.

6. **Prepayment Penalties:** There is no restriction on **closed-end** first mortgages.[12]

7. **Other Fees:**

A. Processing Fee: Such a fee is not specifically restricted.

B. Appraisal Fee: Actual cost may be charged to the Borrower.

C. Credit Report: Actual cost may be charged to the Borrower.

D. Title Charges and Attorney Fees: Actual cost may be charged to the Borrower.

E. Tax Service Fee: Actual cost may be charged to the Borrower.

F. Courier Fees: Actual cost may be charged to the Borrower.

G. Bad check ("service") charge by Holder/Payee limited to $15.00 (U.C.A. 7-

15-1(2)).[13]

8. **Late Charges:** There is no restriction on **closed-end** first mortgages.

On second mortgage loans, U.C.A. 70C-2-102 imposes a limit of the greater of $20 or 5% of the payment if not paid **in full** within ten days of its **"scheduled due date."**

9. **Brokers:** As second mortgage loans are covered under the Utah CCC, it should be noted that parties acting as consumer loan brokers may be subject to the Credit Services Organizations Act (U.C.A. Title 13, Chapter 21), which requires registration with the Division of Consumer Protection of the Utah Department of Commerce, and prohibits certain practices.

10. **Signature Requirement:** Spouse signatures are required to mortgage separate property.

11. **Advertising.** There is no State regulation beyond Regulation Z.

12. **Record Retention**. There is no State regulation beyond Regulation Z.[14]

13. **Subordination and Assumption:** There is no applicable provision of Utah law.

Additional Related Documents and Sources

Several documents from the Utah Department of Financial Institutions are appropriate for further review. They cover issues that may be involved in the processes of securitization or transfer of servicing rights in this type of lending program.[15]

The possible advantages of extending consumer credit from federally-insured Utah based depository institutions have been chronicled elsewhere, and may provide useful collateral information for the reader.[16]

Welcome and Good Luck

For those of you who have "stuck it out" and arrived at the end of this treatise, it is with great hope that the author wishes you success in the application of the concepts expounded herein. May the path that you and your clients take through the real estate landscape of consumer lending be smooth and profitable.

[1]Copyright 1995 by Yan M. Ross. All Rights Reserved.

This article should serve as a roadmap. Actual entry or compliance exercises should be undertaken only with specific advice from competent counsel retained for that purpose.

[2]This requirement duplicates federal law.

[3]*But see* Title 70D-1-9: provision is made for the Utah Department of Financial Institutions to promulgate rules requiring maintenance of records on first mortgages to be kept at the principal place of business; however, no such rule has been promulgated. The Department relies on federal Regulation Z requirements and "good judgment" of the lender. Utah CCC, which covers second mortgage loans, is silent on this issue.

[4]However, it should be noted that 7-7-106 does introduce the possibility of a court finding a Code Loan unenforceable and subjecting the lender to penalties if the loan is unconscionable.

[5]Uniform Consumer Credit Code, § 1.202 (Comment, ¶3).

[6]Uniform Consumer Credit Code, § 1.109.

[7]*Coast Sash and Door Co. v. Strom Construction Company, Inc.*, 396 P.2d 803, (Wa. 1964); *Cf.* 17 C.J.S. Contracts § 29.

[8]Restatement 2d Conflict of Laws 2d § 187 (Comment *c*).

[9]See further discussion of second mortgage loan treatment under Title 70C.

[10]See further discussion of second mortgage loan treatment under Title 70C. The principal restriction is on points characterized as "prepaid finance charge."

[11]*NOTE:* Rule R335-3 of the Utah Department of Financial Institutions (*see* discussion above) interprets Section 70C-3-101(2)(c), clarifies the nature of the non-refundable prepaid finance charge on Code Loans, and sets out certain disclosure requirements. Importantly, this rule states that a prepaid finance charge as authorized by 70C-3-101(2)(c) is *not* a prepayment penalty. *ALSO NOTE:* The application of this provision may cause a difference between the Note Rate and the APR disclosed pursuant to Regulation Z.

[12]*See* Item 3 above on second mortgages.

[13]Although there is no limit on bad check charge by Drawee Bank.

[14]*See* Footnote 3, supra.

[15]June 14, 1989 Memorandum re Registration of Assignees of Consumer Credit Receivables under Title 70C [Second Mortgages only].

April 5, 1991 and April 17, 1991 Letters re relationship between State and federal disclosure requirements regarding the potential transfer of servicing rights and notice of transfer of servicing rights [First Mortgages only].

The Department's 1992 Consumer Credit Rights Pamphlet covers general issues on Code Loans [Second Mortgages].

16Yan M. Ross & George Sutton, **Utah Industrial Loan Corporations: A Fresh Look Backward and Forward,** 48 Consumer Finance Law Quarterly Report 7 (1994), and Yan M. Ross & Kenneth J. Sheppard, **Utah Industrial Loan Corporations: Non-Banks of the Future?**, 43 Consumer Finance Law Quarterly Report 236 (1989).

State v. Teuscher: The "Exception" Swallows the Rule

By Gary W. Pendleton

After [six months], I still cannot reconcile the Utah Court of Appeals' opinion in *State v. Teuscher,* 883 P.2d 922 (Utah App. 1994), with my understanding of Rule 404(b) of the Utah Rules of Evidence.[1] The court of appeals' discussion of the use of other-offenses evidence to prove the *identity* of the one perpetrating a criminal offense is particularly troubling.[2]

THE CASE

On December 16, 1991, Teuscher called 911 to report that one of the children in her home daycare facility was not breathing. Upon arrival emergency personnel found the two-month-old child lying on the kitchen floor. Despite heroic efforts on the part of medical personnel, the child never regained the ability to sustain life on his own and was pronounced dead the following day.

The defendant initially told police that she did not know what had happened to the child. Later she stated that the child had hit his head on the arm of the rocking chair. When police told the defendant that such an incident was inconsistent with the child's injuries, the defendant changed her statement again and indicated that she had accidentally dropped the child in the playpen.

Medical experts concluded that the child's death was "due to injuries sustained by unnatural force applied to his spinal column such that it was stretched, twisted, flexed, or extended," and that the child's pattern of injuries was "consistent with being held by the head and violently shaken."

Teuscher was charged with second-degree murder. Prior to trial, the state sought permission to introduce evidence of "prior bad acts" committed by the defendant against children in her care. The trial court concluded that the state could present evidence of the following specific instances to prove the perpetrator's identity and intent and to prove that the child's injuries were not sustained as the result of an accident:

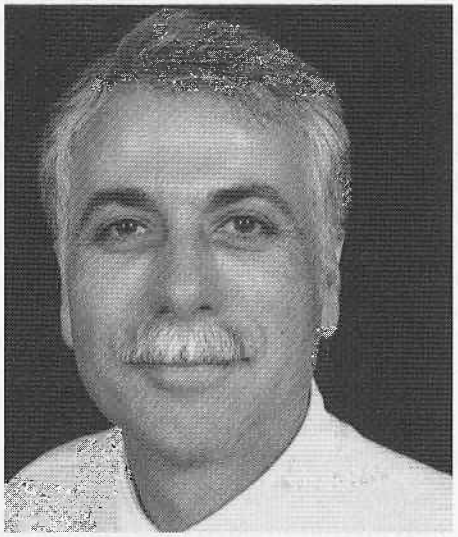
(1) Approximately 13 months prior to the alleged offense, a six-month-old boy named Austin suffered a broken leg while in the defendant's care. The defendant initially denied that anything had happened to the child but later indicated that she remembered him rolling off the couch. Upon being interviewed by police, the defendant denied any knowledge of injury to the child. She later told police that her daughter had dropped the boy. Finally, she stated that she, not her daughter, had dropped Austin after changing his diaper. The defendant had told her daughter that Austin had broken his leg when he fell down some stairs.

(2) During the summer of 1991, the defendant was observed picking up a three-to-four-year-old boy and shaking him "harshly" and "vigorously" for "five to ten seconds," while his head "went back and forth."

(3) During the summer of 1991 the defendant was observed in her back yard with a four-year-old boy. She called the crying child to her and when he was within her reach, the defendant "reached out and grabbed his hair with her fist and yanked his head over so that it was closer to where she was standing . . . ." The defendant then "proceeded to lift him up and over the railing by one arm into the house."

Additionally, the district court allowed various witnesses to testify that they had seen children crowded into closets in the defendant's home. This evidence was received in order to prove the perpetrator's intent or mental state.

The jury found the defendant guilty of manslaughter. In affirming the conviction, the court of appeals has concluded that since there were others in the home who could have caused the child's injuries, the identity of the perpetrator was in issue and that under Rule 404(b) evidence of specific instances of the defendant's misconduct was properly admitted as proof of the perpetrator's identity. The obvious question then becomes: *How* did the admission of evidence of the above-described prior misconduct tend to establish the identity of the perpetrator?



GARY W. PENDLETON received his J.D. from Washburn University of Topeka in 1978. He has been practicing law in the St. George area since 1978, concentrating his practice in the areas of personal injury and criminal defense.

ANALYSIS

Character Evidence. Rule 404 prohibits the use of character evidence for the purpose of proving a person's conduct on a particular occasion.[3] Although such evidence is highly relevant, it is excluded for reasons of sound policy. The natural tendency is to give excessive weight to such evidence either by allowing it to bear too heavily on the present charge or "to take the proof of it as justifying a condemnation irrespective of guilt of the present charge." *See* 1 *Wigmore on Evidence* §194 (3d ed. 1940) at 646.

The exclusion of such evidence is based upon a policy consideration which has become one of the fundamental restraints on prosecutorial proof in American criminal trials. It is a policy which recognizes that a person's guilt should be established by the quality of the evidence against him

and not by evidence of who or what he is. This policy is a fundamental characteristic of any system of criminal justice which is accusative rather than inquisitorial in nature. *See* Reed, *Trial by Propensity: Admission of Other Criminal Acts Evidenced in Federal Criminal Trials,* 50 U. Cin. L. Rev. 713 (1981).

The rule excludes character evidence which is offered *"for the purpose of proving action in conformity therewith on a particular occasion,"* whether such evidence is presented by way of reputation, opinion, or specific instances of conduct. In this context, evidence offered by way of reputation or opinion is ineffective to prove anything other than character. Accordingly, unless a criminal defendant presents evidence of his good character, reputation and opinion evidence is *never* admissible to prove his conduct on a particular occasion.[4]

"Taking this analysis one step further, if the defendant has presented himself to the community as a tee totaler and the only available evidence of his use of alcohol is a DUI conviction, the potential for prejudice may increase slightly."

Evidence of Other Crimes or Civil Wrongs. Evidence of specific instances of conduct is another story. Such evidence may be relevant to prove a material fact and, at the same time, may tend to impugn the defendant's character. Rule 404(b) states that evidence of specific instances of conduct, which is otherwise relevant, is not excluded simply because it may reflect adversely upon a litigant's character.

It is not always clear at what point evidence of specific instances of conduct has the potential of impugning a party's character. *See State v. Williams,* 874 P.2d 12 (N.M. 1994) (Montgomery, C.J., concurring). Suppose that the evidence in a murder case indicates that the perpetrator and the victim shared a bottle of scotch whiskey on the night of the killing. Evidence that the accused has a penchant for scotch whiskey would certainly have some relevance. In most circles the fact that the defendant enjoys scotch would not necessarily reflect poorly upon his character. In some circles it may, but even then the potential for prejudice is slight. Such a character trait, if indeed it is a character trait, does not suggest a propensity to commit murder.

Taking this analysis one step further, if the defendant has presented himself to the community as a tee totaler and the only available evidence of his use of alcohol is a DUI conviction, the potential for prejudice may increase slightly.

In any event Rule 404(b) clearly authorizes the use of such evidence because it has relevance apart from any reflection upon the defendant's propensity to commit homicide. If the particular incident used to prove the defendant's use of alcohol creates a potential of prejudice, an analysis under Rule 403 is required. If the evidence is excluded, it is excluded by operation of Rule 403. Evidence is excluded under Rule 404 only when it has no relevance apart from its tendency to prove the defendant's propensity to commit crime.

Although the Utah Supreme Court has referred to Rule 404(b) as an "exception to the rule against admitting evidence of other crimes",[5] there is no rule against admitting evidence of other crimes.[6] It may seem as though there is a "presumption that prior criminal conduct is not admissible"[7] because whenever a party seeks the introduction of such evidence, a Rule 403 analysis is always indicated.[8] In reality, there is not even a presumption against the use of other-offenses evidence *if* it has relevance apart from its tendency to prove the defendant's bad character and the likelihood that he acted in conformity therewith on particular occasion. *See* Boyce and Kimball, *Utah Rules of Evidence 1983,* 1985 Utah L. Rev. 63, 87 fn. 121.

It seems as though many members of the Bar and Bench think of Rule 404(a) as a prohibition against the use of other-offenses evidence and think of Rule 404(b) as a exception to that rule. Rule 404(b) is not, and has never been, an exception to the application of Rule 404(a). Indeed, the policy of excluding evidence offered to prove propensity to commit crime is reiterated in Rule 404(b).

Application of Rule 404(b) and Comparable Rules. Traditionally, the prior misconduct must itself provide evidence of the perpetrator's identity indepen-

dent of the fact that the conduct may present evidence of the accused's bad character. A classic example is the case where the prosecution was allowed to produce evidence that the accused had, some weeks before the alleged murder, stolen an article of clothing similar to that worn by the murderer. *People v. McMonigle,* 29 Cal.2d 730, 177 P.2d 745 (1947). Although proof of the theft reflected adversely upon the defendant's character, the prior bad act was relevant in establishing the identity of the perpetrator apart from its relevance in proving the accused's bad character.

In another vein, if both the charged offense and the uncharged misconduct were committed with the same or a strikingly similar methodology, and the methodology is so unique that both acts can logically be attributed to one individual, the uncharged misconduct may have relevance apart from its tendency to establish bad character. *See* Imwinkelried, *Uncharged Misconduct Evidence,* Section 3.10 to 3.12 (1984). Note the following discussion in *People v. Haston,* 444 P.2d 91, 99-100 (Cal. 1968):

> "[T]he test of admissibility of evidence of another offense . . . is whether there is some clear connection between that offense and the one charged so that it may be logically inferred that if defendant is guilty of one he must be guilty of the other." [Citation omitted.] It is apparent that the indicated inference does not arise, however, from the mere fact that the charged and uncharged offenses share certain markers of similarity, for it may be that the marks in question are of such common occurrence that they are shared not only by the charged crime and defendant's prior offenses, but also by numerous other crimes committed by persons other than defendant. On the other hand, the inference need not depend upon one or more unique or nearly unique features common to the charged and uncharged offenses, for features of substantial but lesser distinctiveness, although insufficient to raise the inference if considered separately, may yield a distinctive combination if considered together. Thus it may be said that the inference of identity arises when the marks common to the charged and uncharged offenses, considered singly or in combination, logically operate to set the charged and uncharged offenses apart from other crimes of the same general variety and, in so doing, tend to suggest that the perpetrator of the uncharged offenses was the perpetrator of the charged offenses.

This is the law in Utah. *See State v. Featherson,* 781 P.2d 424, 429 (Utah 1989) (commenting on the "common error" of concluding that acts and circumstances which are "merely similar" render other-offenses relevant and admissible); *State v. Cox,* 787 P.2d 4, 6 (Utah 17. 1990) ("Defendant's acts were not 'so unique as to constitute a signature'"). *Cf. State v. Johnson,* 748 P.2d 1069 (Utah 1987) (use of same alias to cash uncharged forged checks on the same day of charged forgery offense was sufficient earmark).

"We are no longer talking about using evidence of a prior bad act to prove identity, we are using "evidence of the [accused's] character" to prove the accused's conduct on a particular occasion."

Criticism. In *Teuscher,* the Utah Court of Appeals devoted its entire Rule 404(b) analysis to a discussion of whether or not identity, intent, and absence of accident or mistake were genuine issues at trial. Once the court answered that question in the affirmative, the conclusion that the other-offenses evidence was admissible followed perfunctorily, subject only to an analysis under Rule 403. In other words, the court of appeals treated Rule 404(b) as an exception to the rule prohibiting the use of character evidence for the purpose of proving conduct on a particular occasion. Although the Utah Court of Appeals never expressly states this as its holding, consider the language used by the Wyoming Supreme Court in *Longfellow v. State,* 803 P.2d 848 (Wyo. 1990), a case which *Teuscher* cites with approval.

In *Longfellow,* the defendant, her daughter, and her three-month-old son lived in a trailer with defendant's boyfriend. On December 2, 1987, the defendant spent most of the day caring for her son and daughter. The boyfriend arrived home from work at about 4:30 p.m. The defendant left the residence at approximately 5:00 p.m. to run some errands, leaving the boyfriend in charge of the children. According to the boyfriend, at about 6:00 p.m. he left the living room to place some wood in the stove. He heard a thud and returned to the living room where he found defendant's infant son lying on the floor in front of the couch. Unable to revive him, the boyfriend dialed 911 for help. Defendant returned home to find emergency personnel attempting to revive her son. The boy was pronounced dead two days later.

Defendant's boyfriend was arrested and charged in connection with the boy's death. After passing a polygraph test, charges against him were dismissed and the defendant was arrested and charged with second degree murder. At her trial, the state was allowed to introduce evidence that the defendant had physically abused her daughter. This evidence was received in order to prove the defendant's identity as her son's killer.

After being convicted of voluntary manslaughter, defendant appealed claiming error in the introduction of testimony concerning her alleged abuse of her daughter and contending that the evidence was insufficient to sustain a conviction. In upholding the conviction, the Supreme Court of Wyoming stated:

> The evidence which tied appellant to the homicide was circumstantial. The evidence of appellant's *character* and prior conduct was therefore an essential part of the state's case and of our substantial evidence review.

Id. at 850 (emphasis added).

Yes. You read that correctly. We are no longer talking about using evidence of a prior bad *act* to prove identity, we are using "evidence of the [accused's] *character*" to prove the accused's conduct on a particular occasion. The Wyoming Supreme Court was not concerned with the distinction, apparently concluding that the rule placing limitations upon the use of other-offenses evidence was "a rule of evidence which has been emasculated by judicial exceptions." *Id.* at 851, quoting *Gezzi v. State,* 780 P.2d 972, 986 (Macy, J., specially concurring).

Most of the cases which the court of appeals cited as authority in Teuscher at least pay lip service to the requirement that the prior bad act bear the earmarks of the offense charged. For example, *see State v. Foster,* 623 P.2d 1360 (Kan. 1981)

(offenses were "remarkably similar" and injuries "strikingly similar").

The evidence of Austin's broken leg and Teuscher's apparent prevarication does not, apart from proving bad character, tend to prove that this defendant was the one who held the homicide victim by the head and violently shook him. The same is true of all of the other-offenses evidence in this case.

An objective review of the Utah Court of Appeals' opinion in *Teuscher* indicates that no attempt was made to demonstrate *how* the evidence of prior misconduct "link[ed] defendant to the crime." 883 P.2d at 928. One can hardly blame the court for not undertaking to explain how, apart from demonstrating bad character, evidence of these bad acts tends to prove the defendant's identity as the perpetrator. This other-offenses evidence would never survive scrutiny under a traditional analysis.[9]

The danger in thinking of Rule 404(b) as an exception to Rule 404(a) lies in the erroneous assumption that if evidence is offered to prove "motive, opportunity, intent," etc., the prohibition against the use of character evidence to prove conduct is somehow relaxed. Apparently, the court of appeals concluded that it did not need to undertake a traditional analysis of the other-offenses evidence because the evidence of the bad acts tended to prove bad character and bad character tended to prove the defendant's identity as the perpetrator. This logic is sound if Rule 404(b) is interpreted as an exception to the rule prohibiting the use of character evidence as a means of proving one's conduct on a particular occasion. The non-existent "exception" has now swallowed the rule — at least in the court of appeals.

CONCLUSION

The Bar should recognize *Teuscher* as a substantial departure from the time-honored rule governing the use of character evidence and should appreciate the danger in such a departure. The observations Justice King made a hundred years ago in *Fenstermaker v. Tribune Publishing Co.,* 12 Utah 439, 472, 43 P. 112, 118 (1895), are as valid now as they were then:

> [A] strict adherence to well-established rules of evidence is still essential, or our courts and systems of jurisprudence will be regarded as delusions and snares. "The rules of evidence are founded in the charities of religion, in the philosophy of nature, in the truth of history, and in the experience of human life." Any departure from them can only be attended by evils immeasurable in their consequences.

[1]All citations to the rules refer to the Utah Rules of Evidence (1983).

[2]The court of appeals also held that other-offenses evidence was properly admitted to prove the perpetrator's intent or mental state and to prove the absence of accident or mistake. In the interest of brevity, this article does not include any discussion of the propriety of the use of such evidence for those purposes. However, it is noted that most of the concerns expressed herein apply to the use of the subject other-offenses evidence for the purpose of proving intent or the absence of accident.

[3]There are only three exceptions to this rule: (1) an accused's right to offer character evidence in his own behalf and the prosecutor's right to rebut the same; (2) an accused's right to offer evidence of a pertinent trait of his alleged victim's character and the prosecutor's right to rebut the same; and (3) the use of character evidence to persuade the trier of fact that a witness has or has not testified truthfully. See Rules 404(a)(1), 404(a)(2), 607, 608, and 609, Utah Rules of Evidence.

[4]This is not to be confused with situations where a person's character is an essential element of the claim or defense such as in a child custody contest or defense of an action for defamation. *See generally,* Boyce, *Character Evidence: The Substantive Use,* 4 Utah Bar J. 13, 14-17 (1976).

[5]*State v. Johnson,* 748 P.2d 1069, 1074 (Utah 1987).

[6]*See* text accompanying footnotes 3 and 4, Reed, *supra,* at 713-14.

[7]*State v. Forsyth,* 641 P.2d 1172, 1179 (Utah 1982) (Stewart, J., concurring).

[8]*See id.*

[9]Let us assume that on appeal Teuscher had challenged the sufficiency of the state's evidence. Could the evidence of the prior misconduct have been considered in reviewing the sufficiency of the evidence? If the evidence had been properly admitted under Rule 404(b), the answer would be "yes" because it would have probative value apart from its tendency to prove the defendant's bad character. Had the court of appeals been required to make such a review, it may have been forced to articulate *how* this evidence added to the body of the evidence supporting the conviction.

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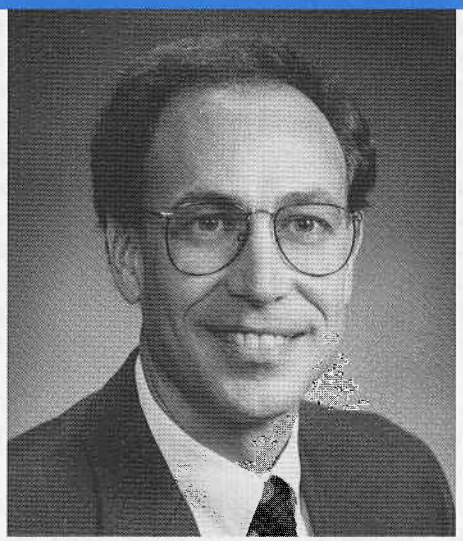

How to Commence an Appeal: Steps (and Missteps) in Commencing an Appeal

By Merrill F. Nelson

This "how-to" article is intended to serve as a guide to the important steps in commencing an appeal in Utah. This article will first discuss jurisdictional considerations, then timeliness of the appeal, and conclude with a procedural checklist for commencing the appeal.

A. JURISDICTIONAL CONSIDERATIONS

1. Appealable Order

The first step in any appeal is to examine the order and determine whether it is final or otherwise appealable. Without an appealable order, the appellate court has no jurisdiction. Utah rules recognize three basic modes of appeal, depending on the type of order: (a) final order appeal, (b) Rule 54(b) appeal, and (c) interlocutory appeal.

a. Final order. An appeal as of right may be taken only from an order or judgment that is "final."[1] A "final" order or judgment is one that entirely disposes of the complete action as to all parties and all claims. An appeal from an order that does not dispose of all claims as to all parties is subject to dismissal.[2] Common examples of orders that are not final and appealable as of right include denial of a motion to dismiss,[3] denial of a motion for summary judgment,[4] granting of partial summary judgment,[5] a ruling that leaves unresolved counterclaims or parties,[6] granting of a new trial,[7] an oral ruling,[8] and an unsigned minute entry.[9]

b. 54(b) order. Rule 54(b) (Utah R. Civ. P.) permits an appeal from an order that is final as to one or more but fewer than all of the claims or parties through an express certification of the order by the trial court. To qualify for certification, there must be multiple claims or parties, the ruling must be certified as final as to at least one claim or party and be separable from the remaining claims, and the court must expressly certify that there is no just reason for delay of an appeal on the ruling.[10] If the requirements are met, the appellate court has no discretion to deny the appeal.[11] However, the appellate court is not bound by an erroneous certification, and if the requirements of the rule are not satisfied, the appeal is subject to dismissal.[12] A timely appeal from an improperly certified order may be treated as a petition for interlocutory appeal.[13]

c. Interlocutory order. An interlocutory appeal may be taken from nonfinal orders pursuant to Utah R. App. P. 5. The granting of such an appeal is completely within the discretion of the appellate court. Considerations are whether the order involves substantial rights and may materially affect the

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final decision, or whether a determination of the correctness of the order before final judgment will better serve the administration of justice.[14]

d. Criminal cases. In criminal cases, the defendant may appeal from a final judgment of conviction, a post-judgment order affecting substantial rights, an interlocutory order in the discretion of the appellate court, or an order of incompetency.[15] The prosecution may appeal from a final judgment of dismissal, an order arresting judgment, an order terminating the prosecution because of double jeopardy or denial of a speedy trial, an order holding a statute invalid, a pretrial supression order in the discretion of the appellate court, or an order withdrawing a plea of guilty or no contest.[16] The prosecution may not appeal from an acquittal,[17] or appeal a sentence.[18] To determine whether a particular order is appealable, the appellate court looks to the substance of the ruling rather than its label.[19]

2. Form and Entry of Judgment

An order or judgment may not be appealed until it is properly entered in compliance with rules of procedure and practice. Rule 58A(c), Utah R. Civ. P. states that a judgment is not "entered" until it is signed by the court and filed by the court clerk. An unsigned minute entry is not appealable.[20] Proper filing and entry also requires that the judgment be served on opposing counsel prior to submission to the court for signing, in compliance with Rule 4-504 of the Code of Judicial Administration. An appeal from a judgment not properly entered in compliance with applicable rules is subject to dismissal.[21] The prevailing party must give notice of entry of the judgment to other parties.[22]

"A timely appeal commenced in the wrong appellate court may be transferred to the proper court without penalty."

3. Proper Appellate Court

With an appealable order, the next step is to determine which court has jurisdiction to hear the appeal. Appeals can be taken to the circuit court, district court, court of appeals, or supreme court depending on the type of case and the tribunal that issued the ruling. The only overriding rule is that any decision from a court of record invalidating a state or federal statute under either the state or federal constitution is appealed directly to the Utah Supreme Court.[23] The remaining rules of appellate case flow are easier to follow from the point of issuance.

a. Justice Court. A judgment rendered by a justice court may be appealed to the circuit court for a trial de novo.[24] This right to appeal and trial de novo also applies to a judgment of the small claims department of the justice court.[25] A justice court is not a court of record;[26] therefore, the rule regarding direct appeal to the Utah Supreme Court does not apply.

b. Circuit Court. A judgment rendered by a circuit court may be appealed to the court of appeals.[27] The only exception is that a trial de novo of a small claims matter may not be appealed unless the circuit court invalidates a state statute or local ordinance.[28]

c. Juvenile Court. A judgment rendered by a juvenile court may be appealed to the court of appeals.[29] The appellant is not entitled to a trial de novo.[30]

d. District Court. The course of appeal from an order or judgment of the district court depends on the subject matter.[31] Appeals involving domestic relations, criminal charges less than a first degree or capital felony, and review of certain administrative proceedings go to the court of appeals.[32] All other appeals from the district court go to the Supreme Court.[33] Appellate jurisdiction of a criminal case is determined by the degree of crime in the conviction rather than in the charge.[34]

e. Court of Appeals. Review of a court of appeals judgment is by petition for writ of certiorari to the Utah Supreme Court.[35] The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari.[36] When exercising certiorari jurisdiction, the Supreme Court reviews the decision of the court of appeals, not that of the district court.[37] If the Utah Supreme Court denies review, certiorari review in certain cases may also be sought in the United States Supreme Court.[38]

f. Supreme Court. A decision by the Utah Supreme Court is final and nonreviewable, except the United States Supreme Court may review by writ of certiorari any decision invalidating a federal statute or holding a state statute in violation of the federal constitution.[39]

g. Administrative Agencies. Judicial review of agency decisions is governed by the Administrative Procedures Act, Utah Code Ann. § 63-46b-0.5.[40] The proper reviewing court is determined by the agency that issued the ruling and by whether the agency adjudication was "informal" or "formal." All final agency actions resulting from informal adjudicative proceedings are reviewed by trial de novo in the district court.[41] All final agency actions resulting from formal adjudicative proceedings are reviewed by the court of appeals or Supreme Court, depending on the agency involved.[42] Formal decisions by the Public Service Commission; State Tax Commission; Board of State Lands and Forestry; Board of Oil, Gas, and Mining; and the State Engineer are reviewed by the Supreme Court.[43] All other formal agency decisions are reviewed by the court of appeals.[44]

h. Transfer of Cases Between Appellate Courts. A timely appeal commenced in the wrong appellate court may be transferred to the proper court without penalty.[45] A case properly appealed to the court of appeals may be certified by that court, on its own motion, to the Supreme Court.[46] The Supreme Court has no discretion to deny review of such certified cases.[47] The Supreme Court may also transfer any of its cases to the court of appeals, except those involving a capital felony, election and voting contests, reapportionment, retention or removal of public officers, legislative subpoenas, lawyer discipline, and judicial conduct.[48]

B. TIMELINESS OF APPEAL

1. Time Limits and Judicial Construction

An appeal as of right, including a 54(b) appeal, must be commenced within *30 days* after entry of the order or judgment.[49] An interlocutory appeal must be commenced within *20 days* after entry of the order.[50] In criminal cases, the appeal must be commenced within *30 days* after entry of judgment.[51] In administrative proceedings, the appeal must be commenced within the time prescribed by statute, or if there is no time prescribed, within *30 days* after the date of the written decision.[52] In forcible entry or unlawful detainer actions, the appeal must be commenced within *ten days* after entry of the judgment or order.[53] A cross-appeal must be commenced within *14 days* after the date on which the notice of appeal was filed.[54]

"The order or judgment is "entered" for purposes of appeal, and the appeal time begins to run, on the date it is stamped as filed by the court clerk, not when the parties receive notice of the entry."

A timely notice of appeal is *essential* to invoke appellate court jurisdiction. If the appeal is not commenced timely, the appeal is subject to dismissal, either sua sponte or upon motion, for lack of jurisdiction.[55]

The order or judgment is "entered" for purposes of appeal, and the appeal time begins to run, on the date it is stamped as filed by the court clerk, *not* when the parties receive notice of the entry.[56] Likewise, in an agency appeal, the time runs from the date the decision is issued, which is the date on its face, not the date it is mailed or received.[57]

An appeal is commenced by "filing" a notice of appeal with the appropriate court clerk.[58] A notice of appeal mailed before the filing deadline but received by the clerk after the deadline is untimely.[59] In determining the timeliness of a notice of appeal, the appellate court is bound by the stamped filing date on the notice received and transmitted by the trial court.[60] A notice of appeal filed after the announcement of a decision, but before entry of the judgment, is treated as timely filed on the date of entry.[61] However, if a timely post-judgment motion is filed, a new notice of appeal must be filed after entry of a decision on that motion.[62] (See Part B.3 below).

2. Extension of Time for Appeal

The time for filing a notice of appeal may be extended by the trial court upon a motion showing excusable neglect or good cause. The motion may be ex parte if filed before expiration of the time for appeal. If filed after expiration, the motion must be filed within 30 days after the deadline, with notice to all parties. No extension may exceed 30 days past the deadline or ten days after the extension order, whichever is later.[63] No motion for extension may be entertained beyond the 30-day grace period.[64] The required showing for an extension is strict, and a lawyer's inadvertence, oversight, or press of business ordinarily does not satisfy the standard.[65] Moreover, an appellate court is not bound by the trial court's finding of excusable neglect.[66] The appellate court itself has no power to extend the time for appeal.[67]

3. Effect of Post-Judgment Motions on Time for Appeal

If any party files a timely motion in the trial court for judgment notwithstanding the verdict, to amend the findings, to amend the judgment, or for a new trial, under Rules 50(b), 52(b), or 59 of the Utah Rules of Civil Procedure, the time for appeal for all parties runs from the entry of the order granting or denying the motion, unless a new trial is granted.[68] In criminal cases, a post-judgment motion under Rules 24 or 26 of the Utah Rules of Criminal Procedure has the same effect.[69] The appellate court cannot take jurisdiction of an appeal until such post-judgment motions are resolved.[70] Only those motions listed suspend the time for appeal. Neither a "motion for reconsid-

eration," a Rule 60(b) motion, nor any other motion qualifies for the suspension under the rule.[71] However, a timely motion that has the same effect as the listed motions will qualify, notwithstanding its incorrect title.[72] A proper motion that is untimely will not suspend the time for appeal.[73] Moreover, the trial court may not extend the prescribed time for such post-judgment motions.[74]

A timely notice of appeal filed before the filing or disposition of a proper post-judgment motion is ineffective to confer jurisdiction upon the appellate court.[75] The notice must be refiled after disposition of the motion, or the appeal may be dismissed.[76]

C. PROCEDURAL CHECKLIST FOR COMMENCING APPEAL

1. Notice of Appeal or Petition

a. Final Order. An appeal from a final order or certified order is commenced by filing a timely notice of appeal with the clerk of the trial court.[77] The notice of appeal must specify the party taking the appeal, the judgment or order being appealed, the court that rendered the decision, and the court to which the appeal is taken.[78] Mere technical defects in the notice of appeal will not invalidate the appeal.[79] The opposing party cannot challenge the judgment without filing a timely notice of cross-appeal.[80]

b. Interlocutory Order. An appeal from an interlocutory order is commenced by filing a timely petition for interlocutory appeal with the clerk of the appellate court.[81] The petition must state the facts, the question of law, why an immediate appeal should be permitted, how the appeal may benefit the litigation, and include a copy of the challenged order.[82]

c. Agency Appeals. Appellate review of an agency order is commenced by filing a timely petition for review with the clerk of the appellate court. The petition must specify the party seeking review, the respondent, and the order to be reviewed.[83]

2. Filing Fee and Cost Bond

A filing fee must be paid at the time of filing the notice of appeal or petition. The notice or petition cannot be accepted for filing without the required fee.[84] However, payment of the fee is apparently no longer jurisdictional.[85]

In civil appeals, a cost bond must be filed with the notice of appeal to secure payment of costs if the appeal is dismissed or the judgment is affirmed.[86] The cost bond is not jurisdictional and may be filed after the required time if no prejudice is shown.[87] No cost bond is necessary if a supersedeas bond is filed.[88] (See Part C.3., below.)

3. Stay or Injunction Pending Appeal

A stay of the challenged order or judgment is not necessary to appeal, but neither does the appeal automatically stay or suspend the judgment during the appeal.[89] Nor does a 54(b) appeal or interlocutory appeal prevent the trial court or parties from proceeding with the remainder of the case.[90] Accordingly, in civil cases, if rights or interests under the judgment could be lost during the appeal, the appealing party should seek a stay of the judgment to preserve the status quo.[91] The request for stay should be directed first to the trial court, and then, only if necessary, to the appellate court.[92] The stay may be conditioned on the filing of a supersedeas bond in an amount approved by the court.[93] The bond does not stay accrual of obligations or interest, but merely stays execution or enforcement of the judgment.[94] The grounds for a stay are similar to those for an injunction under Utah R. Civ. P. 65A(e), including likelihood of success on appeal or irreparable injury.[95]

Stays in agency appeals are governed by Utah R. App. P. 17, which is similar in substance to the foregoing. Stays in criminal cases are governed by Utah R. Crim. P. 27.

4. Preparation of Record of Appeal

Within ten days after filing the notice of appeal, the appellant must request a transcript from the court reporter of any parts of the proceedings not already on file considered necessary for the appeal. Copies of the

request must be filed with the clerks of the trial and appellate courts. If no such transcript is needed, the appellant must, within that same period, file a certificate to that effect in the trial court, with a copy to the appellate court.[96] In order to challenge the sufficiency of evidence, a transcript of such evidence must be included in the record. The burden of ensuring a complete record on appeal is on the appellant, not on the courts or other parties.[97]

Unless the entire transcript is requested, the appellant must, within the same ten days after filing the notice of appeal, file a statement of issues presented on appeal. The appellee then has ten days to request any additional parts of the transcript, either through the appellant or directly.[98] The parties may also file an agreed statement in lieu of the record on appeal, or supplement, correct, or modify the record as necessary and approved by the court.[99] If the record is incomplete or inadequate, the appellate court cannot address the issues and will presume the correctness of the verdict or disposition in the trial court.[100]

5. Docketing Statement

Within 21 days after filing the notice of appeal, the appellant must file a docketing statement in the appellate court.[101] The docketing statement is used in classifying, assigning, prioritizing, and summarily resolving cases; it should not contain arguments or motions.[102] The docketing statement must contain the date of the challenged decision, including resolution of any post-judgment motion; a statement of jurisdiction or certification; nature of the proceeding; statement of facts; issues presented, with standards of review; statement regarding assignment; citation of key legal authorities; related or prior appeals; and copies of the challenged order, related documents, and notice of appeal.[103] Failure to file a docketing statement or to comply with these requirements may result in dismissal of the appeal.[104]

6. Other Steps in the Appeal

Upon completion of the foregoing requirements, the appeal is properly commenced. Motions for summary disposition may be filed after the docketing statement.[105] Absent such motions, the next steps in the appeal are briefing (Utah R. App. P. 24-27), transmission of the record (Utah R. App. P. 12), oral argument (Utah R. App. P. 29), decision (Utah R. App. P. 30), optional post-decision actions (Utah R. App. P. 34-35, 45), and issuance of remittitur (Utah R. App. P. 36).

[1]URAP 3(a).

[2]*A.J. Mackay Co. v. Okland Constr. Co.*, 817 P.2d 323 (Ut. 1991).

[3]*Little v. Mitchell*, 604 P.2d 918 (Ut. 1979).

[4]*Denison v. Crown Toyota*, 571 P.2d 1359 (Ut. 1977).

[5]*Holt v. Biggs*, 714 P.2d 643 (Ut. 1986).

[6]*Kennedy v. New Era Industries*, 600 P.2d 534 (Ut. 1979).

[7]*Haslam v. Paulsen*, 389 P.2d 736 (Ut. 1964).

[8]*Hinkins v. Santi*, 481 P.2d 53 (Ut. 1971).

[9]*Gallardo v. Bolinder*, 800 P.2d 816 (Ut. 1990).

[10]*Kennecott Corp. v. State Tax Comm.*, 814 P.2d 1099 (Ut. 1991).

[11]*Pate v. Marathon Steel*, 692 P.2d 765 (Ut. 1984).

[12]*Id.*

[13]URAP 5(a).

[14]URAP 5(e); *Manwill v. Oyler*, 362 P.2d 177 (Ut. 1961).

[15]URCrimP 26(2).

[16]*Id.*; URCrimP 26(3).

[17]*State v. Musselman*, 667 P.2d 1061 (Ut. 1983).

[18]*State v. Kelbach*, 569 P.2d 1100 (Ut. 1977).

[19]*State v. Workman*, 806 P.2d 1198 (Ut. App. 1991), *aff'd*, 852 P.2d 9481 (Ut. 1993).

[20]*Wisden v. City of Salina*, 696 P.2d 1205 (Ut. 1985).

[21]*Wayne Garff Constr. v. Richards*, 706 P.2d 1065 (Ut. 1985).

[22]URCivP 58A(d).

[23]UCA § 78-2-2(3)(g).

[24]UCA §§ 78-5-120, 78-4-7.5.

[25]UCA § 78-6-10.

[26]UCA § 78-5-101.

[27]UCA §§ 78-4-11, 78-2a3(2)(d).

[28]UCA § 78-6-10(2).

[29]UCA §§ 78-3a-51, 78-2a-3(2)(c).

[30]*State ex rel. K.K.H.*, 610 P.2d 849 (Ut. 1980).

[31]UCA § 78-3-4.

[32]UCA § 78-2a-3(2)(a)-(b), (e)-(f), and (i).

[33]UCA § 78-2-2(3)(f), (h)-(i), (j)-(k).

[34]*State v. Doung*, 813 P.2d 1168 (Ut. 1991).

[35]UCA §§ 78-2a-4; 78-2-2(3)(a), (5); URAP 45-51.

[36]UCA § 78-2-2(5).

[37]*Butterfield v. Okubo*, 831 P.2d. 97 (Ut. 1992).

[38]URAP 36(b); 28 USC § 1257.

[39]*Id.*

[40]*See* URAP 14.

[41]UCA § 63-46b-15.

[42]UCA § 63-46b-16.

[43]UCA § 78-2-2(3), (6).

[44]UCA § 78-2a-3(2)(a), (4).

[45]URAP 44.

[46]UCA § 78-2a-3(3).

[47]UCA § 78-2-2(5).

[48]UCA §§ 78-2-2(4), 78-2a-3(2)(k).

[49]URAP 4(a).

[50]URAP 5(a).

[51]URCrimP 26(4)(a).

[52]URAP 14(a).

[53]URAP 4(a).

[54]URAP 4(d).

[55]*Albretson v. Judd*, 709 P.2d 347 (Ut. 1985); *Bowen v. Riverton City*, 656 P.2d 434 (Ut. 1982); *Retherford v. Industrial Comm'n*, 739 P.2d 76 (Ut. App. 1987) (agency appeal).

[56]URCivP 58A(d); *In re Bundy's Estate*, 241 P.2d 462 (Ut. 1952).

[57]*Silva v. Dept. of Emp. Sec.*, 786 P.2d 246 (Ut. App. 1990); *Dusty's Inc. v. Auditing Div.*, 842 P.2d 868 (Utah 1992).

[58]URAP 3(a).

[59]*Isaacson v. Dorius*, 669 P.2d 849 (Ut. 1983) (civil); *State v. Palmer*, 777 P.2d 521 (Ut. App. 1989) (criminal); *Silva, supra* (agency).

[60]*In re M.S.*, 781 P.2d 1287 (Ut. App. 1989).

[61]URAP 4(c).

[62]URAP 4(b).

[63]URAP 4(e).

[64]*Edwards v. Doctor's Hosp.*, 242 F.2d 888 (2nd Cir. 1957).

[65]*Prowswood v. Mountain Fuel Supply*, 676 P.2d 952 (Ut. 1984).

[66]*Id.*

[67]URAP 22(b)(2).

[68]URAP 4(b).

[69]*Id.*

[70]*Bailey v. Sound Lab*, 694 P.2d 1043 (Ut. 1984).

[71]*Peay v. Peay*, 607 P.2d 841 (Ut. 1980); *Browder v. Dept. of Corrections*, 434 U.S. 257 (1978).

[72]*Watkiss & Campbell v. Foa & Son*, 808 P.2d 1061 (Ut. 1991).

[73]*Burgers v. Maiben*, 652 P.2d 1320 (Ut. 1982).

[74]URCivP 6(b).

[75]URAP 4(b); *Transamerica Cash Reserve v. Hafen*, 723 P.2d 425 (Ut. 1986).

[76]*Bailey, supra; U-M Investments v. Ray*, 658 P.2d 1186 (Ut. 1982).

[77]URAP 3(a); URCrimP 26(1).

[78]URAP 3(d).

[79]*Wood v. Turner*, 419 P.2d 634 (Ut. 1966).

[80]URAP 4(d); *Bentley v. Potter*, 694 P.2d 617 (Ut. 1984).

[81]URAP 5(a).

[82]URAP 5(c); *Manwill v. Oyler*, 361 P.2d 177 (Ut. 1961).

[83]URAP 14(a); *Silva v. Dept. of Emp. Sec.*, 786 P.2d 246 (Ut. App. 1990).

[84]URAP 3(f), 5(b), 14(b); UCA § 21-1-5 (fee schedule).

[85]URAP 3(a) (failure of any step other than filing of notice of appeal does not affect validity of appeal); *State v. Johnson*, 700 P.2d 1125, 1129 n.1 (Ut. 1985).

[86]URAP 6.

[87]*Mountain States Tel. & Tel. v. Atkin*, 681 P.2d 1258 (Ut. 1984).

[88]URAP 6

[89]URCivP 62(a); *Hidden Meadows v. Mills*, 590 P.2d 1244 (Ut. 1979).

[90]*Lane v. Messer*, 689 P.2d 1333 (Ut. 1984); *Phelan v. Taitano*, 233 F.2d 117 (9th Cir. 1956).

[91]URAP 8; URCivP 62(d)-(h).

[92]URAP 8(a); *Warren v. Warren*, 642 P.2d 385 (Ut. 1982).

[93]URAP 8(b); *Hidden Meadows, supra.*

[94]*Lund v. Lund*, 315 P.2d 856 (Ut. 1957).

[95]*Jensen v. Schwendiman*, 744 P.2d 1026 (Ut. App. 1987).

[96]URAP 11(e)(1).

[97]URAP 11(e)(2); *Franklin Financial v. New Empire Dev.*, 659 P.2d 1040 (Ut. 1983).

[98]URAP 11(e)(3).

[99]URAP 11(f)-(h); *Jeschki v. Willis*, 793 P.2d 428 (Ut. App. 1990).

[100]*State v. Rawlings*, 829 P.2d 150 (Ut. App. 1992).

[101]URAP 9(a).

[102]URAP 9(b).

[103]URAP 9(c)-(d).

[104]*CMC Cassity v. Aird*, 707 P.2d 1304 (Ut. 1985); *Brooks v. Dept. of Emp. Sec.*, 736 P.2d 241 (Ut. 1987).

[105]URAP 10.

Commission Highlights

During its regular meeting of May 26, 1995, held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Dennis Haslam reported that the Long-Range Planning Committee has met on a number of occasions and reviewed all of the line items in the Bar budget. He indicated that the committee found that the programs are running reasonably well, efficient, have an eye on expenses and there were no major changes to recommend.
2. John Baldwin reviewed the preliminary 1995-96 budget and answered questions. He indicated that the '95-'96 budget draft would be available next week for review by interested Bar members.
3. The Board voted to accept the proposed 1995-96 budget for comment for 30 days, to make it available to the Bar membership, and to adopt the final budget at the June meeting.
4. Ray Westergard, Budget & Finance Committee Chair, reviewed the April financial reports.
5. Client Security Fund Committee Chair, David R. Hamilton, reported on the May 5th meeting of the Client Security Fund. Hamilton reviewed the claims and answered questions.

   The Board voted to accept the Committee's recommendation to table certain claims for 60 days and to approve the balance of the recommendations. The Board voted to assess the full $10 to supplement the Client Security Fund for the next fiscal year.
6. Ethics Advisory Opinion Committee Chair, Gary Sackett, reported that the Committee has been approached by members of the Bar for an opinion related to a conflict of interest in a criminal case involving homicide and other criminal related circumstances. The Board asked questions and after discussion, the Board agreed the parties should rely on the courts to solve the conflict of interest and that Mr. Sackett should relay to the parties that the Ethics Advisory Opinion Committee does not act as an arbitrator and will not entertain the request of the parties.
7. Judge Michael Murphy appeared to review the status of the court consolidation plan.
8. The Board reviewed all the applications for the Ethics & Discipline Panels and discussed the applicants' experience and backgrounds and then made recommendations based upon the need to have a variety of backgrounds and practice experience on the panels.

   The Board voted to recommend appointment of J. Scott Hunter and Helen Christian and proposed adding one additional member to each panel to be used as an alternate; to reappoint R. Clark Arnold, Stephen W. Farr, Michael D. Wims, P. Keith Nelson, Charles E. Greenhawt and Reid E. Lewis; to appoint Lincoln Hobbs, James B. Lee, Carolyn Nichols and Martha S. Stonebrook to serve as alternates; and Jeanetta Williams as lay member.
9. The Board voted to recommend Kim Rilling for appointment to the Criminal Defense Committee for State Prison Inmates.
10. The Board voted to recommend Greg Skordas, Martha Pierce or Virginia Lee Curtis be appointed to the Criminal & Juvenile Justice Commission.
11. The Board approved the minutes of the April 28, 1995 meeting.
12. The Board voted to respectfully decline the invitation from the Colorado Bar to join in an amicus brief.
13. Moxley reported that he and Chief Justice Michael Zimmerman sent a joint letter thanking those who participated in the Quality Control Conference.
14. John Baldwin indicated that the retention election ballots have been mailed along with a special mailer notifying Bar members of openings on various committees, of the Solo & Small Firm Practitioners Library, and a reminder of the annual Convention.
15. J. Michael Hansen reported on the recent Judicial Council Meeting.
16. Baldwin referred to the Bar Programs Monthly Activity report and indicated that the number of new attorneys is plateauing: the CLE department has been very active; the use of the Law & Justice Center building has been relatively good; and the Pro Bono Coordinator has been meeting with various groups.
17. The Board voted to authorize the Office of Attorney Discipline to proceed with a UPL suit.
18. Baldwin indicated that the Long-Range Planning Committee has reviewed the recommendation for parking expansion and the committee believes that it is premature to allocate funds at this time.
19. ABA Bar Delegate, Norman S. Johnson, reported that the proponents and opponents of the on-going issue of ABA section voting privileges have been actively dividing themselves with sections on one side and bar associations on the other. Johnson noted that, in his opinion, there may not be anything definitive until just before the ABA's annual meeting in August.

During its Annual Meeting of June 28, 1995, held in San Diego, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Paul Moxley welcomed current commissioners and introduced Ron Gould, President of the Washington State Bar; John Martinez, Associate Director of the University of Utah College of Law; Marty Olsen, Young Lawyers Division President; and Steve Cochell, the new Chief Disciplinary Counsel.
2. The Board approved the minutes of the May 26, 1995 meeting.
3. Steve Sullivan, Chair of the Unauthorized Practice of Law Committee presented a follow up report on estate planning and unauthorized practice of law.
4. The Board voted to authorize the UPL Committee to create a task force to begin working on the recommendations and requested the task force give a preliminary report in September.
5. Steven Kaufman reported on a meeting he attended to discuss the possibility of regionalizing bar activities in several western states. The Board voted to have the Executive Committee determine if the Utah Bar should continue in the regionalization discussions.

6. Office of Attorney Discipline Task Force Chair, Charlotte L. Miller, reported that the draft report of the Office of Attorney Discipline Task Force has been circulated to the appropriate people and will be finalized and presented to the Bar Commission next month.
7. Ray O. Westergard, Budget & Finance Committee Chair, reviewed the May financial reports. He indicated that the Budget & Finance Committee has met almost every month this past year and has reviewed the proposed 1995-96 budget and believes the Bar is in a strong position.
8. The Board voted to not provide monetary funding to the Utah Dispute Resolution Program but provide instead in-kind office space.

   The Board voted to approve the 1995-96 budget as amended.
9. The Board voted to approve the July 1995 Bar Examination applicants subject to review by the Character & Fitness Committee.
10. John Baldwin reviewed the Office of Attorney Discipline statistics for the past month and indicated that there were 394 informal cases open, 270 formal cases, 64 dismissed, and 185 telephone inquires on ethics.
11. John Baldwin reviewed the Monthly Activity Report on Bar programs and indicated that the Law & Justice Center building has been quite active. He noted that Pro Bono Coordinator Toby Brown has been busy meeting with groups to solicit participation.
12. Baldwin reported that Steven Kaufman has been retained as president-elect and received 88.4% 'yes' votes on returned ballots.
13. Dennis Haslam referred to a recent Supreme Court case upholding Florida's rule restricting advertising and recommended the Board evaluate whether the Bar should adopt any changes to its rules.
14. The President-Elect and new Commissioners were seated. Moxley expressed thanks and appreciation to everyone this past year for their support.
15. The Board voted to appoint the following as ex officio members of the Bar Commission for the upcoming year: The Dean of the University of Utah College of Law; The Dean of the J. Reuben Clark College of Law, Brigham Young University; The Bar Commission's Representative to the ABA House of Delegates; The Utah ABA delegations Delegate of the ABA House of Delegates; The Young Lawyers Division President; The Immediate Past President of the Bar; A Representative of the Minority Bar Association; A Representative of the Women Lawyers of Utah; and The Liaison to the Judicial Council.
16. The Board voted to approve amending the Bylaws to increase the size of the Executive Committee up to 5 members to facilitate the pending work load.

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

United States Bankruptcy Court For the District of Utah STANDING ORDER #8

Whereas, 28 U.S.C. § 473(a)(6)(B) (Supp. 1993) grants district courts the authority to refer appropriate cases to alternative dispute resolution programs; and

Whereas, pursuant to 28 U.S.C. §§ 471-482 and §§ 651-658 and the Civil Justice Expense and Delay Reduction Plan of 1991, the United States District Court for the District of Utah has promulgated Rule 212 COURT-ANNEXED ALTERNATIVE DISPUTE RESOLUTION; and

Whereas, Federal Rule of Bankruptcy Procedure 7016 incorporates Federal Rule of Civil Procedure 16(c)(9) that allows the court to consider the use of special procedures to assist in resolving disputes when authorized by statute or local rule; and

Whereas, in certain adversary proceedings, alternative dispute resolution may reduce the cost and delay in resolving disputes, it is therefore

ORDERED, that upon agreement and motion of all the parties, at the initial pretrial conference or at any other time, the Court may order that an adversary proceeding be referred to the ADR Program of the United States District Court of the District of Utah to be conducted under the guidance of D. Ut. 212 (j) *ADR Program: Mediation.*

IT IS ALSO ORDERED that any adversary proceeding referred to the ADR Program shall remain under the jurisdiction of the United States Bankruptcy Court for all purposes, including the entry of any order granting a motion to approve a stipulation resolving the adversary proceeding, dismissing the adversary proceeding, or withdrawing the referral to the ADR Program.

DATED this 21st day of August, 1995.

Glen E. Clark, Chief U.S. Bankruptcy Judge

John H. Allen, U.S. Bankruptcy Judge

Judith A Boulden, U.S. Bankruptcy Judge

Discipline Corner

SUSPENSIONS

On August 24, 1995, Suzanne Benson was placed on Interim Suspension from the practice of law by the Third Judicial District court pursuant to stipulation between Ms. Benson and the office of Attorney Discipline. The Interim Suspension will remain in effect until pending disciplinary charges are resolved. The charges allege Ms. Benson accepted fees from clients and failed to provide any meaningful legal services.

ADMONITIONS

On August 8, 1995, pursuant to a discipline by consent, Steven C. Tycksen was admonished for violating Rules 1.2(c), 1.3, 8.4(c) & (d) of the Rules of Professional Conduct of the Utah State Bar. The misconduct occurred in two separate cases involving two different clients.

In the first case, the attorney, knowing there were impending judgments against a client, advised the client to convey certain real property the client owned free and clear to the attorney or the attorney's nominee as "security" for unpaid attorney fees. The client did so. Later a dispute arose between the attorney and client when the attorney refused to re-convey the property to the client.

The potential effect of the transaction was to defeat legitimate claims of the client's creditors. In so acting, the attorney violated Rules 1.2(c) and 8.4(c) & (d). Those rules prohibit an attorney from advising a client to commit potentially fraudulent acts. The rules also prohibit the attorney from engaging in dishonest conduct, or conduct prejudicial to the administration of justice.

In the second case, the attorney, knowing a signed stipulation in a divorce case was no longer valid because of errors in the valuation of certain property, failed to attend the default divorce hearing to protect the client's interests, after opposing counsel indicated she was unwilling to withdraw the stipulation. This conduct violated Rule 1.3, which requires the attorney to render diligent service to a client.

DISBARMENTS

1. On July 21, 1995, a Fourth District Court Judge entered an order disbarring Robert M. Orehoski, pursuant to a discipline by consent. The district court disbarred Mr. Orehoski for violations of Rules 1.13(a) and (b) and 8.4(a) and (b) of the Rules of Professional Conduct of the Utah State Bar.

The disbarment was predicated upon Mr. Orehoski's plea of no contest to one count of forging his client's signature on a settlement check in a personal injury case, and converting the proceeds to his own use. The total amount involved was approximately $40,000.00.

Pursuant to Rule 25(a) of the Rules of Lawyer Discipline and Disability and stipulation, the court gave Mr. Orehoski credit toward the five-year readmission period for the time he has been suspended from the practice of law. Under the court's order, Mr. Orehoski's readmission period commenced as of January 1, 1993. The court also found mitigation that Mr. Orehoski made restitution to the complainants prior to the time the prosecutor lodged the information, and prior to the Bar's involvement in this case.

2. On June 1, 1995, the Third Judicial District Court entered an Order disbarring Cornelius W. Hyzer from the practice of law. The facts show that Respondent knowingly commingled personal funds with trust account funds. The facts further show that Mr. Hyzer committed a criminal and fraudulent act when he wrote a check on his Trust account knowing the account contained no client funds. He then removed the only funds in the account, his personal funds, prior to the check clearing and knowing it had been written. His actions constitute fraud and misrepresentation. In addition, there were numerous complaints that Mr. Hyzer had received payment for legal services, but did not perform them. Mr. Hyzer abandoned his practice and his clients and left the State of Utah. Mr. Hyzer was disbarred for repeated violations of Rule 1.3, Rule 1.4(a), Rule 1.5(a), Rule 1.13, Rule 3.2, Rule 8.1(b), Rule 8.4(c) and Rule 8.4(d) of the Rules of Professional Conduct of the Utah State Bar.

Salt Lake Legal Defender Association Accepting Applications

Salt Lake Legal Defender Association is currently accepting resumes to update its trial and appellate attorney roster. Interested attorneys should submit their application to F. John Hill, Director, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111. (801) 532-5444.

Supreme Court Seeks Attorneys to Serve on Juvenile Procedure Advisory Committee

The Utah Supreme Court is seeking applicants to fill vacancies on the Advisory Committee on the Rules of Juvenile Procedure. Each interested attorney should submit a resume and a letter indicating interest and qualifications to Brent M. Johnson, 230 South 500 East #300, Salt Lake City, Utah 84102. Applications must be received no later than October 25, 1995. Questions may be directed to Mr. Johnson at (801) 578-3800.

A Call for Spanish Speaking Lawyers

The Governor's Office of Hispanic Affairs and the Tuesday Night Bar Program have come together to provide assistance to Spanish speaking members of our community. Lawyers who speak Spanish are needed to assist in this program so that Spanish speaking Hispanics can benefit from the Tuesday Night Bar Program. The program began Tuesday, March 28, 1995. If you speak Spanish and are interested in participating in this program, please contact Kaesi Johansen at 531-9077, Utah State Bar, or Lorena Riffo, Governor's Office of Hispanic Affairs, at 538-8850.

Richard B. Turnbow, Director of Administration at Kirton & McConkie in Salt Lake City, Appointed to Association of Legal Administrators' Board of Directors

VERNON HILLS, ILL. (June 22, 1995) — Richard B. Turnbow, director of administration at Kirton & McConkie in Salt Lake City, Utah, has been appointed to the Association of Legal Administrators' (ALA) Board of Directors as director of Region 4.

Turnbow will complete the remaining year of David Brezina's two-year term as Region 4 director. Brezina, director of administration at a Denver, Colo., law firm, left his position as Region 4 director to become president-elect of ALA. Turnbow's term began at ALA's 24th Annual Educational Conference and Exposition, held in May in Orlando, Fla.

An ALA member and legal administrator for 17 years, Turnbow has held various regional leadership positions in ALA, including education officer and transition team member. He was also chair of ALA's Financial Management Section and is a frequent speaker and educator on law office financial management issues. He is a member of ALA's Beehive Chapter in Salt Lake City.

Prior to becoming a legal administrator, Turnbow was a certified public accountant for Haskins & Sells (now Deloitte & Touche). He received a bachelor's degree in accounting from Brigham Young University.

ALA's Regional 4 comprises the following states: Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, Texas and Utah.

NOTICE TO ALL BAR MEMBERS

Regarding Mandatory Continuing Legal Education Late Fee Increase

The Utah Supreme Court has approved a late filing fee increase from $10.00 to $50.00 in the Rules and Regulations governing mandatory continuing legal education. The purpose of the increase is to create incentive to file timely, as well as to cover the administrative costs associated with untimely filings. The change affects regulation 5-102 which would read as follows:

Regulation 5-102

In accordance with Rule 8, each attorney shall pay a filing fee of $5.00 at the time of filing the statement of compliance. Any attorney who fails to file that statement or pay the fee by December 31 of the year in which the reports are due shall be assessed a **$50.00** late fee.

The court's approval was conditioned upon a 45-day comment period before the court takes definitive action to approve the change. The comment period begins October 16, 1995.

Please direct any questions or comments to Sydnie W. Kuhre, MCLE Board Administrator at (801) 531-9077.

Applicants for Criminal Conflict of Interest Contract

The Salt Lake Legal Defender Association is currently accepting applications for several trial and appellate conflict of interest contracts to be awarded for the fiscal year 1996. To qualify each application must consist of two or more individuals. Should you and your associate have extensive experience in criminal law and wish to submit an application, please contact F. JOHN HILL, Director of Salt Lake Legal Defender Association, 532-5444.

Small Firm Network

The Bar Commission has approved a funding request from the Solo and Small Firm Committee to establish a Small Firm Network to facilitate referrals, mentoring and other networking among Utah solo and small firm practitioners. (A small firm is one with five or fewer members.) Similar programs have proven successful in other states and, in Georgia, the Atlanta small firm network refers to itself as "Atlanta's Largest Law Firm."

A data entry form will be sent soon to all known small firm practitioners asking those who wish to participate to complete and return the form.

If you wish to participate but have not received the form by November 1, 1995 contact Solo and Small Firm Committee Chair, Rex Curtis Bush (801) 572-1991.

Notice From Bankruptcy Court

The United States Bankruptcy Court for the District of Utah asks practitioners who qualify pursuant to D.Ut. Rule 212(f)(1) and are interested in becoming a member of the Court's Mediation Panel for Bankruptcy cases to contact Ms. Laura Gray, ADR Administrator for the United States District Court, for information and an application. Ms. Gray can be contacted at the U.S. District Court, 350 South Main Street, Salt Lake City, Utah 84101, (801) 524-5211 extension 3406.

Solo/Small Firm Resource Library Now Available

The Solo/Small Firm Committee of the Utah State Bar has put together a library of books, journals and other publications on law management issues. This library was designed to be a resource for Bar members, especially those in solo and small firm situations. A practitioner facing a management issue now has this resource to draw upon for help.

The library contains titles on a variety of topics. General categories include: computers, time management, marketing/client services, facilities management and general law management. This library should continue to grow and new titles will be added as they are available and applicable. Any Bar member who is interested in utilizing any of these publications should contact Kim Williams at the Bar offices (531-9077). Kim can provide you with a listing of current titles along with assistance in checking these out.

The following is a listing of current titles by subject:

General Law Management

- How to Start and Build a Law Practice, 3rd ed., by Jay G. Foonberg
- Flying Solo: A Survival Guide for the Solo Lawyer, 2nd ed.
- Practical Planning: A How-to Guide For Solos and Small Firms, by Henry W. Ewalt
- Law Office Management & Administration Report ("LOMAR"), a monthly publication
- Lawyers Weekly USA, a weekly publication
- Model Partnership Agreement for the Small Law Firm, by Richard A. Williams
- Building Your Firm With Associates, by Richard N. Feferman

Computers

- WordPerfect in One Hour for Lawyers, by Gerald J. Robinson
- Winning With Computers, Part 1 and 2
- What's Hot and What's Not in Small Law Office Technology [ABA Video]

Facilities Management

- Planning the Small Law Office Library
- Telephone and Peripheral Systems for Law Firms, by mary R. Westhoff
- Practical Systems: Tips for Organizing Your Law Office, by Charles Coulter

Finanicial Management

- How to Draft Bills Clients Rush to Pay, by J. Harris Morgan

Personnel

- Model Employee Handbook, by Steven C. Bednar
- Professional Telephone Strategies

Time Management

- The Time Trap, by Alec Mackenzie

Marketing/Client Service

- Guerilla Marketing Attack for Attorneys
- The ABCs of Marketing for Sole Practitioners and Small Law Firms, by Don Itkin

Ethics

- Ethics Advisory Opinion, from the Utah State Bar

The Solo/Small Firm Committee would like to thank the Bar Commission for its support of this project. This demonstrates the Bar's on-going commitment to provide assistance to its members.

Going Solo Seminar

The Solo and Small Firm Committee is sponsoring the first Going Solo Seminar November 9th from 8:30 a.m. to 12:30 p.m. at the Law and Justice Center.

This will be a practical seminar for solo and small firm practitioners on starting and maintaining your own law practice. Topics to be covered include: overhead, business/financial organizations, staffing, technology, marketing and lots of do's and don'ts.

Cost: $30.00 for lawyers admitted over one year; $15.00 for lawyers admitted less than one-year and for law students.

Registration will begin at 8:00 a.m. CLE Credit: 4 Hours.

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principles and an attorney's duty to the courts and her client. A simple example seen in the media is the report of an attorney representing a "guilty" client. This adds to the public's misconception of an attorney's responsibilities and tends to misinform the public about the judicial process.

The media is the main source of public information about the legal profession. There should be continued efforts to provide the media with accurate information about attorneys and about the operation of the courts. When we establish and continue programs that assist the general public with their legal problems, it reflects positively on the profession. Publicizing these programs will also better inform all members of the public about the services that lawyers can provide to them.

CONCLUSIONS

The touchstones of lawyer professionalism are integrity, competence, fairness, loyalty to clients, courtesy to all, pro bono work and community undertakings in the spirit of public service. We are doing all of these things, but most members of the public do not know it and, it seems, the media only looks for the juicy stuff. We have a long record of achievement in place and we should continue our efforts to encourage professionalism and a high degree of civility among all our members.

Young Lawyers Select Executive Committee

By Dan Andersen

On September 6, the 1995-96 Executive Committee of the Young Lawyers Division ("YLD") of the Utah State Bar held its first meeting to plan events for the coming year and discuss the staffing of the standing committees. There are a number of new faces on the Executive Committee and it is hoped that these new Executive Committee members will recruit many YLD members who have not been involved with the YLD before.

Two often asked questions are "Who is a member of the YLD?", and "What does the YLD do?" The answer to the first question is easy. Members of the YLD are those attorneys admitted to practice law in the state of Utah who are 36 years of age or younger, or those who have been admitted to practice law for less than three years.

The answer to the second question is a little longer. The focus of the YLD is directed into three main areas. First, the YLD is a public service organization which gives new lawyers the opportunity to give service to the community and share talents that are not necessarily law related. This gives lawyers and members of the public the opportunity to work side by side to accomplish a common goal. Last year the YLD renovated the Salt Lake County Children's Shelter. Members of the YLD solicited monetary and in kind donations from several local businesses and law firms. Over the course of one weekend dozens of YLD volunteers, along with several other volunteers including family members of attorneys, law office staff personnel, people associated with the Children's Shelter program and skilled laborers who donated their time and expertise, spent hundreds of man hours putting in fences, finishing cabinets, painting and cleaning the shelter. Representative Enid Waldholtz, after visiting the shelter during the renovation at YLD's invitation, donated new carpet for the entire shelter. The project was a great success, both for the Children's Shelter and the volunteers who participated.

The second area of YLD focus is to use the legal training of its members to benefit the public. The YLS has sponsored the Tuesday night Bar program for years. Every Tuesday night at the Law and Justice Center members of the YLD are available to consult with members of the public concerning legal questions. Last year, YLD teamed up with Fox Television and AT&T to start the Call-A-Lawyer Night, a program where over 50 attorneys staffed phones the evening of May 1st to answer over 1500 callers with legal questions. Due to the overwhelming response of the Call-A-Lawyer night, the YLD is planning to have between 100 and 120 attorneys available to answer calls this year.

The third area of YLD focus is as a resource and support network for attorneys, especially new lawyers. The YLD sponsors CLE seminars and an annual reception welcoming new admittees to the Bar. Last year, the YLD brought nationally renowned trial attorney and author Gerry Spence to Salt Lake City to speak at the YLD Law Day luncheon. Over 400 attorneys and guests heard Mr. Spence speak on the role of the lawyer in our society and the importance of each lawyer bringing his or her personal perspective and personal power to the practice of law. While not everyone agreed with Mr. Spence's position on all issues, everyone was impressed with Mr. Spence's speech and all came away with a renewed commitment to the practice of law.

The projects listed above are simply a sampling of the work of the YLD. All of the committees listed below are busy planning projects and events in their respective areas. If, as you read through the list of committees and their chairs, you find something that interests you, please call Marty Olsen at 578-3962 or Dan Andersen at 366-7471 who will put you in touch with the committee chair. Or, call the committee chair directly. If you know you'd like to be involved, but don't have a particular preference, we can put you on the committee where the most help is needed.

The Executive Officers of the Young Lawyers Division have selected the Executive Committee for 1995-1996. The Executive Committee is made up of the chairs and co-chairs of the respective committees of the division.

NEEDS OF CHILDREN

Chairing the Needs of Children committee for 1995-1996 is Jeff Hollingworth. Jeff graduated from the University of Utah College of Law in 1991 and is currently with the law firm of Allen, Nelson, Rasmussen and Christensen where his areas of practice include corporate and real property law. Jeff serves as a volunteer Guardian ad Litem in the Third District and is past-chair of the Law Related Education Committee of the YLD. Jeff was recently appointed to the Advisory Board of the Salt Lake County Children's Justice Center.

Co-chairing the Needs of Children Committee is Anne W. Morgan. Anne received a B.A. degree from Stanford University in 1988 and her J.D. from the University of Utah in 1993, where she was a William H. Leary Scholar, a Marriner S. Eccles Fellow, Articles Editor of the *Utah Law Review,* a legal writing teaching assistant, and was elected to Order of the Coif. Prior to joining the firm of Parsons Behle and Latimer, Anne served as a judicial law clerk to the Honorable David K. Winder, Chief Judge of the United States District Court, District of Utah.

BAR JOURNAL COMMITTEE

Mike Zabriskie has been appointed to chair the YLD's Bar Journal Committee. Mike graduated from the University of Utah College of Law in 1993. While in law school, Mike was the Editor-in-Chief of the Journal of Contemporary Law; he was also active in the student division of the American Bar Association. Currently, Mike is a staff attorney at the Legal Aid Society of Salt Lake.

Mark Burns will serve as co-chair of the YLD's Bar Journal Committee. Mark received a J.D. and an M.P.A. from the University of Utah in 1993. Following Law School, Mark accepted a position with a small firm practicing insurance defense. Currently Mark is employed as a staff attorney with the Utah Prosecution Council where he provides training and continuing legal education to prosecutors throughout the state. Mark is a past member of the

YLD's Bar Journal Committee.

MEMBERSHIP SUPPORT NETWORK

Jeff Williams and David Bennion have agreed to continue co-chairing the YLD's Membership Support Network Committee. Jeff Williams graduated from the University of Utah in 1988 and Loyola University Law School in 1991, where he was comment editor of *Loyola Law Review*. Following law school, he clerked for Justice Watson of the Louisiana Supreme Court. He is currently associated with Giauque Crockett Bendinger & Peterson where he concentrates in the area of commercial antitrust litigation.

David Bennion graduated cum laude from the J. Reuben Clark Law School in 1990 where he was a member of the Board of Advocates and wrote for the B.Y.U. Journal of Public Law. David is currently an associate at the firm of Parsons Behle and Latimer where he practices in the areas of anti-trust and intellectual property litigation.

NEW LAWYER C.L.E. COMMITTEE

Brian Jones will serve as chair of the New Lawyer C.L.E. Committee for the upcoming year. Brian graduated from the University of Utah College of Law in 1993 after receiving a finance degree from the University of Utah College of Business in 1990. He is currently employed by Zions Bank in its compliance and credit Administration Department.

Frank Call has been selected to co-chair the New Lawyer C.L.E. Committee. Frank Call received his B.S. in Finance from the University of Utah College of Business in 1990. He graduated from the University of Utah College of Law in 1993 where he was the recipient of the Questar Corporate Law Scholarship and Clerkship. Following law school, Frank practiced law in California, but returned to Salt Lake City in 1994 and opened his own law practice where he concentrates in the areas of utility regulation, corporate, real estate, and employment law.

COMMUNITY SERVICES COMMITTEE

Chairing the Community Services Committee for 1995-1996 is last year's co-chair of that committee, Gary Winger. Gary graduated from J. Reuben Clark Law School, *magna cum laude* in 1992, where he was managing editor of the B.Y.U. *Law Review*. He is currently employed at Holme Roberts & Owen where his practice emphasis is commercial litigation, commercial transactions, state and local taxation and administrative law.

Bradley Helsten will serve as co-chair of the Community Services Committee. Brad graduated from the J. Reuben Clark Law School in 1990. He was an associate at the firm of Rawlings, Olson & Cannon in Las Vegas, Nevada from 1990 to 1993. He is currently associated with the firm of Hanson Epperson & Smith, where his areas of practice include insurance defense and civil rights defense.

LAW RELATED EDUCATION COMMITTEE

Nena Slighting and Camille Anthony will serve as chairs of the Law Related Education Committee for the upcoming year. Nena Slighting, who co-chaired the Law Related Education Committee last year, graduated from the University of Utah College of Law in 1991. Currently, Nena is a full time mom to Sara, Madison, and Sam.

Camille Anthony received her Juris Doctor from the University of Utah College of Law in 1991. Camille is currently the Executive Director of the Commission on Criminal and Juvenile Justice (CCJJ), a position to which she was appointed by Governor Leavitt in November 1992. In addition to her duties with CCJJ, Camille serves on Governor Leavitt's Senior Staff and Cabinet Council. Camille is a member of the National Criminal Justice Association Advisory Council, National Association of Women Judges, Utah Sentencing Commission, Utah Substance Abuse and Anti-Violence Coordinating Council, and Utah Women's Forum.

LAW DAY COMMITTEE

The Executive Officers have selected Jeffrey Hagen and Julie Marsden to chair the YLD's Law Day Committee. Jeff Hagen graduated from New York University School of Law in 1991. Jeff worked for Holme Roberts & Owen from 1991-1992. From 1992 to 1994 he was associated with Snow Christensen & Martineau. Since 1994, Jeff has been a shareholder in the firm Whatcott Barrett & Hagen.

Julie Marsden received her J.D. from the University of Utah School of Law in 1993. Currently she is employed at Snell & Willmer where her areas of practice include employment and labor law, products liability and professional malpractice defense. Julie serves on the Bar's Unauthorized Practice of Law Committee and is affiliated with Women Lawyers of Utah.

PRO BONO COMMITTEE

Susan Grassli is returning as chair of the Young Lawyers Pro Bono Committee along with Steven Shapiro and Jill Aggeler. Susan graduated from Brigham Young University in 1987 with a B.S. in Sociology and received her J.D. from the J. Reuben Clark Law School in 1992. Consistent with her interests in children's issues, Susan has worked for the ABA Center for Children and the Law in Washington, D.C. and is also affiliated with the Utah Chapter for the Prevention of Child Abuse. Susan co-chaired the YLD's Pro Bono Committee last year and was instrumental in the success of the Call a Lawyer Project. She also serves on the J. Reuben Clark Law School Alumni Executive Committee and she is currently employed as an Assistant Attorney General in the Human Services Division.

Steven Shapiro graduated from the J. Reuben Clark Law School in 1992 after which he joined a firm in Salt Lake City where his areas of practice were civil and criminal litigation in state and federal trial and appeals courts. Currently, Steven is employed as a trial attorney at Salt Lake Legal Defender Association. Steven has been affiliated with YLD's Tuesday Night Bar for two years and served as chair of the New Lawyer C.L.E. Committee.

Jill Aggeler graduated from the University of Utah College of Law in 1990. She was associated with the firm of Purser Edwards & Shields from 1990 to 1995 where she concentrated in the areas of insurance coverage and insurance defense litigation, including defense of personal injury, product liability and environmental claims. Currently, she is an associate at Kirton & McConkie in the litigation section. Jill has served as volunteer counsel for Utah Legal Services as well as the Utah Breast Cancer Coalition.

NEEDS OF ELDERLY

Two newcomers will chair and co-chair the Needs of Elderly Committee for 1995-1996. Susan Griffith will chair that committee. Susan graduated from J. Reuben Clark Law School in 1987 and went to work directly for Utah Legal Services in Provo where she became the managing

attorney prior to her departure in 1993. Currently, she is an assistant professor at the J. Reuben Clark Law School where she teaches courses in Elder Law, Domestic Violence, and Ethics.

Adam Trupp is the new co-chair of the Needs of Elderly Committee. Adam graduated from the University of Utah College of Law in 1992 after which he associated with the firm Strong & Hanni where his emphasis was civil litigation and family law. In June, 1995, Adam joined the Third District Office of the Guardian ad Litem where he represents abused and neglected children in Juvenile Court.

YLD'S REGIONAL REPRESENTATIVES

Jeffrey Orr has joined Young Lawyers as the Central Utah Representative. Jeff graduated from the J. Reuben Clark Law School in 1992. While in law school, Jeff was the Editor-in-Chief of the International and Comparative Law Annual of the Brigham Young University Law Review. He also served as the Solicitations Editor of the Journal of Law and Education. Subsequently, Jeff served an internship with the Milan Italy firm of Studio Legale Rubino-Sammartano e Associati and as a law clerk for the Honorable Boyd L. Park of the Fourth Judicial District Court. Currently, Jeff is a shareholder in the law firm of Hill, Harrison, Johnson & Schmutz. He practices in the areas of business, corporate planning, transactions, civil litigation, probate and real estate.

Brian Filter has agreed to serve as Young Lawyers' Representative for Southern Utah. Brian received his J.D. from Syracuse University College of Law in 1993. He is the former senior staff attorney for the Legal Aid Society of Salt Lake and is presently a Deputy Washington County Attorney. Brian has been affiliated with Young Lawyers, the family law section, and the criminal law section of the Utah State Bar.

The Executive Committee of the YLD is looking forward to another successful year and has already started planning this year's projects. We have a lot of work to do and hope that anyone who wants to become involved will contact one of the Executive Committee members.

Young Attorney Profile Andrew "Guss" Guaring

By Michael O. Zabriskie

Look at a map of Utah, the southeastern corner, let your finger follow the road through Moab, Monticello, and Blanding. When you get to Bluff (population 250), about twenty miles from the Arizona border, turn right and follow the road to Mexican Hat (population 38). Finally, cross the San Juan River into the Navajo Reservation about two miles. Your map probably doesn't say it, but you've stopped at a place called Halchita (population unknown, but small) and even though unlikely, there is a law office there.

Andrew "Guss" Guarino is a staff attorney for DNA — People's Legal Services, Inc. in Halchita, Utah. DNA is an organization which provides legal services to people living on or near the Navajo Reservation. Guss' office services a large portion of southeastern Utah both on and off the reservation. Like many public interest attorneys, the areas of law vary depending on the client's needs. At any given moment Guss might be working on cases involving a range of issues from state and federal civil rights to tribal [customary] law and Bureau of Indian Affairs grazing permits.

Although he can't say that being a lawyer in Halchita or living in Bluff was even within the realm of possibility several years ago, Guss has found that life in southeastern Utah couldn't have worked out better. Guss grew up in Richmond, Virginia, and graduated from Virginia Tech with a mechanical engineering degree in 1989. The break from thermodynamics to poverty law was a clean one. After working for a power company during school and realizing that the leap from academic engineering into a full-time engineering position was not one he desired, Guss opted "for something completely different."

Guss graduated from the University of Colorado School of Law in 1992. During law school he discovered his desire to litigate and become a public interest lawyer. Although he had no exposure to Indian law before joining DNA, Guss has found the issues involving questions of federal, state, and tribal jurisdiction to be of the most interest in his practice.

After passing the Colorado bar exam, Gus clerked for District Court Judge Roxanne Bailin in Boulder, Colorado. His experiences with Judge Bailin gave him an understanding of how a trial court works and how trial decisions are made. Judge Bailin, having clerked herself for DNA during law school, recommended to Guss that he look to DNA for a job. Guss called DNA's central office in Window Rock, Arizona, invited himself for an interview, then drove through southeastern Utah for the first time.

DNA initially offered Guss a one-year position to fill in for attorneys who were on sabbatical. As a contract attorney, he initially represented clients before administrative agencies and performed legal research. When a position opened in the Halchita office, Guss was offered the job. He signed up to take the Utah bar exam in Winter, 1994. That exam was closely followed by the Navajo bar in the spring and the New Mexico bar in the summer.

Guss practices with managing attorney David Negri (also a recent Utah Bar member), and tribal advocate Irene Black. Most of his cases involve actions in state or tribal court. Tribal courts have jurisdiction over actions arising on the reservation including actions arising on the Utah strip. The closest tribal court is in Kayenta, Arizona, 45 miles to the southwest.

Guss describes the Navajo district court as similar to any other state or federal district court. The Navajo court system includes district courts and a supreme court which issues published opinions. Navajo district court is controlled by a well-developed tribal code and familiar rules of procedure.

For those actions which must be brought in Utah state court, Guss typically turns to the San Juan County District Court in

Monticello, 90 miles to the north. He tries to limit his trips to Monticello because when he has to go to court, the day is eaten up by travel time. The Monticello Court understands the logistical problems caused by southeastern Utah distances and allows pleadings to be filed by fax.

Practicing in a number of courts Guss discovered the importance of rules which are largely taken for granted. "When you practice in three or four jurisdictions, you realize that it's the little rules which vary from court to court and they're the ones that'll catch you." Guss described how each time he becomes involved in a lawsuit, he has to review pleading and motion rules to remember whether it was Utah, New Mexico, Navajo, or federal court which required pleading paper or allowed three additional days for service by mail instead of five.

The Navajo Nation and San Juan County have an unusually high percentage of its residents living under federal poverty levels. Recent state and BIA reports indicate that on the average unemployment on the reservation exceeds 45%. San Juan County reports poverty levels of 36% (the highest per capita poverty level reported in Utah). With high percentages of persons unemployed and living below poverty levels, many living in the Halchita office service area are eligible for DNA's services.

Guss' clients are typically Navajo, many of whom do not speak English; clients with phones are the rare exception. It is not unusual for clients who do not have vehicles or the money for gas to hitch-hike to Halchita on intake days. Because of high demand for DNA services and lack of resources, cases are accepted in Guss' office according to a priority system and the degree of harm involved. Unfortunately, many who come to Halchita for help have to be turned away. As in many areas, domestic violence is a large problem in southeastern Utah and always commands attention in his office. The problem is aggravated by the rural setting and the skeleton police services stretched over a large area.

As a DNA staff attorney, Guss most enjoys his client contact. Each client teaches him a little more about Navajo culture and tradition. Guss has learned that treating people with respect is a strong principle of Navajo culture, much stronger than anything he has experienced away from the reservation. Whether the result of a confrontation with a car dealer, a social worker, or neighbor, often a client will come to Guss when he or she feels that he or she has not been treated with respect. Sometimes an underlying legal problem exists. Sometimes it doesn't. Often his clients want only to understand what has happened and why.

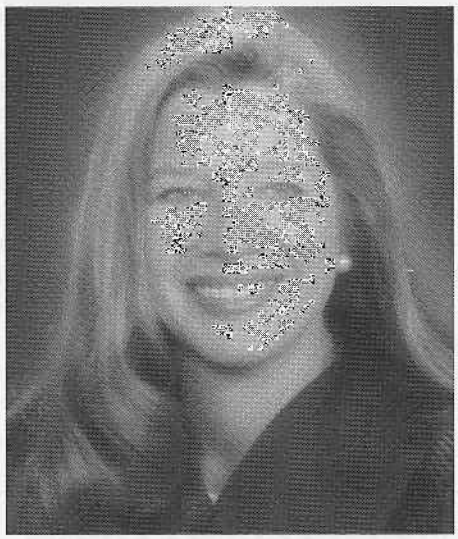
As long as his office equipment is working, practicing law in southeastern Utah usually goes off without a hitch. But when the phones don't work (when the wind picks up), or the fax goes down, the isolation of the area presses in. Repair trucks aren't typically in the area, the part always has to be ordered taking three days to three weeks. You can't run to the local business supply stores because there aren't any. When the phones are down you can't call anyone anyway. A sense of humor is a must to practice law in Halchita.

The Mexican Hat Shakespearean Festival hasn't quite gotten off the ground. (casting requirements exceed local population) and a major newspaper is not yet available south of Blanding. Yet Guss feels he is not without many amenities and distractions in southeastern Utah. He describes the fine points of life existing in the outdoors. Canyonlands National Park, Cedar Mesa and Elk Ridge are to the north. The San Juan Mountains of Colorado are to the east. Canyon de Chelly is south. Monument Valley is west. All around are open desert, biking, hiking and skiing possibilities. The next bend in the road or trail might expose Guss to sandstone arches, extensive Anasazi ruins, petroglyphs, or towering spires. Overall, Guss has found his position with DNA to be rewarding, challenging and satisfying.

In the summer of 1994 Governor Leavitt appointed five attorneys to the Juvenile Court bench. This is the first time in the history of the state that so many judges have been appointed at one time to the Juvenile Court. Four of these judges have provided their comments on the Juvenile Court in the following collection of articles.

A View From the Juvenile Court Bench

By Kimberly K. Hornak



Justice does not depend upon legal dialectics so much as upon the atmosphere of the court room, and that in the end depends primarily upon the judge.
– Judge Learned Hand

We are all familiar with the saying "The more you know, the more you realize how little you know." Not since taking the bar exam have I realized how true this quote is. While some may think that becoming a judge gives one a sense of empowerment, I have found it to be a very humbling experience. It is also very apparent to me that the same requirements apply to being a good lawyer and a good judge:

- The habits of hard and disciplined work.
- Knowledge of how to find and apply the law.
- Experience in facing and overcoming temptations to shirk the difficult task and the unpopular cause.
- Understanding the relationship of the trial to the law.
- Acceptance of the dilemma of conflicting obligations.[1]

I have also learned that it is much easier to be an advocate than to be objective and a neutral arbitrator. On the other hand, it is nice to be able to make the decisions and make change as opposed to leaving it in the hands of someone else.

When I was a practicing attorney I always read the "View From the Bench" articles in the *Bar Journal* first (even before the disciplinary corner). I read this column in hopes to learn how to succeed in a particular judge's courtroom. I am writing this article with the same message in mind. I have decided to concentrate on the "Six Deadly Sins" or "How Not to Succeed in Juvenile Court."

1. Never provide courtesy copies to the judge.

It is common for a juvenile court judge to have 20 matters scheduled on a calendar in one day. Often, judges do not have the opportunity to review the files until shortly before the hearing. The quickest way to irritate a judge is to file a 10 page motion and memorandum and set the motion for a hearing without providing the judge a courtesy copy of the motion and memorandum with a note as to the date and time of the motion. Along with this notion, you can also anger a judge by filing a motion and planning to hear the motion the same day as the trial without informing the judge that you would like to argue the motion before the trial. We all know how witnesses like to be kept waiting while attorneys are arguing motions.

2. Wait as long as possible to try to resolve a case.

Of course, we have all had those cases we were certain would result in a trial and at the last minute we resolved the case. That should be the exception rather than the rule. In juvenile court it is common for attorneys

JUDGE KIMBERLY K. HORNAK was appointed to the Third District Juvenile Court in August 1994 by Gov. Michael O. Leavitt. She serves Salt Lake, Summit, and Tooele Counties. She received her law degree from Gonzaga University College of Law in 1983. From 1984 to 1985 she was a staff attorney with Utah Legal Services in Ogden. From 1985 to 1986 she was a staff attorney with Legal Aid Society. Judge Hornak was an Assistant Attorney General from 1986 to 1988 and was a Deputy Salt Lake County Attorney from 1988 until her appointment to the bench. She has taught classes on the Trial Advocacy Program at the University of Utah College of Law and classes for the paralegal program at Westminster College.

to wait to talk with witnesses when they are subpoenaed to court. While some of you may think we judges enjoy an afternoon off so we can play golf, for most of us our calendar is extensive and we are setting cases several months in advance. You would obtain many brownie points with judges if you would let them know as soon as possible that a case is settled so the judge can set another case in that slot.

3. Do not talk with opposing counsel prior to coming into court.

It is amazing how many issues could be resolved by attorneys chatting with one another prior to stepping in the courtroom. If you want to frustrate a judge come into court with the most insignificant, irrelevant issue you can disagree on and take up court time by arguing with opposing counsel.

4. Argue with the judge after the judge has made her ruling or has requested you to obtain information or follow up on an issue.

There is no doubt that judges err and the appellate courts often tell us so. However, the judge is the final decision and in my experience a judge rarely changes her mind. If you think a judge is wrong file a motion to reconsider or politely ask to be heard on the issue. If the judge still does not find in your favor, live with it and take it on appeal.

Additionally, a judge may ask you to try to locate information about the whereabouts of a party or witness or may ask you to do legal research on an issue. The quickest way to make a judge unhappy is to state "I do not have time and/or do not want to do the research, so my client will live with your decision" (an attorney actually said this to me). You can also state in a whining voice rolling your eyes to the ceiling "I don't know how to find out where this child is living, that is not my job" (this was also said in my courtroom with the 13 year old child and one parent in the courtroom and there was a dispute between the parent and a home detention worker as to where the child was living).

5. Threaten the judge to take an issue on appeal.

I recently had a case wherein I found a criminal allegation against a juvenile to be true. During disposition (sentencing) I ruled on a separate issue against the juvenile. The defense attorney said "Well, that is just another issue to take on appeal." Not only is the comment inappropriate, it is a threat."

6. Treat witnesses with disrespect, especially children.

Witnesses are usually subpoenaed and do not want to be in court. It is completely inappropriate to laugh at a witness, argue with a witness or belittle a witness. I have observed many excellent, effective cross-examinations of witnesses by attorneys who have not engaged in any of these tactics.

Overall, the attorneys who have appeared before me have been competent, polite and a pleasure to have in my courtroom. My experience thus far as a judge has been challenging, rewarding and even fun. Never before in my career have my jokes been so funny or have my comments been so captivating.

[1]The Judge's Book, 2nd Ed.

Juvenile Court Practice

By J. Mark Andrus

JUDGE J. MARK ANDRUS was appointed to the Second District Juvenile Court in September 1994 by Gov. Michael O. Leavitt. He serves Davis, Morgan and Weber Counties. He received his law degree from the University of Utah College of Law in 1982. He was an attorney with the Legal Defender Association prior to accepting a position with the Davis County Attorney's Office in 1983. Judge Andrus is a member of the Family Court Task Force, the Governor's Sentencing Commission, and the Board of Juvenile Justice and Delinquency Prevention Committee.

I am honored, flattered, and excited to be one of the five new Juvenile Court judges selected last summer. I am also pleased to have the opportunity to express a few of my views on the practice of law in Utah's Juvenile Courts.

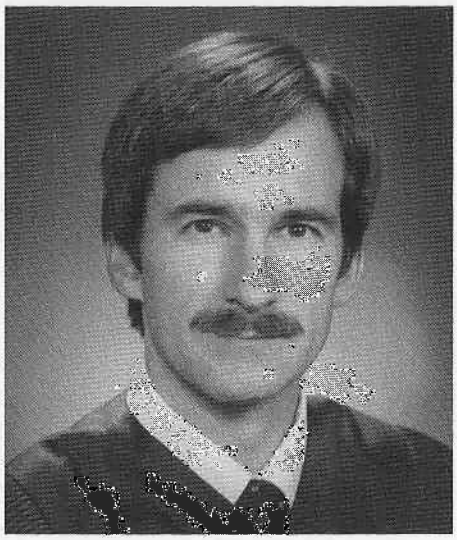
Juvenile Court is a very specialized legal practice and, although some cases may be quite simple, it can be a very complicated area of law. After several years as a Juvenile Court prosecutor, and now as a judge, I have seen many otherwise competent attorneys do their clients a major disservice, simply because of their unfamiliarity with the laws, procedures, and practices unique to Juvenile Court.

Do not assume that, because you are experienced in criminal or civil trial practice, that you are automatically ready to defend a juvenile delinquency matter. (Criminal defense attorneys unfamiliar with Juvenile Court procedure tend to be the worst at unwittingly hurting their clients' positions.) On the other hand, an experienced trial attorney can quickly *become* a competent Juvenile Court practitioner. In order to provide competent, effective advocacy for your clients in Juvenile Court, I would suggest the following steps:

1. Read and become familiar with the following applicable statutory provisions (this assumes that you are already conversant with the state and federal constitutions, the Rules of Evidence, and the Rules of Civil *and* Criminal Procedure):

a. Juvenile Code, 78-3a-1 through 65;

b. Child Welfare Act, 78-3a-301 through 315;



c. Termination of Parental Rights Act, 78-3a-401 through 414; and

d. Juvenile Court Rules of Procedure (the new rules were effective January 1, 1995).

2. Know the "players" in Juvenile Court:

a. County Attorney/District Attorney — prosecutes delinquency matters (violations of the law by a juvenile, which would be a crime if committed by an adult);

b. Probation Officer (in some jurisdictions, this is divided into two groups, "Intake" and "Probation") — meets with the child and parents before court proceedings, makes some preliminary decisions, and makes recommendations to the court;

c. Youth Corrections representative — supervises a child in Youth Corrections custody, also makes recommendations to the court;

d. Attorney General — prosecutes all dependency, neglect, and abuse cases, is the legal advisor to the Division of Family Services;

e. DFS caseworker — may be an investigator or foster care supervisor, makes initial decisions regarding placement of children, makes recommendations; and

f. Personnel from other agencies, such as mental health, schools, etc., are often extensively involved in Juvenile Court proceedings as well.

3. Learn the various roles of the "players" listed above, communicate with them, call them, ask them what they know about the case and what they are recommending, give them information to help them make better decisions for your client or your client's children.

Trial attorneys are very familiar with the roles of the Deputy County Attorney or Assistant Attorney General — they know what these people can and can't do, how much or how little influence they have in the outcome of a case, etc. But attorneys unfamiliar with Juvenile Court usually overlook the role of persons in the best position to effect the end result of the matter — the probation/intake officers, the Youth Corrections caseworker, or the DFS (Division of Family Services) caseworker. Find out if they know details about your client that might change their recommendations, find out if there are things your client can do before court that will help better the client's position, find out if your client's desires can be addressed as part of the recommendations, etc.

4. Become familiar with the language of Juvenile Court. Here are some examples:

The "petition" is the charging document, instead of an information or complaint.

A plea of "true/not true" or "admit/deny" is generally used, instead of "guilty/not guilty."

The "disposition" is the sentence.

5. Find out what programs and dispositional alternatives are available in Juvenile Court. If you are not conversant with the following terms, you should not be practicing law in Juvenile Court: non-judicial closure, community placement, O & A, secure confinement, detention, work hours, work restitution program, day/night reporting center, diversion program, Genesis, Decker Lake, Millcreek, receiving center.

I would urge those who choose to practice law in Juvenile Court to prepare themselves to do so competently.

On a more personal note, I enjoyed being a defense attorney and then a prosecutor. I really like being a judge. To satisfy those who have come to expect a limerick to appear every time I put pen to paper (or touch a word processor, as the case may be), here is a recent offering:

AIN'T LIFE SWEET?
Though I'll be chided, cast out, and oppressed
By my colleagues, for what I've confessed;
Comparing stressors and fears
Of all legal careers,
Relatively, we judges are blessed.

The Serious Juvenile Offender

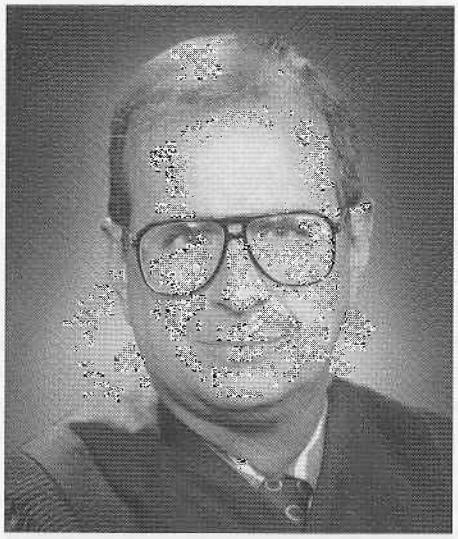
By Frederic M. Oddone

JUDGE FREDERIC (RIC) M. ODDONE was appointed to the Third District Juvenile Court in August 1994 by Gov. Michael O. Leavitt. He serves Salt Lake, Summit, and Tooele Counties. He received his law degree from the University of Utah College of Law in 1972. From 1972 until his appointment to the bench he was a Deputy Salt Lake County Attorney, where he served as division chief of the Juvenile and Family Court Division since 1986. Since 1988 Judge Oddone has been a member of the Utah Supreme Court's Advisory Committee on the Rules of Practice and Procedure before the Juvenile Court. He has also been a member of the Salt Lake City Mayor's Task Force on Gang Violence and the Judicial Council's Task Force on Juvenile Court Organization and Jurisdiction. He is presently a member of the Governor's Commission on Juvenile Justice and the Governor's Commission on Violence.

I feel fortunate that I was one of five judges appointed to the Juvenile Court Bench. The other attorneys who were appointed at the same time are some of our profession's finest people and brightest lawyers. Each of us was asked to provide a "view from the bench" regarding a particular topic. My assignment was changes in the law regarding serious crimes committed by older juveniles.

I have litigated children's issues for approximately 20 years, and have seen a number of dramatic changes come to the Juvenile Court. Most changes have been in response to a major increase in serious crime committed by minors and a dramatic increase in child neglect.

Several factors contribute to the outbreak of violent juvenile crime. There are more young people in the population than the Department of Education and the Legislature had originally predicted. The youth population is older than anticipated. There is greater cultural diversity which often divides youth groups. A large migration to Utah from other states had deluged the Wasatch Front. Instead of assimilating, as European immigrants had, some groups balkanized themselves and withdrew into their own culture. Fringe contact with the



other cultures was frequently anti-social. Finally, the allocation of public resources inadequately prepared our State for the inevitable social problems.

Even the printed law contributed to the confusion. Between 1965 and 1994, issues of neglect, where the minor is a victim, and delinquency, where the minor is a defendant, were governed by a single chapter of the Utah Code, Chapter 3a in Title 78. The failure of the legislature to separate the competing needs of juveniles as defendants from the needs of juveniles as victims contributed to the confusion and overall delay of the juvenile system's response to serious crime. Anticipating the problems to come, in 1984, the Juvenile Court Administrator petitioned the Legislature for funds to hire additional probation officers and expand the capacity of the Salt Lake Detention Center. But Corrections, and especially Juvenile Justice was not an attractive issue at the time, and, as of that time, the high crime numbers were not upon us. They were still only projected statistics.

The real numbers were in the elementary schools as newly-enrolled children. Limited tax funds went to education to hire teachers, purchase supplies and construct facilities. Two years later as a result of unprecedented flooding, Salt Lake County residents found themselves sandbagging their homes and businesses, and the resources went there. When Juvenile Justice again asked for funds, the money went for the Bangerter Pumps and flood control projects. The following years, the dollars went to labor retraining as a result of federal job reduction.

When the numbers became genuine teenagers, crime rates exploded. In 1993, statewide, the Juvenile Justice System had only 91 secure beds. In Salt Lake County alone, the Juvenile Court processed approximately 27,000 cases that year. The residents of Utah were prepared to incarcerate state-wide less than 1/2 of 1% of the number of cases arising in Salt Lake. The facilities, manpower, programs, and laws had not been provided to meet the need. What had originally been public apathy towards Juvenile Courts became public outrage for not protecting the community. The anger was misdirected.

Without adding significant improvements, the Juvenile Court came under intense community and police pressure to identify and deal with the serious juvenile offender. Instead of strengthening the Court by providing facilities and programs, laws were passed divesting the Court of its sentencing authority placing teenagers in the adult criminal system. For some juvenile offenders this was the right thing to do. Historically, the Juvenile Court had always sent a number of serious older offenders to the adult system. In every case of murder, involving a juvenile fifteen years of age or older, the court regularly granted the prosecutor's request to waive its jurisdiction and try the juvenile defendant as an adult. The new laws however were sweeping and eliminated the Juvenile Courts discretion to consider each juvenile on his merits. Individualized justice and judicial discretion were eliminated from sentencing. Some urged that serious juvenile offenders did need to be incarcerated for substantial periods of time, but believed that in the final analysis, the community would be better off if the incarceration occurred in a juvenile corrections facility, instead of adult prison. The proponents of the adultification of juveniles ignore the reality that many critical youthful offenders have no prior record and seldom reoffend.

The Juvenile Court is at a philosophical crossroads. We treat young offenders differently than adult offenders for the obvi-

continued on pg 37

Juvenile Court

By Sterling B. Sainsbury

JUDGE STERLING B. SAINSBURY was appointed to the Fourth District Juvenile Court in August 1994 by Gov. Michael O. Leavitt. He serves Juab, Millard, Utah and Wasatch Counties. Judge Sainsbury also serves in the Eighth District Juvenile Court, serving Daggett, Duchesne, and Uintah Counties. He received his law degree from the J. Reuben Clark Law School at Brigham Young University in 1981. From 1981 to 1983 he was in private practice. From 1981 until his appointment to the bench he was a Deputy Utah County Attorney. From 1987 to 1992 Judge Sainsbury was a guest Instructor at Brigham Young University in the Department of Social Work. He is currently a member of the Utah State Supreme Court's Advisory Committee on Rules of Juvenile Court Procedure and a past member of the Utah County Gang Task Force.

I have been asked to summarize my initial impressions as a newly appointed judge in the Fourth District Juvenile Court. Although I have extensive experience as a prosecutor in the juvenile court, the view from the bench provides a totally different perspective. My debut in the Provo Juvenile Court was somewhat inauspicious and not the least bit dignified. My bailiff, also new on the job, asked the court audience to rise before I had put on my borrowed robe. I hurriedly ran to the closet and threw on the robe, but to my consternation, the zipper refused to function despite my efforts. Meanwhile, the people in the courtroom remained standing, wondering if the Governor has made a mistake in my appointment. After approximately two minutes, I was able to force the zipper to function correctly, and flew into the courtroom, advising the audience to please sit down. I have since decided that velcro tabs would look better on a judicial robe than a zipper.

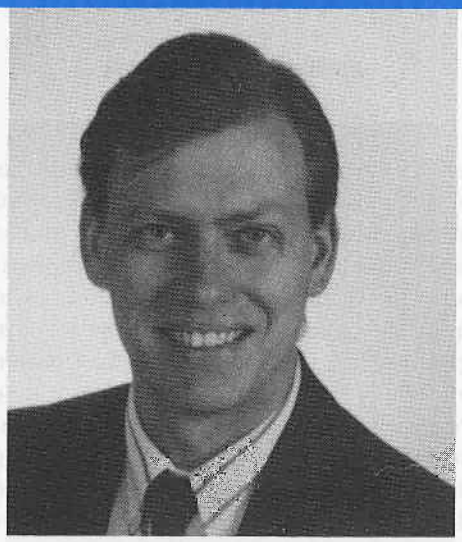
Seriously speaking, it became obvious from the beginning that the most difficult cases to decide would be those involving the removal, either temporary or permanent, of children from their natural parents. A typical scenario would involve numerous parties, represented by numerous attorneys, each claiming to represent the best interests of the subject children. I soon discovered that in most cases there are no perfect solutions for the children, and that it was my responsibility to ascertain the best alternative culled from the recommendations of the parents, grandparents, Guardian Ad Litem, Division of Family Services, and their respective "expert witnesses." Rarely is there a consensus among the various parties concerning how best to serve neglected, abused and dependent children. Ultimately, all parties look to the judge to rise above the fray and make a wise decision that will bode well for the subject children's present and future opportunities for happiness.

With respect to criminal dispositions, I was initially surprised by the general practice of punishing serious offenders by the use of counseling, probation, restitution payments, or foster care placement. I had assumed that the initial consequences of criminal behavior would include loss of freedom, physical labor, and payment of fines from the defendant's own pocket. I have subsequently developed the practice of combining both types of dispositional remedies to ensure both a consequence and rehabilitative component for each criminal act committed by a juvenile.

Another surprising, although perhaps not unexpected, factor in the lives of delinquent youth of both genders is the apparent wholesale abandonment of said children by their fathers. In juvenile court proceedings the court docket lists the names and addresses of both parents of the subject delinquent. It was amazing to find that in the majority of cases on any given day, the address, and at times the name, of the father is listed as unknown. Perhaps there is some truth to the theory advanced by many social scientists that the lack of a positive male role model has contributed to the dramatic increase in juvenile delinquency.

Finally, I have been very impressed with the idealism and sincerity of the juvenile court probation and intake officers who almost without exception evidence a sincere desire to make a positive difference in the lives of children who may be headed for a life of criminal behavior. The public doesn't hear about the thousands of juveniles in the Fourth District who after receiving intervention services from the juvenile court never return. As altruistic as it may seem, I have seen many examples where the effort of the probation officer has completely changed the life of a juvenile delinquent for the better.

In conclusion, after eight months on the bench I'm convinced of the importance of a strong and viable juvenile court with the resources necessary to help at-risk children reach the age of accountability with the opportunity to commence adulthood with a fair chance of succeeding.



The Software Legal Book

By Paul S. Hoffman

Reviewed by David W. O'Bryant

The Software Legal Book is a two volume set of effective assistance for preparing software contracts. Volume One addresses ownership of software, types of protection and when to use them, software contracts and the software contracting environment. Fortuitously, the author approaches each of these subjects from the standpoint of a practitioner who continues to witness the traps which await the unprepared and the ill-informed. For this reason I was grateful to see that Volume One tracks the development of a software contract. In particular, the section on special contract situations covers many crucial issues of concern such as handling third party software, granting price options, international software transactions and even negotiation of site licenses. An attorney should be able to feel confident that there are sufficient resources at hand to provide competent counsel from the first stages of commercial software development through the licensing to third party vendors.

The author also wisely stresses that the many well-drafted forms comprising Volume Two should only serve as a springboard for contract creation. Compilations of form contracts and contract clauses are helpful tools, but are no substitute for a solid understanding of the context of the transaction. Forms and clauses are included which address the topics of copyright, employees and consultants, fixed price software development, end user licenses/maintenance, distribution arrangements and an extensive section of miscellaneous subjects.

While not attempting to be an exhaustive treatise on the topics addressed, the author does well to succinctly highlight relevant history and case law, while emphasizing both practical and subtle issues. Of particular importance for the novice to software contracts is the well written software primer which prefaces Volume One. The vagaries of software contracts are not to be dealt with lightly. This is especially true as the law surrounding software changes rapidly in these times of phenomenal software development. One area of weakness, however, which the author might wish to improve is the brief treatment of the protection afforded by software patents in view of cases which continue to whittle away at the scope of software copyright protection.

The Software Legal Book is an excellent resource for both the attorney who is experienced in contracts but is new to software, as well as the former engineer who wants to cut to the chase in his practice of software contracts.

DAVID W. O'BRYANT attended Brigham Young University where he received a B.S. in Electrical Engineering and Computer Engineering. He received his J.D. from Seattle University School of Law, where he served as Systems Administrator with responsibility for the law school's computer network.

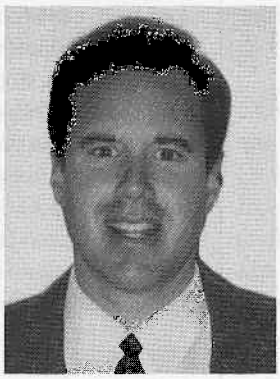
Mr. O'Bryant is a member of the Utah Bar and recently passed the registration examination of the United States Patent and Trademark Office. Mr. O'Bryant is admitted to all state and federal courts in Utah, as well as the United States Court of Appeals for the Federal Circuit.

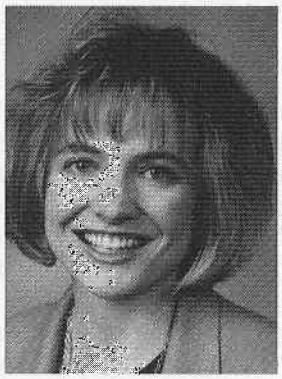
He has worked as a computer and software engineer, and has had considerable experience in both analog and digital circuit analysis and design, as well as modifying avionic weapons systems for the military. Mr. O'Bryant also has considerable expertise in computer networks in addition to computer hardware and software design. He has been with Thorpe, North & Western since 1994. His practice focuses on the preparation of patent, trademark and copyright applications, with a special focus in the protection of electrical and mechanical devices, and particularly computer software and hardware.

Utah Bar Foundation Recognizes Law Students for Ethical Standards and Commitment to Public Service


Roxanne Renee Mennes


Christine M. Hellbusch


Robert M. Gregory


Lori Clayton Huber

Four awards were recently awarded to University of Utah and Brigham Young University law students.

The Foundation's two annual Community Service Scholarships of $3,000 each were awarded to **Roxanne Renee Mennes** (University of Utah) and **Christine M. Hellbusch** (Brigham Young University). The scholarship recipients were selected from a large field of applicants and selected primarily for their demonstrated commitment to community service.

Roxanne Renee Mennes has been an active community volunteer since high school to follow her interest in child development, prevention of delinquency and minor's rights. Her experiences include The Children's Center, Office of the Guardian ad Litem, Utah Legal Services, CASA Program and the Public Interest Law Organization.

Christine M. Hellbusch has made community service a part of her life for many years as a responsibility she feels for her community. Some of the agencies she has served are the Office of the Guardian ad Litem, Legal Intervention for the Elderly, BYU Housing Arbitration Program, Trial Advocacy Mentor Program, and the LawHelp Domestic Relations Project.

The Utah Bar Foundation also annually presented two Ethics Awards to students selected by the law schools. The 1995 graduating students, who received an engraved pen and pencil set and a cash award of $250, are **Lori Clayton Huber** (University of Utah) and **Robert M. Gregory** (Brigham Young University).

Lori Clayton Huber, William H. Leary Scholar at the University of Utah College of Law, has also participated in the Traynor Moot Court Competition and served in several legal positions.

Robert M. Gregory has environmental experience, served in several legal positions and has earned many awards and distinctions for his speaking and writing ability and for his managerial, organizational and teaching skills.

The Utah Bar Foundation was organized in 1963 as the charitable arm of the Utah State Bar. The Foundation receives funds from IOLTA (interest on lawyer trust accounts) and from member contributions. A seven-member Board of Trustees administers these funds and awards grants to community agencies and programs which provide free or low-cost legal aid to the disadvantaged, legal education to the community and other law-related services. Since 1985 the Foundation has awarded a total of over $1.6 million.

NOTICE

The 1994 annual accounting of the Utah Bar Foundation has been completed by Wisan Smith Racker & Prescott. Copies are available from the Foundation office at the Utah Law & Justice Center. Call 531-9077 with your request and a copy will be mailed to you.

continued from pg 34

ous reason that they are young, as well as offenders. Proponents of juvenile justice argue that most minors outgrow their problems, and because of our current social dilemma, there is a need for a stronger Juvenile Court, not a weaker, more emasculated court. Critics contend that the Juvenile Court has outlived its usefulness, and the philosophies of individualized justice and rehabilitation should be abandoned in favor of a punitive approach.

Judging from the manner in which the laws regarding juvenile crime have evolved during the past twenty years, one thing that is clear is that these types of decisions should only be made by an involved and informed community. The Juvenile Court Judiciary needs to be community involved, tireless and eager in educating and explaining the strengths and weaknesses of the Juvenile Court. And the residents of Utah need to be more interested and involved with the evolving nature of the Court. Further inattention can only lead to a greater dilemma.

CLE CALENDAR

NLCLE: DEPOSITIONS

Date: Thursday, October 19, 1995
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $20.00 for Young Lawyer Division Members
$30.00 for all others
add $10.00 for a door registration
CLE Credit: 3 HOURS

KEITH EVANS ADVANCED ADVOCACY: SEMINAR AND MASTERCLASS

Date: Friday, October 20, 1995
Time: Seminar portion – 9:00 a.m. to 12:30 p.m.
Masterclass portion – 1:30 p.m. to 4:30 p.m.
Place: Utah Law & Justice Center
Fee: $85 for Seminar portion
$250 for Masterclass & seminar
Masterclass is limited to the first 25 people who register.
CLE Credit: Up to 6.5 HOURS

NATURAL RESOURCES, ENVIRONMENTAL & TAXATION ISSUES IN INDIAN COUNTRY

Date: Friday, October 27, 1995
Time: 9:00 a.m. to 5:00 p.m.
Place: University of Utah Moot Court Room
Fee: $100.00 (fee may change – please watch for more info.)
CLE Credit: ~6 HOURS
**For more information on this seminar, please contact Linda Priebe, Esq. At (803) 363-1347.

CASE MANAGEMENT FOR THE 90'S: EFFECTIVE AND EFFICIENT PRETRIAL PREPARATION

Date: Friday, November 3, 1995
Time: 9:00 a.m. to 4:30 p.m.
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: ~6 HOURS

GOING SOLO: A SEMINAR FOR SOLO AND SMALL FIRM PRACTITIONERS

Date: Thursday, November 9, 1995
Time: 8:30 a.m. to 12:00 noon
Place: Utah Law & Justice Center
Fee: $30.00 for attorneys admitted over one year
$15.00 for new admittees and law students
CLE Credit: 4 HOURS

NLCLE: ETHICS

Date: Thursday, November 16, 1995
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $20.00 for Young Lawyer Division Members
$30.00 for all others
add $10.00 for a door registration
CLE Credit: 3 HOURS

EFFECTIVE WRITING FOR LAWYERS

Date: Friday, November 17, 1995
Time: 9:00 a.m. to 5:00 p.m.
Place: Utah Law & Justice Center
Fee: $140.00
CLE Credit: 7.5 HOURS

Seminar fees and times are subject to change. Please watch your mail for brochures and mailings on these and other upcoming seminars for final information. Questions regarding any Utah State Bar CLE seminar should be directed to Monica Jergensen, CLE Administrator, 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

RATES & DEADLINES

Utah Bar Member Rates: 1-50 words — $20.00 / 51-100 words — $35.00. Confidential box is $10.00 extra. Cancellations must be in writing. For information regarding classified advertising, please contact (801) 531-9077.

Classified Advertising Policy: No commercial advertising is allowed in the classified advertising section of the Journal. For display advertising rates and information, please call (801) 532-4949. It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification or discrimination based on color, handicap, religion, sex, national origin or age.

Utah Bar Journal and the Utah State Bar Association do not assume any responsibility for an ad, including errors or omissions, beyond the cost of the ad itself. Claims for error adjustment must be made within a reasonable time after the ad is published.

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

BOOKS FOR SALE

ALR 2d, later case service, supplementing ALR 2d, Volumes 1 through 100: ALR Federal, Volumes 1 through 110: Shepard's Citations for ALR, Part I and Part II: ALR 3rd, Volumes 1 through 100: ALR 4th, Volumes 1 through 91: ALR 5th, Volumes 1 through 9A. Index to Annotations, ALR 2d, 3rd, 4th, ALR Federal, US L.Ed. 2d, A through Z. Call Willard R. Bishop @ (801) 586-9483.

POSITIONS AVAILABLE

Mid-size Salt Lake City firm seeking intellectual property lawyer with established, portable practice. We will also consider merger with two to four person intellectual property/business firm. All Correspondence will be kept strictly confidential. Send resume, practice description and/or firm profile — with compensation requirements — to Utah State Bar, Attention Maud Thurman, Confidential Box #13, 645 South 200 East, Salt Lake City, Utah 84111.

ATTORNEY – Mid-sized downtown law firm seeking association with 2-5 years business transaction and business litigation experience. Send resume to Maud C. Thurman, Utah State Bar, 645 South 200 East, Box 14, Salt Lake City, Utah 84111.

ASSOCIATE ATTORNEY POSITION, **DENVER** Large Denver-based firm with established natural resources practice seeks attorney with two to four years' experience in public lands and natural resources law. Representation of oil, gas and mining companies leasing federal, state and tribal lands. Attractive compensation package. Excellent academic credentials and references required. Send resume and law school transcript to Mary Pat Wilson, Recruiting Manager, Davis, Graham & Stubbs, P.O. Box 185, Denver, CO 80201-0185.

Trademark Administrator position available with a large international company. Will be responsible for the administration of foreign and domestic trademark registrations. A minimum of two years' trademark experience required. Please send resumes to Trademark Administrator Position, Human Resources Department, P.O. Box 801, Provo, UT 84601.

POSITIONS SOUGHT

Expert EMPLOYEE BENEFITS (ERISA) ATTORNEY, (labor and tax) for corporation or law firm. Seventeen years experience. Will relocate. Call (713) 937-8195.

Tax Attorney, Admitted in PA and UT, LL.M. (Taxation), desires opportunity to practice with progressive firm, in any of the following taxation areas: Corporate Tax Planning, Partnerships, Limited Liability Companies, IRS issues, Asset Protection, Bond Issues, Trusts, Estate Planning or State & Local Taxes. Consultative/Specific-Issue relationships for small firms/solo practitioners also welcomed. Hourly or package rates. Call (801) 572-6156.

OFFICE SPACE / SHARING

Deluxe office space for one or two attorneys in Broadway Center (111 East Broadway). Spacious offices, conference room and secretarial station included. Fax, copier, telephones and receptionist available. Call (801) 575-7100.

OFFICE SPACE: ACROSS FROM COURTS 243 East 400 South: Call (801) 355-1456.

Executive office with secretarial space in 5 attorney suite, 341 South Main Street. Reception, conference room, break room, access to all office equipment. Call Rhonda @ (801) 364-4040.

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Newly remodeled professional office space adjacent to the Sports Mall. Space available for three to four attorneys. Share space and expenses with four other attorneys. Facilities include large private office, secretarial services, reception area, conference room, library, fax copier, telephones. Room for own secretary if desired. Call Wynn @ (801) 263-0569.

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Professional office space located at 7026 South 9th East, Midvale. Space for two (2) attorney's and staff. Includes two spacious offices, large reception area, sink/wet bar, file storage, convenient client parking immediately adjacent to the building. Call (801) 272-1013.

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Suite for small firm of attorneys. Private offices, conference room, secretarial area, reception area, parking. Very convenient to Courts Building. Call Marilu @ (801) 328-4981.

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SERVICES

LEGAL ASSISTANTS — SAVING TIME, MAKING MONEY: Reap the benefits of legal assistant profitability. LAAU Job Bank, P.O. Box 112001, Salt Lake City, Utah 84111. (801) 531-0331. Resumes of legal assistants seeking full or part-time temporary or permanent employment on file with LAAU Job Bank are available on request.

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, UT 84058 or call (801) 222-8489 / Fax (801) 225-1229.

Part-time or contract work in writing/research sought by attorney with excellent credentials (Moot Court, law review, Coif, Phi Kappa Phi) and background in civil litigation and civil/criminal appellate work. Licensed in Utah and Colorado. For discovery, motions, briefs, research, call M. Boudreau, @ (801) 466-6531.

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MCLE Reminder

Attorneys who are required to comply with the odd year compliance cycle will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1995. The MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a combined 27 hour total. Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt from MCLE requirements. Following is a Certificate of Compliance for your use. Should you have questions regarding the requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

CERTIFICATE OF COMPLIANCE

For Years 19_____ and 19_____

Utah State Board of
Continuing Legal Education
Utah Law and Justice Center
645 South 200 East
Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 FAX (801) 531-0660

Name:_____ Utah State Bar Number:_____

Address:_____ Telephone Number:_____

Professional Responsibility and Ethics **Required: a minimum of three (3) hours**

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

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

Continuing Legal Education **Required: a minimum of twenty-four (24) hours**

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

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

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

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

IF YOU HAVE MORE PROGRAM ENTRIES, COPY THIS FORM AND ATTACH AN EXTRA PAGE

**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 three 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 $5.00 at the time of filing the statement with the Board.

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 Regulations 5-103(1).

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 of which the statement of compliance is filed, and shall be submitted to the board upon written request.

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