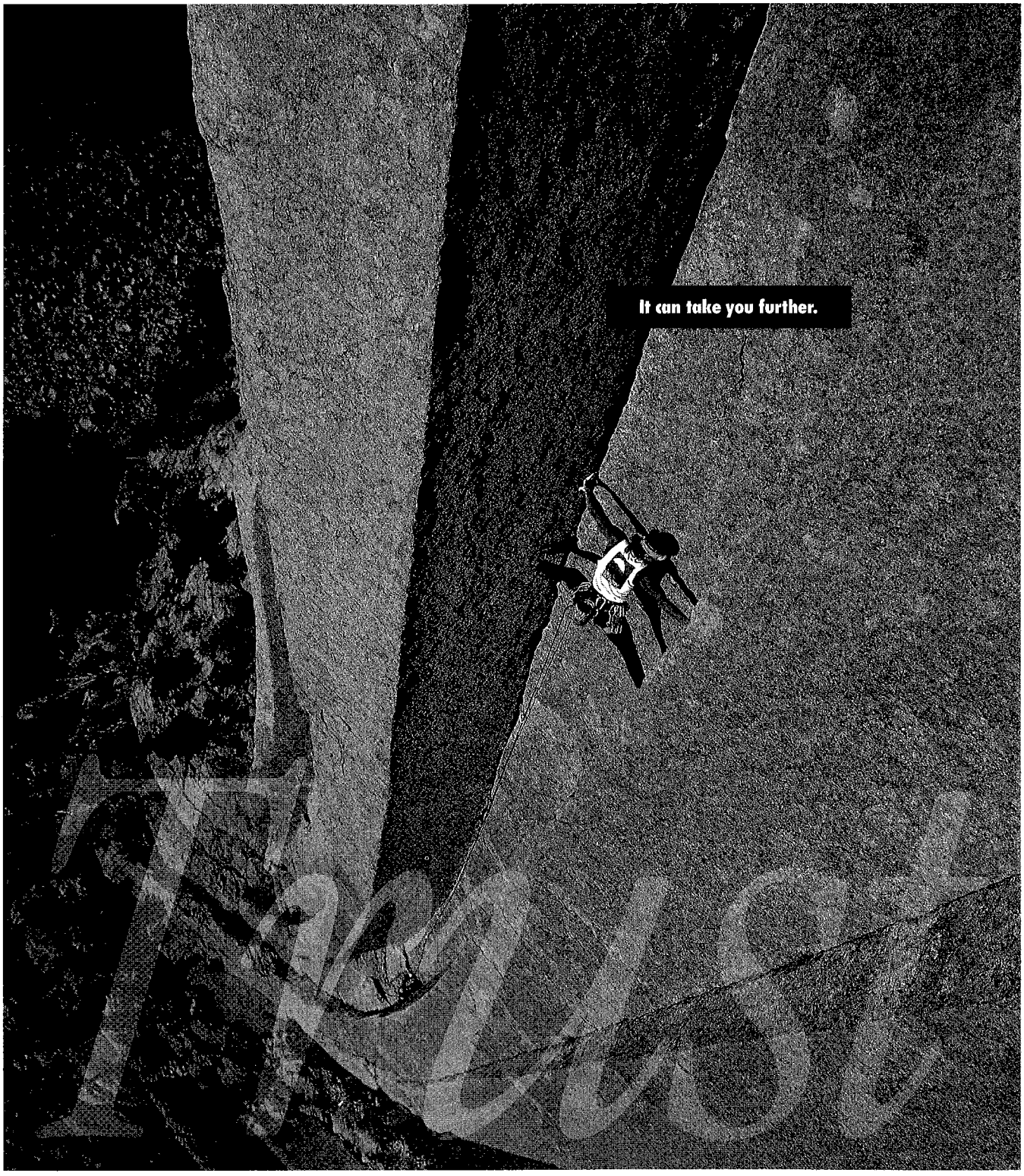
UTAH BAR JOURNAL

Vol. 10 No. 1 February 1997



Westlaw is the source you can trust for the most comprehensive public records.

You've got absolute trust in yourself. Put that same trust in WESTLAW® to deliver public records that can hold the key to success.

For starters, WESTLAW gives you broader coverage than any other source. That helps you reliably check out potential jurors' backgrounds, locate hard-to-find witnesses, qualify prospective clients or business associates, and more.

And only WESTLAW gives you important links between *related* information with exclusive investigative tools such as People Finder,® Sleuth® and Asset Locator.®

So you can uncover important relationships among people, businesses and their assets that you may otherwise miss searching any other source.

With sweeping public records at your fingertips, you can trust in WESTLAW to take you further.

Learn more about how to find the public records you need on WESTLAW. Call 1-800-328-9963.

WESTLAW®

KeySearching. Research you can trust.

www.westpub.com

Utah BJ

Published by The Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
Telephone (801) 531-9077
www.utahbar.org

UTAH BAR JOURNAL

Vol. 10 No. 1 Feburary 1997

VISION OF THE BAR: To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.

MISSION OF THE BAR: To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of, the law.

COVER: Deer Creek Reservoir in December by Mark Dalton Dunn.

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, Randle, Deamer, Zarr, Romrell & Lee, P.C., 139 East South Temple, Suite 330, Salt Lake City, UT, 84111-1169, 531-0441. Send a slide, transparency or print of each scene 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.

DIRECTORY OF BAR COMMISSIONERS AND STAFF

BAR COMMISSIONERS

Steven M. Kaufman
President
Division 2
205 26th Street, #34
Ogden, UT 84401
Tel: 394-5526 • Fax: 392-4125

Charlotte L. Miller
President-Elect
Division 3
Summit Family Restaurants Inc.
440 Lawndale Drive
Salt Lake City, UT 84115
Tel: 463-5553 • Fax: 463-5585

Charles R. Brown
Division 3
One Utah Center
201 South Main Street #1300
Salt Lake City, UT 84111-2215
Tel: 532-3000 • Fax: 532-8736

Scott Daniels
Division 3
175 South Main Street, Suite 1110
Salt Lake City, UT 84111
Tel: 359-5400 • Fax: 359-5473

Denise A. Dragoo
Division 3
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, UT 84145
Tel: 532-3333
Fax: 534-0058 or 237-0406

John Florez
Supreme Court Appointment
614 Aloha Road
Salt Lake City, UT 84103
Tel: 532-5514 • Fax: 364-2818

James C. Jenkins
Division 1
88 West Center Street
P.O. Box 525
Logan, UT 84323-0525
Tel: 752-1551 • Fax: 753-2699

Debra J. Moore
Division 3
Attorney General's Office
160 East 300 South, Fl. 6
P.O. Box 140856
Salt Lake City, UT 84114-0856
Tel: 366-0132 • Fax: 366-0101

David O. Nuffer
Division 5
90 East 200 North
P.O. Box 400
St. George, UT 84770-0400
Tel: 674-0400 • Fax: 628-1610

Craig M. Snyder
Division 4
120 East 300 North
P.O. Box 778
Provo, UT 84603
Tel: 373-6345 • Fax: 377-4991

Ray O. Westergard
Supreme Court Appointment
170 South Main Street #1000
Salt Lake City, UT 84101
Tel: 531-6888 • Fax: 322-0061

Francis M. Wikstrom
Division 3
201 S. Main Street #1800
P.O. Box 45898
Salt Lake City, UT 84145-0898
Tel: 532-1234 • Fax: 536-6111

D. Frank Wilkins
Division 3
50 South Main Street #1250
Salt Lake City, UT 84144
Tel: 328-2200 • Fax: 531-9926

***Ex Officio**
(non-voting commissioner)

***Daniel D. Andersen**
President, Young Lawyers Division
560 East 200 South, #230
Salt Lake City, UT 84102
Tel: 366-7471 • Fax: 366-7706

***H. Reese Hansen**
Dean, College of Law
348 A JRCB
Brigham Young University
Provo, UT 84602
Tel: 378-4276
Fax: 378-3595 or 378-2188

***Dennis V. Haslam**
Immediate Past President
175 West 200 South, Suite 4000
P.O. Box 2668
Salt Lake City, UT 84110-2668
Tel: 322-2222 • Fax: 532-3706

***Sanda Kirkham**
Legal Assistant Division Representative
4516 South 700 East #100
Salt Lake City, UT 84107
Tel: 263-2900 • Fax: 263-2902

***James B. Lee**
ABA Delegate
201 S. Main Street #1800
Salt Lake City, UT 84111
Tel: 532-1234 • Fax: 536-6111

***Paul T. Moxley**
State Bar Delegate to ABA
111 E. Broadway #880
Salt Lake City, UT 84111
Tel: 363-7500 • Fax: 363-7557

***Steven Lee Payton**
Minority Bar Association
431 South 300 East #40
Salt Lake City, UT 84111-3298
Tel: 363-7070 • Fax: 363-7071

***Beatrice M. Peck**
Women Lawyers Representative
134 South 700 West
Salt Lake City, UT 84104
Tel: 533-9208 • Fax: 537-1312

***Lee E. Teitelbaum**
Dean, College of Law
University of Utah
Salt Lake City, UT 84112
Tel: 581-6571 • Fax: 581-6897

UTAH STATE BAR STAFF
Tel: 531-9077 • Fax: 531-0660

Executive Offices

John C. Baldwin
Executive Director
Tel: 297-7028
E-mail: jbaldwin@utahbar.org

Richard M. Dibblee
Assistant Executive Director
Tel: 297-7029
E-mail: rdibblee@utahbar.org

Mary A. Munzert
Executive Secretary
Tel: 297-7031
E-mail: mmunzert@utahbar.org

Katherine A. Fox
General Counsel
Tel: 297-7047
E-mail: kfox@utahbar.org

Access to Justice Program

Tobin J. Brown
Access to Justice Coordinator & Programs Administrator
Tel: 297-7027
E-mail: tbrown@utahbar.org
Attorney Recruitment
Special Projects
Legal Assistants Division
Youth Education Project

Rex W. Olsen
Pro Bono Project
Tel: 297-7049
E-mail: rolsen@utahbar.org

Admissions Department

Darla C. Murphy
Admissions Administrator
Tel: 297-7026
E-mail: dmurphy@utahbar.org
Admission Issues
Bar Examination
Certificates of Good Standing
Membership/Status Changes

Lynette C. Limb
Admissions Assistant
Tel: 297-7025
E-mail: llimb@utahbar.org
Admissions Questions
Member Benefits Liaison

Bar Programs & Services

Maud C. Thurman
Bar Programs Coordinator
Tel: 297-7022
E-mail: mthurman@utahbar.org
Client Security Fund
Domestic Violence Clinic Information
Delivery of Legal Services Committee Staff Liaison
Fee Arbitration
Speakers Bureau
Utah Bar Journal Staff Liaison
Unauthorized Practice of Law Committee
Staff Liaison

Continuing Legal Education Department

Monica N. Jergensen
CLE Administrator
Tel: 297-7024
E-mail:mjergens@utahbar.org
CLE Seminar Planning
Annual & Mid-Year Meetings

Holly K. Hinckley
CLE Assistant
Tel: 297-7033
E-mail:hhinckle@utahbar.org
CLE Video Tapes Library
Section Support
Seminar Registration

Natalie Wood
Program Assistant
Tel: 297-7032

Finance Department

J. Arnold Birrell
Financial Administrator
Tel: 297-7020
E-mail: abirrell@utahbar.org
Accounting
Change of Address
Licensing
Mailing Label Orders
Member Data Base Management

Joyce N. Seeley
Financial Assistant
Tel: 297-7021
E-mail: jseeley@utahbar.org
Accounts Payable
Accounts Receivable

Lawyer Referral Services

Diané J. Clark
LRS Administrator
Tel: 531-9075
1-800-698-9077
Lawyer Referral Service Calls
Sign Up Information

Law & Justice Center

Marie Gochnour
Law & Justice Center Coordinator
Tel: 297-7030
E-mail: @utahbar.org
Law & Justice Center Operations
Meeting Space Reservations & Catering

Receptionist

Summer Pollard (a.m.)
Kim L. Williams (p.m.)
Tel: 531-9077
Attorney Address/Telephone Information
Publication Purchases:
Probate Forms & Bar Journal
Model Questions & Answers
Bar Examination Applications
Tuesday Night Bar

Other Telephone Numbers & E-mail Addresses Not Listed Above

Bar Information Line:
297-7055

Mandatory CLE Board:
297-7035
E-mail: mcle@utahbar.org

Member Benefits:
297-7025
E-mail: ben@utahbar.org

Office of Attorney Discipline

Tel: 531-9110 • Fax: 531-9912
E-mail: oad@utahbar.org

Stephen R. Cochell
Chief Disciplinary Counsel
Tel: 297-7039
E-Mail: scochell@utahbar.org

Carol A. Stewart
Deputy Chief Disciplinary Counsel
Tel: 297-7038
E-Mail: cstewart@utahbar.org

Charles A. Gruber
Assistant Disciplinary Counsel
Tel: 297-7040
E-Mail: cgruber@utahbar.org

Mark Y. Hirata
Assistant Disciplinary Counsel
Tel: 297-7053
E-Mail: mhirata@utahbar.org

Kate A. Toomey
Assistant Disciplinary Counsel
Tel: 297-7041
E-Mail: ktoomey@utahbar.org

Dana M. Kapinos
Secretary to Disciplinary Counsel
Tel: 297-7044
E-Mail: dkapinos@utahbar.org

Stacey A. Kartchner
Secretary to Disciplinary Counsel
Tel: 297-7043
E-Mail: skartchn@utahbar.org

Gwen M. Kittel
Secretary to Disciplinary Counsel
Tel: 297-7054
E-Mail: akittel@utahbar.org

Niki A. Mast
Secretary to Disciplinary Counsel
Administrative Support Clerk
Tel: 297-7045
E-Mail: nmast@utahbar.org

Robbin D. Schroeder
Administrative Support Clerk
Tel: 531-9110

Shelly A. Sisam
Paralegal
Tel: 297-7037
E-Mail: ssisam@utahbar.org

LETTERS

Dear Editor:

I concur wholeheartedly with the December 1996 letter to your magazine by Curtis K. Oberhansly. I think a little doggerel, a little sentimentality, and some dare-devil metaphors are needed in this business.

Enclosed please find my contribution: "The Sheepman's Lament."

Sincerely,
R. Clayton Huntsman

The Sheepman's Lament

by R. Clayton Huntsman

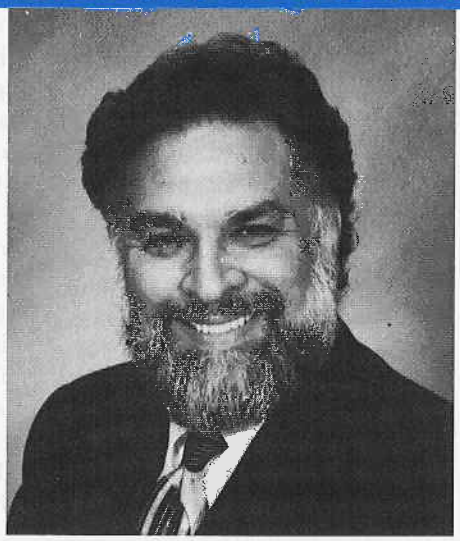
A sheepman who lived near Cove Fort
  Was summoned to a far-distant Court.
Bewildered, he showed up on time,
  To be told of his terrible crime.

"What you've done is no less than a Tort –
  To appear in this far-distant Court,
Circulation intact to your head –
  With no NECKTIE you're better off dead!"

So the sheepman went shopping for ties.
  Found a red one, and just the right size.
Then he hastened back to the Court,
  Heard the final judicial report:

"While you were out shopping for ties,
  Your case was dismissed – surprise!
Now button your coat, you must trust us;
  Form has triumphed again over justice."

So the sheepman returned to Cove Fort,
  Chastened by the far-distant Court.
Still clueless, *sans* collar and button –
  Like his sheep, shorn and carved into mutton.



Looking Good, Feeling Good

By Steve M. Kaufman

It seems like every time I sit down to write this column, the weather is making a major mood change. This time is no different, as it is a nasty blizzard outside. My house almost blew away, my patio furniture did blow away, and the contents of my wallet are blowing away to Mr. Mountain Fuel. I was surprised to wake up this morning to find mounds of snow engulfing my house, snowdrifts four feet high, and screaming winds urging me to get this message written before Mr. Utah Power and Light goes out. As the weather seems to change almost weekly, so does my Presidency. I can't believe that I am over halfway through this wonderful excursion. A couple of my colleagues asked me recently how it was being President of our Bar, and what I intended to accomplish in the next year and on half. In the next year and one half, are you kidding me? I am over the hump, on the downside, moving smoothly, feeling good. This job has a one-year cap, not two years. When I first thought about running for this great office, I though there was no way I could accomplish all the things I wanted to do in one short year. And that is probably true. But, if I can accomplish two or three items on my agenda, hey, I will take on the moniker of Mr. Feelgood. I once thought two years would be perfect, but then every time I would talk to one of my past Bar President buddies, I would be put back into reality. This is a full-time job, at least the way I view it, and I am in a part-time President's body. One still has a private practice (sort of), a wife and kids, and the need for a free weekend sometimes. So, I am slowly trying to put the necessary touches on those programs and projects that I feel are important to complete. And I have realized that one year is too short. I am not suggesting a change or extension, in fact, time limitations for this job are probably appropriate so as to maintain one's "other life" outside Bar circles. Presently, the Bar and its members are pretty much my chosen circle, my life's work, what I do. I cannot begin to tell you how important, how gratifying this particular endeavor has become for me. This is as good as it gets, in my opinion. I get to hang around judges and lawyers who are my best friends, help make policy decisions and work on projects which impact those friends, and have a bully-pulpit to stand on and continue to tell the unconvinced that lawyers are society's best, doing important work, and the negative image conveyed to the public at large is due to a rare few of our profession; that the rest of you enjoy wonderful, well earned reputations, which have taken you years of hard work and honest endeavors to achieve. To continue to stress civility and professionalism shall be my prime directive. That is why this job is so satisfying; the cause is well worth the time.

Now, as much as I obviously would enjoy writing more about the good our profession does, I feel it is necessary and appropriate to update you on other Bar info. I spoke personally again with Albert Krieger, who, you may recall from a previous message I wrote, was hopefully joining us at the annual meeting in Sun Valley. First, I can't believe he actually took my call, which I guess is one of the perks of this job, and he confirmed he is excited and honored to speak to us there. You better sign up soon, because he is a wonderfully bright and entertaining speaker, and the four hours I spent with him in Colorado, are memories not forgotten. Many of you have personally heard me rave about my experience with him, and I am hopeful the rest of our ranks will get that opportunity in Sun Valley this July. We also will have Dee Dee Myers speaking, who was President Clinton's prior press secretary. I am just trying to wet your whistle now so we will have the best turnout ever. The CLE programs look energizing and most interesting, so don't wait until the last minute to make your plans to attend. The midyear meeting in St. George

looks to be outstanding, and by the time you read this message you should have already made plans to attend. Charlotte Miller, our President-Elect is in charge of this great function, and since you are probably reading this in mid February, with the meeting in just a few weeks, I only want to remind you that it is not too late to sign up and go. Our mentoring program is moving along, as the initial policy package has been determined, the law schools are getting on board, and the lawyer-mentors have basically been selected. I am anxious to see how this program is received by the law students, who will ultimately gain a better insight into what it means to be a lawyer, working in a lawyer's surroundings, and trying to be an advocate without being obnoxious or overbearing. Finally, at least for the month of February, I will be attending the mid winter ABA convention in San Antonio, Texas, where I will bring back more information to help our Bar continue to be one of the most progressive Bars in the country, and I say that with sincerity. As I travel to many other states to learn what their Bars are doing, I continue to see how much we are accomplishing. I will also be attending the Western States Bar Conference in Scottsdale, Arizona, and will try to gain some additional insight from other similarly situated Bars here in the west. So I will be busy, and I again thank all of my colleagues for working around my goofy schedule. I really do like what I am doing, though, and thank you again for this opportunity.

Yes, I am moving into the last six months, over the hump, and feeling good about what our Bar is attempting to do. Your Bar Commission has been grand. They are the most diligent, caring group of individuals I know. They are involved. They involve me, and I thank them for that because it makes my job easier to have so much help. The only complaint I have so far is that I wish I could meet more of you. Please continue to come up to me and introduce yourselves to me in the halls of the courthouse or at the meetings we attend. It is important that we continue to stress collegiality; we will all be better practitioners if we do.

Yes, I'm feeling good. Looking good? Well, that may be another question for another time. Talk to you soon!

A Prayer for the Professions

By Scott Daniels

There was a time when the only occupations known as "professions" were the military, the law, medicine, and the ministry. What do these "professions" have in common today? We all take ourselves too seriously.

Of course, it's hard to be humble when you command the immense destructive power of armies and navies. It's hard not to be proud when you direct the awesome and majestic power of the government and the law. It's hard not to be arrogant when you confront disease and even death itself and provide healing and life. It's hard not to take yourself too seriously when you speak for God. Indeed, we in the traditional professions may stand a little taller than the mere mortals that surround us. No wonder everyone in the United States of America hates us.

Even I hate us sometimes. Can't we lighten up just a little? Do you know why there are so many lawyer jokes? Because lawyers are Easy Pickings for those looking for a laugh at the expense of an arrogant, self-important creep. Let's face it: we have some bad apples in our barrel. Even Jesus disliked lawyers, and Jesus was an exceptionally tolerant fellow.

Arrogance is not at the heart of being a lawyer, however. More of us became lawyers because of examples like Atticus Finch than examples from L.A. Law. I know a large number of lawyers, their skills, and their reputations. In the comparatively small legal community of Salt Lake City, I run into lawyers in casual situations all the time. When I see a lawyer making a fool of himself (herself/itself) and an embarrassment of the legal profession, it's almost always the lawyer on the margins of the profession, widely known for ineptitude. It's usually these marginal ones who mention that they are lawyers as they complain to the waiter, or the dry cleaner, or the storekeeper, or act as if they are going to sue because the soup is cold or someone parked a car in front of their house. It's almost always the semi-competent who write the insulting letters; who bluster and threaten and accuse and attempt to intimidate.

Think about the last really uncivil letter or telephone call you received from another lawyer; or think about the last time you saw a lawyer in court full of sound and fury; accusing, blustering, and generally full of himself (herself/itself). I'll guarantee you that this lawyer fell into one of only three categories: 1) just out of law school, and may not know better; 2) an absolutely marginal lawyer with almost no practice experience except this case; or 3) one of a select list of about a dozen lawyers, statewide. Any judge can give you this list.

These jerks are our dredges. And there appears to be no cure. But, what can we do? Do you think requiring a certain number of CLE hours in bowling would make SOB lawyers into regular people? Making them suffer and endure humiliation wouldn't help; they already did that in law school. And bluntly lecturing on proper behavior doesn't help either, because they just don't get it. It seems to be congenital. I wish we could just disbar them, but I don't think we could legally do that, even though "arrogant butthead" is not a constitutionally protected class or a suspect criterion.

Here's the thing: there are a certain number of people on this planet who are full of themselves, thinking they are God's gift to humankind. Not all of these have the aptitude in math to get into premedicine. There are a certain number of people who love to bully and intimidate. Not all of them have the physical abilities required to succeed in the military, police academy, or as gym coaches in junior high. There are people who believe that every word they speak is full of wisdom and gospel truth, and that they speak for, to, or with God. The best of these went into the ministry; the worst are institutionalized; most of the rest became journalists. Still there are some left over who went to law school.

Yes, my brothers and sisters of the Bar, some of the leftovers and dredges of these groups have found their way into the legal profession. If we can't shame them into repentance, at least, can each of us resolve to behave ourselves as ordinary, fallible mortals?

Perhaps the doctors will one day develop a pill which will cure the scourge of arrogance. On that glorious day may each of these doctors take one of the pills himself (herself/itself), and then may they deliver a truckload to the Law and Justice Center.

Amen.

The Recovery of Attorney Fees in Utah: A Procedural Primer for Practitioners – Part II

By James E. Magleby

Editor's note: Part I was published in the December 1996 issue of the Bar Journal.

d. Reasonableness of Fees

Once the initial evidentiary burdens are met,[57] the trial court must determine what constitutes a "reasonable" attorney fee, the issue upon which practitioners will probably find the majority of their energy focused once an award of fees is made.[58]

In determining a reasonable attorney fee, Utah trial courts have considered a number of factors, although it is important to note that "[t]he question of what is a reasonable attorney[] fee in a contested matter is not necessarily controlled by any set formula."[59] Among others,[60] Utah courts have considered the following factors:[61]

1. The difficulty of the litigation.
2. The efficiency of the attorneys in presenting the case.
3. The fee customarily charged in the locality for similar services.
4. The amount involved in the case.
5. The result attained.
6. The expertise and experience of the attorneys involved.[62]
7. The amount in controversy.
8. The extent of services rendered.
9. "[O]ther factors which the trial court is in an advantaged position to judge."[63]
10. The relationship of the fee to the amount recovered.
11. The novelty and difficulty of the issues involved.
12. The overall result achieved.
13. The necessity of initiating the lawsuit.[64]

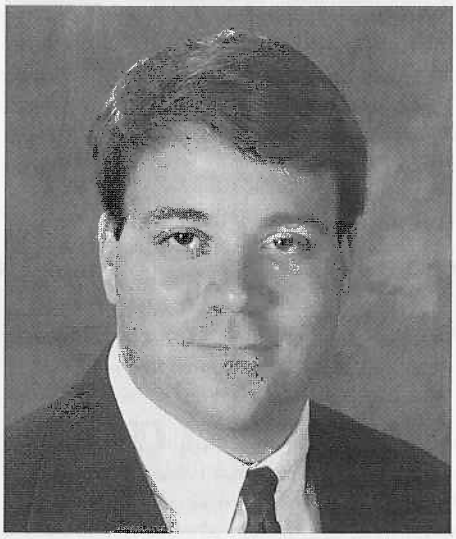
In addition, although never explicitly listed as a factor, the courts have considered whether the opposing party pursued an "inconsistent and unmeritorious" litigation strategy,[65] or acted to "complicate[] and make more difficult" the discovery process.[66]

However, in *Dixie State Bank v. Bracken,*[67] the Utah Supreme Court recognized the confusion created by Utah case law,[68] and "in order to foster consistent and equitable fee awards . . . constructed 'practical guidelines' for analyzing the reasonableness of attorney fees, by consolidating the approaches advocated in then-existing case law into a simple four-step procedure."[69] The court announced the general rule that although many "factors may be explicitly considered in determining a reasonable fee, as a practical matter the trial court should find answers to four questions:"[70]

1. What legal work was actually performed?
2. How much of the work performed was reasonably necessary to adequately prosecute the matter?
3. Is the attorney's billing rate consistent with the rates customarily charged in the locality for similar services?
4. Are there circumstances which require consideration of additional factors, including those listed in the Code of Professional Responsibility?[71]

Accordingly, at the minimum, practitioners who seek an award of attorney fees should argue these four factors before the trial court to withstand appeal. If additional factors are to be argued, practitioners should alert the court that they are properly considered under the fourth step of *Dixie.*[72]

The *Dixie* court's attempt to clarify the appropriate procedure for determining reasonable attorney fees has not, however, eliminated the confusion over the issue. Despite the *Dixie* court's attempt to create a uniform format for considering the reasonableness of an award of attorney fees, Utah courts have not demanded rigorous adherence to the four factors,[73] even as recently as 1996.[74] At first glance, this may suggest that so long as the trial court's award is based upon consideration of some mix of factors, and is supported by the evidence, it will withstand review. This is not, however, always the case.[75]



JAMES E. MAGLEBY graduated from Swarthmore College with Honors in 1989. He then spent three years in San Francisco as a legal assistant, specializing in the preparation of computerized databases for use in national litigation in the areas of products liability and insurance defense. Jim received his J.D. from the University of Utah College of Law in 1995, and was admitted to the Order of the Coif upon graduation. He was admitted to the Utah State Bar in October of 1995.

Jim is the author of Hospital Mergers and Antitrust Policy: Arguments Against a Modification of Current Antitrust Law, 21 The Antitrust Bulleting 137 (1996), and The Constitutionality of Utah's Medical Malpractice Damages Cap Under the Utah Constitution, 21 The Journal of Contemporary Law 217 (1995). Jim is also the co-author of a book commissioned by the Utah Bar Foundation, Justices of the Utah Supreme Court 1896-1996, consisting of a biographical survey of all past and present Utah Supreme Court Justices.

After law school, Jim clerked for the Honorable Pamela T. Greenwood of the Utah Court of Appeals for one year, from August 1995 through September 1996, when he joined the Salt Lake City office of Jones, Waldo, Holbrook & McDonough. The focus of his practice is litigation.

The Utah Court of Appeals has addressed this apparent deviation, noting that *Cabrera* "is often cited for the same principles as *Dixie*."[76] Although it is not immediately obvious from a comparison of the cases,[77] the *Quinn* court concluded that both *Cabrera* and *Dixie* "ultimately recommend consideration of the same factors."[78] However, the *Quinn* court went on to apply *Dixie*, "both because it was decided after *Cabrera*, and because we believe its four step approach is simpler to apply, and will therefore lead to more consistently correct results."[79]

The confusion is enhanced by occasional reliance by Utah courts upon Rule 4-505 of the Utah Code of Judicial Administration to affirm the reasonableness of attorney fees. Although Rule 4-505 appears designed to facilitate the submission of evidence regarding attorney fees, and does not specifically[80] call for practitioners to submit evidence on all four factors enunciated in *Dixie*,[81] practitioners who comply with the rule can argue that under Utah law, they have offered sufficient evidence of reasonableness to withstand appeal.[82]

In addition, practitioners should take care that the trial court does not improperly modify a request for attorney fees based upon considerations disfavored by Utah appellate courts. First, it should be noted that attorney fees in excess of a damages award are not *per se* unreasonable.[83] Furthermore, "what an attorney bills or the number of hours spent on a case is not determinative."[84] Finally, "although the amount in controversy can be a factor in determining a reasonable fee, care should be used in putting much reliance on this factor."[85] Accordingly, if the trial court appears inclined to base an award of attorney fees on one or more of these factors, a practitioner should encourage the trial court to do so as part of its consideration of the four factors enumerated in *Dixie*.

Because of the inconsistent manner in which the reasonableness analysis is conducted in Utah case law, practitioners face the dilemma of how to proceed in presenting reasonableness arguments. The best possible approach appears to be that taken in *Quinn*, which suggests that practitioners should urge trial courts to explicitly consider, at the minimum, the first three factors enunciated in *Dixie*. The trial court should then undertake evaluate the fourth *Dixie* factor, and determine if other evidence would be helpful. If the answer is affirmative, then any of the additional factors may be considered.[86]

e. Findings

Once an award of attorney fees has been made, the trial court must make written findings of fact explaining the grounds for the award, and why the amount awarded constitutes a reasonable fee. The only established exception[87] to this rule under Utah law is where all the relevant facts are undisputed, as in a summary judgment motion.[88] However, even in this context, practitioners should be wary, as it takes little to create a disputed issue of fact.[89] However, trial courts often fail to make findings in support of an award of attorney fees,[90] or make findings which fails to consider the appropriate factors,[91] requiring the case to be remanded after appeal. Practitioners who prevail at trial should therefore take care that the trial court makes findings articulating the grounds for an award of attorney fees in a manner which will withstand appellate review.

Findings are required in almost every situation where attorney fees have been contested. Utah appellate courts "have con-

sistently encouraged trial courts to make findings to explain the factors which they considered relevant in arriving at an attorney fee award. Findings are particularly important when the evidence on attorney fees is in dispute . . . ."[92] Detailed findings are also particularly important in complex cases.[93] Trial courts have also shown a tendency to reduce attorney fee awards sua sponte, or in the face of uncontested evidentiary submissions.[94] In this event, the necessity of detailed findings is even more imperative.

> Where the evidence supporting the reasonableness of requested attorney fees is both adequate and entirely undisputed, as it was here, the court abuses its discretion in awarding less than the amount requested unless the reduction is warranted by one or more of the factors described in *[Dixie State Bank]*. . . . To permit meaningful review on appeal, it is necessary that the trial court, on the record, identify such factors *and otherwise explain the basis for its sua sponte reduction.*[95]

Accordingly, in order for almost any award of attorney fees to survive appeal, the trial court must enter findings in support of the award. Practitioners, therefore, should encourage the trial court to make findings regarding the award. Although it may be counter-intuitive, this is particularly true in cases where a party does not oppose a fee request, but has the fee reduced by the trial court in their favor. Utah appellate courts are especially demanding about findings in this situation.

f. Sufficient Findings

Although it is clear that trial courts must make findings in support of a fee award, the amount of detail required is not as obvious. The exact amount of detail required to survive appellate review is difficult to determine from a review of Utah case law, as each decision seems to involve different reasoning, and some have reached conflicting results. For example, one Utah Supreme Court Justice has upheld a reduction in attorney fees based only upon an oral ruling from the bench that the fees were "excessive."[96] However, the remainder of the court was not in agreement,[97] and this position was inconsistent with that taken by the Court of Appeals two years earlier.[98]

Despite the confusion created by such comparisons, the courts have offered some general guidance. It appears, at least in the context of a sua sponte reduction of fees, that merely listing some of the factors involved in the determination of "reasonableness," without more, is not adequate. For example, in *Selvage v. J.J. Johnson & Assocs.*,[99] the trial court's entire findings merely stated that the fee award was based upon:

> "'the amount in dispute, the complexity of the issues presented, the hourly rates charged by the plaintiffs' attorneys and the total evidence presented at trial.'"[100]

Although the trial court evaluated some of the factors which could be considered under the fourth *Dixie* factor,[101] and made written findings of fact, the Utah Court of Appeals remanded the case to the trial court to enter more detailed findings, noting that "[s]uch conclusory statements do not satisfy the requirement that awards of attorney fees must be supported by adequate findings of fact."[102] The court also noted that "[v]ague statements which require speculation as to the actual reasons behind the ruling are not enough to meet this burden."[103] To withstand review, findings should be as detailed as findings supporting a damages award.[104] Furthermore, "[t]hese findings must be sufficiently detailed, and include enough subsidiary facts, to disclose the steps by which the trial court's decision was reached."[105]

"Practitioners should urge the trial court to make as detailed findings as possible."

Although Utah case law does little to clarify the exact amount of detail necessary to sustain an award of attorney fees on appeal, it does indicate that practitioners should urge the trial court to make as detailed findings as possible.[106] In order to create as thorough a record as possible, practitioners should urge the trial court to make written findings which track the steps in the decision to award attorney fees. The trial court should therefore make a written record[107] which does the following: (1) identify the legal basis for the decision to award attorney fees, whether it be by statute, contract, or equity; (2) identify or acknowledge the evidence submitted by the party or parties requesting fees; (3) identify any evidence offered in opposition to the fee request; (4) identify any allocation issues, and the role they played in the fee award; (5) identify the factors it considered in determining what constitutes a "reasonable" attorney fee;[108] and (6) explain how the factors affected the calculation of the amount of the award.

g. Scope of Attorney Fees Request

Utah case law has also partially defined what may be included in an award of attorney fees. The Utah Supreme Court has allowed recovery of fees incurred by paralegals in preparing the case.[109] It has similarly upheld a trial court's inclusion of paralegal fees in an award of attorney fees.[110]

Practitioners should also investigate whether they are entitled to prejudgment interest on attorney fees.[111]

Finally, for those practitioners who are representing themselves, it should be noted that Utah follows "the general rule that pro se litigants should not recover attorney fees for successful litigation."[112] This rule applies even if the pro se litigant is a licensed attorney,[113] although one member of the Utah Supreme Court argued in favor of "the position . . . that non-attorney pro se litigants may be entitled to an award of attorney fees in appropriate circumstances."[114]

III. CONCLUSION

The ability to sustain a recovery of attorney fees is made difficult by the confusing nature of Utah case law on the subject. Because the confusion is shared by trial courts and practitioners, a practitioner who wishes to sustain an award of attorney fees on appeal must first meet the initial burdens of pleading and evidentiary production. Next, the practitioner should encourage the trial court to follow the procedural steps outlined by Utah appellate courts, in particular the consideration of the appropriate factors in making the fee award. Finally, practitioners should urge trial courts to place their reasoning on the record, so that the award will withstand appellate review.

[57]It should be reiterated that if the evidence in support of an award of attorney fees is insufficient, the trial court's finding that an attorney fee award was "reasonable" will not withstand appeal. "When the evidence presented is insufficient, the court's evaluation of [the reasonableness of] those fees will also be insufficient." *Cottonwood Mall, supra* note 34 at 269.

[58]"Perhaps the most frequently litigated issue involving attorney[] fees in Utah is that of determining what constitutes a 'reasonable fee.'" *Sager, supra* note 3 at 563.

[59]*Wallace v. Build, Inc.*, 402 P.2d 699, 701 (Utah 1965)); see also *Dixie, supra* note 6 at 989 ("[W]hat constitutes a reasonable fee is not necessarily controlled by any set formula") (cit-

ing *Wallace*).

[60]The factors considered by trial courts have varied over time. For example, trial courts once considered "whether the acceptance of employment . . . will preclude the lawyer's appearing for others in cases likely to arise out of the transactions," "will involve the loss of other employment," "the contingency or the certainty of the compensation," and "the character of the employment, whether casual or for an established and constant client." *Thatcher v. Industrial Comm'n.*, 115 Utah 568, 207 P.2d 178, 183-84 (1949); *see also FMA Fin. Corp v. Build, Inc.*, 404 P.2d 670, 673 (Utah 1965) (noting, with regard to the value of legal services, "that the judge may fix it on the basis of his own knowledge and experience; and/or in connection with reference to a Bar approved schedule"). These factors have not been considered in recent decisions, and so are omitted from the list.

[61]The reader's conclusion that the list may repeat itself is correct. The listed factors are taken from cases cited in the *Dixie* decision, and are listed as they appear in the cases cited, with care taken to maintain nearly identical language with that in the decisions. The result gives a glimpse of the similarity of the factors considered by the courts, but also reveals the haphazard and sometimes confusing manner in which evaluation of the reasonableness of attorney fees has been conducted.

[62]Factors 1 through 6 were discussed in *Dixie, supra* note 6 at 989 (citing *Cabrera, supra* note 12 at 625). These factors were derived from the Code of Professional Responsibility. *Cabrera* at 624. However, consideration of these factors is not mandatory, as the court noted only that "the trial court *may* take into account the provisions" of the Code of Professional Responsibility in setting reasonable attorney fees. *Id.*

[63]Factors 7 through 9 were discussed in *Dixie, supra* note 6 at 989 (citing *Wallace v. Build, Inc.*, 16 Utah 2d 410, 402 P.2d 699, 701 (1965)).

[64]Factors 10 through 13 were discussed in *Dixie, supra* note 6 at 989 (citing *Trayner v. Cushing*, 688 P.2d 856, 858 (Utah 1984)).

[65]*Dixie, supra* note 6 at 991. In this regard, the court noted that the losing party's litigation strategy "converted the action from a routine collection action . . . into a brouhaha of much larger proportions" which "increased [the attorney fees] several-fold over what they should have been . . . ." *Id.*

[66]*Morgan v. Morgan*, 854 P.2d 559, 570 (Utah App. 1993); *see also Finlayson v. Finlayson*, 874 P.2d 843, (Utah App. 1994) (noting that trial "court correctly based its award of attorney fees on Husband's noncompliance with its interim orders").

[67]*Supra* note 6.

[68]The Utah Supreme Court felt that *Dixie*, "which involves only the issue of attorney fees, provides us with a unique opportunity to clarify our standards for evaluating attorney fees awards against an abuse-of-discretion standard.

[69]*In re Quinn*, 830 P.2d 282, 285 (Utah App. 1992).

[70]*Dixie State Bank, supra* note 6 at 992.

[71]*Dixie State Bank, supra* note 6 at 992. This last consideration is a catch-all which may include some, or all, of the other factors considered in awarding attorney fees. Although appropriate because of the many possible issues which may arise in evaluating the reasonableness of an award of attorney fees, because of the broad nature of the fourth step, the Utah Supreme Court's attempt to "clarify" the "standards for evaluating attorney fee awards" may be less effective than hoped.

[72]The Utah Court of Appeals describes the process as follows: "After consideration of the first three criteria, a trial court can establish a preliminary fee by multiplying the number of *necessary* hours of legal work performed by the appropriate hourly rate." *Quinn, supra* note 69 at 285. The court then noted that "after the preliminary fee is established, *Dixie's* fourth step asks that courts adjust the amount of that fee, when necessary, to reflect the court's consideration of various criteria set forth in Utah Code of Professional Responsibility DR 2-106." *Id.* The author believes this procedure is incorrect. First, multiplying the necessary hours by the hourly rate completely ignores the first factor, consideration of the legal work actually performed. Second, the author does not read *Dixie* to require consideration of *only* the criteria set forth in the Code of Professional Responsibility. *See Dixie, supra* note 6 at 990 (noting that court should consider whether there are "circumstances which require consideration of additional factors, *including* those listed in the Code of Professional Responsibility") (emphasis added).

[73]*See, e.g. Baldwin v. Burton*, 850 P.2d 1188, 1200 (Utah 1993) (upholding trial court's award of attorney fees based upon mix of factors); *Equitable Life & Cas. Ins. Co. v. Ross*, 849 P.2d 1187, 1194 (Utah App. 1993) (same); *Cottonwood Mall, supra* note 34 at 269 (considering only the factors enumerated in *Cabrera, supra* note 12 at 625); *see also infra* note 72 (discussing failure of Utah Court of Appeals to consider fact that trial court did not consider any of the first three factors enunciated in *Dixie*).

[74]*See Salmon, supra* note 4 at 893 (considering only the factors enumerated in *Cabrera, supra* note 12 at 625).

[75]*See Brown v. Richards*, 840 P.2d 143, 155 (Utah App. 1992) (trial court abused its discretion where "none [of the factors considered] answer[ed] the basic questions posed in *Dixie State Bank*"); *Govert Copier Painting v. Van Leeuwen*, 801 P.2d 163, 174 (Utah App. 1990) (remanding case where, although trial court "explained its reason for reducing the attorney fee award, [it] did not utilize the factors established by appellate courts as relevant to a reduction of fees"); *American Vending Services, Inc. v. Morse*, 881 P.2d 917, 926 (Utah App. 1994) ("[T]he trial court's cursory statement that the requested attorney fees were 'excessive,' failed to show that it had undergone an analysis similar to that contemplated in *Dixie State Bank.*"); *Hoth* at 220; *Rappleye v. Rappleye*, 855 P.2d 260, (Utah App. 1993) (remanding case where findings, "failed to demonstrate that the . . . award was arrived at after proper consideration of the relevant factors for determining the reasonableness of attorney fee awards"); *Mountain States Broadcasting, supra* note 50 at 649 n. 10 (remanding case for determination of "reasonableness" under *Dixie State Bank* factors where trial court had "simply awarded each [party] the total amount of its accumulated billing statements."); *Sorensen v. Sorensen*, 769 P.2d 820, 832 (Utah App. 1989) (reversing award of attorney fees where evidence offered "reflect[ed] only the time spent and the rates charged").

[76]*Quinn, supra* note 69 at 285 n.3.

[77]*Cabrera* appears to involve the consideration of factors not contained in *Dixie*. Specifically, *Cabrera* calls for evaluation of "the difficulty of the litigation," "the amount involved in the case and the result attained," and "the expertise and experience of the attorneys involved." *Cabrera, supra* note 12 at 625. A review of the first three factors in *Dixie* does not yield the obvious conclusion that these factors should be considered.

[78]*Id.*

[79]*Id.*

[80]The rule makes the general statement that the affidavit submitted in support of a request for attorney fees should "affirm the reasonableness of the fees for comparable legal services." *See supra* note 40. While the use of the term "reasonable" could be read to call for consideration of all four *Dixie* factors, the plain meaning of the phrase more likely coincides with only the third factor, the rates customarily charged in the locality for similar services. *See infra* note 81.

[81]Rule 4-505 calls for a description of "the nature of the work

performed by the attorney," probably equivalent to the first *Dixie* factor, the legal work actually performed. The rule also mandates that the affidavit "affirm the reasonableness of the fees for comparable legal services," probably equivalent to the third *Dixie* factor, the rates customarily charged in the locality for similar services. The rule does not, however, call for consideration of the amount of work reasonably necessary to adequately prosecute the matter, or circumstances which may require consideration of additional factors, the second and fourth factors considered in *Dixie*.

[82]*See Estate of Covington v. Josephson,* 888 P.2d 675, 679 (Utah App. 1994) (upholding award of attorney fees where unrebutted affidavit "complie[d] with the requirements of Rule 4-505," noting that "the trial court was not required to take further evidence regarding attorney fees."); *Equitable Life & Cas. Ins. Co. v. Ross,* 849 P.2d 1187, 1194-95 (Utah App. 1993) (finding that trial court's award of attorney fees "is amply supported by the evidence and appears to be reasonable, especially in light of the fact that . . . affidavit with detailed billing statements attached . . . strictly complied with Rule 4-505 of the Utah Code of Judicial Administration."); *LMV Leasing, supra,* note 41 at 198-99 (upholding reasonableness of attorney fees where affidavit complied with Rule 4-505).

[83]"The total amount of the attorney fees awarded in this case cannot be said to be unreasonable just because it is greater than the amount recovered on the contract. The amount of the damages awarded in a case does not place a necessary limit on the amount of attorney[] fees that can be awarded." *Cabrera, supra* note 12 at 625.

[84]*Dixie State Bank, supra* note 6 at 990; *see also Mountain States Broadcasting, supra* note 50 at 649 n.10 (remanding case for determination of "reasonableness" under *Dixie State Bank* factors where trial court had "simply awarded each [party] the total amount of its accumulated billing statements."); *Sorensen v. Sorensen,* 769 P.2d 820, 832 (Utah App. 1989) (reversing award of attorney fees where evidence offered "reflect[ed] only the time spent and the rates charged").

[85]*Dixie State Bank, supra* note 6 at 990. In this regard, the court made the salient point that "[i]t is a simple fact in a lawyer's life that it takes about the same amount of time to collect a note in the amount of $1,000 as it takes to collect a note for $100,000." *Id.*

[86]Although it should be noted that some factors have apparently fallen into disfavor. *See supra* note 60.

[87]One potential way to survive appeal is to argue in favor of implied findings. *See, e.g., Hall v. Hall,* 858 P.2d 1018, 1025 (Utah App. 1993) (findings "can be implied if it is reasonable to assume that the trial court actually considered the controverted evidence and necessarily made a finding"). However, this tactic has not met with favorable results. In *Selvage,* for example, the Utah Court of Appeals rejected the argument that a "fair reading" of the record supported the trial court's award, applying a strict interpretation of the *Hall* test. *Taylor, supra* note 55 at 1265.

[88]In *Taylor, supra* note 88 at 168, the Utah Court of Appeals examined whether the rule "that findings of fact are unnecessary in connection with summary judgment decisions," *Id.* at 168, applied to summary judgment regarding an award of attorney fees. The court found that "[a]lthough it may be unusual for the facts concerning attorney fees to be undisputed, the rule is no different where the subject of the summary judgment is a claim for attorney fees." *Id.* (footnote omitted). In support, the Utah Court of Appeals noted "[o]ther cases recognize that finding are unnecessary to support an award of fees where the relevant facts are undisputed." *Taylor,* at 169 n.6 (citing *Freed Fin. Co. v. Stoker Motor Co.,* 537 P.2d 1039, 1040 (Utah 1975) (attorney fees may be awarded on summary judgment if the record contains a stipulation, an unrebutted affidavit, or evidence supporting the reasonableness of the award); *South Sanpitch Co. v. Pack,* 765 P.2d 1279, 1283 (Utah App. 1988) (uncontroverted testimony concerning amount of reasonable fee provides adequate basis for fee award)). It is also possible that findings in support of an award of attorney fees could be implied, although no Utah court has yet to do so. *See supra* note 87 and accompanying text.

[89]In this regard, a request for attorney fees by summary judgment is no different from any other summary judgment motion. "It takes only one competent sworn statement to dispute the averments on the other side of the controversy and create an issue of fact." *Redevelopment Agency v. Daskalas, supra* note 19 at 1126 (reversing trial court's award of attorney fees where opposing party filed affidavit controverting reasonableness of fee); *see also Provo City Corporation v. Cropper,* 497 P.2d 629, 630 (Utah 1972) (*"[U]nless the parties agree otherwise,* the court is obliged to take evidence on the issue of reasonableness of attorney[] fees and to make findings thereon") (emphasis added); *F.M.A. Financial, supra* (reversing award of attorney fees where no evidence was presented and no findings made because the award "was an issue of fact which was denied").

[90]*See, e.g., Rappleye v. Rappleye,* 855 P.2d 260, 266 (Utah App. 1993) (remanding case to trial court where "trial court articulated no reasonable basis for its ultimate award"); *Saunders v. Sharp,* 818 P.2d 574, 580 (Utah App. 1991) (remanding case to trial court "for an adequate explanation of the amount of fees awarded" where trial court "gave no explanation to support" award); *In re Estate of Quinn,* 784 P.2d 1238, 1249 (Utah App. 1989) ("The absence in the record before us of findings and conclusions on the issue of attorney fees compels remand to the trial court to correct that deficiency in the record), *cert denied,* 795 P.2d 1138 (Utah 1990).

[91]*See supra* note 84 and cases therein discussing failure of trial courts to properly consider the *Dixie* factors.

[92]*Regional, supra* note 32 at 1215.

[93]*See Brown, supra* note 75 at 156 (finding that trial court's findings where "simply too sparse" where "award of attorney fees is a complex matter due to the adjudication of multiple claims arising under several contracts with each party winning some and losing some").

[94]*See, e.g. Selvage, supra* note 55 at 1265 (trial court reduced fees where "the reasonableness of the fee and the supporting affidavit where uncontroverted by the opposing party."); *Regional, supra* note 32 at 1215.

[95]*Martindale v. Adams,* 777 P.2d 514, 517-18 (Utah App. 1989) (emphasis added; *see also Selvage, supra* note 55 at 1265 (noting that "[t]he need for sufficiently detailed findings is especially great where, as here, the reasonableness of the fee and the supporting affidavit where uncontroverted by the opposing party") (quoting *Martindale*); *Regional Sales Agency, Inc., supra* note 32, 1215 ("Findings are particularly important when . . . the trial court has reduced the attorney fees from those requested and supported by undisputed evidence."). In fact, it may be a trial court's duty to reduce an uncontroverted request for attorney fees. *See Hoth v. White,* 799 P.2d 213, 220 (Utah App. 1990) ("A court need not award the entire amount requested, but [it] *must* evaluate the requested fees to determine if a lesser amount is reasonable under the circumstances") (emphasis added). However, although the *Hoth* court cited *Regional, supra* note 32 at 1215, in support of this proposition, it is not clear that *Regional* stands for a *mandatory* evaluation of the fees. *Regional* at 1215 ("[E]ven if there is no opposing testimony . . . [a] trial court *can* evaluate the fees requested and determine a lesser amount is reasonable under the circumstances") (emphasis added). It is also unclear if a court must engage in such considerations if there is no dispute regarding the reasonableness of the requested fees. *See infra* note 88, discussing whether a trial court must make findings in context of summary judgment motion.

[96]*Salmon, supra* note 4 at 901 ("trial court's oral ruling from the bench that [the] bills were 'excessive' is *minimally sufficient* to support the reduction here.") (Zimmerman, C.J., concurring) (emphasis added); *id.* at 899 (upholding award of attorney fees, noting the trial court "need only make findings sufficient to support the ultimate award.") (Russon, J., dissenting).

[97]*Id.* at 894 (declining to award attorney fees where evidence was insufficient and "trial court made no findings to support its reduction, except for the 'finding' that most cases have a cap.") (Durham, J., lead opinion).

[98]*American Vending Services, Inc. v. Morse,* 881 P.2d 917, 926 (Utah App. 1994) ("[T]he trial court's cursory statement that the requested attorney fees were 'excessive,' failed to show that it had undergone an analysis similar to that contemplated in *Dixie State Bank.*").

[99]*Supra* note 55 at 1252.

[100]*Id.* at 1265 (quoting trial court's findings of fact).

[101]Interestingly, none of the first three factors in *Dixie* were discussed. *Id.* The Utah Court of Appeals did not comment on the propriety of the trial court's approach, presumably because the findings were so inadequate as to allow proper review. *Id.*

[102]*Id.*

[103]*Id.* at n. 12. As an example, the Selvage court referred to *Willey v. Willey,* 866 P.2d 547 (Utah App. 1993). In *Willey,* the trial court reduced Mrs. Willey's attorney fees, noting only that the amount of fees was a "very unfortunate use of funds." *Id.* at 556. The court noted that "[w]hile this statement may indicate the trial court believed both parties' fees were unreasonable, it does not constitute a finding addressing the reasonableness of Mrs. Willey's attorney fees. . . ." *Id.*

[104]*Brown, supra* note 75 at 156 ("When a party is contractually entitled to attorney fees, the trial court's findings regarding those fees should be just as complete as its findings regarding other types of contractual damages").

[105]*Quinn, supra* note 69 at 286.

[106]Even if a practitioner does not contest the evidentiary submissions of the party requesting attorney fees, encouraging the trial court to make findings may be worthwhile in the event the trial court reduces fees sua sponte. Without such findings, a sua sponte reduction in fees is certain grounds for an appeal, which will involve additional resources and will almost certainly give an opposing party opportunity to revisit the issue with the trial court, perhaps obtaining a more favorable result.

[107]Although the courts have not required strict adherence to a specific format for findings in support of an award of attorney fees, "[a]s a matter of form, it would [be] preferable for the trial court to have entered separate findings of fact and conclusions of law in addition to the order and judgment for attorney[] fees." *Cabrera, supra* note 12 at 625.

[108]As noted, *supra* notes 67 through 72 and accompanying text, at minimum this should include some discussion of each of the four factors identified in *Dixie.* If additional factors are considered, the trial court should also be encouraged to make findings explaining why the additional considerations are relevant.

[109]*Baldwin v. Burton,* 850 P.2d 1188 (Utah 1993).

[110]*Id.* at 1200.

[111]*James Constructors v. Salt Lake City Corp.,* 888 P.2d 665, 671-72 (Utah App. 1994).

[112]*Smith v. Batchelor,* 832 P.2d 467, 473 (Utah 1992).

[113]*Id.* at 474.

[114]*Id.* (Stewart, J., dissenting).

Judicial Review of Arbitration Awards is Limited

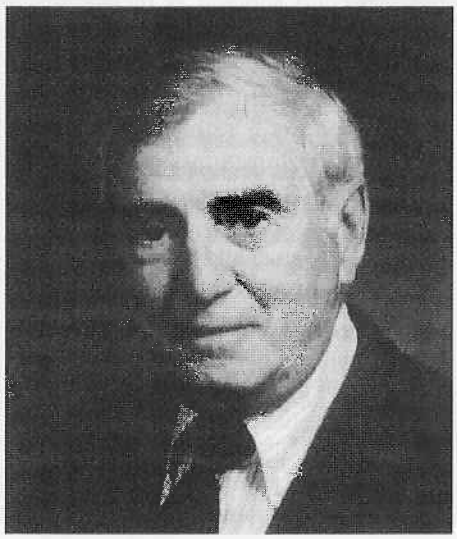
By Peter W. Billings, Sr.

In early October 1996, the Utah Supreme Court issued an opinion, written by Chief Justice Zimmerman and in which all other four justices concurred, resolving a number of issues on judicial review of arbitration awards. A *Salt Lake Tribune* editorial called the decision "the right call," noting "the justices rightfully protected the arbitration process."

The case, *Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.,* No 950351, filed October 4, 1996, involved judicial review of an arbitration award on two issues arising out of a rather arbitrary takeover of the Salt Lake City baseball territory by the Portland Beaver team in the Pacific Coast League, a league just below the two major leagues. The Salt Lake franchise had been held by the Salt Lake Trappers as a team in the Pioneer League which operated at the lowest level of professional baseball. The two teams had agreed to arbitrate how much the Buzas had to pay the Trappers as "just and reasonable compensation" for taking (drafting) the territory and how much for "predraft" damages. "Drafting" is the term in baseball law for the taking of an area franchise by a higher league team. The taker must pay the loser "just and reasonable compensation" for the loss of the franchise.

A panel of five arbitrators granted the Trappers an award of $552,150 as predraft damages and $1.2 million for "just and reasonable compensation" for the drafting of the Salt Lake territory. Buzas sought to set aside the award by filing an action in the Third District Court. That court, after protracted litigation involving a procedure which the Supreme Court charitably described as "somewhat confused," entered an order vacating and modifying the award. The case came before the Utah Supreme Court on the Trapper's appeal from the district court order.

Followers of court review of ADR procedures had expressed some concern[1] that



PETER W. BILLINGS, SR. was a frequent contributor to the Utah Bar Journal. *This article was the last article written by Mr. Billings, who passed away November 10th, 1996. Mr. Billings practiced law for over fifty-six years in Utah and remained active in legal matters until his passing.*

the scope of a judicial review of an arbitration award might destroy the privacy aspect of an arbitration procedure, an aspect that, in many cases, may have been the primary reason for the parties' resorting to arbitration to resolve their dispute. This concern was disposed of early in the Supreme Court's opinion. In footnote 2, Chief Justice Zimmerman wrote:

> We do not rely on the transcript of the arbitration in this opinion. In reviewing an arbitration award, the trial court, and we, must rely solely upon the arbitration award itself and the memorandum agreement which binds the parties and limits the scope of issues to be determined by the arbitration.

If a reviewing court is confined *"solely"* to the award itself, concern about the transcript of the arbitration hearing or the nature of the evidence considered being a public record subject to the First Amendment rights of an inquisitive press should be put to rest.

The most significant aspect of the Supreme Court's opinion was its reiteration of the Utah Arbitration Act as reflecting "a long standing public policy favoring speedy and inexpensive methods of adjudicating disputes." In applying that policy to the nature and extent of judicial review of an arbitration award, Justice Zimmerman noted that the procedure followed in the district court was "antithetical to the policy of expediting judicial treatment of arbitration matters," and that the proper procedure would have been "for Buzas Baseball to file a single motion to vacate or amend, requiring a single response" by the Trappers.

However, the Court refused to reverse the district court order on procedural grounds, because doing so would elevate form over substance. In support of this ruling, the Court cited federal cases applying the Federal Arbitration Act.[2]

Applying rulings under the Federal Arbitration Act, the Supreme Court then discussed standards for review of an arbitration award by the district court. That standard, the court stated, was "extremely narrow," limited to determining whether any of the statutory or judicial grounds for modification or vacation existed. Above all, the Supreme Court noted, the trial court may not substitute its judgment for that of the arbitrator or vacate an award because it disagrees with the arbitrator's assessment. Again relying on federal law, the court noted that courts do not sit to hear claims of factual or legal error by the arbitrators, as an appellate court reviews decisions of lower courts, and that such judicial review of an arbitration award would greatly undermine the speedy resolution of grievances – the primary purpose of arbitration.

The Supreme Court noted that because the district court had substituted its judgment

for that of the arbitrator, it need not further review the judgment below. However, it took the opportunity presented to provide guidance to the trial court on remand and to educate the bar. That education involved the review of each of the grounds specified by Buzas for modifying or revoking the award. The court concluded that, as under the Federal Act, the conclusions of the arbitrator should prevail unless there was no question that the criteria for modifying or vacating an award had been met. After concluding that the criteria had not been met, the Court set aside the district court order and confirmed the award as issued by the arbitration panel.

Having educated the courts below and the Utah Bar on the criteria for modifying or vacating an arbitration award, the court turned to another issue which has troubled both state and federal courts – the extent to which the policies of the Federal Arbitration Act preempt state law on arbitration. The court did so because the issue of attorneys fees for the various stages of judicial review had also arisen and the Utah Arbitration Act expressly provided for an award of costs, to include the attorneys fees, as to which the Federal Arbitration Act was silent.

The court, relying on *Volt Information Services v. Stanford University,* 489 U.S. 468 (1989) and ignoring the preemption fate of the Alabama and Montana statutes in *Dobson*[3] and *Casarotto,*[4] found that authorizing attorneys fees in Utah did not conflict with federal law or stand as an obstacle to the purposes of the Federal Arbitration Act which the court adopted as the purpose of the Utah statute. Accordingly, no preemption would apply. That analysis would appear to be correct. The Utah statute did not purport to give grounds for refusal to enforce an agreement to arbitrate as was the case in Alabama for *Dobson* and Montana for *Casarotto.*

In the Utah baseball franchise arbitration case, the only issues left are the attorneys fees to be awarded to the Trappers for defending the arbitration award in the district court and attorneys fees to the Trappers for overturning the district court's erroneous ruling modifying the award. Neither of these issues would affect the enforceability of the agreement to arbitrate which is the federal test for preemption.

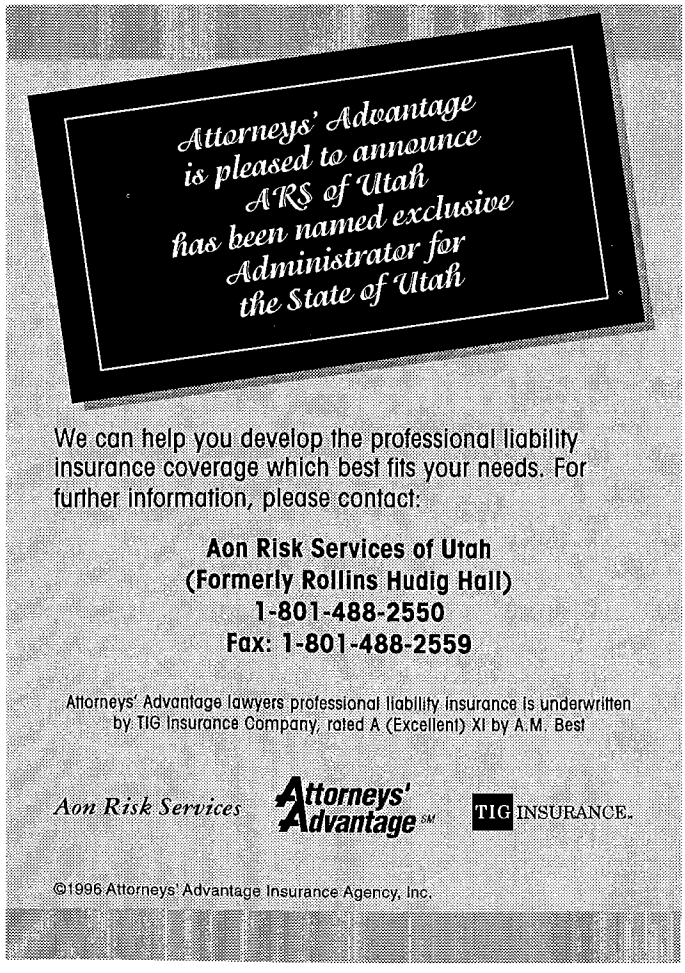
The Utah Supreme Court's extensive decision in the baseball franchise case will limit the scope of future judicial review of arbitration awards. The bar should join the *Tribune* in applauding the court's promotion of arbitration as an effective and expeditious means of dispute resolution by limiting judicial review of arbitration awards to insure the proceeding was fair and the substantive rights of the parties were respected.

[1] *See* "ADR and Access to the Court," *Utah Bar Journal,* Vol. 8, No. 10, December 1995.

[2] 9 U.S.C. §§ 1-14.

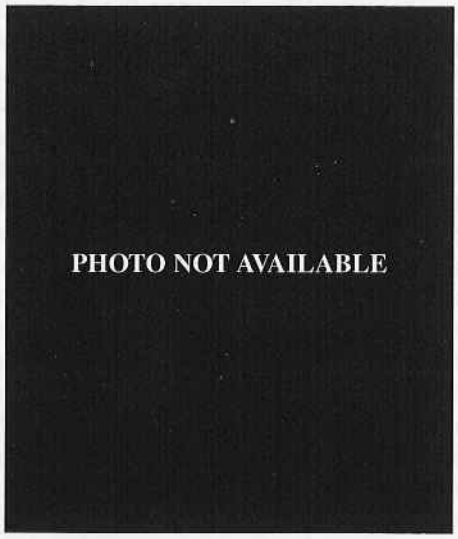
[3] *Allied-Bruce Terminex Co. v. Dobson,* 513 U.S. 265 115 Sup. Ct. 834, 130 L. Ed. 2nd 753 (1995).

[4] *Doctors Associates v. Casarotto,* 78 ATRR 440 (4-18-96).

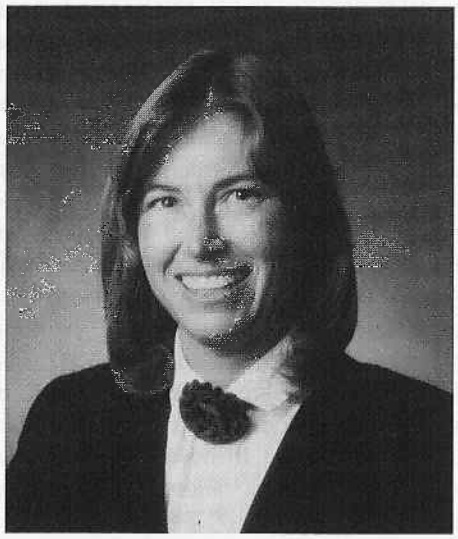


Fundamentals of Wage and Hour Law in Utah

By Brian C. Johnson and Gayanne K. Schmid



BRIAN C. JOHNSON is President and Chief Executive Officer of Viersen & Cochran which is an Oklahoma based oil and gas production company. He is also of counsel at the Salt Lake City law firm of Johnson & Hatch. He regularly defends institutional and individual clients against discrimination claims brought in federal and state courts, as well as before administrative agencies. He also negotiates labor union agreements on management's behalf in a variety of industries, and has been intimately involved in the union election and decertification process. Mr. Johnson served as law clerk to the Honorable Stephanie K. Seymour of the United States Tenth Circuit Court of Appeals, and as a Thornton Bradshaw Fellow at the Claremont Graduate School. He received his B.S. degree, magna cum laude *from Brigham Young University, and was a Phi Kappa Phi Honor Society member. Mr. Johnson received his law degree from the University of California, Hastings College of Law where he was a member of* The Hastings Law Journal, *the Order of the Coif and the Thurston Honor Society.*



GAYANNE K. SCHMID is a labor and employment attorney in private practice. Her areas of expertise include wrongful termination, sexual harassment ,wage and hour, employment discrimination, review and drafting of policy manuals and litigation. She is a frequent seminar speaker on these topics. Ms. Schmid received her undergraduate and J.D. degrees from the University of Michigan. She is a member of both the Utah and California Bar Associations. She is admitted to practice before the Supreme Courts of California and Utah, the United States District Court, Districts of Utah, Western District of Michigan and Central, Eastern and Northern Districts of California and the United States Court of Appeals for the Ninth and Tenth Circuits. Ms. Schmid also serves as a mediator for the American Arbitration Association, the Federal District Court of the State of Utah and for the Industrial Commission of Utah – Anti-Discrimination Division.

INTRODUCTION

Utah law governing wage and hour issues in employment is largely derived from the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* ("FLSA"). The FLSA establishes standards and requirements in several areas including wages, hours, and child labor. The FLSA is supplemented in certain areas by Utah law. This article provides the Utah general practitioner with an overview of the FLSA and certain state laws that govern the employer-employee relationship.

FLSA COVERAGE

The FLSA is pervasive in its coverage. Its provisions regulate all employment relationships affecting interstate commerce. "Employ" means simply "permitting an individual to work." FLSA § 203 (g). An employer only need have knowledge of

work by another with an expectation of payment to be covered by the FLSA. No contract of work is required. The interstate commerce requirement imposed by the FLSA is modest and nearly always met. An employer is covered when its annual gross sales are not less than $500,000, and two or more of its employees are engaged in (1) interstate commerce on a regular basis, however slight; (2) production of goods destined for interstate commerce; or (3) working on goods originating out of the State of Utah. *See* FLSA § 203 (s) (1).

Hospitals, nursing homes and schools are specifically covered by the FLSA. FLSA § 203 (s) (1) (b). Public agencies are also generally covered. FLSA § 203 (s) (a) (c). Significantly, where an employee is engaged in work covered by the FLSA and work not covered by the FLSA during the same work week, the FLSA's provisions are applicable to that employee for the entire week because statutory protections are based on the work week and not on the work day.

Important exceptions to the FLSA's broad coverage exist. For instance, family businesses are not covered by the FLSA where the only regular employees of the business are members of the owners' immediate family. FLSA § 203 (s) (2). Additionally, employees of legislative branches of state and local governments which are not subject to public employer's civil service laws are not covered by the FLSA. FLSA § 203 (e) (2) (c). Elected public officials and their appointed personal staff members are also not covered by the FLSA. *Id.* Most importantly, for the general practitioner, certain employees otherwise subjected to the coverage of the FLSA are exempt therefrom based on the quality or type of work they perform.

Whether an employee or group of employees may be classified as exempt, and therefore not subject to the FLSA's minimum wage and overtime requirements, presents one of the most difficult problems for employers. The standards applied to measure the availability of an exemption are far more rigorous and demanding that most employers and lawyers realize. Job titles, for example, are probably the least determinative factor. Many employers simply rely on the payroll practices of the past and do not take the time to conduct the analysis that would have revealed proper classifications. They are then painfully surprised to learn they are responsible for paying back overtime wages to employees that should have been classified as "non-exempt".

The FLSA has recognized certain established groups of employees as being exempt. The principal exempt classifications include: (1) professional employees, such as pilots, accountants, doctors, etc.; (2) administrative employees, such as personnel directors, and executive secretaries; (3) executive employees who are decision makers for a business enterprise; (4) true outside salespersons who spend the majority of their time selling products or services; (5) employees at seasonal amusement or recreational establishments, organized camps and religious or non-profit educational centers; (6) agricultural employees, such as farmers; (7) babysitters and companions for the aged or infirm; (8) taxicab drivers; (9) domestic employees who work and reside in a household; (10) motion picture theater employees; (11) employees of retail or service establishments who receive most of their compensation and commissions, and whose regular rates of pay exceed one-and-one-half times the minimum wage.

"Whether an employee may be classified as exempt from the FLSA presents one of the most difficult problems for employers."

Employees who are properly classified as exempt must satisfy a two-prong test. First, they must fall within one of the categories generally described above. Second, they must receive a certain level of remuneration for their efforts. As to this latter requirement, the employee must be paid on a salaried basis. The idea is that the individual is compensated based on the overall value of the services rendered and not on the length of time it takes to perform the services. Thus, an employer jeopardizes the employee's exempt status if it deducts from an exempt employee's pay partial absences during the day and/or for unsatisfactory or insufficient work. Of course, an employer is not required to pay an exempt employee for a work week in which he or she performs no work or for days where that employee is absent for personal reasons other than illness or accident. The general idea though is that a salaried employee is required to work until his or her job is completed and do not have to account for time spent doing so.

To be classified as an exempt employee, the salary paid must be a minimum amount which varies according to the employee's job duties. For example, to satisfy the current requirements for an executive or administrative exemption under the streamlined test, an employee must receive at least $250 a week on a salary basis. Employees who make less than $250 a week but more than $155 per week may still qualify under the executive or administrative exemption if they satisfy more stringent job requirements.

The mere fact that the individual is paid a salary, however, is not determinative. The employer must still demonstrate that he or she satisfies the duty standard. The employer must analyze with its counsel whether the employee's job duties or responsibilities comply with the federal requirements for the exemption. As noted previously, job titles have little or no significance.

The watchword for the executive exemption is supervision. An individual who qualifies as an exempt executive is one who primarily supervises other employees. Conceptually, this category includes individuals who are not strictly executives, such as supervisors or managers.

An employee who receives a salary of at least $250 a week will qualify for the executive exemption if: (1) the employee's primary duty consists of the management of the employee's enterprise or of a customarily recognized department or subdivision; and (2) the employee customarily and regularly directs the work of two or more other employees.

An employee who receives a salary of less than $250, but at least $155 per week, will qualify for the executive exemption if, in addition to the duties described above, the employee (1) has the authority to hire or fire employees and/or to make suggestions and recommendations concerning hiring, firing, advancement, or other status changes of employees; (2) customarily and regularly exercises discretionary powers; and (3) devotes less than 20 percent of his or her time to non-exempt work.

Employees who qualify under the administrative exemption typically do not supervise other employees. Instead, they serve as executive or administrative assistants, work in some sort of staff capacity, or perform special assignments. Once

again, it is the duties that the administrator performs and not his or her job title that determine exempt status.

An employee who receives a salary of at least $250 a week will qualify for the administrative exemption if: (1) the employee's primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations; and (2) the employee performs work requiring the exercise of discretion and independent judgment.

An employee who receives a salary of less than $250 but at least $155 a week will qualify for the administrative exemption if, in addition to the duties described above, the employee (1) either regularly and directly assists a proprietor or an employee employed in an executive or administrative capacity, or performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; or executes special assignments and tasks under only general supervision; and (2) the employee devotes less than 20% of his or her time to non-exempt work.

The professional exemption is typically limited to those whose work is licensed, such as medicine, engineering, law, accounting, etc. An employee who receives a salary of at least $250 a week will qualify under the professional exemption if: (1) his or her primary duty is to perform work requiring advanced knowledge in a field of science or learning; and (2) the employee's primary duty is to perform work requiring the consistent regular exercise of discretion and judgment. Additionally, an employee who receives a salary of at least $250 a week will qualify under the professional exemption for artistic professions if he or she performs original and creative works, such as theater, music, and the arts, requiring invention, imagination and talent. An employee who receives a salary of less than $250 but more than $170 per week will qualify for the professional exemption if: (1) he or she performs work that requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of intellectual instruction and study or is original and creative in a recognized field of artistic endeavor or involves teaching, tutoring, instruction, or lecturing as a teacher in the school system or educational establishment; and (2) the employee performs work requiring the exercise of discretion and independent judgment; and (3) the work must be predominantly intellectual and varied and of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (4) the employee devotes less than 20 percent of his or her time to non-exempt work.

The FLSA also recognizes certain groups of employees as partially exempt from its overtime requirements, i.e. they receive overtime but not on the same basis as regular non-exempt employees. Those employees include hospital employees working a 14 day work period (they earn overtime for hours worked in excess of eight in a workday and 80 during the 14 day work period,) fire protection and law enforcement employees of public employers who are not otherwise exempt (law enforcement employees earn overtime for hours worked in excess of 171 hours in a 28 day period and fire protection employees earn overtime for hours worked in excess of 212 during a 28 day work period) and private employees of entities providing services in national parks (they receive overtime for hours worked in excess of 56 in a work week.)

"Neither federal nor Utah State wage and hour law define the term 'independent contractor."

Independent contractors present a unique situation for purposes of the FLSA and its regulations. Many employers mistakenly believe that they can avoid the FLSA standards by classifying their workers as independent contractors. Although it is true that independent contractors are not considered to be employees for federal and state wage and hour purposes, and do not receive overtime or minimum wages, the improper classification of an employee as an independent contractor is fraught with great peril. An employer who does so may be fined and may be required to pay back taxes and interest for the reclassified employee.

Unfortunately, neither federal nor Utah State wage and hour law define the term "independent contractor." Moreover, there are different tests, depending on the government agency or law applied. Fortunately, some important guidelines for evaluating the status of a worker as either an employee or independent contractor exist.

One of the most important tests – and the Utah common law standard – for determining whether a working relationship constitutes an independent contractor relationship is the "right to control." If the worker has the right to control the means and manner of accomplishing the result of his or her work, he or she will typically be categorized as an independent contractor. A second standard frequently applied in evaluating working relationships is to view the "economic realities". If the individual performing the work is economically dependent upon the employer, then an individual is likely to be found to be an employee.

Other factors used in evaluating working relationships to determine whether they constitute employer/employee or independent contractor include: (1) the extent to which the worker's services are integral to the business; (2) the worker's investment in facilities and equipment; (3) the worker's relative opportunity for profit and loss; (4) the skill, initiative, judgment, or foresight

required by the worker; (5) the permanency of the relationship between the worker and employee; (6) the right to hire and fire; (7) who furnishes the worker's equipment; and (8) the method of payment, i.e., whether in wages or fees, as compared to payment for a complete job or project.

MINIMUM WAGE AND OVERTIME REQUIREMENTS

The FLSA requires that each employee, not otherwise exempt from the FLSA, receive a specified minimum wage and one-and-one-half times that wage for hours worked in excess of 40 hours during a work week. There are exemptions from the minimum wage requirement. Waiters and waitresses, for example, are essentially exempt from the FLSA's minimum wage provisions, where they earn more than $30 monthly in tips. FLSA § 203 (m) and FLSA § 204 (t). Utah has also established certain exemptions from the minimum wage requirement. They include: (1) outside sales persons; (2) casual and domestic employees; and (3) apprentices or students.

The amount of money due an employee for straight time or overtime cannot be determined without understanding what constitutes working time. Working time includes the main activities of regular work, as well as tasks incidental to regular work, such as picking up mail, completing paper work, waiting time during regular work hours and travel time during regular work hours. (*See e.g., Dunlop v. City Electric, Inc.,* 527 F.2d 394 (5th Cir. 1956). Significantly, work that is not requested by the employer, but is knowingly allowed by the employer, constitutes working time. *Handler v. Thrusher,* 191 F.2d 120 (10th Cir.).

Hours worked excludes commuting, activities not integrated with main work activities where performed after regular hours, required clothes changing and wash-up time (unless specifically included under a collective bargaining agreement,) on-call time (where the employee is only required to leave a telephone number where he or she can be reached,) and similar situations.

All rest periods are compensable work time if they are less than 20 minutes in length. Meal periods over 30 minutes in length do not constitute compensable work time if the employee is free and unrestricted by the employer during such time periods, even when the employee is not allowed to leave the work premises. Finally, sleeping time is not compensable work time where the employee is on duty for less than 24 hours. Where an employee is on duty for more than 24 hours, an agreement may be reached between the employee and employer for up to eight hours of excludable time, provided that the employee's sleep time is not interrupted for at least five hours and adequate sleeping facilities are provided by the employer to the employee. *Armour & Co. v. Wantock,* 323 U.S. 126 (1944).

Whether waiting time constitutes compensable work time depends on the particular facts in each situation. The test for the general practitioner to keep in mind is whether the employee is "engaged" or "waiting to be engaged". *Skidmore v. Swift,* 323 U.S. 134 (1944).

Inactivity may constitute working time if it occurs during an on-duty period. Only where the employee is completely relieved of duty long enough to use the time for his or her own purposes is the employee not on working time. If an employee is "on call", that is generally considered compensable work time, except in those situations where the employee is not required to be anywhere, but instead, merely reachable by the employer.

Training workshops and professional meetings do not constitute compensable work time under most circumstances. The general presumption is that training workshops and professional meetings where attendance is voluntary, and no work is performed do not constitute compensable work time.

The overtime regulations created by the FLSA do not prohibit overtime work, but merely set a floor for calculating the amount earned. That floor is one-and-one-half-times the employee's regular hourly rate for each hour worked over 40 during a work week. FLSA § 207 (a) (1). The regular rate of pay includes wages, salaries, shift differentials, commissions, piece-work earnings, non-cash wages, on-call pay, guaranteed incentives, and other non-discretionary bonuses. Non-cash wages in the form of board, lodging, or related facilities are valued at reasonable cost. FLSA § 203

(m). Exclusions from the regular rate include discretionary bonuses, gifts, paid for time not worked (for example – holidays, vacations, sick, and funeral leave, jury duty), expense reimbursements, profits or contributions, pension contributions, and similar items.

The traditional calculation of overtime is relatively easy. An employee's normal hourly rate is multiplied by one-and-one-half times, and is simply multiplied by the number of hours over 40 worked by that employee in a given week.

The FLSA and Utah State law, however, permit certain employers to use a "fluctuating" work week method to calculate overtime pay for fixed-salaried employees. Under this method, an employer's regular rate equals the employee's total reimbursement for work performed during the work week, including commissions, divided by the number of hours the employee works. The overtime pay is then computed by multiplying one-half the regular rate of pay by the number of hours worked in excess of 40 during that week. This method results in a declining incentive to work overtime.

To qualify for the fluctuating work week method of overtime compensation, the employer must satisfy two criteria. First, employees must be paid a fixed weekly salary, regardless of hours worked. Accordingly, the employer should take care that each employee's base compensation is expressed as a weekly salary, rather than as a daily or hourly rate. Otherwise, authorities may look to the expressed base hourly or daily compensation rate to determine the regular rate of pay, rather than the weekly rate of compensation divided by the number of hours worked. Second, the fluctuating work week method applies only where an understanding exists between the employer and the employee that the employee will receive a fixed weekly salary, regardless of the number of hours worked. Although oral agreements are enforceable, it is advisable to memorialize the understanding, at least in the employee handbook, if not in a written agreement.

WAGE PAYMENT ISSUES

In Utah, there are a number of statutes that ensure prompt and full payment of wages. The wages earned by an employee are due and payable twice each calendar month, on days designated in advance by the employer as regular paydays. The employer must pay for services rendered during each semi-monthly period within ten days after the close of that period. If the regularly scheduled payday falls on a Saturday, Sunday, or legal holiday, the employer must pay the earned wages on the preceding day.

Employers who hire employees on a yearly salary basis may pay the employee monthly. Payment is due by the seventh day of the month following the month in which the services were rendered.

Employers are required to notify all employees at the time of hiring of the day and place of payment and their rate of pay. Employers must also provide advance notice of any changes with respect to these terms. The information can be incorporated in an offer letter or employment agreement, set forth in the company's employee handbook, or posted in a conspicuous place, such as the company bulletin board. Failure to keep posted the payroll notice or failure to give the notice constitutes a misdemeanor.

"It is unlawful for an employer to withhold or divert any part of an employee's wages unless an employee authorizes it."

The employee must be able to cash his or her payroll check with ease. Accordingly, the employer is required by law to provide a negotiable check, order, or draft that is payable in cash, on demand, at full value. Employers may also satisfy the requirement of paying wages by direct deposit into an employee's account, provided that the employee provides written authorization to do so.

Employers are required by law to make certain regular deductions from employee paychecks, such as for taxes, government sponsored benefits, child support, and so forth. In fact, all non-custodial divorced parents in Utah are subject to mandatory withholding for child support. Employers who receive employee authorizations may also make deductions for discretionary items, such as medical insurance premiums. Employers must furnish employees a statement showing the total amount of each deduction from their paychecks.

Generally speaking, it is unlawful for an employer to withhold or divert any part of an employee's wages unless an employee authorizes it, a court orders it, or the employer can convince the hearing officer or administrative law judge that circumstances warrant the offset.

Regulations promulgated by the Industrial Commission recognize the following as proper deductions or offsets from wages: (1) Internal Revenue Code deductions; (2) Social Security and FICA deductions; (3) Utah city, county, or state tax deductions; (4) sums deducted as dues to labor or professional organizations; (5) sums deducted for the employee's participation in any insurance plan, provided that the employee authorizes it and the deduction terminates upon written revocation; and (6) deductions for repayments by employees for goods, services, tools, and/or equipment damages suffered by the employer due to the employee's negligence or criminal conduct, but only when the employee has knowledge of the policy and consents to it in writing. It is unlawful for an employer to require an employee to rebate, refund or offset wages to be paid, except where required by court order, authorized by the employee in writing or if the employer can present evidence to an administrative law judge or hearing officer justifying the offset. Nothing prevents the employer, however, from pursuing claims for offsets in a civil action against the employee.

When an employee is fired, his or her unpaid wages are due immediately and must be paid within 24 hours of the time of separation at the employee's place of employment. There is an exception to this rule for earnings of a sales agent who is employed on a commission basis. In that circumstance, the employer need not pay the commission within 24 hours if the amount due can be determined only after an audit or verification of sales and accounts. If an employee quits and does not have a written contract for a definite period, his or her unpaid wages need only be paid on the next regular payday.

Utah law provides for a penalty of up to 60 days wages where the employer fails and/or refuses to pay wages due a terminated employee within the required 24 hours. An employee must make a written demand for payment of those unpaid wages to be entitled to a penalty award.

Upcoming International Conferences from Rocky Mountain Mineral Law Foundation

International Petroleum Transactions
March 2, 1997 (Denver)

International Resources Law – Today's Oil, Gas and Mining Projects
co-sponsored with International Bar Association
March 3-4, 1997 (Denver)

International Environmental Law for Natural Resources Practitioners
March 5, 1997 (Denver)

Attorneys Needed to Assist the Elderly

Needs of the Elderly Committee Senior Center Legal Clinics

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

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

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

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

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

Employees are also entitled to receive attorney's fees if they make written demand upon an employer at least 15 days before suit is brought. The civil action must be brought within 60 days from the employee's termination date.

Where the amount of unpaid wages is disputed, the employer must notify the employee in writing regarding the amount of wages which the employer concedes to be due and payable. The employer is then obligated to pay the undisputed amount to the employee within the time limits established by Utah law. The employee can cash the partial payment with impunity, since acceptance of such payment will not constitute a release of the balance of the employee's claim.

Every employer must keep a true and accurate record of time worked and wages paid each employee during each pay period on a form specified by the Utah Industrial Commission. The employer is required to keep the records on file for at least one year after the entry of a record. The Industrial Commission may take assignments of wage claims and may enter any place of employment during business hours and inspect employment records to ensure compliance with the wage laws. It is unlawful for an employer to fire or threaten to fire an employee because he or she brings a wage claim against the employer.

CONCLUSION

The laws governing wages and hours impact nearly every Utah employer and consequently nearly every Utah lawyer. While this article provides an overview for the general practitioner, attorneys should consult the relevant federal and state law before offering employment advice.

Commission Highlights

During its regularly scheduled meeting of November 1, 1996, held in Salt Lake City, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the October 4, 1996 meeting.
2. Bar President Steve Kaufman introduced and welcomed Sanda Kirkham to the Bar Commission as an ex officio member representing the Legal Assistants Division of the Bar.
3. Steve Kaufman reported that the public education project is in full swing. Public service messages have been appearing in all of the major papers and in some of the smaller papers.
4. Kaufman reported that the Utah Supreme Court has approved the "Boise Protocol," which will allow an attorney to take a CLE course in Idaho, Oregon, Utah or Washington and get CLE credit in the state in which they are licensed.
5. Kaufman expressed thanks for the support of those Commissioners who were able to attend the October 15 Admissions Ceremony.
6. Paul Moxley briefly reported on his involvement with the ABA's Central European & Eastern Law Initiatives.
7. Ethics Advisory Opinion Committee Chair Gary Sackett reviewed his committee's report on the Bar Commission proposal to change the committee's Rules of Procedure.
8. The Board voted to approve Opinion No. 96-08 which concludes that if there is no violation of Rule 3.11, an attorney may undertake to represent a client who seeks monetary recovery under a "finders fee" agreement with another attorney.
9. The Board voted to approve opinion No. 96-09 as proposed which concludes that there is no prohibition against an attorney's hiring another attorney to collect the debts of the first attorney, even though the two attorneys are in the same law firm; whether the second attorney may collect attorney's fees from the debtor is a question of law.
10. Bar Examiners Committee Chair Rusty Vetter reviewed the bar examination testing and grading process.
11. Debra Moore recommended the Bar Commission issue a press release on the findings and recommendation of the Equal Administration of Justice Commission ("EAJ").
12. The Board voted to have the Bar Commission provide copies of the EAJ Commission's report to various entities and agencies.
13. Debra Moore reported on her review of the proposed amendments dated September 13, 1996 to the Supreme Court rules and pointed out areas of concern for board discussion.
14. Debra Moore, Denise Dragoo, James Jenkins and D. Frank Wilkins reported on those Bar sections and committees to which they are a Bar Commission liaison.
15. Cheryl May of the Administrative Office of the Courts and Judge Robin Reese presented a video which will now be shown to prospective jurors.
16. John Baldwin gave a follow-up report on the Bar's petition to the Planning Commission to change the zoning of the property south of the Law & Justice Center. He noted the hearing was put off until December, and he reminded the Board of upcoming meetings with members of the Planning Commission.
17. Chief Disciplinary Council Steve Cochell reported on current litigation issues and indicated that there was a favorable result in the *Spafford* and *Caldwell* matters.
18. Associate General Counsel, Katherine A. Fox, distributed and reviewed a report summarizing unauthorized practice of law complaints, financial summary information, and new policies and procedures.
19. Budget & Finance Committee Chair, Ray Westergard, reviewed September financial reports and membership statistics as of mid-October.
20. ABA Delegate James B. Lee distributed an ABA questionnaire on the legislative and government priorities of the ABA for 1997.
21. Representative to the Legal Assistants Division, Sanda Kirkham, reported on current activities.
22. Bea Peck reported on activities of the Women Lawyers of Utah.
23. Young Lawyers Division President Daniel D. Andersen reported on activities of the Young Lawyers Division.
24. James C. Jenkins reviewed the recent Judicial Council meeting.

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

Food and Clothing Drive Participants and Volunteers

We would like to thank all participants, volunteers and the executives of the Utah and Salt Lake County Bar Associations for their assistance and kind support in this year's Food and Clothing Drive. Through these persons' efforts, this was the most successful Drive we have had during the seven years we have been in existence. Over seven truck loads of food and clothing and several thousand dollars were contributed and distributed to the participating shelters. Special attention was paid to gleaning new and nearly new articles of women's and children's clothing and toys for personal delivery to the YWCA Women and Children in Jeopardy program; these articles, together with contributed funds, were a special addition to the Christmas gifts which were distributed to this program's well deserved participants. The bulk of the clothing was delivered to the Rescue Mission, which has a policy of promptly distributing donated items to homeless families and individuals. The generosity of all in contributions in kind and effort reflected the spirit of Christmas.

Leonard W. Burningham
Toby Brown
Sheryl Ross

1997 MID-YEAR MEETING PROGRAM

THURSDAY, MARCH 6, 1997

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

Sponsored By: Jones, Waldo, Holbrook & McDonough

FRIDAY, MARCH 7, 1997

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

Sponsored By: Parsons Behle & Latimer

8:00 a.m. **Opening General Session** - Sabra Rooms
Welcome and Opening Remarks

8:15 a.m. **The Art of Persuasion** **(1)**
Sabra Rooms
Alvin Joseph Lacabe, Jr., Davis, Graham & Stubbs
Sponsored By: Litigation Section
Minority Bar Association

9:05 - 9:30 a.m. **Break** - *Hotel Lobby*

Sponsored By: Campbell Maack & Sessions
Corporon & Williams
Dart, Adamson & Donovan
Green & Berry

9:15 a.m. - 12:30 p.m. **Kid's Fiesta Fun Activity** - *Meet at Fiesta Fun - Family Fun Center, 171 E. 1160 S.*

9:30 a.m. **Breakout Sessions:** **(1 each)**

1 **ETHICS: How to Avoid Legal Malpractice** - *Hilton Inn*
Thomas L. Kay, Snell & Wilmer

2 **Expediting Presentation of Evidence in Civil and Juvenile Proceedings** - *Holiday Inn*
Hon. Michael J. Glasmann, 2nd District Court
Hon. Robert K. Hilder, 3rd District Court
Hon. Kay A. Lindsay, 4th District Juvenile Court

3 **Non-Conventional Contractual Opportunities to Develop School and Institutional Trust Lands** - *Hilton Inn*
John Andrews, Utah Attorney General's Office

4 **Back to Basics: Divorce** - *Holiday Inn*
Mary C. Corporon, Corporon & Williams
Comm. Michael S. Evans, 3rd District Court
Paul F. Graf, Utah Attorney General's Office
Michael R. Shaw, Jones, Waldo, Holbrook & McDonough

10:20 - 10:30 a.m. **Break** - *Hotel Lobby*

Sponsored By: Real Property Section

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

5 **ETHICS: The Ethics of Selling a Law Practice** - *Holiday Inn*
Presented by: Members of the Small Firm/Solo Practitioners Committee

6a **The Use of AIA Construction Contracts in Building: The Owner's Perspective** - *Hilton Inn*
Robert F. Babcock, Walstad & Babcock
Craig R. Mariger, Jones, Waldo, Holbrook & McDonough

7a **The Art and the Law of Jury Selection in Utah** - *Holiday Inn*
Hon. Pat B. Brian, 3rd District Court
Richard D. Burbidge, Burbidge & Mitchell
Gordon W. Campbell, Moxley Jones & Campbell
Francis J. Carney, Suitter Axland
Scott Daniels, Snow, Christensen & Martineau
David J. Jordan, Stoel Rives Boley Jones & Grey

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

Sponsored By: Women Lawyers of Utah

11:35 a.m. **Breakout Sessions:** **(1 each)**

6b **The Use of AIA Construction Contracts in Building: The Contractor's Perspective, cont.**

7b **The Art and the Law of Jury Selection, cont.**

8 **Tax Concerns for the General Practitioner** - *Hilton Inn*
Aric M. Cramer, Halliday, Watkins & Henrie

9 **Why Good Trial Lawyers Lose on Appeal**
Hon. Pamela T. Greenwood, Utah Court of Appeals
Hon. Michael J. Wilkins, Utah Court of Appeals

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

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

1:30 p.m. **Golf Tournament** - *Sunbrook Golf Course*

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

7:00 p.m. **Reception** - *Holiday Inn Lobby*

Sponsored By: Michie Company

7:30 p.m. Dinner - *Holiday Inn Sabra Rooms*
Speaker: Professor James D. Gordon, J. Reuben Clark Law School, Brigham Young University
Sponsored By: VanCott, Bagley, Cornwall & McCarthy

SATURDAY, MARCH 8, 1997

8:00 a.m. **Registration/Continental Breakfast** - *Hotel Lobby*

Sponsored By: Ray, Quinney & Nebeker

8:30 a.m. **ETHICS General Session** - (1)
Holiday Inn Sabra Rooms
Do's and Don'ts of the Attorney - Client Relationship
Richard G. Brown, Kimball, Parr, Waddoups, Brown & Gee
Kathleen Handy, District Claims Manager, Nationwide Insurance
Bruce Hancey, President, Founders Title
Ken Johnson, Geneva Steel General Counsel
Toni M. Sutliff, Franklin Quest
Sponsored By: Kimball, Parr, Waddoups, Brown & Gee

9:20 - 9:45 a.m. **Break** - *Hotel Lobby*

Sponsored By: Richards, Brandt, Miller & Nelson

9:45 a.m. **Breakout Sessions:** (1 each)

10 **The Future of Access to Justice in Utah: A Request for Comments** - *Holiday Inn*
Presented by the Access to Justice Task Force Co-Chairs - Chief Justice Michael D. Zimmerman, and Dennis V. Haslam, Past President, Utah State Bar

11 **School Law Issues for Lawyers Who Are Also Parents** - *Hilton Inn*
David S. Doty, Davis County School District
William T. Evans, Utah Attorney General's Office
Carol B. Lear, Utah State Office of Education

12 **Government's Attempt to Lessen the Pain: Recent Dramatic Reforms in the Law of Government Contracts** - *Holiday Inn*
Michael L. Bell, Alliant Techsystems Inc.

10:35 - 10:50 a.m. **Break** - *Hotel Lobby*

Sponsored By: Farr, Kaufman, Sullivan, Gorman, Jensen, Medsker, Nichols & Perkins
Snow, Nuffer, Engstrom, Drake, Wade & Smart

10:50 a.m. **Breakout Sessions:** (1 each)

13 **Utah Small Claims Court**- *Hilton Inn*
Michael W. Crippen, Small Claims Judge Pro Tem, 3rd District Court

14 **Welfare Reform: Legislative Changes to the Structure of the Family** - *Holiday Inn*
Helen Thatcher, Office of Family Support
Dean Lee E. Teitelbaum, University of Utah College of Law

15 **Employee Discipline Under the Americans With Disabilities Act** - *Holiday Inn*
J. Mark Ward, Utah Attorney General's Office

11:40 - 11:50 a.m. **Break**

Sponsored By: Salt Lake County Bar Association

11:50 - 3:00 p.m. **Salt Lake County Bar Film** (2)
Presentation and Discussion: ***Murder in the First*** - *Sabra ABC*
Hon. Timothy R. Hanson, Third District Court
Hon. Leslie A. Lewis, Third District Court
Ronald J. Yengich, Yengich, Rich & Xaiz

3:00 p.m. **Meetings Adjourn**

Discipline Corner

PUBLIC REPRIMAND

On January 6, 1997, the Honorable David S. Young, Third District Court Judge, entered a Stipulation and Order Regarding Imposition of Reciprocal Discipline imposing a public reprimand on Karen S. Peterson based on public discipline imposed by the Wyoming Supreme Court on August 28, 1996, for Respondent's violation of Rule 8.2(a), Improper Statements Regarding a Judicial Official. The Court adopted the report and recommendation of the Board of Professional Responsibility (the "Board") of the Wyoming State Bar.

In May 1995, the Respondent filed a pro se lawsuit in the United States District Court for the District of Wyoming. In December 1995, the defendants in the federal district court action filed a Motion for Summary Judgment. On January 10, 1996, a hearing was held in Casper, Wyoming, on the defendants' summary judgment motion. Based upon the record, the Judge ruled from the bench and granted defendants' summary judgment motion. The Board found that, in the course of additional motions practice to supplement the record, the Respondent made false statements and allegations regarding opposing counsel and the trial judge. After investigation by the Board of Professional Responsibility of the Wyoming State Bar, the Respondent admitted that the allegations were made based on hearsay and mistaken perceptions of the trial judge's personal and professional relationship with opposing counsel.

In mitigation, it is noted that at the time of the conduct, the Respondent was a newly admitted lawyer in Wyoming, was not affiliated with a law firm, and was inexperienced in the practice of law.

ADMONITION

On or about July 25, 1996, an Attorney was admonished and required to attend Ethics School by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.1 Competence, Rule 1.2(a) Scope of Representation, Rule 1.3 Diligence, and Rule 1.4(a) Communication, of the Rules of Professional Conduct of the Utah State Bar. On November 25, 1996, the Chair of the Ethics and Discipline Committee of the Utah State Bar upheld the decision after the attorney filed an Objection to Findings of Facts and Conclusions of Law.

The attorney was retained to prepare and file an Answer to a civil Complaint. The attorney failed to file the answer within the prescribed time. Subsequently a default judgment was entered in the amount of $6,501.86 against the client. The default and judgment resulted in the client losing his Peterbilt truck. Thereafter, the client retained the services of another attorney in an attempt to set aside the judgment, incurring additional attorney's fees in the amount of $1,450.00.

Mitigating circumstances were that the attorney was under an unusually heavy workload having taken on the cases of another attorney, and, consequently, was under considerable stress due to the large number of cases he was handling.

ADMONITION

On or about December 17, 1996, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 8.4(c) Misconduct, Rules of Professional Conduct. The attorney made misstatements to investigators of a state agency.

An Admonition was deemed appropriate by the Chair of the Ethics and Discipline Committee because the Attorney had personal and emotional difficulties at the time of the misconduct, had a cooperative attitude toward the disciplinary proceedings, was inexperienced in the practice of law and was remorseful.

EXTENDED DEADLINES

Notice of Election of Bar Commissioners

Third, Fourth and Fifth Divisions

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for two members from the Third Division, one member from the Fourth Division, and one member from the Fifth Division, each to serve a three-year term. To be eligible for the office of Commissioner from a division, the nominee's mailing address must be in that division as shown by the records of the Bar.

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after January 10, and **completed petitions must be received no later than March 3.** Ballots will be mailed on or about April 1 with balloting to be completed and ballots received by the Bar office by 5:00 p.m on April 30. Ballots will be counted on May 1.

In order to reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1) Space for up to a 200-word campaign message plus a photograph in the April issue of the *Utah Bar Journal.* The space may be used for biographical information, platform or other election promotion. Campaign messages for the April *Bar Journal* publications are due along with completed petitions, two photographs, and a short biographical sketch **no later than March 3.**

2) A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their division.

3) The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates would be responsible for delivering to the Bar **no later than March 14** enough copies of letters for all attorneys in their division. (Call Bar office for count in your respective division.)

If you have any questions concerning this procedure, please contact John C. Baldwin at the Bar office, 531-9077.

NOTE: According to the Rules of Integration and Management, residence is interpreted to be the mailing address according to the Bar's records.

Position Recruitment

Position	Appellate Clerk of Court
Location:	Utah Court of Appeals – Salt Lake City
Type of Position:	Full time with benefits
Closing Date:	February 21, 1997
Salary Range:	$35,350 – $53,098
Hiring Range:	$35,350 – $43,911 (depending upon experience)

APPLICATION PROCESS: Applications may be obtained from the Administrative Office of the Courts and must be returned by the above-listed closing date to: Marilyn M. Branch, Appellate Court Administrator, Administrative Office of the Courts, 230 South 500 East, Suite 300, Salt Lake City, UT 84102.

REPRESENTATIVE DUTIES: Under general direction of Appellate Court Administrator, administers the clerical operations and docketing activity of the Court of Appeals including, but not limited to the following: supervising court staff; administering court budget; preparing financial and statistical reports; supervising purchase of supplies and equipment; developing, monitoring, and evaluating court procedures, including court's data processing system and record keeping; supervising caseload management and calendaring.

REQUIRED QUALIFICATIONS: Eight years of progressively responsible experience in court operations OR a Bachelor's degree in administration, criminal justice, or related field, plus four years of progressively responsible experience in court operations OR any equivalent combination of education and experience. Alternatively, graduation from an accredited law school with a juris doctorate degree and two years of experience in court administration or practical work experience in personnel, accounting, or supervisory positions.

Ethics Advisory Opinion Committee

Opinion No. 96-10

Approved December 6, 1996

Issue: May an attorney employ a paralegal who owns a proprietary interest in a collection agency the attorney represents as a client?

Opinion: If there is no violation of a statute, including Utah Code Ann. § 78-51-27, and if there is no sham arrangement in which the paralegal would nominally own an interest in a collection agency that is in reality owned by the attorney, the Rules of Professional Conduct do not prohibit an attorney from employing a paralegal who owns an interest in a collection agency the attorney represents as a client.

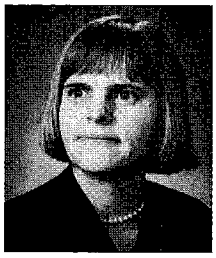
Two Salt Lake Attorneys Receive Awards for Natural Resource Efforts

Thomas W. Bachtell

The Energy, Natural Resources and Environmental Law Section of the Utah State Bar has honored two Salt Lake attorneys.

Thomas W. Bachtell was named the section's Lawyer of the Year. Largely through his efforts, the state Legislature enacted tax incentive legislation for enhanced recovery projects. The amendments allow oil and gas companies to develop fields otherwise considered uneconomical.

Bachtell is the president of Pruitt, Gushee & Bachtell. He received his bachelor's degree from Westminster College and his law degree from the University of Utah.



Denise A. Dragoo

The section also honored attorney Denise A. Dragoo with its Edward W. Clyde Distinguished Service Award. She was recognized for her years of distinguished service to the section and profession.

Dragoo is a partner with the firm of Van Cott, Bagley, Cornwall & McCarthy and a trustee to the Bar's Rocky Mountain Mineral Law Foundation. She received her bachelors and law degrees from the University of Utah.

Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the Bar for the cost of $10.00. Forty nine opinions were approved by the Board of Bar Commissioners between January 1, 1988 and December 6, 1996. For an additional $5.00 ($15.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1997.

ETHICS OPINIONS ORDER FORM

Quantity		Amount Remitted
_____	Utah State Bar Ethics Opinions	_____ ($10.00 each set)
_____	Ethics Opinions/ Subscription list	_____ ($15.00)

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

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

Notice Regarding NSF Check/Overdraft Program

The Utah Supreme Court granted a petition by the Utah Bankers Association to extend the effective date of modifications to Rule 1.15, Rules of Professional Conduct, which establish a requirement that lawyers who maintain a client trust account enter into agreements with financial institutions to report insufficient funds checks or overdrafts on the client trust account. The effective date has been changed from January 15, 1997 to April 30, 1997.

During the extended deadline period, lawyers should contact their financial institutions to obtain copies of a Model Lawyer's Trust Account NSF Agreement drafted by the Utah Bankers Association. Copies of the model agreement may also be obtained from the Office of Attorney Discipline, Utah State Bar. The Utah Bankers Association requested the change in effective date based on a need for additional time to modify their respective banking policies and procedures. The Bar does not anticipate further extensions to the effective date of the rule.

Notice to All Bankruptcy Practitioners

Commencing January 1, 1997, Section 341 First Meetings of Creditors will be held in St. George, Utah in all Chapter 7 and 13 cases filed for debtors who reside in Beaver, Paiute, Wayne, Iron, Garfield, San Juan, Washington & Kane counties. The meetings will be held in the St. George City Council Room located on the main floor at 175 East 200 North, St. George, Utah. Parking is available at the rear of the building. All Bankruptcy Court hearings will still be held in Salt Lake City, Utah at the Frank E. Moss Courthouse. Section 341 Meetings will be scheduled 25 to 60 days from the filing of the petition and will be assigned to current members of the panel of trustees as well as the standing chapter 13 trustee. If you have any questions concerning the new procedure, please contact Laurie Crandall at 524-3031.

NOTICE Court-Annexed ADR Program Rule Change

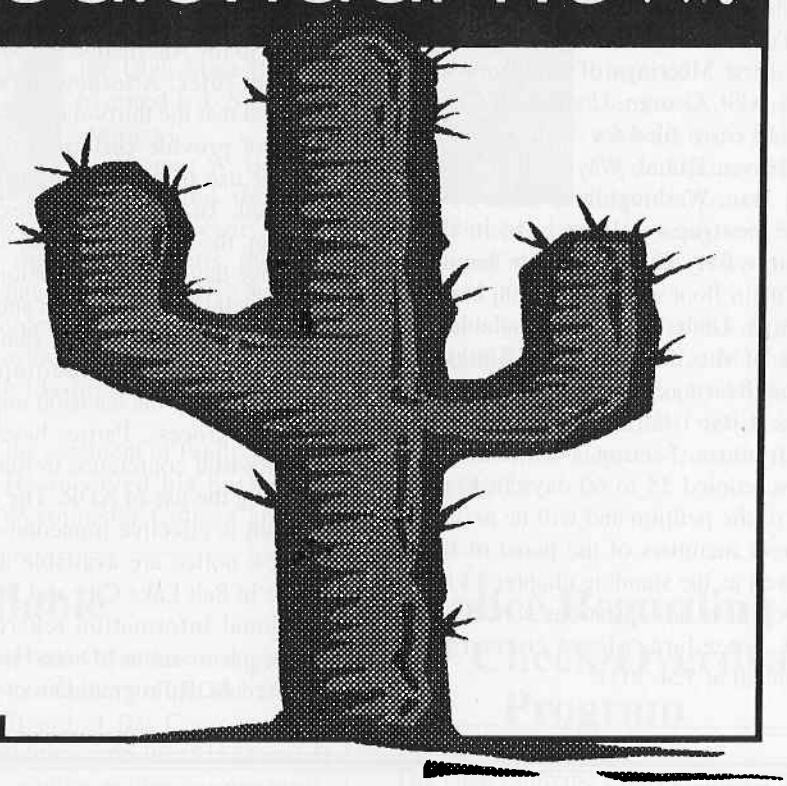
The Judicial Council recently approved a change to the Alternative Dispute Resolution program rules. Attorneys have frequently observed that the thirty-day opt-out provision does not provide sufficient time to assess whether use of ADR in a particular case is indicated. To create more flexibility in the program, the Judicial Council has eliminated the thirty-day opt-out provision, and substituted a deferral notice to be submitted to the court. The notice certifies that parties have watched the ADR videotape, but have elected to defer the decision until later in the litigation process. Parties have up until the final pre-trial conference to make a decision regarding the use of ADR. The change in the program is effective immediately. Copies of the new notice are available at the District Courts in Salt Lake City and St. George. For additional information regarding the rule change, please contact Diane Hamilton, Court-Annexed ADR Program Director, 578-3984.

Mark your calendar now!

The 1997 Mid-Year Convention is right around the corner!

March 6 - 8, 1997
St. George, Utah

We hope see you in St. George!



Position Recruitment

Position:	Appellate Clerk of Court
Location:	Utah Supreme Court – Salt Lake City
Type of Position:	Full time with benefits
Closing Date:	February 21, 1997
Salary Range:	$35,350 – $53,098
Hiring Range:	$35,350 – $43,911 (depending upon experience)

APPLICATION PROCESS: Applications may be obtained from the Administrative Office of the Courts and must be returned by the above-listed closing date to: Marilyn M. Branch, Appellate Court Administrator, Administrative Office of the Courts, 230 South 500 East, Suite 300, Salt Lake City, UT 84102.

REPRESENTATIVE DUTIES: Under general direction of Appellate Court Administrator, administers the clerical operations and docketing activity of the Utah Supreme Court including, but not limited to the following: supervising court staff; administering court budget; preparing financial and statistical reports; supervising purchase of supplies and equipment; developing, monitoring, and evaluating court procedures, including court's data processing system and record keeping; supervising caseload management and calendaring.

REQUIRED QUALIFICATIONS: Eight years of progressively responsible experience in court operations OR a Bachelor's degree in administration, criminal justice, or related field, plus four years of progressively responsible experience in court operations OR an equivalent combination of education and experience. Alternatively, graduation from an accredited law school with a juris doctorate degree and two years of experience in court administration or practical work experience in personnel, accounting, or supervisory positions.

1997 Mock Trial Schedule

Name: _____ Title: _____

Firm or Place of Employment _____

Address: _____ Zip: _____

Phone: _____ Fax: _____ I have judged before. Yes _____ No _____ I will judge _____ (number) of mock trial(s).

Please indicate the specific date(s) and location(s) that you **will commit** to judge mock trial(s) during the months of March and April. The dates and locations are *fixed*; you *will* be a judge on the date(s) and time(s) and location(s) you indicate, unless several people sign up to judge the same slot. If that occurs, we call you to advise you of a change. You will receive confirmation by mail as to the time(s) and place(s) for your trial(s) when we send you a copy of the 1997 Mock Trial Handbook. Please remember — all **trials run approximately 2 1/2 to 3 hours and you will need to be at the trial 15 minutes early.** We will call one or two days before your trial(s) to remind you of your commitment.

Please be aware that *Saturday sessions* will be held on April 5 and April 12. Multiple trials will be conducted. *Please give these dates special consideration.*

Specific addresses for all courtrooms will be mailed with the confirmation letter.

Date	Time	Place	Preside	Panel	Comm. Rep.
Monday, March 24	9:00–12:00	Orem	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	1:00–4:00	Coalville	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Roosevelt	( )	( )	( )
Tuesday, March 25	9:00–12:00	Orem	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Spanish Fork	( )	( )	( )
	2:00–5:00	Logan	( )	( )	( )
Wednesday, March 26	8:30–11:30	Roy	( )	( )	( )
	9:00–12:00	Orem	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	Logan	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Spanish Fork	( )	( )	( )
Thursday, March 27	9:00–12:00	Roy	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	9:00–12:00	Orem	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	Tooele	( )	( )	( )
Friday, March 28	8:30–11:30	Roy	( )	( )	( )
	9:00–12:00	SLC (3rd C)	( )	( )	( )
	9:00–12:00	Orem	( )	( )	( )
	12:30–3:30	SLC (3rd C)	( )	( )	( )
	1:00–4:00	SLC (3rd C)	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	Tooele	( )	( )	( )
	1:00–4:00	St. George	( )	( )	( )
Tuesday, April 1	1:00–4:00	Ogden	( )	( )	( )
Wednesday, April 2	9:00–12:00	Roy	( )	( )	( )
	9:00–12:00	SLC (PSC)	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
Thursday, April 3	9:00–12:00	SLC (PSC)	( )	( )	( )
	1:00–4:00	SLC (PSC)	( )	( )	( )
Friday, April 4	1:00–4:00	Orem	( )	( )	( )
Saturday, April 5	9:00–12:00	SLC (3rd C)	( )	( )	( )
	9:00–12:00	SLC (3rd C)	( )	( )	( )
	9:30–12:30	SLC (3rd C)	( )	( )	( )
	9:30–12:30	SLC (3rd C)	( )	( )	( )
	10:00–1:00	SLC (3rd C)	( )	( )	( )
	10:00–1:00	SLC (3rd C)	( )	( )	( )
	10:30–1:30	SLC (3rd C)	( )	( )	( )
	10:30–1:30	SLC (3rd C)	( )	( )	( )
	12:30–3:30	SLC (3rd C)	( )	( )	( )
	12:30–3:30	SLC (3rd C)	( )	( )	( )
	1:00–4:00	SLC (3rd C)	( )	( )	( )
	1:00–4:00	SLC (3rd C)	( )	( )	( )
	1:30–4:30	SLC (3rd C)	( )	( )	( )
	1:30–4:30	SLC (3rd C)	( )	( )	( )
	2:00–5:00	SLC (3rd C)	( )	( )	( )
	2:00–5:00	SLC (3rd C)	( )	( )	( )
Monday, April 7	1:00–4:00	Coalville	( )	( )	( )

Date	Time	Place	Preside	Panel	Comm. Rep.
Monday, April 7	1:00–4:00	Coalville	( )	( )	( )
	5:30–8:30	Logan	( )	( )	( )
Tuesday, April 8	9:00–12:00	SLC	( )	( )	( )
	9:00–12:00	Roy	( )	( )	( )
	9:00–12:00	Orem	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
Wednesday, April 9	12:30-3:30	SLC	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Logan	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
Thursday, April 10	8:30–11:30	Roy	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	12:30–3:30	SLC	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
Friday, April 11	8:30–11:30	Roy	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	9:30–12:30	Orem	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:30–4:30	Orem	( )	( )	( )
Saturday, April 12	9:00–12:00	SLC (3rd C)	( )	( )	( )
	9:00–12:00	SLC (3rd C)	( )	( )	( )
	9:30–12:30	SLC (3rd C)	( )	( )	( )
	9:30–12:30	SLC (3rd C)	( )	( )	( )
	10:00–1:00	SLC (3rd C)	( )	( )	( )
	10:00–1:00	SLC (3rd C)	( )	( )	( )
	10:30–1:30	SLC (3rd C)	( )	( )	( )
	10:30–1:30	SLC (3rd C)	( )	( )	( )
	12:30–3:30	SLC (3rd C)	( )	( )	( )
	12:30–3:30	SLC (3rd C)	( )	( )	( )
	1:00–4:00	SLC (3rd C)	( )	( )	( )
	1:00–4:00	SLC (3rd C)	( )	( )	( )
	1:30–4:30	SLC (3rd C)	( )	( )	( )
	1:30–4:30	SLC (3rd C)	( )	( )	( )
	2:00–5:00	SLC (3rd C)	( )	( )	( )
	2:00–5:00	SLC (3rd C)	( )	( )	( )
Monday, April 14	9:00–12:00	SLC	( )	( )	( )
	9:00–12:00	Orem	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
Tuesday, April 15	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	Manti	( )	( )	( )
Wednesday, April 16	9:00–12:00	Roy	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
	5:30–8:30	Logan	( )	( )	( )
Thursday, April 17	9:00–12:00	Roy	( )	( )	( )
	1:00–4:00	Roy	( )	( )	( )
Semi-Final Rounds (If you will have judged a previous mock trial)					
Monday, April 21	9:00–12:00	SLC	( )	( )	( )
	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Roy	( )	( )	( )
Tuesday, April 22	9:00–12:00	SLC	( )	( )	( )
	1:30–4:30	Orem	( )	( )	( )
	2:00–5:00	Roy	( )	( )	( )
	5:30–8:30	Logan	( )	( )	( )
Wednesday, April 23	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:00–4:00	Orem	( )	( )	( )
	2:00–5:00	Roy	( )	( )	( )
Thursday, April 24	9:00–12:00	SLC	( )	( )	( )
	1:00–4:00	SLC	( )	( )	( )
	1:30–4:30	Roy	( )	( )	( )
	2:00–5:00	Orem	( )	( )	( )

Please mail this form to:
Mock Trial Coordinator
Utah Law-Related Education Project
645 South 200 East, Suite 101
Salt Lake City, Utah 84111

or Fax to:
(801) 323-9732

Management's Comments Regarding Financial Statements Year Ended June 30, 1996

TO ALL BAR MEMBERS:

The following pages summarize the financial results for the Utah State Bar (the Bar), the Client Security Fund, and the Bar Sections for the year ended June 30, 1996. The Bar's financial statements were audited by the national accounting firm, Deloitte and Touche, and a complete copy of the audit report is available upon written request. Please direct these to the attention of Arnold Birrell. The 1995 results and 1997 budget figures are provided for informational and comparison purposes only.

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

CASH AND OTHER CURRENT ASSETS

The bottom portion of the Statement of Activities provides an explanation of how the Bar's cash is being used. After allowing for payment of Current Liabilities and providing certain reserves, the Bar's unrestricted cash balance is $658,763 at June 30, 1996 and projected to be $676,696 at June 30, 1997.

NET RECEIVABLE FROM THE LAW AND JUSTICE CENTER

The receivable balance at June 30, 1996 was $12,437 which represents current charges.

MORTGAGE PAYABLE TO THE LAW AND JUSTICE CENTER

The Bar purchased the Utah Law and Justice Center 50% interest in the land and building and improvements, and the Center's furniture and equipment in October, 1994. The Bar applied the June 30, 1994 receivable balance due from the Center as the down payment toward the purchase price. The balance will be carried in a note payable to the Center with an interest rate of 10%. Principal and interest payments on the note payable will equal amounts necessary to subsidize the Center's future operating losses. During the year ended June 30, 1996 the Bar paid $46,150 in principal on the Law and Justice Center mortgage.

DEFERRED INCOME

As of June 30, 1996, the Bar had collected $430,080 in 1997 Licensing Fees and Section Membership Fees. These fees have been classified as Deferred Income since they pertain to the 1997 fiscal year.

REVENUE OVER EXPENSES

The Change in Net Assets in the actual amount of $280,501 for 1996 and the budgeted amount of $18,805 for 1997 reflect the Board of Commissioners' and the current management's commitment to exercising sound fiscal policies in the management of the Bar's funds. Current plans are to continue the present policies to provide the funds to make necessary capital expenditures, provide replacement and contingency reserves, and to maintain a reasonable fund balance.

SUMMARY

In summary, the Bar continues to be financially sound. The Bar is currently upgrading its computer system including a homepage on the internet which will provide information about the Bar, its members, and scheduled activities on a more timely basis. A new phone system was installed during the 1996 fiscal year which enables most calls to be answered within 30 seconds.

UTAH STATE BAR

STATEMENT OF FINANCIAL POSITION

As of June 30, 1996 (with 1995 totals for comparison only)

ASSETS	1995	1996
CURRENT ASSETS:		
Cash and short term investments	$ 1,398,145	$ 1,663,421
Receivables	32,084	26,952
Prepaid expenses	8,231	35,884
Total current assets	1,438,460	1,726,257
NET RECEIVABLE FROM LAW AND JUSTICE CENTER	17,677	12,437
PROPERTY:		
Land	633,142	633,142
Building and improvements	2,058,178	2,070,540
Office furniture and fixtures	456,257	541,514
Computer and computer software	207,370	259,654
Total property	3,354,947	3,504,850
Less accumulated depreciation	(939,119)	(1,126,338)
Net property	2,415,828	2,378,512
TOTAL ASSETS	$ 3,871,965	$ 4,117,206
LIABILITIES AND FUND BALANCES		
CURRENT LIABILITIES:		
Accounts payable and accrued liabilities	$ 297,753	$ 296,793
Deferred income	418,230	430,080
Long-term debt--current portion	75,000	50,000
Total current liabilities	$ 790,983	$776,873
LONG-TERM DEBT	556,955	535,805
Total liabilities	1,347,938	1,312,678
FUND BALANCES:		
Unrestricted	2,303,667	2,551,777
Restricted:		
Client Security	52,657	80,823
Other	167,703	171,928
Total fund balances	2,524,027	2,804,528
TOTAL LIABILITIES AND FUND BALANCES	$ 3,871,965	$ 4,117,206

STATEMENT OF ACTIVITIES

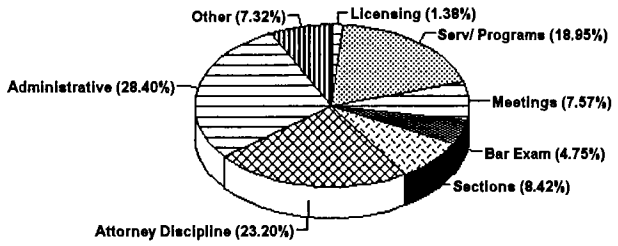
For the year ended June 30, 1996 (1995 actual and 1997 budgeted for comparison only)

	1995	1996	1997 Budget
REVENUE:			
Bar examination fees	$ 172,853	$ 180,603	$ 172,045
License fees	1,583,710	1,670,221	1,705,958
Meetings	188,263	244,095	213,132
Services and programs	331,182	332,211	306,009
Section fees	186,368	233,334	21,285
Interest income	74,343	94,412	93,971
Property management	112,487	138,112	134,183
Other	120,923	147,620	100,000
Total revenue	$ 2,770,129	$ 3,040,608	$ 2,746,583
EXPENSES:			
Bar examination	$ 114,947	$ 108,760	130,523
Licensing	33,426	27,685	24,220
Meetings	183,317	193,028	213,132
Services and programs	458,773	474,937	536,588
Sections	203,802	184,952	9,842
Attorney Discipline	561,610	609,033	667,716
Property Management	67,563	286,087	329,083
General and administrative	687,322	669,025	686,231
Other	109,733	206,600	178,954
Total Expenses	2,420,493	2,760,107	2,765,389
CHANGE IN NET ASSETS	$ 349,636	$ 280,501	$ (18,806)
Add Non-Cash Expenses Depreciation	145,390	187,219	176,738
Cash from operations	495,026	467,720	157,932
ACTUAL AND PLANNED USES OF CASH			
Mortgage Payments	$ (86,420)	$ (46,150)	$ (50,000)
Capital Expenditures	(35,702)	(149,903)	(90,000)
Change in A/P	71,133	(960)	
Change in A/R	(1,336)	10,372	
Change in PPD Expenses	6,761	(27,653)	
Change in Deferred Income	(131,613)	11,850	
INC. (DEC.) IN CASH	317,849	265,276	17,933
BEGINNING CASH	1,080,296	1,398,145	1,663,421
ENDING CASH - TOTAL	1,398,145	1,663,421	1,681,354
DEDUCT:			
Deferred Income	(418,230)	(430,080)	(430,080)
Restricted Fund Cash	(284,205)	(274,578)	(274,578)
Reserves	(300,000)	(300,000)	(300,000)
UNRESTRICTED CASH AT JUNE 30	$ 395,709	$ 658,763	$ 676,696

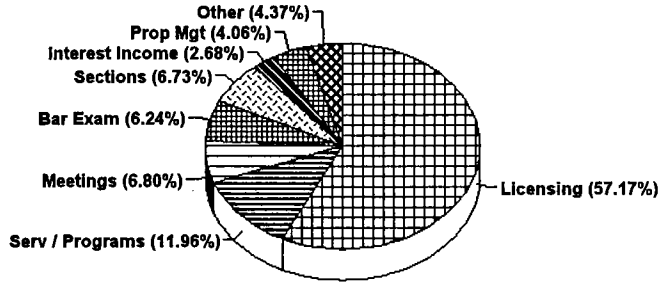
UTAH STATE BAR

Financial Results and Projections

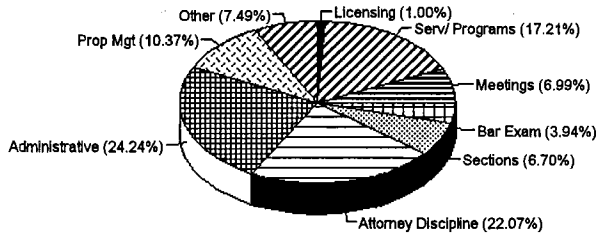
EXPENSES BY CATEGORY
FOR THE YEAR ENDED JUNE 30, 1995



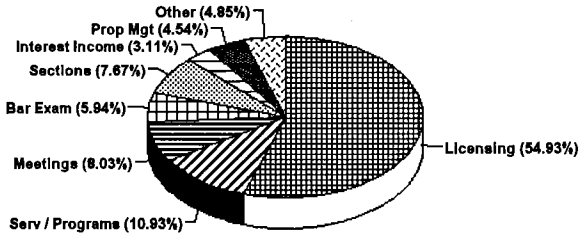
REVENUES BY SOURCE
FOR THE YEAR ENDED JUNE 30, 1995



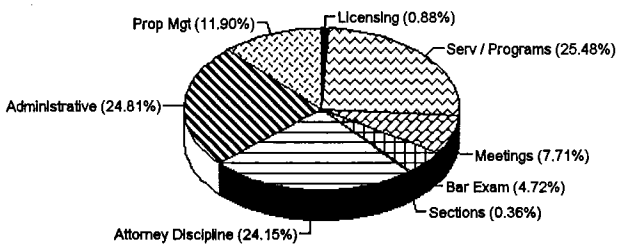
EXPENSES BY CATEGORY
FOR THE YEAR ENDED JUNE 30, 1996



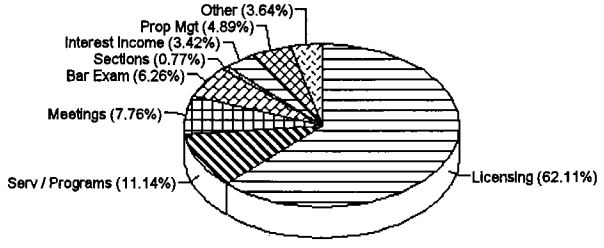
REVENUES BY SOURCE
FOR THE YEAR ENDED JUNE 30, 1996



EXPENSES BY CATEGORY
BUDGETED - 1997



REVENUES BY SOURCE
BUDGETED - 1997



Young Lawyers or New Lawyers: It Doesn't Really Matter

By Brian W. Jones
Treasurer of the Young Lawyers Division

I've always wanted to write an article with a colon in the title. Although I've never had much interest in writing on such weighty topics as Portfolio Diversification Through the Use of Derivatives: An Acceptable Risk? or An Examination of the Characteristics of Ultra-Cold Materials: Flow Dynamics of Liquid Nitrogen, I have always wanted to impress my peers and attract the attention of the weighty-minded by at least pretending to read these types of articles. These types of articles are only read by people who are too busy or too important to bother with less impressive topics. And the people who write them? Well, these deep thinkers are in a class of weightiness all by themselves. Now, if you'll note the title of this article, you'll see that I have joined these deep thinkers and attracted the attention of both the ultra-busy and the ultra-important who certainly don't take the time to read non-colon-titled articles. And, I'm sure you'll agree, the issue which I will discuss undoubtedly qualifies as sufficiently weighty to warrant the title. That issue is, "What is the proper label to be attached to persons who have recently graduated from law school and joined the rank and file of the Utah State Bar?"

You may or may not be aware of the continuing debate that rages every year in the closed door meetings and the smoky back rooms of the Young Lawyers Division (YLD). That debate focuses on whether new admittees are really New Lawyers rather than Young Lawyers. Say the Young Lawyers who remain young-at-heart but who, alas, are no longer young, "I'm a New Lawyer, not a Young Lawyer!" The Young Lawyers who consider themselves neither young, new, nor young-at-heart retort, "I'm neither new nor young, but I certainly am younger than I am new!" Get it? After much analysis, pondering, and internal struggle focused on resolving this issue, I have arrived at a conclusion that will become clear as I ARSAC it thoroughly below.

With more than 1500 members, the YLD is the largest division of the Bar. It includes all new admittees who are thirty-six years of age or younger as well as "post thirty-six" bar-passers for three years after being admitted to the Bar. Don't remember signing up? You don't have to. If you fit in the categories described immediately above, you're a YLDer, like it or not. You say you're seventy years old and passed the bar exam last year? Welcome to the YLD! You have three years to put your wisdom, experience, and extensive contacts to good use. Of course, all members of the YLD can participate in other sections of the Bar and are encouraged to do so. But, if you become involved in the YLD, I think you'll agree with John Baldwin, Executive Director of the Utah State Bar when he says "the YLD is the funnest, most active division of the Bar. The activities, community service, and other YLD projects are always the best!"

The YLD is governed by five elected officers and the YLD Executive Committee. The officers are elected by the members of the YLD and include the President, President-Elect, Secretary, Treasurer, and Past President. The Secretary and Treasurer are elected for one-year terms. The President-Elect will serve three terms by the time he or she is finished; one year as President-Elect, the following year as President, and the final year as Past President. The election is held every April. The Executive Committee is appointed by the officers and generally consists of about twenty-five Young Lawyers who co-chair

nine committees. Currently, the committees of the YLD are: *Utah Bar Journal,* Community Services, Law Day, Law-Related Education, Membership Support Network, Needs of Children, Needs of Elderly, New Lawyer Continuing Legal Education, and Pro Bono. The Executive Committee also includes three representatives serving Northern Utah, Central Utah, and Southern Utah.

Some may think that the YLD doesn't do all that much for them. They are wrong. Representatives of the YLD sit on the Bar's Annual and Mid-Year Meeting Committees and the CLE Committee. The President of the YLD is an ex-officio member of the Bar's Board of Commissioners. A past YLD president currently serves as the Utah's representative to the ABA's Young Lawyer's Division, another serves as President-Elect of the Utah State Bar, and yet another serves as Chair of the Tax Section and Chair of the CLE Advisory Board.

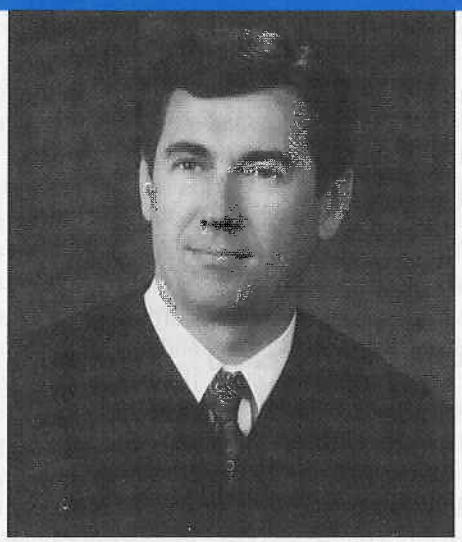
The YLD sponsors and coordinates the annual Law Day activities which, along with a luncheon and recognized speaker, include the Call-a-Lawyer Program. Through this program, Young Lawyers offer free legal counsel to anyone who calls a broadcast 1-800 number. In the past, about one hundred Young Lawyers have staffed the bank of telephones for an evening. Fox Television broadcasts the number during its programming that evening and anyone who feels the need can call and speak, free of charge, to a lawyer. The callers to whom I've talked have never asked whether I was a Young Lawyer or a New Lawyer. For some reason, they didn't seem to care. The YLD also coordinates the Tuesday Night Bar program. Every Tuesday night, several lawyers, mostly Young, offer free legal consultation to anyone who shows up. Although I'm only thirty years old, certainly not "young" to some, no one I've met at Tuesday Night Bar has ever asked whether I'm Young or New. The YLD also sponsors and staffs an annual service project. Last year the YLD renovated a floor of the Salt Lake YWCA. It took a couple of days, but made a noticeable positive difference in the look and feel of the building. Again, no one seemed to care whether we were Young or New, or neither. So if you want to make a difference in your "legal life," you should consider becoming more involved in the YLD, whether you're Young or New or both. It is really easy to do. Just call the Bar and get in touch with one of the YLD officers. For you tech-types who *really* like colons in article titles, you can also check out the YLD web page at http://www.utahbar.org or e-mail the bar at info@utahbar.org. Just think, if you get involved in the YLD, someday *you* might write an article with a colon in the middle of the title for the *Utah Bar Journal.*

My point is that labels don't always accurately reflect the true nature of the object to which they refer. While some, myself included, may consider the title of this article impressive, most probably don't care. What really matters is substance and content. While the substance and content of this article may be less than impressive, that of the YLD is not only impressive, it's fun, it's worthwhile and, if you give it some of your time, a very rewarding and beneficial part of your legal experience, whether you're young, new, neither or both.

1997 Mid-Year Convention Sponsors

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

Jones, Waldo, Holbrook & McDonough
Kimball, Parr, Waddoups, Brown & Gee
Parsons Behle & Latimer
VanCott, Bagley, Cornwall & McCarthy
Ray, Quinney & Nebeker
Richards, Brandt, Miller & Nelson
Campbell Maack & Sessions
Corporon & Williams
Dart, Adamson & Donovan
Green & Berry
Snow, Nuffer, Engstrom , Drake, Wade & Smart
Farr, Kaufman, Sullivan, Gorman, Jensen, Medsker, Nichols & Perkins
Salt Lake County Bar Association
1-800-LETS-MEET
American Insurance
Attorneys' Title Guaranty Fund, Inc.
Continental Insurance Agency
Knight Adjustment Bureau
Michie Company
Shoaf & Associates
Utah Bar Foundation
West Publishing
Litigation Section
Real Property Section
Women Lawyers of Utah
Minority Bar Association



Of Courtroom Conduct and Performance Evaluations

By Judge Ben H. Hadfield

Several years ago, our family purchased five acres outside of Brigham City and built a new home. The downside to this move is that my commute to the Courthouse is now sixteen blocks. The upside is that we have been able to enjoy and participate in nature, planting scores of trees, all manner of shrubs and perennials, and even developing a couple of fish ponds. This year, we also raised California Quail with the hopes that they could be persuaded to make a permanent home in the timber and cover on the upper part of our lot.[1] In early September we began releasing a few quail each week, hoping to condition them to remain in the area because a portion of the flock was still inside the pen. On a Saturday morning in October, I released the last five quail from the pen and left the pen door wide open.

I walked further up the lot to work on another project. When I came down approximately an hour and one-half later, I walked past the quail pen wondering if any of the quail would still be in the vicinity. The door of the pen was wide open and the pen was occupied by at least ten quail. I had to bang on the sides of the pen and force them all out the door, and then securely lock it so that they would not make the pen their permanent home.

Human beings are a lot like quail. Left on our own, we have a tendency to default to our established practices. With the quail story as an introduction, I want to discuss a few areas of courtroom conduct. The areas selected are not intended to be comprehensive. If any of my observations make you uncomfortable, consider whether you, like the quail, are perhaps being "pushed" out of your established pen.

BEN H. HADFIELD was appointed to the First District Court in January 1993. He graduated from Weber State College in 1975 with a BA in Political Science and a minor in German. He obtained his Juris Doctor from J. Reuben Clark Law School in 1978 and served as the Student Bar President during 1977-78 school year. He worked as an associate and then partner in the firm of Mann, Hadfield and Thorne from 1978 to 1993. He serves as the membership chairman for the Rex E. Lee American Inn Of Court.

He is the father of three daughters and two sons, and is married to the former Annette Griffiths.

PREPARATION

When I graduated from law school, I joined a small firm in Brigham City. The senior partner, Walter G. Mann, was somewhat of a legend in Northern Utah as a trial attorney.

I spent many hours lugging the briefcase and conducting the depositions for Walt during my early career. It was great training. I learned something about him that few members of the bar knew. During the depression, Walt could not afford to attend law school. He worked full time and studied law in the evenings through a correspondence school. He never attended law school. He passed the bar in 1936, one of the last members ever to be admitted without a law degree. Walt conveyed to me that he had a sense of insecurity or even inferiority as he began practicing. Over a period of time, he learned that it did not matter where opposing counsel obtained their law degrees, so long as Walt was better prepared. Walt always insisted that he know more about the facts of the case than his opponent.

He served as president of the Utah State Bar from 1949 to 1950, was recognized by the bar as Utah Lawyer of the Year in 1980, and practiced law for a half century. Walt

loved trying cases to juries, and from the results, it appeared they loved Walt.

An attorney should never underestimate the importance of preparation. Impressive credentials and reputation are not visible in a courtroom, lack of preparation is.

COMMUNICATION

I include under this heading, the attorney's obligations to:

(1) concisely state what he or she is seeking,
(2) clearly and efficiently present the evidence, and
(3) communicate the supporting authorities in a useful manner.

Counsel has a duty to concisely show the Court the relief requested. Come prepared with well thought out exhibits. The quality of exhibits and summaries is much more important than the quantity. I have a personal preference for courtesy copies of both exhibits and memoranda. If provided, these are the documents which I read and work from. I scribble notes in the margin, highlight or underline certain things, and refer to these at the time I formulate a decision. (I do not feel comfortable abusing the originals in this manner.)

Concerning memoranda, "overlength" sometimes means "overdone." Try to avoid overlength memoranda. A strong argument can be diluted.

Much of what I have written concerning communication represents my personal views. This illustrates that effective communication methods vary from one judge to the next. Learn to communicate effectively with the judge you are assigned.

EXAMINATION

It is not my purpose to provide a treatise on the art of examining witnesses. Rather, I provide just a few reflections as to common mistakes or pitfalls.

One of the most important considerations in examination is to keep the questions simple and comprehensible. If an attorney's question is unclear to the witness, judge or jury, the responding answer is of greatly diminished value. For example, beginning any question with the preface "Is it not true . . ." creates a situation where a simple yes or no answer from the witness is utterly confusing. Does the witness mean "yes, it is not true," or "no, it is not not true"?

Once an attorney has been given the green light from the Judge to conduct either direct or cross-examination, he or she has the floor. It is superfluous to preface questions with the phrase "Let me ask you this . . ." Just ask.

Be courteous during direct or cross-examination. Rudeness may cause a jury to assess penalty points and it certainly does not dispose a Judge to award favorable points.

Finally, use cross examination appropriately. Cross-examination is not a substitute for pretrial discovery. Asking questions which allow the witness to simply reinforce what was said on direct examination scores points for your opponent and hurts your own case. I once believed that, as a rule of thumb, cross-examination should last less than one-half the time of direct examination. I have modified my view. I believe the better rule is *cross-examination should last as long as the witness' answers are scoring points for the questioner.* When the answers are not scoring any points for the cross-examiner, the cross-examiner should cease.

"Impressive credentials and reputation are not visible in a courtroom, lack of preparation is."

I have never seen anyone so beaten and badgered through cross-examination that they confessed to being a liar and a cheat, and apologized to the opposing party. Remarkably, however, I have observed numerous attempts at obtaining this result. Counsel should be realistic about what they might accomplish with cross-examination.

DEMEANOR

I offer four simple guidelines for courtroom behavior.

First, *do not cause or allow the dispute to degenerate to personal animosity between counsel.* Judges try very hard to make decisions on the merits and ignore annoying or petty conduct on the part of an attorney. However, it is safe to assume that no judge ever consciously rewards an attorney for reducing the dispute to a personal level. Be professional.

Second, *treat opposing counsel the way you want to be treated.* Any time you are asking the Court to impose sanctions against your opponent, make sure you have covered your own bases. For instance, a Rule 37 Motion To Compel usually seeks an award of attorney's fees. Such an award is more likely if the moving attorney has documented the motion with copies of a courtesy letter previously sent to opposing counsel reminding of the tardiness and requesting responses. When an attorney asks for sanctions without ever providing a courtesy reminder, it may evidence a mentality of "shoot first and ask questions later."

Third, *do not "grandstand" for the client.* Occasionally, an attorney will attempt to compensate in loudness for what an argument lacks in substance. Once in a while counsel may attempt to dispute an announced decision simply as a means of appeasing a client.

Fourth, *reserve "outrage".* The term is overworked and in most instances should be resisted. If I had become outraged every time I have been told I should be outraged, I would have long since succumbed to the debilitating effects of stroke, heart attack, etc.

PROMPTNESS

(1) Show up for court on time.
(2) Meet the established deadlines for filing motions, replies, etc.
(3) Promptly submit requested Orders and other documents. Ten days is a reasonable time under most circumstances, two months is not, four months is . . . almost an outrage.

PERFORMANCE EVALUATIONS

I suspect that like me, many of you read with interest the Utah Judicial Performance Survey published in the *Salt Lake Tribune* on October 20, 1996. Evaluations can serve a useful purpose. They may help us identify areas in which to improve. They can challenge us to rethink some issues. I read with great interest my own scores.[2]

I suggest for your personal education, a brief "Attorney Performance Evaluation." Give a few minutes of thought to how ten judges before whom you have appeared would rate you. For simplicity's sake, the rating system will be:

4 – excellent
3 – good
2 – needs improvement
1 – poor

You should score yourselves in tenths of a point. For example, if six judges rates you as "good" (3), and four judges rated you as "needs improvement" (2), your score would average 2.6.[3]

PREPARATION	
COMMUNICATION	
EXAMINATION	
DEMEANOR	
PROMPTNESS	

Spend a few minutes pondering these categories and reviewing the observations I have made, then pencil in a score which you believe judges would give you on each category.

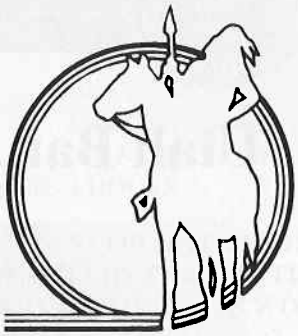
We have begun a new year. This is often a good time to evaluate where we are and adjust our course. Analyze the results of your attorney performance evaluation. What do they tell you? Determine what specific steps you will take to improve in your weakest areas. Without conscious effort to improve, we are much like quail. We default to our established patterns. Perhaps, after all, performance evaluations are not such a bad idea. The difficulty lies in analyzing the results. If performance evaluations establish anything, it is that all of us have room for improvement.

I'll see you in Court.

[1]For those of you with prosecutorial mindsets, my DWR Certificate of Registration is #2PWFB2693

[2]My best score was for temperament, and my lowest score was for intellect. These scores have not bothered me, either because I'm too good natured or too dumb.

[3]If you score a 2.6, rather than conclude that judges took a "dim view" of you, you may more accurately observe that a majority of the responding judges rated you as "good".



Western States Bar Conference

FEBRUARY 26 – MARCH 1, 1997
Scottsdale, Arizona

The 49th Annual Western States Bar Conference will be held in sunny Scottsdale, Arizona, February 26 - March 1, 1997, at the DoubleTree Paradise Valley Resort. Scottsdale provides an abundance of recreational, dining and shopping opportunities.

The Western States Bar Conference is an annual gathering of current and past state bar leaders, ABA officers and attorneys interested in issues affecting lawyers and bar associations. This year's topics include: integrating young lawyers in to the profession, bar programs on family violence, lawyers and the Internet, and the bar's role in judicial appointments. All programs have CLE credits pending.

A special pre-meeting golf tournament will be held Wednesday, February 26 at the Stone Creek Golf Club. A casual wild west dinner and casino night will cap the Friday meeting sessions.

For further information and registration, contact Dana Vocate, Director of Administration for the Colorado Bar Association, (303) 860-1115.

MEMBERSHIP CORNER

CHANGE OF ADDRESS FORM

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

Name (please print) _____ Bar No. _____

Firm _____

Address _____

City/State/Zip _____

Phone _____ Fax _____ E-mail _____

All changes of address must be made in writing and NAME changes must be verified by a legal document. Please return to: UTAH STATE BAR, 645 South 200 East Salt Lake City, Utah 84111-3834; Attention: Arnold Birrell. Fax Number (801) 531-0660.

Utah Bar Foundation Holds Annual Luncheon

Hon. Stephen H. Anderson

Hon. Stephen H. Anderson, Stewart M. Hanson Jr. & Steven M. Kaufman

The Bar Foundation annual luncheon is truly one of the last "no strings attached" affairs around town. No one asks for money. No one even asks for time. The luncheon is an uncomplicated opportunity to share a meal with friends during the holiday season, honor one of those among us who exemplifies the highest values of our profession, and reflect upon the good work that the proceeds of Interest on Lawyers' Trust Accounts help accomplish. Then we all return to work, humming appropriate holiday tunes, and feeling relatively good about the world, at least for the moment.

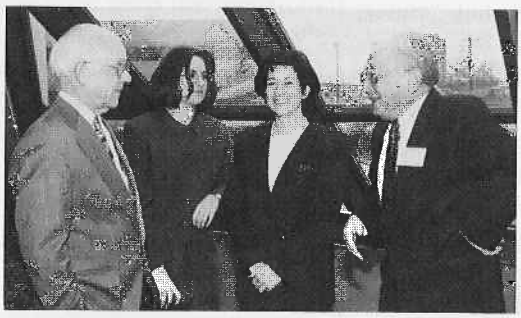
Judge Stephen Anderson, this year's reluctant but well-deserved honoree, regaled us with his search for proof that the justice system works as well as he surmised it does. He began by surveying law clerks, litigants, and lawyers for proof. Knowing that his law clerks were inherently unreliable sources, he turned to litigants. To illustrate the problem with this source, he recalled an opinion he wrote in a case arising out of Edmonds, Oklahoma involving an official city logo which included, among other symbols, a Christian cross. After authoring an opinion striking down the logo on constitutional grounds, Judge Anderson heard via the grapevine that two thousand of the town's most zealous citizens had formed themselves into a human cross to be photographed purely for his benefit. Quipped Judge Anderson, "I'm not an enemy of Jesus Christ. I'm just a friend of Stare Decisis!

Having thus eliminated litigants as a source for assessing the fairness of the system, Judge Anderson ultimately concluded that all internal proofs were flawed, but that the structure and function of the system itself provided the best assurance of the fair administration of justice. Notably, he believes that it makes little difference whether the Court's appointees are Republicans or Democrats. He now serves with judges appointed by eight different presidents and is convinced that the system works because its basic structure is sound.

* * *

During 1996, the Bar Foundation awarded $285,000 to nine different organizations supporting work ranging from legal aid to low-income persons in rural southeastern Utah (DNA People's Legal Services) to similar help in the most densely-populated areas of Salt Lake City (Legal Aid Society, Utah Legal Services). We awarded funds to provide immigration assistance to low-income families (Catholic Community Services Immigration Program) and multicultural outreach to ethnic minorities (Legal Center for People with Disabilities). We supported citizenship education within the public schools (Law-Related Education), projects sponsored by the Needs of Children Committee, the Senior Lawyers Project at Legal Services, and a new task force on racial and ethnic fairness in the state court system.

Congratulations to all lawyers and law firms in the state who have had the foresight and commitment to the public good to participate in IOLTA! If you have not yet joined IOLTA, take a moment now to call Zoe Brown at 297-7046. All it takes is one signature.



Hon. Norman H. Jackson, Tonya Cluff, Laurie Gilliland & Carman E. Kipp

Harold G. Christensen & Hon Leonard Russon

CLE CALENDAR

NLCLE WORKSHOP: BUSINESS ORGANIZATION

Date: Thursday, February 20, 1997
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $30.00 for Young Lawyer Division Members
$60.00 for all others
CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: THE INTERNET FOR LITIGATORS

Date: Thursday, February 20, 1997
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(Please call 1-800-CLE-NEWS to register)*
CLE Credit: 4 HOURS

1997 MID-YEAR CONVENTION

Date: March 6–8, 1997
Place: St. George Holiday Inn
CLE Credit: 9 HOURS, WHICH INCLUDES UP TO 3 HOURS IN ETHICS
Fees & Times: Please watch your mail for a detailed brochure.

ALI-ABA SATELLITE SEMINAR: COPYRIGHT & TRADEMARK LAW FOR THE NONSPECIALIST

Date: Thursday, March 13, 1997
Time: 9:00 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: $249.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 6 HOURS

ALI-ABA SATELLITE SEMINAR: LIMITED LIABILITY VEHICLES

Date: Thursday, March 20, 1997
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

NLCLE WORKSHOP: REAL PROPERTY LAW

Date: Thursday, March 20, 1997
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $30.00 for Young Lawyer Division Members
$60.00 for all others
CLE Credit: 3 HOURS

COMMERCIAL & CONSUMER BANKRUPTCIES AND BUYING & SELLING A BUSINESS

Date: Friday, March 21, 1997
Time: 8:30 a.m. to 11:45 p.m.
1:00 p.m. to 4:15 p.m.
Place: Utah Law & Justice Center
Fee: $85.00 for each session
$150.00 for both
CLE Credit: 3.5 HOURS each or 7 HOURS for full day

ALI-ABA SATELLITE SEMINAR: ANNUAL SPRING ESTATE PLANNING PRACTICE UPDATE

Date: Wednesday, March 26, 1997
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

ALI-ABA SATELLITE SEMINAR: BROWNFIELDS TRANSACTIONS – MAKING THE DEALS WORK

Date: Thursday, March 27, 1997
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $160.00 *(To register, please call 1-800-CLE-NEWS)*
CLE Credit: 4 HOURS

Those attorneys who need to comply with the New Lawyer CLE requirements, and who live outside the Wasatch Front, may satisfy their NLCLE requirements by videotape. Please contact the CLE Department (801) 531-9095, for further details.

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

_____
Credit Card Billing Address City, State, ZIP

_____
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

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) 486-9095. 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.

POSITIONS AVAILABLE

SALT LAKE CITY Associate City Prosecutor $2,741–$3,427/month. Conducts prosecution in court proceedings in behalf of the City. Reviews evidence, pertinent decisions, policies, regulations and other legal materials pertaining to cases. Conducts investigations to determine if prosecution is warranted. Prepares a variety of legal materials including informations, warrants, subpoenas, etc. and makes necessary arrangements to have them served. Position requires a JD or LL.B. degree and candidate must be a member in good standing with the Utah State Bar. Candidates must have an ability to establish a productive "attorney/client" working relationship with the City Attorney, City Prosecutor and City Officials. Critical to the position is the ability to analyze, appraise and organize facts, evidence and precedents, present such material effectively both orally and in writing, and to glean and rapidly assimilate facts, respond impromptu and argue cases effectively often under stressful and hostile circumstances. Apply at Salt Lake City Human Resources Office, 451 South State Street, Suite 115 or FAX resume (including social security number) to 801-535-6614 by **February 14, 1997,** 5:00 p.m.

Attorney Wanted – Relocate to Oregon for new Foundation that provides legal services primarily to senior citizens and low income individuals. Starting salary of $30,000.00. Not a career; an adventure. Send resume to: J. Kara, P.O. Box 5241, Klamath Falls, Oregon 97601.

POSITIONS WANTED

Position Wanted: Full time permanent position as Criminal/Civil Investigator for reputable law firm, agency or business. Law Enforcement and Private Investigator experience. Master's Degree in Criminal Justice and Juris Doctor in Law. Please call Mark Davids @ (307) 436-3467.

ATTORNEY: Former Assistant Bar Counsel. Experienced in attorney discipline matters. Familiar with the disciplinary proceedings of the Utah State Bar. Reasonable rates. Call Nayer H. Honarvar, 39 Exchange Place, Suite #100, Salt Lake City, UT 84111. Call (801) 583-0206 or (801) 534-0909.

CALIFORNIA LAWYER . . . also admitted in Utah! I will make appearances anywhere in California; research and report on California law; and in general, help in any other way I can. $75 per hour + travel expenses. Contact John Palley @ (916) 455-6785 or PalleyJ@palley.com

ATTORNEY WALKER ANDERSON: 44 years Experience: *Research:* Memorandums For Trial Courts, Briefs for Appellate Courts: (801) 363-6426 or (810) 277-4283.

OFFICE SPACE/SHARING

Professional office space for one attorney. Share with two other attorneys. Complete facilities, including large private office, large reception, conference room, parking immediately adjacent to building, limited library, fax, copier, telephone system, kitchen. 4212 Highland Drive. Call (801) 272-1013.

Large, beautifully restored, fully equipped office-conference-reception suite for 1 or 2 lawyers in historic Heber Grant House, 174 East South Temple. Secretary/paralegal, parking included. $1800/mo. (801) 539-8515.

OFFICE SPACE FOR RENT: Choice office space for rent in beautiful, historic building in Ogden, Utah. Several offices available. For information, please contact (801) 621-1384.

CONSIDERING SOLO PRACTICE? Hesitant due to high cost of staff/equipment? I have the skills and equipment you need! IBM compatible; WordPerfect; Timeslips 3; Quicken; HP Laser; 24-hour phone-in dictation/fax; copier. 20 years Experience. 150 wpm; excellent skills. **BARBARA PIÑA SECRETARIAL SERVICES,** 2034 East Fort Union Blvd., (801) 942-9241, fax/dictation (801) 942-9243.

OFFICE SPACE AVAILABLE in small office near Cottonwood Mall in Holladay. Charming refurbished home. Office is 13' x 18'. Hardwood floors. Adjoining secretary space available. Copy and fax machines available. Ample parking space. Negotiable terms. Call (801) 278-3700 for more information.

SERVICES

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: Mikki O'Connor, UVSC Legal Studies Department, 800 West 1200 South, Orem, UT 84058 or call (801) 222-8850. Fax (801) 764-7327.

BARBARA PIÑA SECRETARIAL SERVICES. 20 years experience – civil litigation, contracts, PI, wills, real estate, billing, bookkeeping, etc. 150 wpm; excellent skills; superior work product. WordPerfect; Timeslips; Quicken; HP Laser; 24-hour phone-in dictation/fax; modem; copier. 2034 East Fort Union Blvd., Lower Level, (801) 942-9241, fax (801) 942-9243.

Help Clients Raise Cash on secured payment streams: Real Estate Notes, Business Notes, Structured Settlements, Annuities, etc. Purchase can be all payments, splits, partial, multi-stage. **FREE** on-site consultations in Salt Lake area. Abram Miller, Ph.D., (801) 281-9723, pager (801) 460-9500.

STRUCTURED SETTLEMENTS A BURDEN? (Lighten **your** burdens and **better** serve your clients). We pay **CASH** for structured settlements! Full or partial. Call: HMC INTERNATIONAL INC. **TOLL FREE – 1-800-426-8367.**

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
_____
Program Title
_____
Date of Activity CLE Hours Type of Activity**

3. _____
Provider/Sponsor
_____
Program Title
_____
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 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 the 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.

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.

Can you get ALL of these, tailored to your law firm, from ONE insurance company?

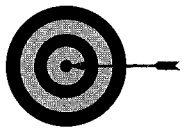
Lawyers' Professional Liability Coverage

Employment Practices Coverage for Law Firms

Employee Dishonesty Coverage for Law Firms

Nonprofit Director and Officer Coverage for Lawyers

Public Officials' Coverage for Lawyers



YES.

Introducing Coregis' New Customized Practice Coverage℠

Easy, one-stop shopping for multiple coverages designed solely for law firms, at lower, risk-related rates. From Coregis Insurance Company, a leader insuring lawyers for 25 years.

For more information, contact:

CONTINENTAL INSURANCE AGENCY, L.L.C.

1111 E. Brickyard Road • Suite 202 • Salt Lake City, UT 84106
1-888-466-0805 • 801-466-0805 • Fax: 801-466-2633

COREGIS®
Custom Insurance Programs