UTAH BAR JOURNAL

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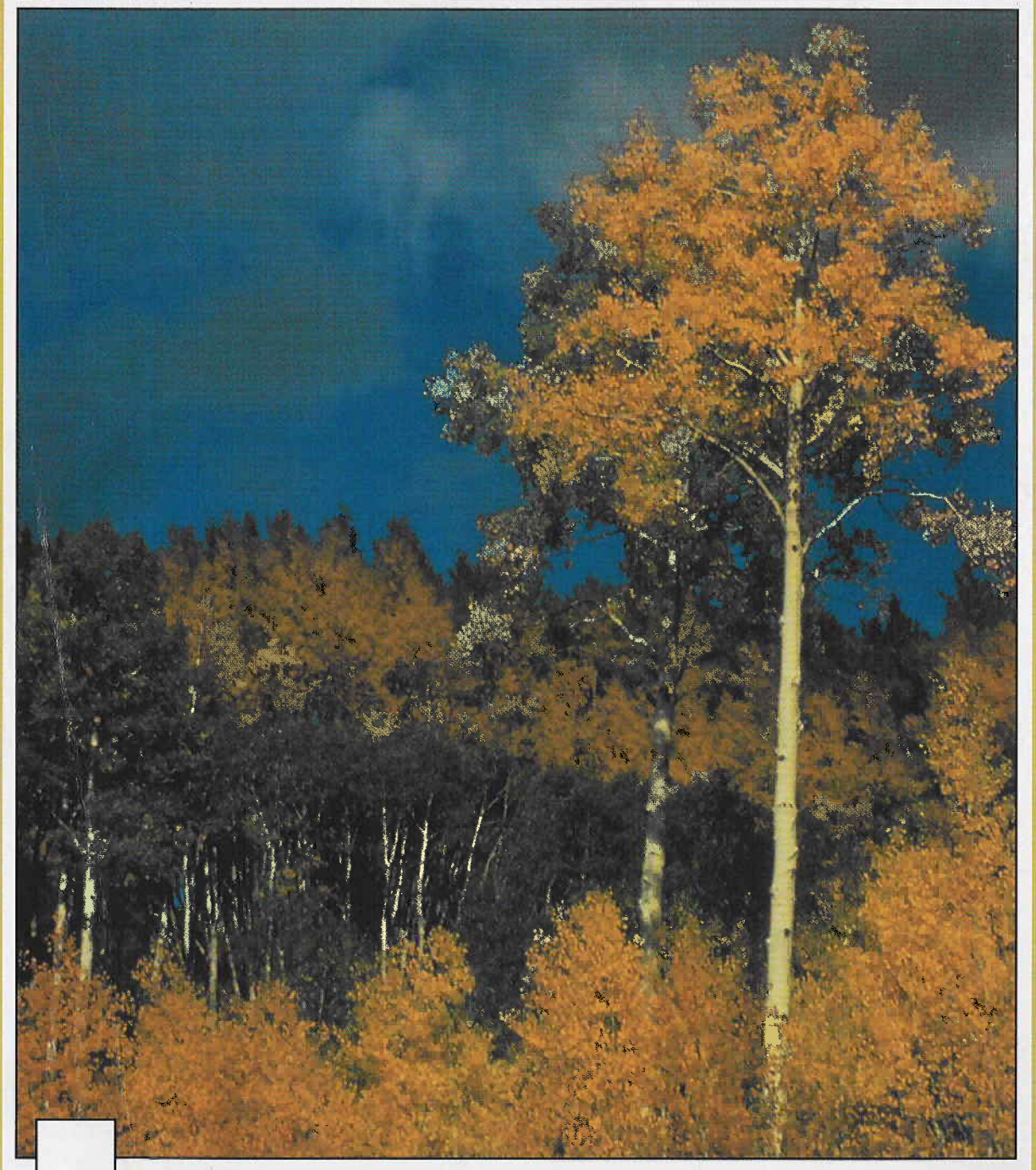

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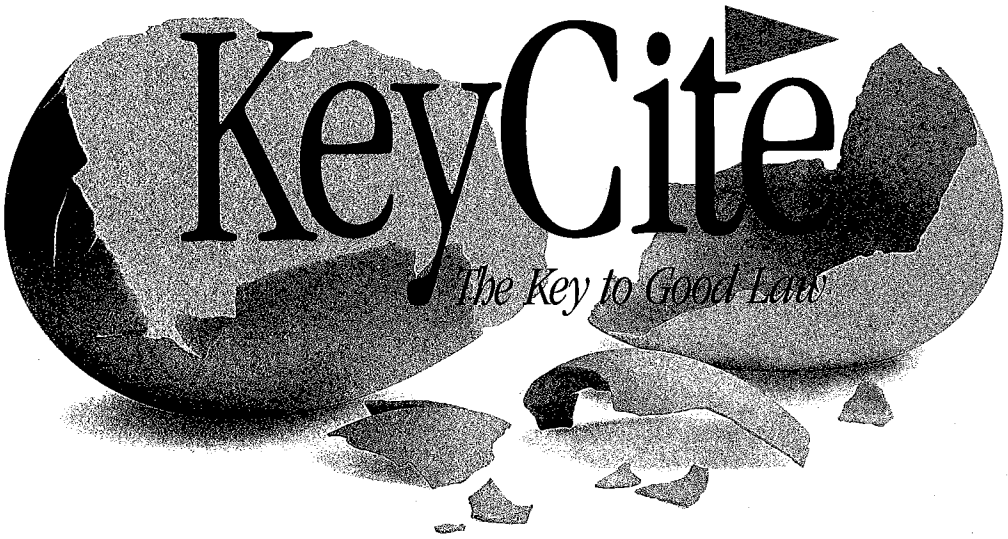

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VISION OF THE BAR: To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.

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.

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COVER: Autumn Colors in Logan Canyon, by Bret B. Hicken, Spanish Fork, Utah.

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, 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, $40; single copies, $4.00. For information on advertising rates and space reservation, call or write Utah State Bar offices.

LETTERS

Editor:

I appreciated your September issue highlighting the Crime Summit. However, several aspects of Judge Hutchings' and Professor Smith's article ("The Good, the Bad, and the Ugly: Crime and Punishment in Utah") need correction.

- Under the heading "Illegal Alien Drug Dealers," they write that "[a]ll illegal aliens who commit drug felonies can be subject to federal prosecution, with stiff minimum mandatory punishment imposed." In fact, the overwhelming majority of felony drug arrests do not involve amounts of drugs that would make a defendant eligible for a federal minimum mandatory sentence.
- The authors then write, "However, the policy of the U.S. Attorney's Office is to decline prosecutions on all but a handful of these offenders." In fact, when a drug defendant is eligible for a minimum mandatory sentence and the evidence presents a prosecutable case, the U.S. Attorney's Office rarely if ever declines such a case.
- Next, the authors assert that "[i]n 1996, the U.S. Attorney prosecuted less than 5% of the illegal aliens booked into the Salt Lake County Jail for drug distribution." This compares apples and oranges. The authors cite to information from my office having nothing to do with prosecutions for drug distribution; that information reported aggravated illegal re-entry immigration cases and showed that such federal prosecutions in Utah have increased significantly in recent years. Indeed, as reported at the Crime Summit, more of these cases are being charged in Utah than in Nevada, Idaho, Wyoming, and Colorado combined.
- The authors did not ask my office about federal drug prosecutions. Rather, one of Judge Hutchings' law clerks asked about immigration law and aggravated illegal re-entry prosecutions. As is the case throughout the United States, most drug offenses are prosecuted in state rather than federal court because they often involve small amounts of narcotics. Federal resources are appropriately focused on the large amount, complex drug cases that produce "stiff minimum mandatory punishment."

For example my office recently prosecuted an international drug smuggler for the importation of thousands of pounds of marijuana to the United States. He was sentenced to 20 years imprisonment. This complex investigation and prosecution also produced about $1.5 million in forfeited assets connected to the illegal drug activity.

Finally, I would like to comment on the report that my office will receive three new prosecutors. We welcome this additional resource and will put these attorneys to work prosecuting immigration, drug, and violent crime offenses. Naturally, we will focus these resources on criminal conduct that can best be prosecuted in federal court. We also will continue to do our best to help address the crime problem in Utah to the full extent that our jurisdiction and resources allow.

Sincerely,
Scott M. Matheson, Jr.
United States Attorney

Interested in Writing an Article for the *Bar Journal*?

The editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine.

If you have an article idea or would be interested in writing on a particular topic, contact the editor at 566-6633 or write, *Utah Bar Journal*, 645 South 200 East, Salt Lake City, Utah 84111.

Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.

2. No one person shall have more than one letter to the editor published every six months.

3. All letters submitted for publication shall be addressed to Editor, Utah Bar Journal and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.

4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.

5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Code of Professional Conduct, (c) is deemed execrable, calumnious, obliquitous or lacking in good taste, or (d) otherwise may subject the Utah State Bar, the Board of Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.

7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.

8. The Editor, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

Will the Real Lawyer Please Stand Up

By Charlotte L. Miller

Litigator, tax lawyer, personal injury lawyer, criminal defense lawyer, merger and acquisition lawyer, divorce lawyer, insurance defense lawyer, environmental lawyer. As you read each of these lawyer types, certain images, preconceived ideas, and generalizations come to mind. Think about government lawyer, big firm lawyer, solo practitioner, in-house lawyer. Which of these are "real" lawyers? Public defense lawyers can tell you about their clients who wished they had a "real" lawyer from a big law firm. (Ironically, these clients do not realize the outstanding representation they receive from the Salt Lake Legal Defender's Office). And, I've heard associates in big law firms who don't feel they are getting enough litigation experience refer longingly to a prosecutor who goes to court everyday as a "real" lawyer. Since I work in corporation, I'm not even close to being a "real" lawyer.

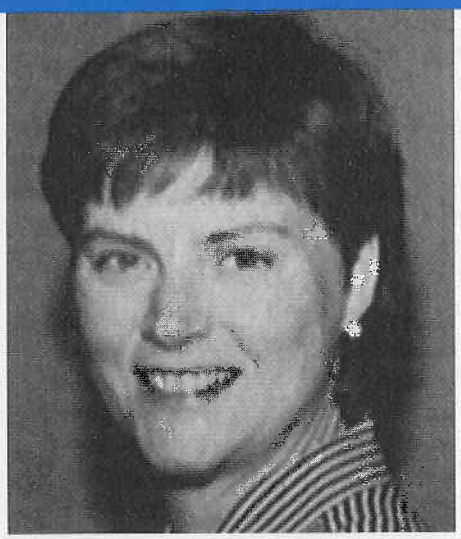
Some of us lawyers are concerned about the public image of lawyers, lawyer bashing and lawyer jokes. However, we may spend as much time bashing one another as any member of the public who is not a lawyer. I have heard solo practitioners complain how much easier big firm lawyers have it than solo practitioners, or business lawyers complain that litigators have no business or management acumen, or ability to negotiate. Or, I hear how business lawyers have no personality, or criminal defense lawyers have no morals, or collections lawyers are greedy. I don't usually have to go outside of talking to members of the Bar to hear these comments.

Sometimes these over-generalization are meant as humor (and I'm not opposed to fun) but occasionally we should consider what drives us to be so critical of those in our own profession. Next time you or some lawyer with you starts down the path of criticism, remember that big firm lawyers have to pay for their copy machines the same way as solo practitioners (and I've been in more than one meeting where the answer to raising money was "ask the big law firms"), that government lawyers have the stress of a demanding client the same as divorce lawyers, and that a good litigator knows how to manage a case and the people involved in it.

A few years ago I wrote an article in the *Bar Journal* outlining what I believe is good customer service by lawyers. One of the points I raised is that as a client I never like for attorneys in a firm to criticize other attorneys in the firm. A litigator's client may need a tax lawyer, and the litigator's criticism may result in the client finding a tax lawyer in another firm. Or, your real estate client's daughter may get arrested one night and you'll need the help of one of those criminal defense lawyers that you've told your client are flaky and unstable. We often say that the public hates lawyers until they need one. Maybe that applies to a lot of lawyers too.

Law is a profession. As professionals, we should be appreciative of one another's talents, strengths, and successes, without the need to also be demeaning. The securities lawyer who understands the value of a good litigator, and the divorce lawyer who appreciates a good estate planning lawyer can provide much better customer service to a client. I encourage all of us to not only be more tolerant, but to have pride in our colleagues.

As a consumer of legal services, I have used solo practitioners, big firm lawyers, business lawyers, and I have worked with government and in-house lawyers. None are inherently bad, and I have found all of those areas to contain bright, hard-working individuals. (I apologize for never having hired a criminal defense lawyer, but I have other connections to them that allow me to aver that they are not inherently evil either). I propose we are all "real" lawyers – whatever that means – and that the best way to improve the public image of lawyers is to start with looking at the image we project of ourselves and our colleagues.



Looking Into the Crystal Ball

By Debra J. Moore

Perhaps few Bar members realize that the Bar Commission has a standing committee whose purpose is to forecast the future and recommend action on issues the Bar will confront in the years ahead. The Long Range Planning Committee currently consists of its Commissioner Dave Nuffer (Chair), Bar Executive Director John Baldwin, State Court Administrator Dan Becker, Commissioner Scott Daniels, Young Lawyers Division President-Elect Brian W. Jones, Minority Bar Association Ex Officio Dane Nolan, Commissioner Ray Westergard, and me. The Committee is now putting finishing touches on an ambitious set of recommendations, and will soon present its proposed Long Range Plan to the Bar Commission for consideration. Watch for distribution of the proposed Plan in the coming months. The Commission will welcome your comments as it considers the Committee's recommendations and determines the Long Range Plan of the Bar.

THE ON-GOING PLANNING PROCESS

The Committee envisions that the Long Range Plan will be a living document, subject to continual revision to meet the changing landscape (or should I say cyberscape?) of the future. The planning term is at least five years, and the Committee has attempted to project even further ahead. Once a complete Plan is in place, the Committee will continue to meet on a quarterly basis to review each area of the Plan in turn, so that a complete review occurs over a period of ten years. Every ten years, the Committee will conduct a zero-based overhaul of the entire Plan.

CONTEXT INFORMATION

To provide a context for drafting the Plan, the Committee reviewed a large volume of materials. Those context materials, summaries of which will be appended to the Plan, fell into several categories:

1. Framework for Administration of Justice and the Practice of Law. The Committee reviewed the structural framework of Utah's system for the administration of justice and the practice of law, identifying each of the numerous standing committees of the Judicial Council, of the Bar, and other committees supervised by the Supreme Court, that play a role in the administration of the state's justice system. Although somewhat labyrinthine at first blush, Utah's framework for the administration of justice follows a highly participatory model, providing Bar members abundant opportunity for input. As D. Frank Wilkins has said, "Democracy is messy."

2. Demographics and Needs of Members. From various surveys of Bar members conducted by the Bar over the last ten years, as well as current statistical information from Bar records, the Committee gleaned an impression of the makeup, attitudes and needs of Bar members. On a national scale, the Utah State Bar has grown from a small to a medium sized bar in recent years, and that growth is expected to continue. The race and gender diversity of the Bar is increasing, albeit slowly.

3. Financial and Administrative History of the Bar. The Committee reviewed and analyzed the history of Bar finances and administration. The Committee closely examined the current allocation of revenues among the regulatory, member service, and public service functions of the Bar. The Committee also identified areas of growth in expenditures, the most significant of which is attorney discipline, which has grown out of proportion to Bar revenues and is sure to receive the close attention of the Bar Commission in both the short and long term.

In the short run, for example, a program recently implemented at the initiative of Bar President Charlotte Miller, the Consumer Assistance Hotline, may significantly reduce the Bar's discipline caseload. The Hotline, staffed on a part-time basis by attorney Jeannine Timothy, is essentially a Better Business Bureau for the legal pro-

fession. The Hotline is expected to divert from the formal discipline system minor client relations problems that do not implicate serious ethical violations, but that historically have been the subject of discipline complaints.

4. Forecast of the future of the justice system, the delivery of legal services and the practice of law. Rather than generating its own forecast, the Committee relied on a wealth of futures studies and other information from a variety of sources to identify trends and project the future of the practice of law in Utah. A few highlights from those materials include:

- The lawyer work force has grown younger and receives less mentoring by large firms; more new lawyers are entering solo and small firm practice.
- Utah's population, which will reach 2.8 million in the year 2020, is aging, creating more elder law issues.
- Clients have and will continue to become increasingly sophisticated, demanding, and willing to consider alternatives to the adversarial system, including ADR; competition in the legal workplace will continue to increase.
- The ratio of lawyers to Utah citizens was 1 to 336 in 1992 and will decrease to 1 to 290 in 2002.
- The need will increase for reciprocity in licensing to accommodate greater globalization of lawyering.
- The definition of practicing law will change. Traditional practice will experience encroachments from increased pro se legal work, increased access to forms and transactional assistance through computer programs and internet services, performance of work by other professionals, including legal professionals other than lawyers.

THE NEED FOR CONTINUITY AND BROAD PARTICIPATION

The number, scope and velocity of the changes influencing the legal profession are astonishing. The Long Range Plan will help to place the Bar in the advantageous position of anticipating and accommodating or buffeting, rather than merely reacting to these changes. To have any meaningful impact, however, the Bar must develop its competence as an institution to maintain a sustained effort. The Bar will also need to build and maintain a strong consensus among Bar leaders and members about its vision and priorities. The proposed Long Range Plan will address these issues, among others. I look forward to hearing your comments on the proposed Plan when it is released after the Commission finishes its preliminary review.

Use Immunity: A Major Change in Utah Criminal Law

By Creighton C. Horton II

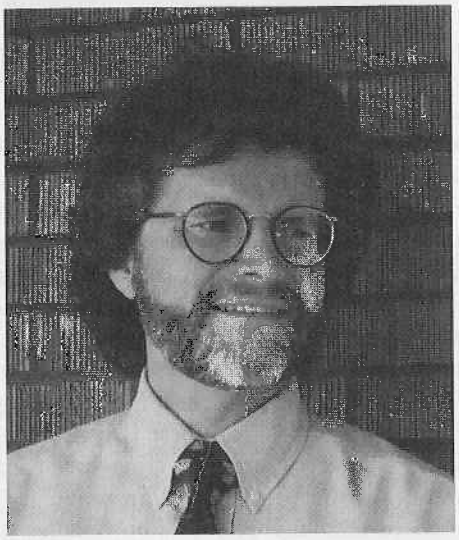
The 1997 Legislature enacted H.B. 78, Witness Immunity Amendments, sponsored by Representative David Gladwell. It is a major change in the law, bringing to Utah the concept of "use immunity," which authorizes a prosecutor to compel a witness to provide testimony or evidence so long as the information cannot be used against the witness. No longer will prosecutors have to give witnesses "transactional immunity," barring any possibility of prosecuting them for anything they disclose, in order to compel them to testify or give evidence against others.

In this article, I will briefly touch on the history of use immunity, discuss provisions of the new law, and then cover some of the strategic considerations, particularly when a witness may later be prosecuted after testifying under a grant of use immunity.

HISTORY

In 1972, in *Kastigar v. United States,* 406 U.S. 441 (1972), the United States Supreme Court established the principle that use immunity is sufficient to protect the Fifth Amendment privilege against self-incrimination, so long as the statement of the defendant and evidence produced by him cannot be used against him, *either directly or indirectly,* in a criminal case. Previously, in *Counselman v. Hitchcock,* 142 U.S. 547 (1892), the Court had held that "straight" use immunity (not including derivative use) was not constitutionally sufficient, and that only transactional immunity would suffice to protect Fifth Amendment interests.

Use immunity recognizes the principle that the self-incrimination clause protects a person from being compelled to be a witness against himself, not against others. Following the *Kastigar* decision, a number of states enacted use immunity statutes similar to the federal statute (18 U.S.C. § 6002).



CREIGHTON C. HORTON II is a 1976 graduate of the UCLA School of Law. He worked as a Deputy Salt Lake County Attorney from 1978 until 1987, at which time he became an Assistant Attorney General. He is presently Division Chief of the Criminal Division of the Attorney General's Office.

WHAT THE BILL DOES

Here are some of the main features of the new law:

1. Up until now, the transactional immunity provisions have been within Chapter 22 of Title 77, which deal with the Subpoena Powers Act. The new immunity provisions are in a new chapter, Chapter 22b, to make clear that they apply across-the-board and not just in the investigative subpoena context.[1]

2. The new use immunity provisions allow a county attorney, district attorney, attorney general, or a deputy or assistant *authorized by the elected official,* to grant use immunity to a witness. This is different from the previous law, which required that the elected official personally grant immunity.[2]

3. The new law provides a mechanism for granting immunity and for notifying the witness of the grant, which includes advising the witness that he or she may not refuse to testify or produce evidence or information on the basis of the privilege against self-incrimination, but that such evidence cannot be used directly or indirectly against the witness. The notice must be in writing (unless it occurs during a preliminary hearing, grand jury proceeding, or trial, and is on the record). The grant is then effective and requires no judicial involvement. In the event the witness refuses to cooperate after receiving the grant, the prosecutor may notice up a hearing before the district court and request the court to compel the witness to comply. If the witness is ordered by the court to comply and refuses, he or she may be held in contempt of court.

4. The protections given a witness who is compelled under a grant of use immunity are found in subparagraph (2) of § 77-22b-1, which provides that testimony, evidence or information compelled under use immunity may not be used against a witness in any criminal or quasi-criminal case, nor may any information be used that is directly or indirectly derived from the compelled information (unless volunteered by the witness or otherwise not responsive to a question). Subparagraph (3) provides that if a witness is later prosecuted — something which was not possible under transactional immunity — the burden is on the prosecution to show that no use or derivative use was made of the compelled testimony, evidence or information, and to show that any proffered evidence was derived from sources *totally independent* of the compelled information. (As I will mention in the next section, this is a high standard, even though the statute provides that the prosecution need only establish no use or derivative use by a preponderance of evidence.)

5. The remedy for failing to establish that any evidence was derived from sources totally independent of the witness' testimony is suppression of that particular piece of evidence only. It does not necessarily require dismissal of the case, depending on the strength of the untainted evidence.

6. Subparagraph (4) establishes that the new law does not in any way limit prosecutorial authority to enter into agreements with cooperative witnesses under § 77-22-4.5.

7. Use immunity can only be granted by prosecutors who have authority to prosecute felonies. This means that city prosecutors cannot grant use immunity. Instead, they must go to a felony prosecutor if they need a grant of use immunity to compel a witness to testify. The same applies to county attorneys within prosecution districts, since their jurisdiction is limited to misdemeanor ordinance violations. (Currently, Salt Lake County is the only county that has opted to create a prosecution district.)

However, city prosecutors and county attorneys within prosecution districts do retain the same authority they had prior to the change in the law — to grant transactional immunity for misdemeanor violations within their jurisdictions. (In instances where witnesses are only concerned about potential exposure to misdemeanor violations, they may be satisfied with a city prosecutor's grant of transactional immunity and be willing to testify without a grant of use immunity.) The reason for the distinction in who may grant use immunity is that a grant of use immunity, in order to be constitutionally sufficient, must apply to all criminal cases and cannot be limited to misdemeanors. The new law is structured so that the prosecutor whose felony case may be impacted by the decision to grant use immunity will be the one making the decision to grant it.[3]

8. Administrative Agency Authority: Prior to this change in the law, many administrative agencies and officials (from the Meat and Poultry Inspector to the Department of Commerce to the Industrial Commission) could (wittingly or unwittingly) give transactional immunity to people who might otherwise be prosecuted for crimes, including serious felonies, without even consulting a prosecutor. Sprinkled throughout the code were sections requiring witnesses subpoenaed before certain administrative bodies to give testimony and evidence which could be incriminating, but then immunizing the witnesses from ever being prosecuted for anything they disclosed.

Under the new statutory scheme, administrative agencies and officials who want to compel testimony no longer have authority to grant immunity to witnesses. Instead, they must go to the appropriate prosecutor and ask that a witness be granted use immunity in connection with their administrative hearings.

9. Finally, the statute prohibits use of compelled information against a witness in a criminal or "quasi-criminal" case. Case law establishes that certain proceedings which are not strictly criminal are so far punitive in their purpose and effect that the right against self-incrimination attaches. These may include juvenile adjudications, as well as proceedings for civil penalties

and forfeitures that are perceived by a court to be so far criminal in nature that a defendant has a constitutional right against self-incrimination. *See United States v. Ward,* 100 S.Ct. 2636 (1980). Note also that the Utah Supreme Court has found the Utah Drug Stamp Tax Act to be quasi-criminal for purposes of the exclusionary rule. *Sims v. State Tax Com'n,* 841 P.2d 6 (Utah 1992). The Court might (but need not necessarily) determine the Act to be quasi-criminal for purposes of use immunity as well.

STRATEGIC CONSIDERATIONS

Once a prosecutor grants use immunity to a witness and takes testimony or evidence, it becomes much more difficult to prosecute the witness afterwards. While most courts interpreting *Kastigar* have apparently adopted a preponderance of evidence standard, prosecutors are still constitutionally required to establish that any evidence used against a witness who becomes a defendant was derived from sources totally independent of the compelled information.

In *U.S. v. North,* 910 F.2d 843, 873 (D.C. Cir 1990) *(North I)*, the court said: "We remind the prosecution that the *Kastigar* burden is 'heavy' not because of the evidentiary standard, but because of the constitutional standard: the government has to meet its proof only by a preponderance of the evidence, but *any* failure to meet that standard must result in exclusion of the testimony. "

This is often a very difficult thing to do, especially if the prosecutor has not documented what evidence he or she already had implicating the defendant before the compelled testimony occurred. (The easiest case for the prosecution is where the testifying defendant has already been tried and convicted before being compelled to testify.)

Various mechanisms have been used by prosecutors to help them meet the heavy burden of establishing that the evidence used against the witness/defendant at trial is wholly independent of information the witness/defendant was compelled to provide. Some include:

1. Constructing a "Chinese Wall" between those who are involved in taking the statement under use immunity (or have been exposed to the statement) and those who may be involved in a later prosecution;

2. "Canning" the testimony of all witnesses and documenting all the evidence that links the witness to criminal activity *before* a statement is taken under a grant of use immunity. This may include filing a document with the court, before any information is taken from the witness, to establish what the State already knew. (One mechanism for doing this would be in the context of the record-keeping requirements imposed upon the prosecutor for investigations conducted pursuant to the Subpoena Powers Act. *See* Utah Code Ann. § 77-22-4.)

3. Carefully staffing any proposed immunity grant to be sure it ought to be given and that the investigation has reached the best strategic point to grant it.

"Once a prosecutor grants use immunity to a witness and takes testimony or evidence, it becomes much more difficult to prosecute the witness afterwards."

An example of the difficulties prosecutors may encounter is the Oliver North case. The federal prosecutors went to some length in that case to segregate themselves from any evidence produced through the congressional hearings at which North was required to testify under a grant of use immunity. The D.C. Circuit Court of Appeals in *U.S. v. North,* 920 F.2d 940 (D.C. Cir. 1990) *(North II)* reversed North's conviction because witnesses who testified at North's trial might have been exposed to his immunized testimony, which could have influenced their testimony. The court essentially required that prosecutors not only prove that they had no knowledge or exposure to North's immunized testimony, but that the witnesses who testified against North did not draw upon his testimony in any fashion.

The bottom line is that courts interpret "derivative use" quite broadly. While each case turns on its unique facts, examples of what some courts in other jurisdictions have found to be "derivative use" include evidence obtained from the witness/defendant that enhances the prosecutor's case against that person by tending to:

1. Assist in identifying witnesses or evidence which can be used against the witness;

2. Motivate other witnesses to come forward and/or cooperate;

3. Cause the prosecutor to focus the investigation on the witness;

4. Give the prosecutor an advantage in planning trial strategy against the witness;

5. Increase the prosecutor's motivation to prosecute the witness;

6. Cause the prosecutor to refuse to plea bargain with the witness; and

7. Provide material which helps the prosecutor cross-examine the witness at trial.

As is evident, it is important to have a prosecutor and investigators who are not familiar with the witness' immunized testimony handle the criminal case against the witness. The underlying concept is that a defendant cannot be disadvantaged in any way by what he or she has been compelled to disclose. To be constitutional, the protection afforded by any grant of immunity must be "coextensive with the scope of the privilege" and "afford protection commensurate with that afforded by the privilege." *Kastigar,* 406 U.S. at 453.

Given the inherent risks of granting use immunity to a witness who may later be prosecuted, elected public prosecutors should be very cautious about the circumstances under which immunity is granted, as well as ensuring that those persons whom they specifically designate within their offices to grant use immunity be well informed about the principles and hazards associated with such grants.

A final issue: a handful of state supreme courts have ruled that only transactional immunity is sufficient under their state constitutions, raising the possibility that our court might do the same. While the Utah Supreme Court did at one time interpret our state constitutional provision broader than the Fifth Amendment in *Hansen v. Owens,* 619 P.2d 315 (Utah 1980), by seizing on the state constitutional language "compelled to give evidence against himself," it was a short-lived departure. In *American Fork v. Crosgrove,* 701 P.2d 1069, 1073 (Utah 1985), *Hansen v. Owens* was overruled, and Justice Durham, writing for the majority, stated: "If any intent can be derived from the proceedings of Utah's constitutional convention, it is that framers intended to have the privilege to have the same scope that it had under similar constitutional provisions, which was the scope it had at common law." *See also State v. Herrera,* 895 P.2d 359, 371 (Utah

1995) (". . . Utah's privilege against self-incrimination does not exceed that of the federal constitution.").

CONCLUSION

Twenty-five years after *Kastigar,* use immunity has finally come to Utah, providing prosecutors with a mechanism for getting information without giving witnesses total legal absolution for their crimes. There are, however, serious strategic concerns which prosecutors need to take into account when they are considering granting immunity. If the goal is to preserve the possibility of later successfully prosecuting the witness, prosecutors must proceed cautiously. They must follow procedures that minimize the risk of having the evidence they wish to use against the witness suppressed due to their inability to prove that the evidence came from sources totally independent of what was obtained through the immunity grant.

Use immunity, if skillfully and wisely used, can be invaluable in penetrating criminal activity that might otherwise remain unsolved or unprosecutable. If prosecutors are well-versed in the pitfalls and take them into account, use immunity can be an effective tool for bringing the guilty to justice without necessarily having to give up one guilty party in order to convict another.

[1]It is important to note that the procedures relating to granting use immunity only apply in circumstances in which the prosecutor affirmatively grants immunity to compel testimony, usually after a witness invokes the privilege against self-incrimination. Often, witnesses and defendants enter into "deals" with the prosecutor which do not involve forcing them to provide information. Some also involve proffers by defense counsel as to what a witness will say or be able to provide. Generally, those situations will be handled through written contractual agreements under §77-22-4.5, Prosecutorial Authority to Compromise an Offense Regarding a Witness, rather than through granting use immunity (although nothing would prevent the parties from incorporating the concept of use immunity into their agreement).

[2]*See State v. Ward,* 571 P.2d 1343 (Utah 1977).

[3]The distinction in immunity authority is not due to any notion that a city prosecutor would be any less capable of making a good judgment. I will discuss in the next section some of the strategic concerns whenever a grant of use immunity is given to a witness who may later be prosecuted.

Disclosure Rules and Remedies Under the Truth in Lending Act

By Brian W. Jones

The amount of outstanding consumer debt has exploded since 1990. Consumer loans made just by the banking industry increased 37% from early 1990 through 1995.[1] Credit card lending to the consumer by banks increased 77% during the same period.[2] Given the increasing use (some would argue abuse) of consumer credit, Congress and the various banking regulators have recently given increased attention to the laws governing the extension of consumer credit. The primary vehicle through which Congress has regulated the consumer lending business has been the Truth in Lending Act (TILA or Act) (15 U.S.C.A. § 1601 *et. seq.*) This article examines disclosure of the finance charge as required by the TILA and the remedies offered by the TILA for improper disclosure.

THE ACT

The TILA consists of the first five chapters of the Consumer Credit Protection Act and was first enacted by Congress in 1968 but has been amended several times since; most recently in September 1995. In *Mourning v. Family Publications Service,* 411 U.S. 356 (1973), the Supreme Court noted that the TILA was initially proposed because Congress perceived that consumers were "ignorant of the nature of their credit obligation and of the costs of deferring payment." (Footnote omitted). Congress enacted the TILA and stated that its purpose was "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." (15 U.S.C.A. §1601(a)). To accomplish this purpose, the TILA requires that creditors provide uniform disclosure of credit terms and provides consumers with specific remedies against creditors that fail to meet the disclosure standards prescribed by the TILA.

BRIAN W. JONES graduated in 1993 from the University of Utah College of Law. In 1990, he received a bachelor's degree in finance from University of Utah College of Business. Jones is currently an in-house attorney at Zions Bank where he used to perform commercial loan workouts but now oversees and manages the bank's implementation of new and existing bank laws and assists the bank's board of directors with establishing bank policies consistent with those laws. During law school, Jones clerked for the Tax and Revenue Section of the Utah Attorney General's office and completed an internship with Chief Judge Glen E. Clark of the U.S. Bankruptcy Court. Jones is the President-elect of the Young Lawyer's Division and serves on the Bar's Long Range Planning Committee.

THE REGULATION

Congress granted authority to the Federal Reserve Board (FRB) to issue regulations implementing the TILA.[3] The result is Regulation Z.[4] Regulation Z prescribes the form, timing, and content of the disclosures required by the TILA. The FRB has also issued official commentary on Reg. Z.[5] The requirements of the regulation are deemed requirements of the Act[6] and creditors acting in good faith may rely on the FRB's official commentary and official interpretations to avoid civil and criminal penalties under the Act.[7] In response to the 1995 amendments to the TILA, the FRB adopted revisions to Reg. Z in September 1996[8] and issued additional official commentary pertaining to the revisions in March 1997.[9]

SCOPE

The TILA requires creditors, as defined in the Act,[10] to disclose the cost of credit as a dollar amount (referred to in the Act as the "finance charge"[11]) and as an annual percentage rate (APR).[12] Although TILA applies to virtually all creditors, it does not apply to all credit transactions. The TILA only applies to consumer credit transactions. A consumer credit transaction is one in which a creditor extends credit to a natural person and the loan proceeds are to be used by the consumer primarily for personal, family, or household purposes.[13] Loans to be used primarily for business purposes are exempt from the provisions of the TILA.[14]

The Act covers only creditors who offer or extend credit regularly[15] and it covers only transactions subject to a finance charge or payable in more than four installments.[16] Loans greater than $25,000 are exempt from the provisions of the Act unless the loan is secured by real property or a dwelling.[17] Credit that involves public utilities is exempt,[18] as is credit extended for securities or commodities accounts,[19] for home fuel budget plans,[20] and for certain student loan programs.[21] Both the TILA and Reg. Z contain provisions governing disclosure, advertising,[22] billing,[23] and remedies.[24] Only the disclosure rules

and remedies will be discussed here.

DISCLOSURE RULES

Congress instructed the FRB to publish model disclosure forms that creditors may use for common transactions.[25] A creditor that properly uses these forms is deemed in compliance with the disclosure requirements of the Act,[26] except with respect to numerical disclosures.[27] Creditors may alter the forms to suit their own needs, so long as the changes do not alter the substance or clarity of the disclosures.[28] Although not required to do so, most creditors use the model forms and make few, if any, modifications. Therefore, issues most commonly arise with respect to how creditors calculate and disclose the numerical portions of the model forms. Properly disclosing the numerical disclosures depends almost entirely on how a creditor calculates the finance charge.

FINANCE CHARGE

A creditor must disclose the finance charge in any credit transaction subject to the TILA.[29] The finance charge is the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.[30] It does not include charges of the type that would be payable in a comparable cash transaction.[31] The 1995 amendments to the TILA and subsequent amendments to Reg. Z clarified the finance charge rules by specifying whether certain items should or should not be included in the finance charge.

ITEMS INCLUDED IN THE FINANCE CHARGE

Regulation Z includes a list of certain types of charges that, if imposed, are always included in the finance charge calculation. These are interest charges,[32] transaction fees,[33] points and origination fees paid by the consumer,[34] credit guarantee insurance premiums,[35] loan purchase charges,[36] cash discounts for the purpose of inducing payment by a means other than via credit,[37] and fees related to the preparation of the Truth in Lending disclosure.[38]

Other charges must always be included unless certain conditions are met by the creditor. Premiums and fees for credit life, accident, debt cancellation[39] and other types of insurance must be included in the finance charge unless the coverage is optional to the consumer, the creditor discloses that fact in writing, the fee and terms of the coverage are disclosed, and the consumer signs or initials an affirmative request for coverage after receiving the disclosure.[40] Property and liability insurance premiums, including those for collateral protection (also known as vehicle single interest) insurance[41] must be included in the finance charge unless the creditor discloses to the consumer that the consumer may obtain this type of insurance from a person of the consumer's choice,[42] and, if the insurance is obtained from or through the creditor, the premium for the initial term of the insurance is disclosed to the consumer.[43] Fees and taxes paid for perfection of security interest or insurance in lieu of perfection must be included in the finance charge unless these charges are disclosed and itemized for the consumer.[44]

Recent amendments to Reg. Z clarified the proper treatment of certain fees charged by third parties. Appraisal and credit report fees must be included in the finance charge unless they are charged to all applicants as non-refundable application fees[45] or are charged as part of a loan secured by real estate.[46] Fees such as those charged for mortgage insurance premiums must be included in the finance charge if the creditor requires use of the third party as a condition of, or incident to, the extension of credit. If the services are required, the fees should be included whether or not the consumer may choose the party who will render the service. They should also be included if the creditor retains a portion of the third-party charge.[47] Fees charged by third party closing agents (including attorneys) must also be included in the finance charge when the creditor requires the particular services, requires imposition of the charge, or retains any portion of the charge.[48] The revised FRB official commentary explains that the third party closing agent fees may be excluded from the finance charge if those services are of the type otherwise excludable.[49] Charges such as those that would be paid in a comparable cash transaction (excludable under 12 C.F.R. §226.4(a)), or a lump-sum fee charged for real estate closing costs (excludable under 12 C.F.R. §226.4(c)(7)), are examples of charges that may otherwise be excludable.[50]

SPECIAL RULES FOR RESIDENTIAL MORTGAGE AND REAL PROPERTY LOANS

If the loan is to be secured by an interest in real property, certain charges may be excluded from the finance charge if various conditions are met by the creditor. If the charges are bona fide and reasonable in amount, the creditor can exclude fees for title examinations and insurance, surveys, and similar services,[51] fees charged for preparing loan-related documents,[52] notary and credit report fees,[53] appraisal and inspection fees (including fees charged for pest inspections and flood hazard determinations),[54] and amounts to be paid into escrow so long as those amounts would not otherwise be included in the finance charge.[55] Mortgage broker fees must always be disclosed and included in the finance charge.[56] However, certain charges imposed by the mortgage broker that could be excluded by the creditor may be excluded from the mortgage broker fee disclosed to the consumer.[57] For example, an application fee charged by the mortgage broker that would be excludable by the creditor need not be included in the finance charge when imposed as part of a mortgage broker fee.

CHARGES THAT ARE ALWAYS EXCLUDED FROM THE FINANCE CHARGE

Charges that the creditor imposes that would be payable by the consumer in a comparable cash transaction should not be included in the finance charge.[58] These charges typically occur on auto loans. The FRB considers charges such as tax, title, and registration fees, auto club membership fees, and quantity discounts as the type to be excluded under the comparable cash transaction exemption.[59] Late payment or overdraft fees are excludable.[60] Seller-paid charges such as points and mortgage insurance premiums are also excludable.[61]

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FINANCE CHARGE TOLERANCE

The TILA and Reg. Z allow creditors certain amounts of leeway when calculating the finance charge. Disclosures made by the creditor are deemed accurate under the TILA if they fall within the tolerances prescribed by the TILA and Reg. Z. The 1995 amendments made some important changes to the finance charge tolerances allowed under the TILA.

For most closed-end loans that aren't secured by real estate, the disclosed finance charge will be deemed accurate so long as it is not more than $5 above or below the actual finance charge for transactions involving an amount financed[62] of $1,000 or less.[63] The tolerance is increased to $10 above or below the actual finance charge for transactions greater than $1,000.[64] If the loan is secured by real estate or a dwelling and originated after September 30, 1995, the finance charge is deemed accurate so long as it is not understated by more than $100. An overstated finance charge is not considered a violation.[65] The 1995 TILA amendments added a new section titled "Certain limitations on liability."[66] This new section prescribes tolerances allowed on loans originated before September 30, 1995 and is effective retroactively. Under this new section, any understatement of the finance charge by $200 or less is deemed accurate as is an overstatement of the finance charge.[67]

Under the 1995 amendments to the TILA, special tolerances apply if the borrower is attempting to exercise the right of rescission. The rescission remedy is discussed in more detail below but is generally available on loans that aren't purchase money mortgages but are secured by the borrower's principal dwelling.[68] Basically, this definition includes home refinance loans and home equity loans. If the borrower is asserting rescission rights on a home refinance loan that isn't a consolidation or new advance on an existing loan, the finance charge tolerance is 1% of the loan amount or $100, whichever is greater.[69] If the borrower is asserting rescission rights on a home equity loan or a "high cost" mortgage loan,[70] the finance charge tolerance is one half of 1% of the loan amount or $100, whichever is greater.[71] If the borrower asserts rescission rights as a defense to a foreclosure action initiated by the creditor, the finance charge tolerance is $35 regardless of the character of the loan.[72] In any of the above circumstances involving a loan secured by a dwelling, an overstatement of the finance charge is not deemed a violation of the TILA.

REMEDIES

The TILA provides civil, criminal, and for certain types of loans, rescission remedies. The TILA allows up to a $5,000 fine and a year in prison for whoever willfully and knowingly violates the disclosure requirements of the TILA.[73] However, the TILA is typically enforced civilly by consumers seeking damages from creditors or by seeking to rescind the transaction or both.

RESCISSION

When a creditor[74] takes a security interest in the consumer's principal dwelling (except via a purchase money mortgage),

the transaction is subject to the consumer's right to rescind the transaction until midnight of the third business day following consummation of the transaction or the delivery of the disclosures and rescission notices required by the TILA, whichever is later.[75] This three-day rescission right is often referred to as a "cooling-off" period. During this time, the creditor is prohibited from disbursing money other than into escrow, performing services for the consumer, or delivering materials to the consumer.[76]

The consumer may only waive the three-day rescission right in order to meet bona fide personal financial emergencies.[77] Exactly what constitutes a "bona fide" emergency depends on the facts of each case. However, creditors would probably be safe accepting a waiver from a consumer affected by a natural disaster such as a flood.[78] The FRB has also stated that the consumer's need for credit to avoid foreclosure constitutes a bona fide financial emergency.[79] The mere existence of the consumer's waiver will not, by itself, insulate the creditor from liability for failure to provide the rescission notice.[80] Therefore, if the consumer offers to waive the right to rescind, the creditor should nevertheless provide the necessary rescission disclosures to the consumer and verify the claimed emergency.

The rescission remedy provided by the TILA has a longer reach than the three day cooling-off period. If a creditor neglects to provide the consumer with the notice of the right to rescind in its proper form, or fails to deliver material disclosures, the consumer may rescind the transaction any time within three years after consummation of the transaction.[81] "Material disclosures" include the annual percentage rate, the finance charge, the amount financed, the total payments, and the payment schedule.[82]

The finance charge tolerances apply when determining the availability of rescission. However, creditors should be reminded of the smaller finance charges tolerance ($35) that applies in the event the creditor attempts to foreclose on the real property securing a rescindable loan. If the finance charge is understated by more than $35 or if some other material deficiency is present in the form or content of the disclosures, the consumer may rescind the loan transaction. Also, if a mortgage broker fee is improperly excluded from the finance charge, the consumer may rescind regardless of whether or not the disclosures are within allowable tolerances.[83] Therefore, if a creditor attempts to foreclose on a loan that is less than three years old having deficient material TILA disclosures, it is likely the consumer will elect to rescind the transaction and terminate the creditor's interest in the security to thwart the creditor's foreclosure effort.

Rescission is intended to be an equitable remedy designed to return the parties to the status quo that existed prior to consummation of the rescinded transaction. However, the TILA and Reg. Z specify a sequence of rescission different than that established under common law. The statutory sequence of tender and rescission under Reg. Z places the consumer in a stronger bargaining position than does the common law. Therefore, the statutory rescission sequence can be quite harsh on creditors who may be forced to rescind because of what one court has called "hypertechnical" violations.[84]

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STATUTORY RESCISSION SCHEME

Regulation Z requires that if the consumer elects to rescind, the consumer must notify the creditor in writing.[85] The security interest in the property becomes void when the consumer exercises the right of rescission regardless of whether the security interest was recorded or perfected prior to rescission.[86] Within 20 calendar days after receipt of the consumer's notice of rescission, the creditor must return any money or property, including any finance charge, application fees, and appraisal fees to the consumer and take whatever steps necessary to reflect the termination of the security interest in the property.[87] If the creditor has delivered any money or property to the consumer (which will always be the case unless the consumer is rescinding under the three day "cooling-off" period), the consumer need not return this money or property to the creditor until the creditor has satisfied its obligation to terminate its security interest in the consumer's property and returned any money the consumer paid to the creditor.[88] This rescission scheme leaves the creditor in an extremely vulnerable unsecured position. However, the statutory rescission scheme may be modified by court order.[89] Prior to 1982 when the 1980 amendments to the TILA took effect, the statute granted no explicit right to the courts to modify the statutory rescission scheme. However, several courts implied a right to modify the statutory rescission process in order to meet the TILA's equitable goal.[90]

Even though the TILA and Reg. Z were amended to explicitly allow court modification, there remains some question as to the scope of a court's ability to modify the statutory rescission scheme. The statutory scheme as prescribed by Reg. Z does three things. First, 12 C.F.R. §226.23(d)(1) provides that the creditor's security interest becomes void when the consumer rescinds the transaction. Second, §226.23(d)(2) and (3) establish a time frame and sequence governing the exchange of property. Third, §226.23(d)(4) states that "[t]he procedures outlined in paragraphs (d)(2) and (d)(3) of this section can be modified by court order." It is noteworthy that §226.23(d)(4) allowing judicial modification omits paragraph (d)(1) from the list of those allowed to be modified. Section 226.23(d)(1) acts to render a creditor's security interest void when the consumer exercises his or her right of rescission. Therefore, under the provisions of Reg. Z, a creditor technically becomes unsecured if the consumer merely exercises the right to rescind. However, one federal court of appeals has declined to allow this result despite the language of Reg. Z, and has required that the consumer tender back money or property to the creditor prior to the creditor's security interest being voided.[91]

MONEY DAMAGES AND ATTORNEY'S FEES

In addition to (or instead of) rescission,[92] the TILA allows consumers to claim money damages against creditors for twice the finance charge imposed on the transaction, with a minimum of $200 and a maximum of $2,000.[93] These amounts are available when a creditor fails to comply with any TILA requirement regardless of

whether the plaintiff suffered any actual damage. Civil money damages are available to plaintiffs for any violation of the TILA by the creditor, no matter how minor and the violation need not be related to a "material" disclosure item. However, in the case where multiple violations are present, the plaintiff is only entitled to a single recovery.[94] The TILA also specifies statutory damages for class actions. The TILA limits total recovery in a class action to the lesser of $500,000 or 1 percent of the creditor's net worth.[95] The TILA also provides for the award of reasonable attorney's fees and costs in successful actions to enforce the TILA.[96]

CONCLUSION

The broad range and increasing amount of consumer loan transactions has required the creation of a detailed and complex disclosure scheme which requires accurate calculation and disclosure of the finance charge imposed on consumers. Given the Act's complexity, creditors must, and generally do, take great care and expend substantial resources to assure that the finance charge is properly calculated and disclosed to the consumer. However, when violations occur, the TILA provides remedies designed to enforce creditor compliance by allowing consumers to recover attorneys fees and some limited damages. This article has discussed only certain portions of the TILA. Counsel for creditors and debtors should refer to the statute and the recent amendments when actual issues arise relative to a consumer lending transaction.

[1] *Has Consumer Credit Growth Jeopardized Bank Profits?*, Federal Reserve Bank of Dallas, Financial Industry Issues, First Quarter 1996. Accessed via the Dallas Federal Reserve Bank's Home Page (visited May 11, 1997). <http://www.dallasfed.org/publications/fi/txt/fi_96_lq.html>

[2] *Id.*

[3] 15 U.S.C.A. §1607(d).

[4] 12 C.F.R. §226. All FRB regulations are assigned a position in the 200 series of 12 C.F.R. that corresponds to the letter of the alphabet used to refer to the particular regulation. For example, Reg. B can be found at 12 C.F.R. §202, Reg. C at 12 C.F.R. §203, Reg. D at 12 C.F.R. §204 and so on.

[5] 12 C.F.R. §226, Supp. I.

[6] 15 U.S.C.A. §1602(y).

[7] 15 U.S.C.A. §1640(f).

[8] 61 Fed. Reg. 49237 (September 19, 1996).

[9] 62 Fed. Reg. 10193 (March 6, 1997).

[10] 15 U.S.C.A. §1602(f); 12 C.F.R. §226.2(a)(17). A creditor is one who "regularly extends consumer credit." Reg. Z clarifies that one regularly extends consumer credit if one does so more than 25 times a year or more than 5 times a year for transactions secured by a dwelling, or when one extends a single credit that would be classified as a "high cost" mortgage transaction by Reg. Z. (12 C.F.R. §226.2(a)(17), n. 3).

[11] 15 U.S.C.A. §1605(a).

[12] 15 U.S.C.A. §1606(a).

[13] 12 C.F.R. §226.1(c)(1)(iv).

[14] 15 U.S.C.A. §1603(1); 12 C.F.R. §226.3(a).

[15] 12 C.F.R. §226.1(c)(1)(ii).

[16] 12 C.F.R. §226.1(c)(1)(iii).

[17] 15 U.S.C.A. §1603(3); 12 C.F.R. §226.3(b).

[18] 15 U.S.C.A. §1603(4); 12 C.F.R. §226.3(c).

[19] 15 U.S.C.A. §1603(2); 12 C.F.R. §226.3(d).

[20] 12 C.F.R. §226.3(e).

[21] 15 U.S.C.A. §1603(7); 12 C.F.R. §226.3(f).

[22] 15 U.S.C.A. §§1661-1665b; 12 C.F.R. §226.16 (governing advertising for open-end credit), 12 C.F.R. §226.24 (governing advertising for closed-end credit).

[23] 15 U.S.C.A. §§1666-1666j.

[24] 15 U.S.C.A. §§1635, 1640; 12 C.F.R. §226.23.

[25] 15 U.S.C.A. §1604(b).

[26] For example, Reg. Z requires that certain terms be disclosed more prominently than others, that the disclosures be made clearly and conspicuously in writing and in a form the consumer may keep. (12 C.F.R. §226.5(a)(1), (2); 12 C.F.R. §226.17(a)(1), (2)). Closed-end credit transactions requires disclosures that are segmented and grouped together and may not contain any information not directly related to the disclosures. (12 C.F.R. §226.17(a)(1)).

[27] 15 U.S.C.A. §1604(b).

[28] *Id.*

[29] Both the TILA and Reg. Z make a distinction, and impose somewhat different disclosure requirements, based on whether the character of the transaction is open- or closed-end. An open-end credit transaction is one in which the creditor reasonably expects repeated transactions under the same plan and may impose a finance charge periodically on the unpaid balance (12 C.F.R. §226.3(a)(20)). An overdraft protection account or an in-store account would be examples of open-end plans. A credit card is also a type of open-end credit plan but Reg. Z imposes unique disclosure requirements on issuers of credit cards (12 C.F.R. §226.5a). A closed-end credit plan is any credit transaction not under an open-end plan (12 C.F.R. §226.3(a)(10)). A finance charge must be calculated and disclosed for both open-end plans (15 U.S.C.A. §1637(b)(4)) and closed-end plans (15 U.S.C.A.

§1638(a)(3)).

[30]15 U.S.C.A. §1604(a); 12 C.F.R. §226.4(a).

[31]15 U.S.C.A. §1604(a); 12 C.F.R. §226.4(a); 12 C.F.R. §226, Supp. I. 4(a)-1.

[32]12 C.F.R. §226.4(b)(1).

[33]12 C.F.R. §226.4(b)(2).

[34]12 C.F.R. §226.4(b)(3).

[35]12 C.F.R. §226.4(b)(5).

[36]12 C.F.R. §226.4(b)(6).

[37]12 C.F.R. §226.4(b)(9). These charges may be excluded if part of a transaction involving an open-end plan or a credit card so long as the merchant offers the discount to all customers whether or not they are card holders or members of the open-end plan. (12 C.F.R. §226, Supp. I, 4(b)(9)-2).

[38]12 C.F.R. §226, Supp. I, 4(a)-1(ii)(A). Note that if the proposed loan is subject to the Real Estate Settlement Procedures Act (RESPA), the creditor may not charge a fee for the preparation of disclosures required by the Truth in Lending Act. (24 C.F.R. §3500.12).

[39]Debt cancellation insurance provides for the cancellation of all or part of the debtor's liability for amounts exceeding the value of the collateral securing the obligation. (61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(d)(3)(ii)).

[40]15 U.S.C.A. §1605(b); 61 Fed Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(d)(1) and (d)(3)).

[41]12 C.F.R. §226.4(d), n. 5. In the case of collateral protection insurance, in addition to the other conditions required for property insurance charges, the insurer must also waive all right of subrogation against the consumer in order to exclude the premiums from the finance charge.

[42]12 C.F.R. §226.4(d)(2)(i).

[43]15 U.S.C.A. §1605(c); 12 C.F.R. §226.4(d)(2)(ii).

[44]12 C.F.R. §226.4(e) (for fees); 61 Fed. Reg. 49237, 49245-46 (to be codified at 12 C.F.R. §226.4(e)(3)) (for taxes).

[45]12 C.F.R. §226, Supp. I, 4(c)(1)-1; 61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(c)(7)(iii)).

[46]61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(c)(7)(iv)).

[47]61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(a)(1)).

[48]61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(a)(2)).

[49]62 Fed. Reg. 10193, 10196 (to be codified at 12 C.F.R. §226, Supp. I, 4(a)(2)-2).

[50]*Id.*

[51]15 U.S.C.A. §1605(e)(1); 12 C.F.R. §226.4(c)(7)(i).

[52]15 U.S.C.A. §1605(e)(2); 61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(c)(7)(ii)).

[53]15 U.S.C.A. §1605(e)(4), (6); 61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(c)(7)(iii)).

[54]15 U.S.C.A. §1605(e)(5); 61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(c)(7)(iv)).

[55]15 U.S.C.A. §1605(e)(3); 61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(c)(7)(v)).

[56]15 U.S.C.A. §1605(a)(6); 61 Fed. Reg. 49237, 49245 (to be codified at 12 C.F.R. §226.4(a)(3)).

[57]62 Fed. Reg. 10193, 10196 (to be codified at 12 C.F.R. §226, Supp. I, 4(a)(3)(1)-1).

[58]12 C.F.R. §226.4(a).

[59]12 C.F.R. §226, Supp. I, 4(a)-1(i).

[60]12 C.F.R. §226.4(c)(2).

[61]12 C.F.R. §226.4(c)(5); 62 Fed. Reg. 10193, 10196 (to be codified at 12 C.F.R. §226, Supp. I, 4(c)(5)-2).

[62]The "amount financed" is another term defined in detail by Reg. Z. When disclosing the amount financed, the creditor must use the term as "the amount of credit provided to you or on your behalf." (12 C.F.R. §226.18(b)). Reg. Z also instructs creditors how to properly calculate the amount financed. (12 C.F.R. §226.18(b)).

[63]61 Fed. Reg. 49237, 49246 (to be codified at 12 C.F.R. §226.18(d)(2)).

[64]*Id.*

[65]15 U.S.C.A. §1605(f)(1).

[66]12 U.S.C.A. §1649.

[67]15 U.S.C.A. §1640(a)(3).

[68]Note that a consumer's principal dwelling need not be attached to real property. A mobile home, trailer, RV, or boat may qualify as a consumer's principal dwelling. (12 C.F.R. §226.2(a)(19), Supp. I, 2(a)(19)).

[69]15 U.S.C.A. §1605(f)(2)(B); 61 Fed. Reg. 49237, 49247 (to be codified at 12 C.F.R. §226.23(g)(2)).

[70]A "high cost" mortgage loan is defined at 12 C.F.R. §226.32 as a loan where the annual percentage rate will exceed yields on Treasury securities of similar maturity by more than 10 percentage points or where the total points and fees payable are greater than 8 percent of the total loan amount.

[71]15 U.S.C.A. §1604(f)(2)(A); 61 Fed. Reg. 49237, 49247 (to be codified at 12 C.F.R. §226.23(g)(1)).

[72]15 U.S.C.A. §1635(i)(2); 61 Fed. Reg. 49237, 49247 (to be codified at 12 C.F.R. §226.23(h)(2)).

[73]15 U.S.C.A. §1611.

[74]A consumer may also rescind the transaction against an assignee if the violation is apparent on the face of the disclosure statement and the assignment was voluntary. (15 U.S.C.A. §1641(e)).

[75]15 U.S.C.A. §1635(a).

[76]12 C.F.R. §226.23(c) and Supp. I, 23(c)-1.

[77]15 U.S.C.A. §1635(d).

[78]*See e.g.* 12 C.F.R. §226.23(e)(2)-(4).

[79]60 Fed. Reg. 15463, 15464 (March 24, 1995).

[80]12 C.F.R. §226, Supp. I, 23(e)-1.

[81]15 U.S.C.A. §1635(f); 12 C.F.R. §226.23(a)(3).

[82]12 C.F.R. §226.23(a)(3), n. 48.

[83]15 U.S.C.A. §1635(i)(1)(A); 61 Fed. Reg. 49237, 49247 (to be codified at 12 C.F.R. §226.23(h)(1))i)).

[84]*Cowen v. Bank United of Texas, FSB,* 70 F.3d 937 (7th Cir. 1995) ("Outside of [a] narrow exception . . . hypertechnicality reigns [with Truth in Lending violations].")

[85]12 C.F.R. §226.23(a)(2).

[86]12 C.F.R. §226.23(d)(1) and Supp. I, 23(d)(1)-1.

[87]12 C.F.R. §226.23(d)(2).

[88]12 C.F.R. §226.23(d)(3).

[89]15 U.S.C.A. §1635(b); 12 C.F.R. §226.23(d)(4).

[90]*See, e.g., Rudisell v. Fifth Third Bank,* 622 F.2d 243 (6th Cir. 1980) ("Since rescission is an equitable remedy, the court may condition the return of moneys to the debtor upon the return of property to the creditor." (Citations omitted)); *Powers v. Sims & Levin,* 542 F.2d 1216 (4th Cir. 1976) ("[N]othing in the statutory provision . . . limits the power of a court of equity to circumscribe the right of rescission to avoid the perpetration of stark inequity . . ."); *LaGrone v. Johnson,* 534 F.2d 1360 (9th Cir. 1976) ("[T]he district court erred in not conditioning rescission on the tender of the net amounts advanced by the [creditor]." (Citations omitted)). Although the 10th Circuit seemed to imply a right to modify the statutory rescission scheme in *Rachbach v. Cogswell,* 547 F.2d 502 (10th Cir 1976), it refused to do so citing an inadequate record. However, the *Rachbach* court followed the statutory rescission scheme and acknowledged that "[u]nder the Truth in Lending Act the tender back of consideration received [by the debtor] is not a prerequisite to rescission." *Rachbach, id.* at 505.

[91]*Williams v. Homestake Mortgage Co.,* 968 F.2d 1137, 1142 (11th Cir. 1992) ("Thus, we hold that a court may impose conditions that run with the voiding of creditor's security interest upon terms that would be equitable and just to the parties in view of all surrounding circumstances." Footnote omitted.)

[92]15 U.S.C.A. §1635(g).

[93]15 U.S.C.A. §1640(a)(2)(A)(i).

[94]15 U.S.C.A. §1640(g).

[95]15 U.S.C.A. §1640(a)(2)(b).

[96]15 U.S.C.A. §1640(a)(3).

No More Hazing: Eradication Through Law and Education

By David S. Doty

One of the most disturbing trends in the United States is the repeated occurrence of brutal hazings in American schools, colleges, and other public institutions. Despite the fact that hazings often result in injury or death, and almost always provoke acrimonious litigation, they continue unabated as some form of twisted social rite.

Over the past couple of years, several hazing incidents have been reported in locations from Washington State to Washington, D.C.[1] For example, on August 14, 1996, the first day of classes at Lamar High School in Arlington, Texas, eleven junior and senior students took six sophomores to a field away from school grounds and hazed the sophomores by paddling, painting, and urinating on them.[2] The eleven students were transferred for an entire year to another school. Then in December 1996, two first-year women cadets, Kim Messer and Jeanie Mentavlos, left the Citadel after filing complaints that upper-class male cadets hazed them by shoving them with rifles, washing their mouths with cleaning fluid, dabbing nail-polish remover on their clothes, and setting their clothes on fire.[3]

More recently, the Associated Press reported on a July 1997 trial that resulted in a Prince George's County, Maryland jury award of $375,000 to a former University of Maryland student who was severely beaten as part of a fraternity hazing ritual.[4] Joseph Snell sued the black fraternity Omega Psi Phi for injuries he suffered in 1993 when fraternity members beat him with a hammer, horsehair whip, broken chair leg, and a brush. Snell also testified that his fraternity brothers put a space heater next to his face to darken his skin because they believed he was not "black enough" to become part of the fraternity.

Unfortunately, hazings have also persisted in Utah. In August 1996, two Roy High School senior football players were removed from the team for their participation in a summer football camp incident in Carbon County. Several sophomore players accused the seniors of holding them down while one of the seniors sat naked on their faces or the back of their heads.[5]

Shortly thereafter, five Hillcrest High School football players, including a student body officer and the team captains, were expelled for their role in a locker room hazing on August 21, 1996.[6] Although full details of the incident were never released to the public, the Jordan School District's response to a lawsuit filed by the expelled boys provides some information.

According to the district's answer, five students taped two other students to locker room benches and then proceeded to "mummy tape" the faces and bodies of the two victims. Subsequently, "some of the perpetrators forcefully exposed their buttocks and genitals" to the victims and flatulated in their faces. Football helmets were also placed on the victims, and they were flipped and struck with towels. Most seriously, "[a]s the incident progressed, one of the boys panicked and began to cry and begged to be released." The other victim also repeatedly requested to be released. Yet all of the perpetrators walked away and left the victims helplessly taped to the benches.[7]

It should be troublesome to all Utahns that the Hillcrest hazing appeared to be a reprise of a vicious hazing four years ago, in which several football players at Sky View High School taped Brian Seamons, the junior quarterback, to a towel rack, and humiliated him by pushing a girl into the locker room to view him naked.[8] Apparently the more things change, the more they stay the same in some high school football locker rooms.

DAVID S. DOTY is the Assistant to the Superintendent for Policy & School Law with the Davis County School District, Farmington, Utah. In his work with the Davis County Schools, Mr. Doty is responsible for investigating and resolving civil rights complaints, conducting due process hearings, mediations, and other forms of alternative dispute resolution, and developing district policy. He received his J.D. degree in 1993 from the J. Reuben Clark Law School, Brigham Young University, where he graduated cum laude, and was a Senior Editor of the B.Y.U. Law Review. Prior to attending law school, Mr. Doty obtained an M.A. degree in Education from the Stanford University Graduate School of Education, and he is currently a Ph.D. candidate in Education Leadership at Brigham Young University. Mr. Doty is a member of the Education Law Association, National School Boards Association Council of School Attorneys, and the Utah State Bar's Education Law Section.

NEW UTAH LEGISLATION

In response to the continued rash of hazings in Utah, the Utah Legislature passed, and Governor Leavitt signed into law, Senate Bill 150 during the 1997 legislative session. This bill, somewhat misleadingly titled "Conduct Related to School Activities," became a new section of Utah's Education Code, Utah Code Ann. §53A-11-908, and an amended section of the Criminal Code, Utah Code Ann. §76-5-107.5.

The new section of the Education Code contains three important provisions. First, the law codifies existing Tenth Circuit case law, most recently articulated in *Seamons v. Snow*, 84 F.3d 1226 (10th Cir. 1996), holding that public school students do not have a constitutional right to participate in extracurricular activities. At the same time, however, the law formally recognizes the importance of extracurricular activities to the overall school experience of young people. The Legislature finds that "participation in student government and extracurricular activities may confer important educational and lifetime benefits upon students, and encourages school districts to provide a variety of opportunities for all students to participate in such activities in meaningful ways."[9]

Second, the law permits the State Board of Education, and requires local boards of education, to adopt rules and policies prohibiting hazing, as well as "demeaning or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law."[10]

Third, the law establishes a reporting obligation for school employees. All school employees who become aware of a hazing must immediately report it to the school principal or district superintendent, and principals who receive reports of hazing from school employees are required to submit a written report of the incident, and actions taken in response, to the superintendent within ten working days after receipt of the report.[11] School employees who fail to report a hazing as required by the law may be charged with an unprofessional practice and subject to discipline by state licensing boards.[12]

Several of the amendments to the Criminal Code section are also significant. For example, the law now makes it clear that a person does not have to engage in intentional conduct in order to be prosecuted for hazing; a person is guilty of hazing if that person "intentionally, knowingly, or *recklessly* commits an act or causes another to commit an act" defined under the law as hazing (emphasis added).[13]

In addition, the amendments eliminate the narrow scope of the old hazing law, which defined hazing as a variety of activities required for the "initiation or admission into" a group or organization. Because several of the Utah hazings have been perpetrated on athletes already on the team, county attorneys have been reluctant to bring charges against the offenders. The amendments attempt to remedy this problem by prohibiting a number of acts, if they are "for the purpose of initiation, admission into, *affiliation with, holding office in, or as a condition for continued membership in any organization*" (emphasis added).[14]

"Perhaps most importantly, the amended law precludes hazing perpetrators from making the argument that they were just 'playing around,' or that the victims 'volunteered' for the activity."

Perhaps most importantly, the amended law precludes hazing perpetrators from making the argument that they were just "playing around," or that the victims "volunteered" for the activity. In very plain language, the law states: "It is not a defense to prosecution of hazing that a person under 21, against whom the hazing was directed, consented to or acquiesced in the hazing activity."[15]

A PROPOSED PLAN OF ACTION

The new Utah legislation is certainly a step in the right direction toward eliminating the scourge of hazing in our society. However, a statute alone will not completely solve the problem. Therefore, lawyers, school officials, and parents could engage in a number of measures to ensure that a concerted effort is made to eradicate hazing.

1. County and city attorneys need to prosecute hazing crimes vigorously, and with a willingness to withstand potential civil challenges to the law filed by defendants. Despite the fact that hazing defendants have fought hazing laws in several other states, courts in those states have upheld the state hazing statutes against challenges based on vagueness, overbreadth, and violation of state constitutional provisions regarding equal protection and special legislation.[16]

2. Lawyers could participate in the Bar-sponsored Law-Related Education Project or volunteer in their childrens' neighborhood school to help educate students, parents, and school staff about hazing and the serious legal consequences that can come to those who participate, or acquiesce, in a hazing.

3. School (as well as university and Greek) officials must, by means of carefully drafted and well-communicated policy, unequivocally prohibit hazing and firmly discipline students who participate in hazing. Moreover, school officials must recognize that acts of hazing that involve nudity, lewdness, or sexual aggression, in addition to being criminal, may also be considered acts of sexual harassment, that if not corrected in a timely manner, could subject the educational institution to federal civil rights liability under Title IX.[17] As Judge Monroe McKay noted in his concurring opinion in *Seamons*:

> I write separately to express my disagreement with the court's analysis of Plaintiff's Title IX claim. I cannot agree that the alleged harassment in this case was not based on sex within the meaning of Title IX. The majority writes that statements such as "boys will be boys" and "take it like a man" are not sufficiently sex related to state a claim. I believe, however, that these statements can only be understood as a response to the original hazing incident. In my view, this incident was clearly sexual in nature. Members of the football team taped Plaintiff to a towel rack while he was naked, taped his genitals, and then displayed their captive to a girl Plaintiff had dated. These actions clearly derive their power to embarrass and to intimidate from their sexual and sex-based nature. It

is hard for me to believe that the display of the male genitalia to a female for other than medical or educational reasons has a non-sexual connotation. The coach's statement that "boys will be boys" clearly relates to and flows out of the original sexual harassment. As such, it may be considered to be a continuation by the school official of the student-initiated harassment, even if the statement by itself is not sexual in nature.[18]

4. Parents, including those who are lawyers, should take an active role in teaching their children values of civility and kindness in connection with their behavior toward peers and school officials. Such parental education might include helping adolescents understand a non-legal test of contemplated group activity; getting young people to ask themselves the following questions might be a starting place: 1) Is the activity an educational experience? 2) Does the activity promote or conform to the values of the school (or organization)? 3) Will the activity increase the respect for the school (or institution) and individuals? 4) Do new and already-initiated members participate equally in the activity? 5) Would I be willing to allow my parents or school officials to witness the activity? 6) Does the activity have value in and of itself?[19]

Bruce Chadwick, a professor of sociology at Brigham Young University, states that in order to turn the tide back on the willingness of people to intentionally harm one another, we must constantly emphasize the importance of forbearance and respect: "We have to reach a consensus as people that enough is enough. Life is so much more enjoyable when civility rules. When people are forgiving, understanding, kind and gentle, it makes life better for all of us. Life is just more enjoyable when we do extend common courtesies to each other."[20]

5. All adults must work together to teach youth that participation in extracurricular activities is a privilege, not a right, but that with privileges, as with rights, come responsibilities. In the setting of public schools, the responsibility may be that of being a positive example for others. The legislation states:

> [S]tudents who participate in student government and extracurricular activities, particularly competitive athletics, and the adult coaches, advisors, and assistants who direct those activities, become role models for others in the school and community;
>
> [T]hese individuals often play major roles in establishing standards of acceptable behavior in the school and community, and establishing and maintaining the reputation of the school and the level of community confidence and support afforded the school; and
>
> [I]t is of the utmost importance that those involved in student government, whether as officers or advisors, and those involved in competitive athletics and related activities, whether students or staff, comply with all applicable laws and rules of behavior and conduct themselves at all times in a manner befitting their positions and responsibilities.[21]

"Bruce Chadwick, a professor of sociology at Brigham Young University, states that in order to turn the tide back on the willingness of people to intentionally harm one another, we must constantly emphasize the importance of forbearance and respect: 'We have to reach a consensus as people that enough is enough. Life is so much more enjoyable when civility rules.'"

Commenting on the Hillcrest High hazing last September, sports columnist Brad Rock astutely noted:

> [S]plitting hairs over the seriousness of the incident is a bad idea when you're dealing with high school students; when it comes to teenagers, they often don't know when to quit. Allowing room for conjecture as to what is and what isn't acceptable in hazing is an invitation to more disaster. *Better they understand that they should never get started in the first place.*[22]

With that though, let us all work together to rid our schools, colleges, fraternities, and other institutions of this pernicious practice.

[1] *See, e.g.,* Lucinda Dillon, "Ugly, Bewildering Hazing Phase Persists in Utah Schools", *Deseret News*, Sept. 1, 1996, at A1, A5 (reporting on the suspension of eight members of the Walla Walla High School football team for hazing freshmen players at football camp); "One Fraternity Suspended and One Placed on Probation", *University of Kansas Office of University Relations Newsletter,* http://www.urc.ukans.edu/News/Oread96/OreadOct18/, Oct. 18, 1996 (describing discipline imposed on two fraternities for depriving pledges of sleep and forcing them to drink, be paddled, and be head-butted); "State to Pay Ex-Inmate $5,000 in Hazing", *Deseret News,* Nov. 21, 1996 (reporting that the State of Utah agreed to settle a lawsuit by a Utah State Prison inmate who claimed to have been hazed by fellow inmates and prison guards); "Marine Hazing Disgusts Pentagon", *Deseret News,* Feb. 1, 1997, at A3 (reporting on a North Carolina Marine Corps airborne unit's initiation ritual called "gold winging"); "College Students and Alumni Accused in Hazing 4 in Creek", *Deseret News,* Feb. 27, 1997, at A11 (noting that police in Salem, Virginia arrested a group of 18 Roanoke College students and alumni after they were discovered holding down four shivering, blindfolded, and drunk classmates in an icy creek); "Former Pledge Tells of Abuse at Fraternity", *Deseret News,* Aug. 31, 1997, at A9 (describing allegations of Sigma Alpha Epsilon pledge at Louisiana State University that he had to endure hazing, forced drinking, and beatings at the fraternity chapter); "Farmer Finds Garbage Pit Where Teens are Hazed", *Boston Globe,* Sept. 15, 1997 (describing Berlin High School hazing tradition where seniors throw manure and motor oil on freshmen in a nearby field); Debra Rosenberg & Matt Bai, "Drinking and Dying", *Newsweek,* Oct. 13, 1997, at 69 (reporting that fraternity brothers at the MIT chapter to Phi Gamma Delta could be tried for manslaughter if they are found to have coerced a freshmen pledge, who died from binge drinking, to consume alcohol).

[2] "Hazing Scandal in Tex. District", *Education Week,* Sept. 4, 1996, at 4.

[3] "2nd Cadet at Citadel Suspended in Harassment", *Deseret News*, Dec. 17, 1996, at A11; Bonnie Erbe & Josette Shiner, "Is Hazing Inherent in Maleness", *Deseret News,* Jan. 20, 1997, at A13.

[4] "Former Student Awarded $375,000 in Hazing", *Baltimore Sun*, July 13, 1997, at A11.

[5] "2 Roy Football Players Dismissed After Hazing", *Deseret News*, Aug. 22, 1996, at B1.

[6] Lucinda Dillon, "5 Students Expelled for Role in Hazing", *Deseret News*, Sept. 6, 1996, at A1.

[7] Lucinda Dillon, "Court Fight Shapes Up Over Hazing at Hillcrest", *Deseret News*, Oct. 9, 1996, at A1.

[8] Brad Rock, "Memo to Hazers: Read the Handbook", *Deseret News*, Sept. 12, 1996, at D1.

[9] Utah Code Ann. §53A-11-908(1)(a) (1997).

[10] Utah Code Ann. §53A-11-908(2)(b)(iii).

[11] Utah Code Ann. §53A-11-908(3)(a)-(b).

[12] Utah Code Ann. §53A-11-908(3)(c).

[13] Utah Code Ann. §76-5-107.5(1) (1997).

[14] Utah Code Ann. §76-5-107.5(1)(b)(I).

[15] Utah Code Ann. §76-5-107.5(2).

[16] *See generally,* Frank J. Wozniak, *Annotation, Validity, Construction, and Application of "Hazing" Statutes*, 30 A.L.R. 5th 683 (1995).

[17] *See* John Sedgwick, "Guess Who's Coming to VMI?", *Gentleman's Q.*, July 1997, at 124 (noting that "between old-fashioned hazing and 1990s-style sexual harassment, there is only a thin gray line"); *U.S. Dept. of Educ., Office for Civil Rights, Sexual Harassment Guidance; Harassment of Students by School Employees, Other Students, or Third Parties* (1997).

[18] *Seamons v. Snow,* 84 F.3d 1226, 1239 (10th Cir. 1996).

[19] *See* Davis County School District Policy No. 11IR-106 §6 (adopted Oct. 22, 1996).

[20] Lois M. Collins, "Reviving Civility", *Deseret News*, Aug. 2, 1997, at E1.

[21] Utah Code Ann. §53A-11-908(1)(c)-(e) (1997).

[22] Rock, *supra* note 8, at D1 (emphasis added).

Annual Lawyers, Employees & Court Personnel Food & Winter Clothing Drive for the Homeless

Please mark your calendars for this annual drive to assist the homeless. Once again, local shelters have indicated shortages in many food and clothing items. Your donations will be very much appreciated in alleviating these conditions. Even a small donation of $5 can provide a crate of oranges or a bushel of apples.

Drop Date:	December 19, 1997
	7:30 a.m. to 5:30 p.m.
Place:	Utah Law & Justice Center
	Rear Dock
	645 South 200 East • Salt Lake City, Utah
Selected Shelters:	Traveler's Aid Shelter School (Treshow School)
	The Rescue Mission
	South Valley Sanctuary
	Women & Children in Jeopardy Program

Volunteers are needed who would be willing to donate a few hours of their time to take the responsibility of reminding members of their firms of the drop date and to pass out literature at their firms regarding the drive.

For more information and details on this drive, watch for the flyer or you can call Leonard Burningham or Sheryl Ross at 363-7411 or Toby Brown at 297-7027.

When you feel you are having a tough time, just look around you; we have it pretty good when compared with so many others, especially the children.

Please share your good fortune with those who are less fortunate!

Commission Highlights

During its Annual Meeting of July 2, 1997, held in Sun Valley, Idaho, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Steve Kaufman welcomed and reviewed the schedule of events for the 1997 Annual Meeting and Convention.
2. Steve Kaufman reported on the results of the president-elect retention election noting that James C. Jenkins has been retained as president-elect for the 1997-98 year.
3. John Baldwin reviewed the petition filed with the Supreme Court objecting to the proposed courts complex contribution.
4. The Board approved the minutes of the May 30, 1997 meeting.
5. The Board approved Ethics Opinion No. 97-08 as proposed by the Ethics Advisory Opinion Committee.
6. Dennis Haslam reported on the Access to Justice Task Force.
7. James B. Lee discussed three ABA-related items.
8. The Board approved the July 1997 bar examination applicants.
9. Charlotte Miller reviewed the proposed list of Committee Chairs.
10. Craig Snyder gave an introduction to the newly elected Fourth Division Commissioner, Randy Kester. Kaufman indicated that Randy Kester along with Dave Nuffer, Fran Wikstrom and Charles R. Brown, who were re-elected, would be sworn in during the General Session at the Annual Meeting.
11. The Board approved the appointment of the following representatives as ex officio members of the Bar Commission for the 1997-98 year: The ABA Delegate, the State Bar Delegate to the ABA, the Dean of the University of Utah College of Law, the Dean of the J. Reuben Clark Law School at BYU, the president of the Young Lawyers Division, the Minority Bar Association representative, the Women Lawyers of Utah representative, the Judicial Council Liaison, and the Legal Assistants Division representative.

During its regular meeting on July 28, 1997, held in Salt Lake City, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Miller distributed a letter drafted by Wikstrom to Chief Justice Zimmerman regarding the Bar Commission's position on amendments to Rule 3-414 of the Cod of Judicial Administration relating to security in the court house. Jenkins noted that the Judicial Council has already adopted the rule and that there will be a 60-day public comment period. The Board voted to send the letter as drafted to Chief Justice Zimmerman.
2. Miller reported that the October 24 meeting will be held in Cedar City, The April 24 meeting in Vernal, and the May 29 meeting in Park City.
3. The Board approved Ethics Advisory Opinion No. 97-09.
4. Fee Arbitration Chair G. Steven Sullivan appeared to review proposed modifications to the Fee Arbitration rules. He indicated that most of the committee's recommendations are based on the ABA rules, and he reviewed and explained all the changes, paragraph by paragraph.
5. John Baldwin summarized the background and recommendations regarding appointments to the Ethics & Discipline Hearing Panels. The Board approved the recommendations and approved forwarding the names to the Supreme Court.
6. The Board reviewed the applicants to the State Sentencing Commission and voted to appoint Fred Metos to fill the unexpired term of Rod Snow.
7. Dave Nuffer gave a presentation on ideas and goals for the future of the Bar's Web site and indicated he would be giving a similar report at the ABA annual meeting next month.

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

Chapter 7 Filing Fee Waiver Program Discontinued at the Close of Business on September 30, 1997

On October 27, 1993, the Congress enacted legislation requiring the Judicial Conference of the United States to implement a three-year pilot program to study the effect of waiving the filing fee for eligible chapter 7 debtors. The six districts selected to participate in the program were the Southern District of Illinois, the District of Montana, the Eastern District of New York, The Eastern District of Pennsylvania, the Western District of Tennessee, and the District of Utah.

The pilot filing fee waiver program commenced on October 1, 1994 and will be discontinued at the close of business of September 30, 1997. During the pilot period, individuals who were unable to pay the chapter 7 filing fee either in full when filing the petition or in installments could apply to the court for waiver of the fee. After September 30, 1997, all individuals filing chapter 7 bankruptcy must either pay the $175 filing fee in full when filing the petition or file an application to pay the fee in installments.

The Judicial Conference of the United States is to submit a report describing the costs and benefits of the program to Congress no later than March 31, 1998. This information will allow the Congress to consider whether the program should be implemented nationwide.

Discipline Corner

SUSPENSION

On October 2, 1997, the Honorable Boyd Bunnell, specially assigned and sitting in the Fourth District Court, entered an Order of Suspension suspending D. John Musselman from the practice of law. The Order was based on a stipulation between Musselman and the Office of Attorney Discipline.

Musselman stipulated to violations of Rules 1.3 (Diligence), 1.4 (Communication), and 8.4(c) (Misconduct) in his representation of three clients. Mussleman also stipulated to violations of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), and 1.5 (Fees) in the representation of other clients.

Musselman stipulated to the existence of the following aggravating factors:

(a) prior record of discipline;
(b) a pattern of misconduct;
(c) multiple offenses;
(d) obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;
(e) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;
(f) vulnerability of victim;
(g) substantial experience in the practice of law;
(h) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

The Court ordered that Musselman be suspended from the practice of law for two years, with the suspension stayed to four months. After the initial four months of suspension, Musselman will be allowed to practice law once again, but will be on probation for the remaining twenty months of the stayed suspension. During that time, Musselman's law practice will be supervised by a supervising attorney to whom Musselman will report periodically regarding the status of his cases. Musselman was further ordered to attend ethics school for two years and to take, in addition to his standard CLE requirements, eighteen hours of office management.

If during the two years suspension/probationary period a complaint is filed against Musselman and a Screening Panel determines that the allegations in the complaint warrant a vote to take formal action in the District Court, then Musselman will serve the entire two year suspension, and he will be removed from the practice of law for that two year period.

INTERIM SUSPENSION

On September 16, 1997, the Honorable Frank G. Noel, Third District Court, executed an Order of Interim Suspension suspending Robert A. Bentley from the practice of law pending the outcome of an attorney discipline action arising out of Mr. Bentley's failure to obey a court order, his failure to diligently represent and communicate with his clients, and his failure to cooperate with the Bar.

ADMONITION

On September 18, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct. The Order was entered pursuant to a Discipline by Consent.

The two complaints filed against the attorney alleged that the attorney was not diligent in the representation of two different clients in family law matters concerning child custody. The complaints further alleged that the attorney failed to communicate with the clients regarding the status of their cases.

The attorney agreed to stipulate to an admonition for the violation of Rules 1.3 and 1.4 and agreed to attend ethics school. The attorney further established that the attorney refunded fees to the clients.

ADMONITION

On September 29, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), and 1.5(a) (Fees) of the Rules of Professional Conduct.

During 1993, the attorney was retained to represent a client in a Workers' Compensation claim. The attorney received $200 from the client in February 1994. The attorney intended to charge the client an additional 1/3 contingency fee. The contingency fee violated Industrial Commission Rule R568-1-7, which sets attorney's fees to a maximum of 30% if litigated before the Supreme Court. The normal contingency fee allowed is approximately 15%, depending on the amount of recovery, if any. In September 1994, the attorney contacted the client to secure a power of attorney so that he could obtain records from the client's former employer. This was the first work performed by the attorney on the Workers' Compensation claim. The attorney ultimately did not secure any records from the client's ex-employer, and returned the file to the client in March 1995, informing the client that he could no longer pursue the matter.

On December 14, 1995, a Screening Panel of the Ethics and Discipline Committee found that the attorney's conduct violated Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and1.4(b) (Communication) and 1.5(a) (Fees) of the Utah Rules of Professional Conduct by failing to provide the client with any meaningful legal services, failing to maintain adequate contact with the client, and charging a prohibited fee.

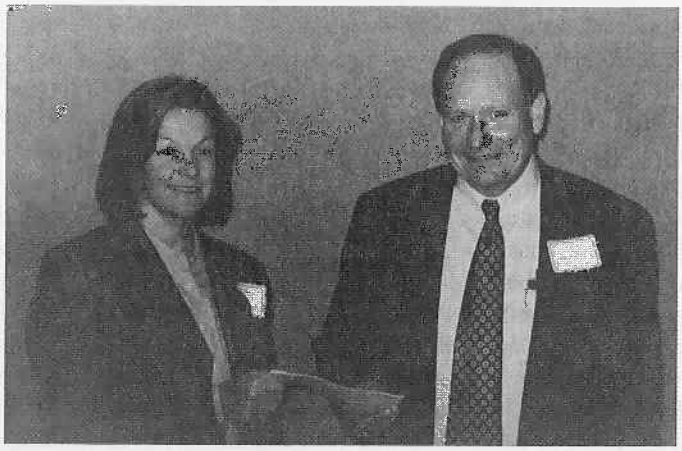
ADMONITION/ RECIPROCAL DISCIPLINE

On September 26, 1997, an attorney, admitted to practice in Utah and California, was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.7 (Conflict of Interest) of the Rules of Professional Conduct.

In September 1986, the attorney's client was injured at work. His employer referred him to the attorney, who had previously handled legal work for the employer. The client unsuccessfully sued the manufacturer of the defective equipment that was responsible for the employee's injury. No suit was pursued against the client's employer. The attorney alleges he orally informed the client that the attorney had a conflict of interest. Nevertheless, the attorney failed to obtain a written waiver, required in the State of California.

On November 12, 1996, the attorney was privately reproved by the State Bar of California for failing to obtain a written waiver of a conflict of interest stemming from the attorney's previous relationship with the client's employer.

Central Bank CLE Benefits Utah Legal Services



Central Bank President Brent Packard presented Anne Milne, Executive Director of Utah Legal Services, with a contribution of $2,440, proceeds of an estate planning and retirement seminar held at the Provo Park Hotel on October 1. The seminar for attorneys and certified public accountants was organized by Central Bank Trust Services and the Utah State Bar.

David Macbeth, manager of Trust Services, contacted ULS to be the recipient of the funds. Milne was touched by the initiative, "This is a non-random act of thoughtful generosity. It is impressive to see how the legal and business community come together to insure access to justice for all Utahns."

Personal Trust Administrator Jennifer Dracoulis reported that many of those attending the day long seminar came from outside of Utah County and attributed the success of the event to a cadre of prestigious faculty.

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. Sixty one opinions were approved by the Board of Bar Commissioners between January 1, 1988 and July 31, 1997. 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 only	_____ ($10.00 each set)
_____	Ethics Opinions and 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.

MARK YOUR CALENDARS NOW!

The Utah State Bar Presents:

A Tribute: The First One Hundred Women Members of the Utah Bar

Reception and Dinner
Wednesday, January 14, 1998
Little America Hotel
Grand Ballroom

For information, please contact the Utah State Bar, 531-9077.

Utah Lawyers Needed to Help Disabled Children Retain Benefits

By Lauren Scholnick

Under cost-cutting federal welfare reform legislation in 1996, benefits are being cut to children who are blind or disabled. In Utah, almost 60% of the 1,200 disabled, low-income children may lose Supplemental Security Income (SSI) monthly payments which average $440.

By the end of August 1997, 340 children in Utah had been terminated from SSI and 400 more await review by the Social Security Administration (SSA). To receive SSI benefits, the children and their parents must prove they are economically at poverty level or lower. SSI benefits supplement family income so a single parent can only work part-time or, in two parent families, one parent can stay home with the disabled child and tend to that child's medical and emotional needs – attention that is critical to the child's progress and improvement. Children's advocates believe that families eliminated from SSI funding will no longer be able to care for their disabled children at home. Instead, the children will have to be placed in foster care, nursing homes, or institutions.

In an effort throughout Utah and the nation, lawyers are extending a hand to disabled children and their families – those least able to help themselves. In conjunction with Utah Legal Services (ULS) and the Disability Law Center (DLC), the Utah State Bar (USB) is recruiting and training pro bono attorneys to handle administrative appeals of these SSI terminations. The goal is to provide an attorney for every family with a meritorious appeal. There may be as many as 500 disabled children in Utah who need attorneys; the flood of cases cannot be handled by public interest lawyers alone.

"One child at risk is a compelling need; 500 children at risk is a state of emergency," said Charlotte Miller, USB president. "I know the lawyers in Utah will come forward to help these children."

Tom Yates, of the American Bar Association's SSI Coalition, has been training lawyers around the country to handle these cases. He recognized why this project appeals to lawyers, "These are kids. They haven't made the situation they are in. The key is that a lot of kids are at risk of being denied benefits improperly. If they can have effective representation to negotiate the Byzantine system that SSA uses, they could win."

The SSI Project in Utah is a collaborative effort. Funding is provided by the Corporate Counsel Section of the USB, the Salt Lake County Commission, and the United Way of the Great Salt Lake. ULS will perform the intake services for these children, gathering initial information about the cases and the relevant dates. Both ULS and the DLC attorneys will train volunteers statewide in addition to handling cases. The first free training seminar will be held on November 10, 1997, at the Utah Law and Justice Center in Salt Lake, from 8 a.m. to 12 p.m. Attendees will receive four CLE/NLCLE credits. The USB's pro bono coordinator will assign cases to trained volunteer attorneys. Pro bono attorneys will then have three to four months to prepare for an administrative hearing on the child's case. **If you would like to become a pro bono attorney in the SSI Project in Utah, please call Lorrie Lima at the USB, 801-531-9077.**

Lauren Scholnick is an attorney and Director of Development for Utah Legal Services.

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.

Change in Process for Requesting Transcripts

By Timothy M. Shea, Administrative Office of the Courts

If you try cases in Utah's District Court, you have probably noticed an increasing number of trials and other hearings recorded on video tape rather than by traditional court reporter or audio tape. Also, in more and more of the hearings in which a court reporter is present, that reporter is using a computerized stenograph machine that produces a real time transcript. These effects are the visible tip of much more fundamental changes in the manner in which trial courts record their hearings.

A further change, effective January 1, 1998, will affect the manner in which lawyers and parties obtain transcripts of those hearings.

Historically in Utah court reporters have been, in part, employees of the state earning a salary for the time spent in court maintaining a verbatim record of hearings. Court reporters have also been, in part, independent contractors earning a fee paid by a party for preparing the transcripts necessary for an appeal or for some other review of a hearing. After many years of planning, court reporters will, effective January 1, shed their status as independent contractors. Transcript fees, currently paid to the court reporter preparing the transcript, will on that date be paid to the state. Court reporters, historically responsible for their own time, will on that date become merit employees earning additional pay for transcript preparation time required beyond the traditional 40 hour work week. In addition to transcribing the stenographic notes of their own hearings, court reporters also will have the primary responsibility for transcribing video and audio tapes for appeals. Private transcribers for these tapes will be used only when the volume of work exceeds the capacity of the court reporters.

To better enable court reporters to perform these important tasks, part of the transcript fees will be used to purchase computerized stenograph systems and to train court reporters in the use of these systems. To better manage the tasks of court reporters, the district courts have begun to "pool" court reporters, who will be supervised by a managing court reporter and the district court executive. Computer hardware, software and stenographic dictionaries are all being standardized to assist in the pooling.

Because court reporters will be transcribing audio and video taped hearings, it will be necessary to modify the method in which transcripts are requested. Lawyers and parties will no longer request a transcript from the court reporter directly, but rather will submit the request to the court executive for that district and level of court. The court executive will assign the transcript to a court reporter. For the most part, hearings recorded by a court reporter will be transcribed by that same reporter. In theory, because of standardized computer systems, but rarely in practice, the transcript could be assigned to some other reporter. In any hearing recorded by audio or video tape, the court reporter to be assigned the transcript will be selected from the pool, taking into consideration the reporters' in-court obligations and other transcripts being prepared. The court executive will notify the lawyer or party of the court reporter to whom the assignment has been made. Thereafter, the lawyer or party is free to contact the court reporter directly with any questions, comments or concerns.

The transcript fee amounts are not changing, but payment of the fee also will be made to the court executive rather than directly to the court reporter. Just as is now the case with the court reporter, the lawyer or party first will have to obtain from the court executive an estimate of the length, and thus the cost, of the transcript. The lawyer or party will pay that fee with the request for transcript. If the actual fee for the transcript is less than the estimate, the difference will be refunded upon completion of the transcript. If the actual fee is greater than the estimate, the difference will have to be paid prior to delivery of the transcript.

The flow of fees and of requests for transcripts will be through the court executive, and the court executive is responsible for supervising court reporters and ensuring timely preparation of transcripts. Court executives will be assisted by three managing court reporters, who will be responsible for the day-to-day management of the system and the scheduling and assignment of in-court and transcript work.

Because of the important role court executives and managing court reporters will play in the new procedures, it is important that lawyers and parties know who these officials are. The court executives, the managing court reporters and the districts they serve are provided below. The court executive is responsible for the district court and juvenile court in all districts except Districts 2, 3, and 4.

COURT EXECUTIVES

Sharon Hancey
First District Court Executive
P.O. Box 873
Brigham City, UT 84302-0873
Phone: 734-4600 • Fax: 734-4610
Email: sharonh@courtlink.utcourts.gov

Margaret Satterthwaite
Second District Court Executive
2525 Grant Ave • Ogden, UT 84401
Phone: 395-1050 • Fax: 395-1182
Email: margares@courtlink.utcourts.gov

Mike Strebel
Second District Juvenile Court Executive
444 26th Street • Ogden, UT 84401
Phone: 626-3800 • Fax: 626-3827
Email: mikes@courtlink.utcourts.gov

Larry Gobelman
Third District Court Executive
451 S 200 E • Salt Lake City, UT 84111
Phone: 238-7315 • Fax: 238-7397
Email: larryg@courtlink.utcourts.gov

Roy Whitehouse
Third District Juvenile Court Executive
3522 South 700 West
Salt Lake City, UT 84119
Phone: 265-5910 • Fax: 265-5936
Email: royw@courtlink.utcourts.gov

Paul Sheffield
Fourth District Court Executive
P.O. Box 1847 • Provo, UT 84603
Phone: 429-1038 • Fax: 429-1020
Email: pauls@courtlink.utcourts.gov

John Day
Fourth District Juvenile Court Executive
2021 South State Street • Provo, UT 84606
Phone 373-3613 ext. 1213 • Fax: 373-6579
Email: johnd@courtlink.utcourts.gov

James Nelson
Fifth District Court Executive
40 N 100 E • Cedar City, UT 84720
Phone: 586-4907 • Fax: 586-4801
Email: jimn@courtlink.utcourts.gov

Brent Bowcutt
Sixth District Court Executive
895 E 300 N • Richfield, UT 84701
Phone: 896-2710 • Fax: 896-8047
Email: brentb@courtlink.utcourts.gov

Tim Simmons
Seventh District Court Executive
149 E 100 S • Price, UT 84501
Phone: 637-7753 • Fax 637-7349
Email: tims@courtlink.utcourts.gov

John Greene
Eighth District Court Executive
147 E Main • Vernal, UT 84078
Phone: 789-2882 • Fax 789-0564
Email: johng@courtlink.utcourts.gov

MANAGING COURT REPORTERS

Districts 1 & 2
Dean Olsen
Second District Court
2525 Grant Ave • Ogden, UT 84401
Phone: 395-1056 • Fax 395-1182
Email: deano@courtlink.utcourts.gov

District 3
Bunny Neuenschwander
Third District Court
240 E 400 S • Salt Lake City, UT 84111
Phone: 535-5813 • Fax 535-5957
Email: bunnyn@courtlink.utcourts.gov

District 4, 5, 6, 7 & 8
Vonda Bassett
Fourth District Court
P.O. Box 1847 • Provo, UT 84603
Phone: 429-1080 • Fax 429-1020
Email: vondab@courtlink.utcourts.gov

Progressing toward a more automated system of recording court proceedings has already begun to accrue savings of public expenditures, and those savings will do nothing but increase with time. As with any modification of policy or procedure of this magnitude, there inevitably will be some confusion at the start. Judges, court personnel and lawyers have been studying the changes to our method of recording court hearings generally and the further changes to the transcript process necessitated by the changes in policy. They have planned for as many of the contingencies as can be anticipated. The judiciary will closely monitor this new system and respond quickly to complaints to ensure the timely preparation of transcripts.

United States District Court for the District of Utah
Office of the Clerk

150 U.S. Courthouse
350 South Main Street
Salt Lake City, Utah 84101-2180

Position Vacancy Announcement
Intake Deputy

The Office of the Clerk is now accepting applications for the position of Intake Deputy. The position is a Judicial Salary Plan Classification Level 24, Step 1, with an annual starting salary of $22,430. Incumbent may convert to full-time permanent status after successful completion of six-month probationary period and performance review. This is a federal government position with potential for upward mobility.

INITIAL ASSIGNMENT: Serve as intake clerk, reviewing and accepting new case filings and pleadings; receipting filing fees; copying court documents; and responding to inquiries concerning legal process and case-file information. Act as liaison between the court, counsel, litigants, the public, and court-related agencies. The position requires basic understanding of and familiarity with computers/data entry, the ability to type at the rate of 60 corrected words per minute, and the initiative to accomplish assigned work independently and accurately within time limits for completion. Applicants should be well groomed.

MINIMUM REQUIREMENTS: Applicants must have a minimum of three years administrative experience in Government or private sector which provided a thorough understanding of office administrative procedures and organization of high-volume paperflow. Preference will be given to applicants who have experience in data entry in complex information processing systems. A bachelor's degree may be substituted for clerical experience. The position requires the ability to type at the rate of 60 net words per minute and to work independently and accurately within time limits specified for completion. Applicants should have working knowledge of WordPerfect for Windows, and Windows 95. Applicants should have good communication and interpersonal skills.

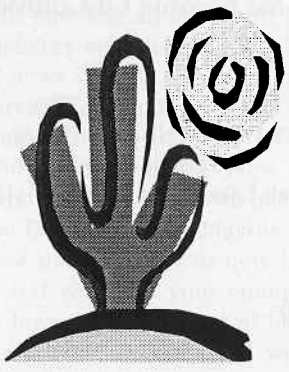
QUALIFICATIONS: Prior court- or law-related experience in an automated environment highly desirable.

APPLICATION PROCEDURE: Interested applicants who meet the qualifications should prepare a cover letter and Application for Federal Employment (OF-612) and submit them with relevant supporting documentation and references to the address listed below. OF-612 Forms are available for pickup at the address listed below from 8:30 a.m. to 5:00 p.m. Monday-Friday. Position open until filled. Submit application packets to:

United States District Court
for the District of Utah
Office of the Clerk of Court
Attn: KJPS
Room 150, Frank E. Moss U.S. Courthouse
350 South Main Street
Salt Lake City, Utah 84101-2180
EQUAL OPPORTUNITY EMPLOYER

Get out of the snow and into the sun at the 1998 Mid-Year Meeting in St. George, Utah!

Mark your calendars now for March 5-7, 1998. Hope to see you there!



Utah Lawyers Honored

The Energy, Natural Resources and Environmental Law Section of the Utah State Bar honored Hal J. Pos as the Section's Lawyer of the Year, and honored Joseph Novak with the Section's Edward W. Clyde Distinguished Service Award. The awards were presented by the new Section Chairman, Frederick A. MacDonald. Mr. MacDonald also recognized Craig W. Anderson for his service as Chairman of the Section this past year.

Mr. Pos is a shareholder in the Environmental and Natural Resources Department with the law firm Parsons Behle & Latimer. He concentrates on environmental and mining matters. Mr. Pos also represents clients in environmental criminal enforcement actions and environmental toxic tort actions. He is currently the Chair of the Environmental Law Committee of the Energy, Natural Resources and Environmental Law Section of the Utah State Bar. Mr. Pos is a graduate of Carleton College (A.B., magna cum laude 1981) and Washington University Law School (J.D. 1984). He also attended the University of Copenhagen School of International Business in Copenhagen, Denmark, and the Warsaw School of Economic Planning in Warsaw, Poland, in 1980 where he studied international finance and trade.

Mr. Joseph Novak serves "Of Counsel" to Snow, Christensen & Martineau. His practice concentrates on water law. Mr. Novak has served the Utah State Bar as president, Chairman of the Water Law Section and Chairman of the Eminent Domain Section. He has been recognized on numerous occasions for service to the Utah State Bar including receiving the Distinguished Lawyer of the year Award and the Amicus Curiae Award from the Utah Judicial Council.

Opportunities to Serve

By Michael Mower

As a new member of the Bar, you are automatically a member of the Young Lawyers Division, "YLD". For three years after admission to the Bar, or until you reach age 35, you belong to one of the most active Divisions of your state bar. As President of the Young Lawyers Division, I invite you to read more about the various, worthwhile committees of the Bar. "YLD" involvement is a terrific way to serve others, serve your profession, and meet many other young Utah attorneys.

If you have any questions, please feel free to call me at 397-2505. Also, you're welcome to contact any of the committee chairpersons listed below.

PRO BONO

The only people in town who can volunteer legal advice are attorneys, and the Young Lawyers have played an integral role in providing legal help in Utah. The Pro Bono Committee of the YLD, headed by **Rob Rice** at 532-1500 and **Jensie Andersen** at 485-7343 lead YLD efforts to staff the Tuesday Nigh Bar as well as the annual Call-A-Lawyers project.

MEMBERSHIP SUPPORT NETWORK

The goal of the Membership Support Network is to help Young Lawyers in Utah. Committee chairs **Eric Christiansen** at 536-6719 and **Brianna Lavelle** at 262-0669 are working to provide more bang for YLD members bar dues bucks. They are planning many great, free CLE classes, a new lawyer lunch, and are hoping to expand the benefits YLD members receive from the Bar.

NEEDS OF CHILDREN

Members of this committee work to assist Utah children in need. Past projects have included Big Brother/Big Sister activities, Sub-for-Santa projects and sponsoring volunteer Guardian Ad Litem training. Chairpersons this year are **Lisa Rischer** at 531-3000 and **Charlie Friedman** at 582-7599.

NEW LAWYER CLE

"Oh my word. I though I was through with law school!" is an expression often heard from new bar admits upon learning about mandatory continuing legal education. The good news is CLE courses don't grade on the curve. The other good news is that **Julie Thomas** at 237-1982 and **Jeff Hagen** at 328-3560, Chairs of the New Lawyer CLE committee, work hard with members of the Senior Bar to provide classes that are informative and relevant to new lawyers. Julie and Jeff welcome your comments on what new lawyers wish they had learned in law school but didn't. They will work hard to provide such courses.

COMMUNITY SERVICE

Are you a little tired of giving out legal advice to neighbors, friends and family members but still want to be of service to the community? Well, continue to do that pro bono work because there is a real need for it. Along with it, realize that the Community Service committee of the YLD can provide you with opportunities to give a little sweat to help out others. Past Young Lawyers projects have included painting a floor at the YWCA, helping to remodel and furnish a county youth shelter, and painting homes for local low-income residents. Chairpersons **Renee Spooner** and **John Bowman** at 568-4660 are committed to continuing YLD projects that help people in need.

LAW DAY

This is no ordinary rubber chicken luncheon. The food is good; the talks are enlightening and the company is terrific. Each year on May 1st, Utah Young Lawyers host a luncheon to remind us about the importance of the law in our society. Last year Senator Orrin Hatch outlined his views on the rule of law. A few years ago, noted defense attorney Gerry Spence expounded on his concerns that justice often isn't served. Awards to the

Young Lawyer of the Year and those in the community who have been active in promoting justice are presented at this luncheon. **Dan Garrison** at 237-1900 and **Rob Latham** at 567-3284 are chairing the luncheon and are coordinating other Law Day activities.

BAR JOURNAL

A few years ago **Peggy Stone** at 538-4660 was an editor of the *University of Utah Law Review*. Today, she is putting those editing skills to good use as she and committee Co-chair **Mark Quinn** at 569-3131 and **Catherine Roberts** at 583-0257 cover young lawyers and their activities throughout the state. They are anxious to learn and report on what young lawyers are doing in their practices, their communities and their pro bono activities.

LAW RELATED EDUCATION

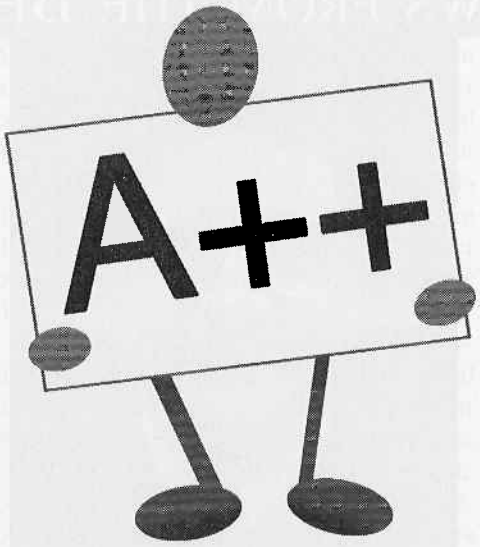
Want to know how to divorce your husband? Curious about who gets your stuff if you die without a will? Concerned about what rights you have as a tenant to get that leaking toilet fixed? The Law Related Education committee works to educate people in the community about their legal rights. While lacking the drama and intensity of the People's Court, the free classes this committee hosts are informative and appreciated by those who attend them. Attorney volunteers are always needed to teach these classes, which are usually held in public libraries, schools and senior citizens centers. Any interested parties are invited to call committee leaders **Frank Call** at 532-9909 and **Charlie Veverka** at 533-9800.

LONG TERM PLANNING

Steve Shapiro at 532-5444 and **Steve Owens** at 363-7611 are the Chairs of this newly formed committee. Their goal is to project several years ahead to see what the needs of Young Lawyers in Utah will be and to start planning for it. Their work is modeled on the long term planning project currently being undertaken by the Senior Bar. Steve and Steve will also be assisting with YLD projects at the mid-year and annual meetings of the Utah State Bar. Currently they are seeking young lawyers responses to proposals such as provisionary bar licenses for new admittees to the Bar.

REGIONAL OFFICERS

The YLD works to make certain that its activities and assistance reach beyond Salt Lake County. Coordinating Young Lawyer projects in northern Utah is **Randall Philips** at 621-6546. Randall also spearheads the Thursday Night Bar pro bono program in Weber County. **Brock Belnap** at 634-5723, a Washington County Prosecutor, is the YLD director for Southern Utah. Both attorneys welcome comments from attorneys who practice outside of Salt Lake on what programs the Young Lawyers Division can provide.



The Coregis Lawyers' Insurance Programs Now Have a New, Stronger Owner to Serve Your Firm Even Better

You'll do anything to find the best professional liability insurance coverage for your law firm, right?

Well, your job just got a lot easier.

Coregis' professional liability insurance programs are now part of Westport Insurance Corporation and the Employers Reinsurance Group, which has been writing specialized liability coverage since 1930.

Westport is part of the Specialty Division of Employers Reinsurance Corporation, a GE Capital Services company and rated **A++** by A.M. Best and **AAA** by Standard & Poor's, *the industry's highest financial ratings.* General Electric is our ultimate parent - *the world's largest company* on a market capitalization basis.

Add these strengths to the following facts:

++ Coregis lawyers' programs are the choice of *over 30,000 law firms nationwide.*

++ More bar associations endorse our company's professional liability insurance program *than any other insurance company.*

++ We have insured lawyers *for more than 25 years.*

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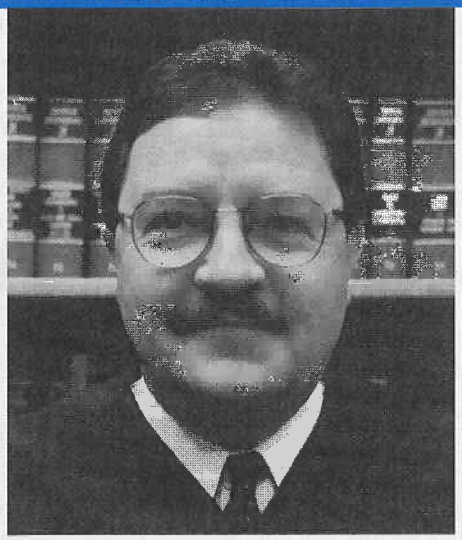


Ten Tips for New Attorneys

By Judge G. Rand Beacham

This article will be published near the time that the Utah State Bar announces the names of those who have successfully run the gauntlet of the 1997 Bar Examination. Scores of new law school graduates will then take the formal oath and be added to the ranks of practicing attorneys. This article is addressed to those new attorneys.

As a relatively new judge, I sincerely sympathize with you and anyone else who is faced with new responsibilities and risks. Your immediate future may be difficult. Many of you have acquired or perfected a considerable ego during law school but, unless your ego has entirely overcome your senses, you will begin practicing law with a genuine feeling of insecurity. No one can give you any immediate comfort; you *should* fee insecure, because you now have demanding professional responsibilities, but virtually no experience in real-world legal practice. Some of you will become litigators and will soon find your way to the courthouse door, even without having been taught to do so. Until you have more experience, your litigation and courtroom work will be fraught with potential for embarrassment or humiliation. Consequently, I offer the following tips for new attorneys who want to avoid some of the typical mistakes of the inexperienced litigator.[1]

G. RAND BEACHAM was appointed to the Fifth District Court in August 1995 by Governor Michael O. Leavitt. He sits primarily in Washington County. He is a graduate of Snow College and Utah State University, and graduated from the University of Utah College of Law in 1980, after serving two years on the Utah Law Review. *He was in private legal practice until his appointment to the bench. He was a member of the Planning Committee for the 1997 District Court Judges Conference. He is married to Diane Beacham, who teaches in the Washington County School District, and they are the parents of three sons and one daughter.*

1. FIND A MENTOR. Law school has taught you much of the subject matter that you need to know, and some subject matter that you may never need to know. Law school has taught you little about the actual daily practice of law, however, in spite of more progressive curricula adopted in the twenty years since I began law school. You should not try to invent every wheel by yourself. You need to learn from the experience of some trustworthy practitioner who has successfully done the things you are learning to do.

If you are lucky enough to have a job in a firm or office with experienced attorneys, do not blithely assume that you will give the help you need; some law firms provide good mentoring, while others may give you the proverbial Viking swimming lesson – they will throw you out of the boat to see whether you can swim to shore on your own. If you are starting a practice and hanging out a shingle, you especially need a good mentor. In any event, you must find an experienced attorney who will commit to being your mentor. Take advantage of mentoring programs if they are available, or take it upon yourself to find someone. Even an attorney with whom you will be competing may appropriately feel flattered by your request for his or her advice, direction and form documents.

2. LEARN THE RULES. If you intend to litigate, you must learn to apply the rules of procedures, evidence and appeal to real-life situations. Do not expect judges and other attorneys to waive the rules just because you are new. Regardless of the extent of his or her experience, the attorney who knows and follows the rules always has a great advantage over the attorney who tries to work from vague memory or on the basis of perceived practices (i.e., "We've always done it this way."). Do not file any pleading or motion without first reviewing

the applicable rules, and at least, reading the relevant annotations to the rules.

3. TALK IS CHEAP. Inexperienced lawyers may not appreciate the value of simply discussing a dispute candidly with opposing counsel. You may file unnecessary motions because you are too intimidated by experienced opponents to talk to them, or because drafting motions and memos is what you know best. You should adopt a firm practice of making a good faith effort to discuss a problem with opposing counsel on a professional level before spending your time and your client's money to file a motion and ask the court to resolve the problem. Doing this will help develop the respect of good attorneys. It will also allow you to appear in court and tell the judge that you have tried to solve your own problems. If the judge learns that you do not simply run to the courthouse to resolve every problem that you encounter, you will be more welcome there when it is truly necessary.[2]

4. READ IT BEFORE YOU SIGN IT. Your first impression to a judge may be made through your written work. Before you get to a hearing and have the opportunity to demonstrate your true brilliance, you may have already portrayed yourself as a careless dolt by submitting sloppy, mistake laden motions and memoranda. I recently received a memorandum in support of a motion for sanctions which argued that the opposing party's argument was neither "well-rounded [sic] in fact" nor "warranted by existing law or a good fake [sic] argument" for a change in the law. The attorney probably dictated the memo and failed to proof-read it.[3] Regardless of the merits of your argument, you will severely weaken your persuasiveness by submitting written work which contains obvious mistakes. If you don't care about it enough to correct it, a judge may hesitate to rely on it. Learn to edit what you draft, and proof-read everything that you sign or submit.

5. COURTESY COPIES. If you want a judge to be persuaded by your argument, make it easy for him or her to locate your argument and study it. If the judge has to dig through the entire court file on the night before your hearing in order to locate your motion and the supporting and opposing papers, and then the judge has to try to understand and remember your arguments without being able to highlight sentences or make notes near the text, you have put yourself at a serious disadvantage. Rule 4-501 of the Code of Judicial Administration already requires the moving party to deliver courtesy copies of motions, memoranda and other papers to the judge (not the clerk) at least two working days before a hearing; do not send them before you have a hearing date, and then always include a cover letter or other paper showing the judge when the hearing is scheduled.

I think it is a good practice for the moving party to provide courtesy copies of all papers filed by all parties; a partial set of papers just creates the task of finding the others. I also recommend that you provide courtesy copies for motions submitted without hearing, even though Rule 4-501 does not require it. If you send a complete set of courtesy copies to the judge with a copy of your Notice to Submit for Decision, you help the judge avoid spending time just trying to locate what has been filed. All judges appreciate being able to get to the task of the actual decision without having to waste time sorting through a file.

"If you want a judge to be persuaded by your argument, make it easy for him or her to locate your argument and study it."

6. SAVE SANCTIONS FOR SEVERE SITUATIONS. A Rule 11 motion for sanctions against an opposing party or attorney is a serious matter, and such motions should not be thrown around indiscriminately, like Dikembe Mutumbo's elbows. Unsupportable motions for sanctions are often filed by attorneys who are too emotional and unprofessional, or are simply "blowing smoke" to pad a weak argument. Do not add a Rule 11 motion to every routine dispute in which the problem is simply that you really, really don't like your opponent and his or her argument. Remember the boy who cried wolf: If you ask for sanctions too often, perhaps no one will take you seriously when sanctions are actually warranted. Furthermore, filing an unsupportable Rule 11 motion may, ironically, give your opponent a valid Rule 11 motion against you.

7. USE NORMAL ENGLISH. Young attorneys sometimes try to sound more experienced by adopting stilted and formal language. Some terms used in legal matters have precise and technical meanings, of course, and are used by any competent lawyers. The problem occurs when an attorney stumbles into using awkward or verbose language which communicates nothing more than normal speech.

This may happen more in hearings and trials than in written materials, and it often happens in direct examination of a witness by an inexperienced and nervous lawyer. For example, the questions "Upon your initial gaining of access to the defendant's dwelling place, what, if anything, were you able to observe of the interior of the dwelling?" is actually a less effective question than "What did you see when the door opened?" Similarly, asking "Did you come into contact with her?" in place if "Did you talk to her?", and "Did she indicate anything to you in response to that contact?" in place of "Did she say anything?", may make you sound more like a television lawyer, but it communicates less substance to your listeners. Using unnecessarily formal language in questioning also prompts some witnesses to try to answer in similar language, leaving the fact-finder to wonder what you were talking about.

Remember that your goal is to have the witness understand your questions and to have the judge or jury understand both your question and the witness's answer. You will do that best when you use accurate language that he or she will readily understand.

8. AVOID MULTIPLE NEGATIVES IN CROSS-EXAMINATION. Most attorneys like to cross-examine witnesses, because the ability to use leading questions makes it much easier to get the desired answer. Even inexperienced attorneys can do well on cross-examination if they are reasonably well prepared. There are negative forms of leading questions, however, that make the answers sound at least ambiguous. For example, if the question is "It is true, is it not, that you did not see the other car before the impact?", and the answer is "No," does the witness meant that he did or did not see the other car? On the other hand, if you ask "You did not see the other car before the impact, did you?", the answer will be clearer. Do not be lured into using old fashioned forms like "It is

true, is it not" by some misguided desire to demonstrate how esoteric and scholarly you can sound. If you ask a question such as "It is true, is it not, that you did not fail to deny that you are a liar?", who will understand the answer, regardless of what it is?

9. STAY ABOVE THE FRAY. The native combativeness and the developed verbal skills of litigators occasionally lead to curt and caustic verbal exchanges. The president of the American Bar Association recently reported the results of his nationwide survey of presidents-elect of state and local bar associations on the subject of "civility." Ninety percent of the survey respondents believed civility was a problem in their jurisdiction, and that the problem was defined by diminished respect among lawyers. Disrespectful conduct outside the courtroom is one problem, but inside the courtroom it is even more pointless and destructive. You will never find a judge who is favorably impressed or persuaded by histrionics or snide carping between attorneys. It always hurts your argument, which hurts your client. No matter how little experience you have, or how much experience your opponent has, you will have a great advantage, if you remain dignified and professional, especially when your opponent descends into unprofessional personal attacks.

10. QUALITY AND INTEGRITY; CREDIBILITY AND RESPECT. I believe that the only really lasting assets of a good attorney are quality of work and personal integrity. Do not be seduced into doing poor quality work by the pressure of billable hours and heavy financial expectations; do whatever it takes to do good quality work and to avoid being known for sloppy, shallow or careless work. Do not trade your personal integrity for anyone's money, power or security; you may not always be a lawyer, but you will always be yourself if you maintain your integrity.

If that sounds a bit corny or sentimental, consider this: Among your knowledgeable clients and competitors in the legal marketplace, your effectiveness and worth as an attorney will be measured by your ability to get the results that you want. Your actual effectiveness, both in court and out of court, will depend in large part upon your personal credibility with attorneys, clients and judges. Judges will always base their decisions on the legal merits of the opposing cases, but even a great argument may be tainted by an attorney's known lack of credibility.

In my opinion, credibility as an attorney results entirely from quality work and personal integrity. An honest attorney with a reputation for shoddy work is not credible. A highly skilled attorney who is known to lack integrity is not credible. If you become known for quality work and personal integrity, you will have the confidence of knowing that attorneys, clients and judges are inclined to believe you and trust you.

Maintaining that credibility over time will result in genuine respect within your legal community. By the time that you conclude your legal practice, the strength of your credibility and the satisfaction of the respect shown to you will be far more valuable to you than money, letterhead position or popular notoriety.

GOOD LUCK!

[1]Some of this may seem painfully obvious to you, but you will soon find that it is not obvious to all practicing attorneys.

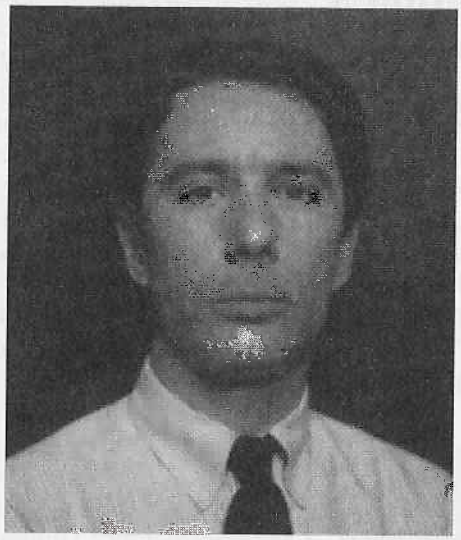
[2]A friend and former colleague once told me about a solo practitioner who had forgotten to respond to an opponent's written discovery requests, and was reminded by being served with a Motion to Compel Discovery, a demand for sanctions and a weighty supporting memorandum on the terrors of Rule 37. He responded with a one-sentence Memorandum in Opposition: "Why didn't they just call me?" When the court called the case for hearing on the motion, the judge began by addressing counsel for the moving party with a question: "Why didn't you just call him?" The motion was denied.

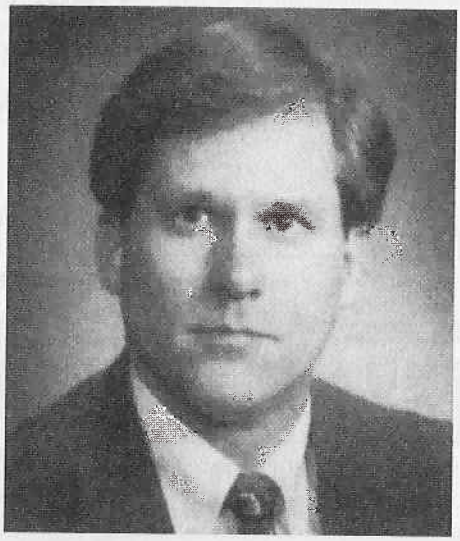
[3]Several years ago, while proof-reading a promissory note which I had dictated and given to a substitute secretary, I found that, without correction, it would have required the maker to repay the principal together with "a crude" interest. Fortunately, I found and corrected the mistake before my client had to determine how to calculate and collect crude interest.

[4]There are some judges who prefer not to receive courtesy copies. If you have any questions about your judge, ask the judge's clerk.

CASE SUMMARIES

By Daniel Torrence & Glen A. Cook





ZIONS FIRST NATIONAL BANK V. FOX CO., FOOTE, ET AL., 320 Utah Adv. Rep. 30 (Utah 1997).

Zions, as personal representative of the Pepper estate, was sued by the Pepper beneficiaries for five claims for relief, including fraud, mismanagement, and negligence. Zions named Fox Company and Foote (accounting firm and accountant) as third-party defendants, alleging they negligently prepared audits of certain businesses owned by the estate. Later, Zions agreed to dismiss its third-party claims against Fox and Foote with provisions for potential future reinstatement.

Zions settled with the Pepper beneficiaries for $2.8 million and later sued Fox and Foote, in a separate action, for that portion of the $2.8 million caused by the accounting negligence of Fox and Foote.

The trial court granted summary judgment in favor of Fax and Foote.

On review, the Supreme Court noted that a trier of fact has no practical way to distinguish, in retrospect, what portion of the settlement payment was attributable to Zions' independent liability and what portion, if any, was caused by the conduct of Fox and Foote. By forgoing its right to have a trier of fact decide causation, Zions lost the ability to seek an allocation of a portion of those damages to Fox and Foote.

To preserve its rights against Foote and Fox, Zions could have proceeded to litigation or brought Fox and Foote into the settlement negotiations. Having failed to do so, Zions won't be allowed to ask a court to perform an "autopsy" on its settlement with the beneficiaries.

STATE V. LEYVA, 324 Utah Adv. Rep. 5 (Utah 1997).

"Hey, man, I'll admit to everything else, but the cocaine isn't mine." This and other equally incriminating statements are at the heart of *State v. Leyva*. After reading Mr. Leyva his *Miranda* rights, the policeman asked, "Having these rights in mind, do you want to talk to us now?" Leyva responded, "I don't know," then shortly thereafter proceeded to answer the officer's other questions, making incriminating statements.

The trial court denied Leyva's motion to suppress and Leyva was convicted.

The Court of Appeals reversed Leyva's conviction on the ground that the officer should have limited his questioning to clarifying Leyva's initial ambiguous response of "I don't know."

The Supreme Court reversed, and held that the requirement that an officer limit his questioning to clarifying a suspect's ambiguous or equivocal statement only applies to pre-waiver scenarios as opposed to situations in which a suspect has waived his *Miranda* rights and then later seeks to reassert them.

Once a suspect waives his *Miranda* rights, the requirement of clarity with respect to post-waiver invocation of those rights is on the suspect. The Court found Leyva waived his rights.

The Court also reaffirmed its prior holding that a waiver of *Miranda* rights may be inferred from a suspect's understanding of his rights and his subsequent course of conduct (which may include silence) based on a "totality of the circumstances."

McNAIR V. FARRIS, 324 Utah Adv. Rep. 9 (Utah App. 1997).

Daniel Farris drove his car over Leslie McNair's foot, breaking two of McNair's toes. McNair sued Farris.

Farris brought a motion for summary judgment, arguing that (1) McNair's medical bills totalled only $1,200.00, less that the $3,000.00 threshold required by Utah's No-Fault Act and, (2) the injury wasn't a "serious impairment" as required by the Act.

McNair's attorney couldn't locate McNair to assist in opposing the summary judgment motion, and it was granted three days before trial.

The Court of Appeals noted that the No-Fault Act requires "objective findings" to establish the permanency of injury, and ruled that McNair "had the burden of demonstrating the permanency of his injury with something more than his say so." Because McNair's complaint and deposition testimony failed to allege any permanent injury based on objective findings, summary judgment against him was appropriate.

The Court also reiterated its long-standing rule that a dismissal based upon a motion for summary judgment is properly granted "with prejudice."

Utah Bar Foundation's

Newest Grant Recipient

Utah Dispute Resolution

By Jane Semmel

Utah Dispute Resolution (UDR) provides residents of Utah with quality mediation and conciliation services, including information and training in alternative dispute resolution, as well as the means to successfully, informally, and cooperatively resolve their disputes.

The above mission statement might strike some attorneys as mission impossible. However, not all disputes must remain fixed in an adversarial mode that inevitably leads to court. Many conflicts are appropriate for other means of resolution. Mediation, a voluntary process in which the mediator remains neutral and does not decide who is right or wrong, can often assist antagonists in settling their differences. The goal is a signed agreement that is satisfactory to the parties and enforceable as a contract.

Utah Dispute Resolution, housed in the Law and Justice Center, has been offering free mediation and conciliation services as an alternative to litigation since its establishment in 1991. With continuing support from private foundations and the Utah State Bar, UDR has evolved into a significant and legitimate community resource. Now, as a new recipient of an IOLTA grant and with fresh leadership from a board of directors and a recently-hired executive director, UDR is hoping to expand its services, its panel of mediators, its funding base and its profile.

While the primary target of UDR is Utah's poor population, whose legal needs are generally unmet, UDR also contributes a forum for those individuals who cannot afford a lawyer, yet do not qualify for free legal services. With a roster of some 60 mediators (less than half are attorneys), UDR is able to facilitate agreements that generally result in preserving relationships and leave participants with a sense of satisfaction.

Already operational is a UDR office, aptly called the Solution Center, located at the Horizonte Instruction and Training Center, an alternative public high school. "People like to stay in their own neighborhoods," says Susan Bradshaw, explaining the success of Horizonte, where not only are local disputes mediated on the spot, but conflict resolution skills are taught to teens in the classrooms. Talks are underway for creating similar facilities in the Sorensen Multi-Cultural Center (formerly Glendale) and in West High School's peace center. UDR is also present in Murray small claims court as on on-site alternative; parties can elect to participate in an immediate mediation prior to presenting their case before a judge.

SUSAN BRADSHAW, the new executive director, brings to UDR a JD degree from the J. Reuben Clark School of Law at BYU and a Master's Degree from the Straus Institute for Dispute Resolution at the Pepperdine University School of Law. Bradshaw envisions making mediation services available throughout the Salt Lake Valley via widely scattered, satellite neighborhood mediation centers administratively supported by the UDR hub at the Law and Justice Center.

Many community agencies are currently referring cases to UDR. For instance, UDR meets weekly with Utah Legal Services to identify those conflicts that might be defused by having the disputers sit down face to face with a neutral mediator. The parties are subsequently contacted and presented with the option. Referrals also come from the Consumer Protection Agency, the Better Business Bureau, Department of Commerce, Legal Aid, Community Action Program and various law enforcement agencies, such as the District Attorney's office, the Salt Lake County Sheriff's office and the West Valley Police Department. In addition, UDR is developing referral mechanisms for the Salt Lake City Prosecutor's office.

In response to an overwhelming need, UDR hopes to begin taking referrals in divorce and child custody cases in cooperation with outside agencies and the private bar, which will assist with pre-mediation counseling and prepare the final court documents once agreement is attained.

UDR's mediators, who come from all walks of life, have each completed at least 32 hours of training. A very modest fee is charged for the training in exchange for a commitment to conduct at least three mediations a year. Those volunteer mediators who are not attorneys must also lend a hand in the UDR office for six months in order to become familiar with the overall

mediation process. Many disputes can be efficiently resolved through telephone conciliations, in which a mediator converses over the phone with the involved parties and facilitates an agreement. New trainees are encouraged to participate in these forums.

While not all disputes are suitable for mediation, certain situations in particular can benefit from the process. If the feuding parties will inevitably have a relationship beyond the life of the strife (for instance, landlord/tenant, neighbor/neighbor and family or friend disputes), arriving at an agreement to which each has contributed and subscribed is much more likely to lead to future harmony than is a decision rendered in one party's favor by a court.

The following scenarios are examples of recent, successful mediations; they are illustrative of the broad range of disagreements that can often be amicably resolved:

Landlord/tenant: The parties were headed to court over a disagreement about the tenant's deposit. Mediation resulted in a compromise splitting the money. The relationship remained intact and court costs were avoided.

Agency: Two agencies that work together to provide community services could not agree on the appropriate service and implementation. Three days of discussion under the guidance of a UDR mediator resulted in an agreement about basic service. Additionally, a structure was set up to manage future grievances.

At-risk children: A teen who was court-ordered to foster care threatened to run away from the placement. At the request of a social worker, a UDR mediator met with the teen, the foster parents and the social worker in several sessions where grievances were aired. The face-to-face confrontation, the first the parties had ever had, resulted in an agreement to continue the placement.

Neighbor/neighbor: When a neighborhood was becoming increasingly terrorized by a local gang, UDR was contacted by a resident and a meeting was held at the home of the family accused of harboring gang members. An agreement was reached on an agenda and key issues, and an action plan was developed to deal with specific problems as they arise. At the end of the process, neighbors swapped phone numbers, opened up lines of communication and celebrated their new-found sense of community with a potluck dinner.

Bradshaw estimates that by the end of 1997 approximately 335 of the projected 589 referrals to UDR this year will have been successfully resolved. In order to handle the anticipated future caseload, UDR needs to enlarge its panel of mediators. To that end, Bradshaw is scheduling a training in early spring and encourages interested persons to call the UDR office at 532-4841 for details.

Sums up Bradshaw, "Participation in UDR can be a rewarding way for attorneys to fulfill their obligations (remember the proposed Bar reporting requirement!), help alleviate the heavy backlog of cases in the courts and gain valuable skills in an area that is of increasing necessity and value to the community."

CLE CALENDAR

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: Thursday, November 6, 1997
Time: 9:00 a.m. to 1:00 p.m.
Place: Utah Law & Justice Center
Fee: $45.00 for section members
$60.00 for non-section members
CLE Credit: 4 HOURS which includes 2 HOURS in ETHICS

ALI-ABA SATELLITE SEMINAR: EMPLOYEE BENEFITS LAW AND PRACTICE UPDATE

Date: Thursday, November 6, 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 MANDATORY SEMINAR – FOR 1997 ADMITTEES

Date: Friday, November 7, 1997
Time: 8:30 a.m. to 4:15 p.m.
(Registration begins at 8:00 a.m.)
Place: Utah Law & Justice Center
Fee: $35.00
CLE Credit: This program counts as the ETHICS requirement for New Lawyers, and is mandatory for those attorneys who sat for the Bar Exam as "students" and were admitted in 1997. If you have a question about whether or not you need to attend this program, please call Monica Jergensen at (801) 297-7024.

CHILDREN'S SSI PRO BONO PROJECT TRAINING

Date: Monday, November 10, 1997
Time: 8:15 a.m. to 12 noon
Place: Utah Law & Justice Center
Fee: Free to those willing to accept a pro bono case
$40.00 for all others
CLE Credit: 4 HOURS NLCLE or CLE, which includes 1 HOUR in ETHICS

WIN YOUR CASE BEFORE TRIAL: EFFECTIVE PRETRIAL TECHNIQUES & STRATEGIES

Date: Friday, November 14, 1997
Time: 9:00 a.m. to 4:30 p.m.
(Registration beings at 8:30 a.m.)
Place: Utah Law & Justice Center
Fee: $140.00; $160.00 at the door
CLE Credit: 7 HOURS

ALI-ABA SATELLITE SEMINAR: EEO BASICS – PRACTICE FUNDAMENTALS OF EMPLOYMENT DISCRIMINATION LAW

Date: Tuesday, November 18, 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. _____ _____

_____ Total Due

Make all checks payable to the Utah State Bar/CLE

Name _____ Phone

Address _____ City, State, Zip

Bar Number _____ American Express/MasterCard/VISA _____ Exp. Date

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.

AN EVENING WITH THE THIRD DISTRICT COURT

Date: Tuesday, November 18, 1997
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: $15.00 for Young Lawyers and attorneys in practice 5 years or less; $35.00 for members of the Litigation Section; $50.00 for all others
CLE Credit: 3 HOURS CLE & NLCLE

NLCLE WORKSHOP: ESTATE PLANNING & PROBATE

Date: Thursday, November 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: EVIDENCE FOR THE TRIAL ADVOCATE

Date: Thursday, November 20, 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

LAWYERS ON THE INTERNET: RESEARCH AND ELECTRONIC PRACTICE

Date: Friday, November 21, 1997
Time: 8:30 a.m. to 12:00 p.m. *(Registration beings at 8:00 a.m.)*
Place: Utah Law & Justice Center
Fee: To be determined
CLE Credit: 4 HOURS

ALI-ABA SATELLITE SEMINAR: THE CONVERGENCE OF ELECTRICITY, GAS & TELECOMMUNICATIONS – NEW OPPORTUNITIES FOR THE PRACTICING LAWYER

Date: Thursday, December 4, 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

ETHICS – ESTABLISHING SUCCESSFUL & PROFITABLE CLIENT RELATIONSHIPS

Date: Friday, December 19, 1997
Time: 9:00 a.m. to 12:00 p.m. *(time subject to change)*
Place: Utah Law & Justice Center
Fee: $70.00 pre-registration
$60.00 for three or more registrations from the same office
$80.00 at the door
CLE Credit: 3 HOURS ETHICS

ETHICS – THE BOTTOM LINE: SETTING & COLLECTING FEES

Date: Friday, December 19, 1997
Time: 1:00 p.m. to 4:00 p.m. *(time subject to change)*
Place: Utah Law & Justice Center
Fee: $70.00 pre-registration
$60.00 for three or more registrations from the same office
$80.00 at the door
CLE Credit: 3 HOURS ETHICS

Mandatory Continuing Legal Education Reminder

Attorneys who are required to comply with the odd year compliance cycle will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1997.

- The Mandatory CLE requirement is: 27 hours of total credit with at least 3 hours of ethics.
- The New Lawyer CLE Requirement is: A one day Mandatory Seminar (ethics), 12 New Lawyer CLE hours and 12 regular hours.

Please be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt.

If you have any questions concerning your hours, please contact Sydnie Kuhre, MCLE Administrator at 297-7035.

Just a reminder to those on the 1997 CLE Cycle:

CLE Reporting Deadline December 31, 1997

New Lawyer CLE Requirement:
Mandatory Seminar (Ethics)
12 NLCLE hours + 12 regular hours

CLE Requirement:
27 total hours with 3 hours in Ethics

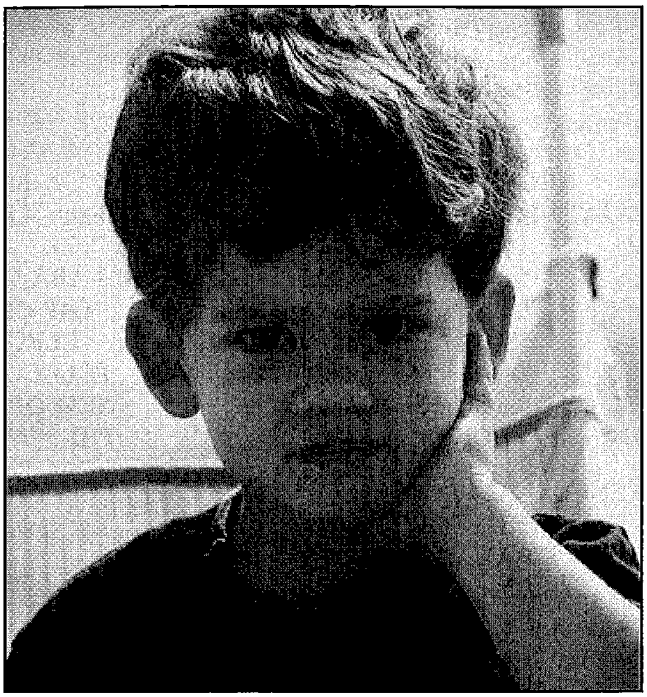
If you have any questions regarding your CLE requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator, at 297-7035.

If you need a listing of Utah State Bar courses, please contact Monica Jergensen, CLE Administrator, at 297-7024.

In an effort to assist those who fall short of their requirements, the Utah State Bar will provide its annual "LAST MINUTE CLE VIDEO" program on **Monday, December 29, 1997.**

CHILDREN'S SSI PRO BONO PROJECT TRAINING

400 disabled Utah children recently had their supplemental security income (SSI) disability benefits terminated. They need your help to appeal the termination of their benefits. This seminar is designed to prepare advocated representing these children in the administrative appeals process which includes how appeals are filed, filing deadlines, and the circumstances under which SSI benefits may be paid for children whose SSI eligibility is redetermined.



Attorneys interested in becoming involved, or who are already involved, in the Children's SSI Project are encouraged to attend.

Instructors: Mike Bulson – Utah Legal Services, Inc.
Rob Denton – Disability Law Center

DATE:	Monday, November 10, 1997
TIME:	8:15 a.m. – 12:00 p.m.
PLACE:	Utah Law & Justice Center 645 South 200 East, Salt Lake City, Utah
CLE CREDIT:	4 hours NLCLE or CLE, which includes 1 hour in ETHICS
COST:	FREE for those attorneys willing to accept a Pro Bono case; $40.00 for all others
RSVP:	Kindly respond by Wednesday, November 10, 1997 to Amy Jacobs, 297-7033, at the Utah State Bar. Thank You.

Sponsored by:

UTAH STATE BAR, UTAH LEGAL SERVICES, INC., DISABILITY LAW CENTER, WOMEN LAWYERS OF UTAH, NEW LAWYER CLE COMMITTEE, NEEDS OF CHILDREN COMMITTEE, & DELIVERY OF LEGAL SERVICES COMMITTEE

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 call (801) 297-7022.

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 Attorney's Office. Senior City Attorney (Pay Level 613, $4092 - $6466) or Assistant City Attorney (Pay Level 609, $3256 - $5145). Depending on Qualifications and Experience. Starting salary is usually below midpoint of range.

The Salt Lake City Attorney's Office is seeking an attorney to perform the following duties and responsibilities: (1) represent the City in Federal and Utah State courts on civil matters with emphasis on matters involving the City's Airport; and (2) prepare and review complex construction contracts and other agreements with emphasis on matters related to the CIty's Airport. Senior City Attorney level requires a JD or LL.B. degree and six years full-time paid employment in the practice of law including litigation experience. The Assistant City Attorney level requires a JD or LL.B. degree and four years of full-time paid employment in the practice of law including litigation experience. The attorney must be a member in good standing with the Utah State Bar. Preference will be given to candidates who have construction litigation and contract experience. Total compensation includes a generous benefits package of paid leave (personal leave, vacation, holidays), retirement and insurance programs (medical, dental, life). Apply at the Salt Lake City Department of Human Resource Management, 451 South State Street, Suite 115 or FAX resume, including title of desired position, to 801-535-6614. Applications shall be accepted until December 1, 1997. EOE

HAWLEY TROXELL ENNIS & HAWLEY LLP seeks two attorneys for its Boise, Idaho office. **Real Estate Associate** – must have 2-5 years transaction real estate experience. **Commercial Litigation Associate** – must have 2-5 years litigation experience. Strong academic credentials required. All replies are confidential. Please send resume to: **Hiring Partner P.O. Box 1617, Boise, ID 83701.**

ATTORNEY NEEDED IMMEDIATELY. Richer, Swan & Overholt, P.C. a six attorney law firm, located in the South part of the Salt Lake Valley seeks an associate with two to four years experience in either the creditors' rights (collection), real estate, bankruptcy or litigation areas. Send resume and salary requirement to Tim at 6925 South Union Park Center, Suite 450, Midvale, Utah 84047.

Small medical-related non profit corporation is interested in an attorney with 3 years general experience to establish new V.P./Corporate Counsel position and handle varied legal and managerial matters. Prefer research and litigation background with a strong work ethic. Ability to analyze problems, make decisions and act. Involves some travel and capability to understand financial reports. Computer literate with Microsoft Office software familiarity. No Law Review/Coif/or high academic applicants please. All inquiries kept confidential. Send resume and cover letter stating minimum salary expectations to MHS; P.O. Box 1054; Layton, Utah 84041-1054.

Civil Rights Attorney: Public interest law firm seeks experienced litigation attorney with a commitment to the rights of citizens with disabilities. Persons of color, women and persons with disabilities encouraged to apply. Submit resume and letter of application to Ronald J. Gardner, Legal Director, Disability Law Center, 455 East 400 South #410, Salt Lake City, Utah 84111. Equal Opportunity Employer.

Large Salt Lake City law firm seeks corporate/securities/business transactions attorney with 3-5 years quality experience for an associate position. Strong credentials, writing skills and references required. Inquiries will be kept confidential. Send resumes to Confidential Box #40, Attention: Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

WINDER & HASLAM, P.C. a mid-sized downtown law firm is seeking an associate with 2 to 3 years experience. The firm's areas of practice include business transactions, litigation, entertainment and sports law. Please send your resume to Suzy M. Edwards, Winder & Haslam, P.C., 175 West 200 South, Suite 4000, Salt Lake City, Utah 84101.

Large Salt Lake City law firms seeks trust and estate/closely-held business planning attorney with 3-5 years quality experience for an associate position. Strong credentials, writing skills and references required. Inquiries will be kept confidential. Send resume to Confidential Box #41, Attention: Maud Thurman, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

POSITIONS SOUGHT

ENTERTAINMENT LAW: Denver-based attorney licensed in Colorado and California available for consultant or of-counsel services. All aspects of entertainment law, including contracts, copyright and trademark law. Call Ira C. Selkowitz @ (800) 550-0058.

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 john@palley.com.

Experienced litigator seeking contract work. Areas of practice: civil, tax **ERISA,** bankruptcy (including Chapter 11), criminal, domestic relations, worker's comp. I have gone to trial 32 times, and have litigated 1 case through the American Arbitration Association. Call Ted Weckel @: (801) 699-2005.

MD and DC attorney seeking to relocate to a smaller community. Experienced in family law and related areas; taxes; real estate; probate; military; education and government. John V. Kavanagh – Tel/Fax - (301) 652-8629.

CONTRACT WORK. Uncertain about the appellate process? Need assistance with a complex or lengthy motion? Attorney with extensive experience clerking for the Utah Court of Appeals and the Utah Federal District Court seeks contract appellate/motion work. Excellent research and writing skills combined with very reasonable rates. Sheleigh A. Chalkley @ (801) 532-7282.

OFFICE SPACE / SHARING

Deluxe office space for two or three attorneys. Avoid the downtown/freeway congestion. 7821 South 700 East, Sandy. Includes three spacious offices, large reception area, conference room, space for library, file storage, wet bar and refrigerator, convenient parking adjacent to building. Call (801) 272-1013.

Deluxe office space for one attorney. Avoid the rush hour traffic. Share with three other attorney's. Facilities include large private office, large reception area, parking immediately adjacent to building, limited library, fax, copier, telephone system, & kitchen facilities. 4212 Highland Drive. Call (801) 272-1013.

Office space available for attorney. Secretarial space available. Space includes office (10' x 13'), shared reception area and kitchen. Possible sharing of secretary, receptionist, fax, copier and telephone. Centrally located in Ogden. Excellent space for DUI attorney or attorney looking to get on own. Contact Paul D. Greiner @ (801) 627-1455.

Deluxe office space for two attorneys, 7321 South State, Midvale, Utah. Avoid freeway congestion. Conference room, reception area, two secretarial spaces, wet bar, and refrigerator. Large parking lot, copy machine, fax, etc. (801) 562-5050.

Historic building on Exchange Place, leasing 1600 Square foot office space with five individuals offices, reception/secretarial area, storage room and separate outside entrance. Located half block from new courts complex and Federal Court. Great for small firm requiring court access. 4 to 5 Parking stalls. Available Dec. 1st, $1600 monthly. Contact Joanne Brooks @ (801) 534-0909.

Downtown – Kearns Building. Office for one attorney. Four attorneys presently in suite. Beautiful furnished conference room, reception area. Fax, printer, copier, tele-

phones, postage meter, computer network provided. Library: Westlaw, Utah Reporter, Federal Reporter, USCA/Regs. Pleasant, professional atmosphere. Parking next to building. Call (801) 364-5600.

Solo practitioner in Kearns Building has available office for another attorney who is willing to share secretarial services. Office suite includes reception area, conference room and equipment room with fax and copier. Reasonable rent of $500 plus expenses. Call Mike Jensen @ (801) 266-2009.

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.

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. Call about advances on Estates in Probate. Abram Miller, Ph.D., (801) 281-9723, pager (801) 460-9500.

SEXUAL ABUSE/DEFENSE: Children's Statements are often manipulated, fabricated, or poorly investigated. Objective criteria can identify valid testimony. Commonly, allegations lack validity and place serious doubt on children's statements as evidence. Current research supports **STATEMENT ANALYSIS,** specific juror selection and instructions. B. Giffen, M.Sc. Evidence Specialist American College Forensic Examiners. (801) 485-4011.

LUMP SUMS CASH PAID For Remaining Payments on Seller-Financed Real Estate Contracts, Notes & Deeds of Trust, Notes & Mortgages, Business Notes, Insurance Settlements, Lottery Winnings. **CASCADE FUNDING, INC. 1(800) 476-9644.**

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SKIP TRACING/LOCATOR: Need to find someone? **Will find the person or no charge / no minimum fee for basic search.** 87% success rate. Nationwide Confidential. Other attorney needed Searches / records / reports in many areas from our extensive data bases. Tell us what you need. **Verify USA** Call toll free **(888) 2-verify.**

TOXICOLOGY AND CHEMISTRY: Technical, education, and expert witness services for legal alcohol (DUI), illicit drugs, priority pollutants, and chemical products. Court-tested expertise in metabolism, biological effects and forensic analyses (e.g., breathalyzers, gas chromatoghraps, and mass spectrometers). Contact: Joseph Stewart, Consulting Toxicologist/Chemist, Regional Toxicology and Chemistry Services, Tel/Fax: (406) 443-4546, e-mail: **rtacs@mt.net**

SHOOTING SPORTS LAWYERS! Join us for networking, shared interests in pro-gun, hunting, and other shooting issues and recreation opportunities. Send name, address, phone/fax number and interests to: Utah Lawyers for Shooting Sports Association, P.O. Box 112382, Salt Lake City, UT 84147.

Rocky Mountain Mineral Law Foundation

Special Institute on Public Land Law

co-sponsored with the

Public Land and Land Use Committee Section of Natural Resources, Energy, and Environmental Law, American Bar Association

Denver, Colorado • November 13-14, 1997

The Rocky Mountain Mineral Law Foundation is presenting a two-day Special Institute on Public Land Law at the Hyatt Regency Hotel in downtown Denver. This institute is presented during the 21st anniversary year of the Federal Land Policy and Management Act, and is co-sponsored with the American Bar Association, Section of Natural Resources, Energy, and Environmental Law – Public Lands and Land Use Committee.

This institute is designed to provide a comprehensive overview of the statutory and regulatory framework governing the management and use of the public lands, which comprise one-third of the nation's lands. This framework includes constitutional underpinnings, organic statutes for federal land management agencies, and a broad variety of laws and regulatory schemes governing the management and use of public lands, the protection of public resources, and historic and cultural resource preservation.

The program includes papers on the Endangered Species Act, the National Environmental Policy Act, water rights and public lands development, recreational development issues, management and protection of sacred sites, access issues, and environmental regulation. Among the many highlights of the program is a panel discussion among speakers with diverse interest addressing "hot" issues arising on the public lands. The faculty for this institute in comprised of experts from diverse backgrounds. The goal of the program is to present a comprehensive, scholarly, and practical overview of the laws governing the use and management of the public lands and, at the same time, provide registrants with a diversity of views as to how the public lands should be managed.

The institute is directed towards attorneys, landmen, mineral developers, oil and gas operators, timber and real estate interests, recreation users, conservation and preservation organizations, federal and state agencies, and other groups interested in the management of the public lands.

The registration fee for this program includes an extensive course manual containing scholarly and practical Institute papers, two hosted luncheons, coffee breaks, and hosted reception. This program starts late on Thursday morning, allowing registrants to fly into Denver that day and save the cost of an extra hotel night.

Audiotapes and the course manual are available if you are unable to attend.

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UTAH STATE BAR STAFF

Tel: 531-9077 • Fax: 531-0660
E-mail: info@utahbar.org

Executive Offices

John C. Baldwin
Executive Director
Tel: 297-7028

Richard M. Dibblee
Assistant Executive Director
Tel: 297-7029

Mary A. Munzert
Executive Secretary
Tel: 297-7031

Katherine A. Fox
General Counsel
Tel: 297-7047

Access to Justice Program

Tobin J. Brown
Access to Justice Coordinator & Programs Administrator
Tel: 297-7027

Pro Bono Project

Lorrie M. Lima
Tel: 297-7049

Admissions Department

Darla C. Murphy
Admissions Administrator
Tel: 297-7026

Lynette C. Limb
Admissions Assistant
Tel: 297-7025

Bar Programs & Services

Maud C. Thurman
Bar Programs Coordinator
Tel: 297-7022

Continuing Legal Education Department

Monica N. Jergensen
CLE Administrator
Tel: 297-7024

Amy Jacobs
CLE Assistant
Tel: 297-7033

Finance Department

J. Arnold Birrell
Financial Administrator
Tel: 297-7020

Joyce N. Seeley
Financial Assistant
Tel: 297-7021

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Diané J. Clark
LRS Administrator
Tel: 531-9075

Law & Justice Center

Lisa Farr
Law & Justice Center Coordinator
Tel: 297-7030

Consumer Assistance Coordinator

Jeannine Timothy
Tel: 297-7056

Receptionist

Summer Shumway (a.m.)
Kim L. Williams (p.m.)
Tel: 531-9077

Other Telephone Numbers & E-mail Addresses Not Listed Above

Bar Information Line:
297-7055

Mandatory CLE Board:
Sudnie W. Kuhre
MCLE Administrator
297-7035

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

Office of Attorney Discipline
Tel: 531-9110 • Fax: 531-9912
E-mail: oad@utahbar.org

Carol A. Stewart
Deputy Chief Disciplinary Counsel
Tel: 297-7038

Charles A. Gruber
Assistant Disciplinary Counsel
Tel: 297-7040

David A. Peña
Assistant Disciplinary Counsel
Tel: 297-7053

Kate A. Toomey
Assistant Disciplinary Counsel
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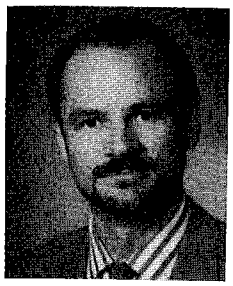
Get to Know Your Bar Staff



TOBIN J. BROWN

Toby (as he is known) serves the Utah State Bar as Access to Justice and Programs Administrator. His duties include: Pro Bono projects, Access to Justice initiatives, the Bar's network activities, Bar's web page, the Utah Electronic Law Project, and staff liaison to the Legal Assistant Division. WOW!!!

Toby was born and raised in Salt Lake City. He attended Cottonwood Heights Elementary School, Butler Jr. High School, and Brighton High School. He has B.S. and M.S. degrees in Economics from the University of Utah and be bleeds **red.**

After hours, you can find Toby water skiing, bare foot water skiing, wake boarding, and more water skiing. He has been known to put on the dry suit and water ski at Pineview Reservoir in December. For a change of pace, Toby loves soccer. He plays and also coaches soccer, and is a member of a co-ed soccer team. With soccer season almost over, you will find Toby on the slopes, doing snow skiing. He loves mountain biking, camping, and has been known to sky dive. With all if this activity, Toby loves to read and he claims his favorite book is *Zen and The Art of Motorcycle Maintenance.*

Toby keeps busy with family affairs which includes wife Michele, 2 sons & 1 daughter. His mother is Director of the Bar Foundation. The name plate on her desk reads "Toby's Mother". Among Toby's prized possessions is a solo wood water ski, designed and made by his father.

Toby was a former Legal Administrator, and the former CLE Administrator for the Bar. He is President of the Board at Legal Aid Society. When all of this is said and done, Toby is the computer expert. His knowledge is far and wide on this subject and he is ever ready, willing and able to share his knowledge with others. We all salute you Toby in this endeavor.

Finally, Toby's claim to fame is the fact that he has never been arrested (or so he says).

MAUD THURMAN

Maud serves the Bar as the Bar Programs Coordinator. In this position she provides many services to Bar members. These services include: coordinating publication of the *Bar Journal*, handling fee arbitration requests, coordinating client security fund business, scheduling pro bono attorneys for the Domestic Violence Clinic in Salt Lake, and fielding Speakers Bureau requests. She does all of these things very well.

Maud was born and raised in Ephraim, Utah. Apparently Ephraim is the epicenter of the Universe, since, as Maud states, "You can't go anywhere without running into someone from Ephraim." Maud attended the only available high school (Snow High) and went on to Snow Junior College and Utah State University. On her darker side, prior to working for the Bar, Maud worked at BYU.

In her leisure-time, Maud enjoys time with her fourteen grandchildren, doing crafts and power-walking. Daredevil that she is, Maud recently rode the Piaute trail on an ATV four-wheeler. She likes reading as well, especially biographies. Among her favorite books is *Avenue of the Righteous.* This book details people who assisted holocaust victims in their escape from Germany. Maud enjoys traveling, and seeing new places and people. She has lived in Utah, Denver, Colorado; Phoenix, Arizona; Southfield, Michigan; and Albuquerque, New Mexico. Which is her favorite place? A toss up, all have great attributes with super people.

Three things Maud is famous for doing: First, she has been snorkeling in the Caribbean and would go back and do it again, in a minute. Next, she makes a to-die-for New York Style Cheesecake. Lastly, Maud won the "Employee of the Quarter Award" so many times at the Bar, we retired the award and gave it to her permanently. Let's just say Maud is a wonderful person and a great part of the Bar team!

Invitation for Bids Legal Defender Contract

Uintah County is soliciting bids to provide legal defense services in Uintah County. The position(s) will commence January 1, 1998, and will be for one year. The services to be provided are as follows:

1. Legal defense representation of all adult defendants who qualify for such services and who are accused of committing crimes in Uintah County.
2. Legal representation of all juveniles who qualify for such services and who are accused of violations of the criminal law.
3. Legal representation of juveniles and their families in proceedings involving abuse, neglect, dependency, and termination of parental rights.
4. Legal representation in criminal appeals for adults and juveniles when Uintah County is obligated to provide such services.

It is anticipated that the work load will require the services of at least three attorneys: two attorneys to handle the majority of the adult criminal defense work and another attorney to handle the conflict cases for adult defendants and all of the juvenile cases.

Your bid may be submitted to cover all of the services required or only a portion of the services. You may submit the bid individually or with other attorneys.

If you require more information please contact JoAnn B. Stringham, at 152 East 100 North, Vernal, Utah 84078 or call 781-5436.

Please submit your bids to Uintah County Clerk-Auditor's Office, 152 East 100 North, Vernal, Utah, 84708 no later than November 15, 1997. Pursuant to the Uintah County Purchasing Policy, after bid opening further discussions may be conducted and revisions of proposals allowed. Final award of the contracts shall be made no later than December 15, 1997.

Notice to Utah State Bar Members Licensed in Idaho, Oregon & Washington

Upon the recommendation of the Utah State Board of Continuing Legal Education, the Utah Supreme Court has approved and adopted the "Boise Protocol". The "Boise Protocol" was prepared by a Regionalization Study Group consisting of members from the states of Idaho, Oregon, Utah and Washington. The Boise Protocol is as follows:

> ***A record of the points for establishing an agreement of comity which will allow individual lawyers licensed to practice in more than one of the participating states to fulfill their mandatory continuing legal education (MCLE) requirements in any participating state by fulfilling the MCLE requirements in the state where they maintain their principal offices for the practice of law, agreed to by participating representatives of the Idaho State Bar, the Oregon State Bar, the Utah State Bar, and the Washington State Bar.***
>
> ***The program was implemented January 1, 1997***

Ultimately, the Utah State Board of Continuing Legal Education believes that by approving the "Boise Protocol", and by adopting the comity rule this will allow lawyers admitted in more than one of the four states to simplify their MCLE compliance, while preserving mutual commitment to a well educated bar membership through the mandatory continuing legal education program.

If you would like further information, or have questions regarding the implementation of the program, please contact Sydnie W. Kuhre, MCLE Board Administrator at 297-7035.

Utah State Bar Litigation Section Presents An Evening with the Third District Court

Mark your calendars for Tuesday, November 18, 1997 to spend "An Evening with the Third District Court" to be held from 5:30 p.m. to 8:30 p.m. at the Utah Law & Justice Center in Salt Lake City. This program will be worth THREE hours of CLE/NLCLE credit and more details will be available later. Watch your mail for a more detailed notice regarding topics and fees. If you have questions, please contact Monica Jergensen, CLE Administrator, at (801) 297-7024.

Divorce and Child Custody Mediator Training

Sponsored by the Court Annexed ADR Program
November 12-14, 1997

Trainers:	Diane Hamilton, M.A. William W. Downes, Jr., J.D. Marcella L. Keck, J.D.
Location:	Law & Justice Center 645 South 200 East, Salt Lake City, Utah
Dates:	November 12-14, 1997, 8:00 a.m.-5:00 p.m. daily
Fees:	$450.00 ($50.00 discount for registration prior to October 15, 1997)

Focus of Training:

This training is designed for persons interested in mediating divorce and post-divorce conflicts including parenting, property, and support issues. The focus includes basic aspects of Utah law, the psychological factors important to divorce matters, and conflict resolution strategies for mediators.

The training is structured for participants who have received basic mediator training, but who have not received specialized divorce and child custody training.

The 24 hour course satisfies the domestic training required for participation on the Court Annexed ADR program roster for divorce and child custody matters.

For more information contact Tonia Torrence 486-5953

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**

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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.

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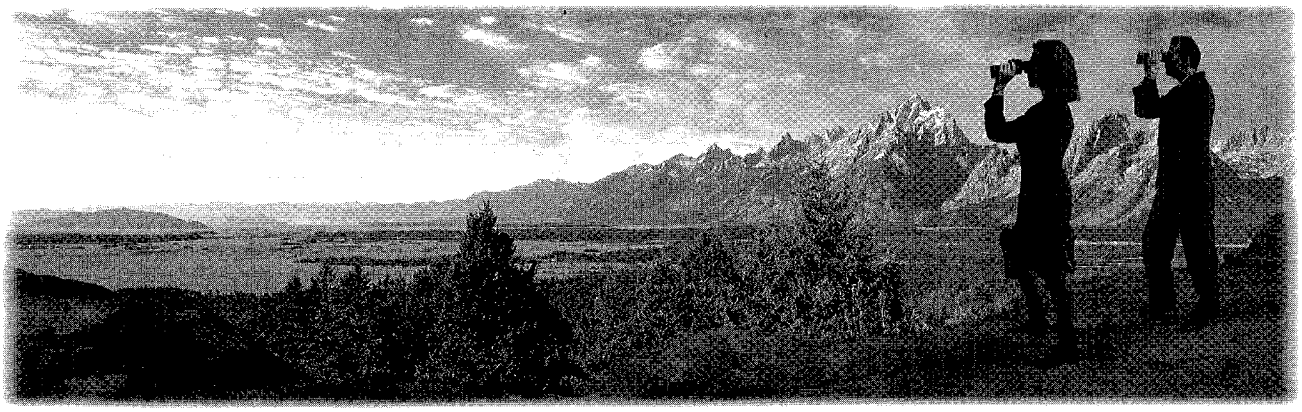

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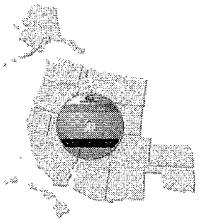

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