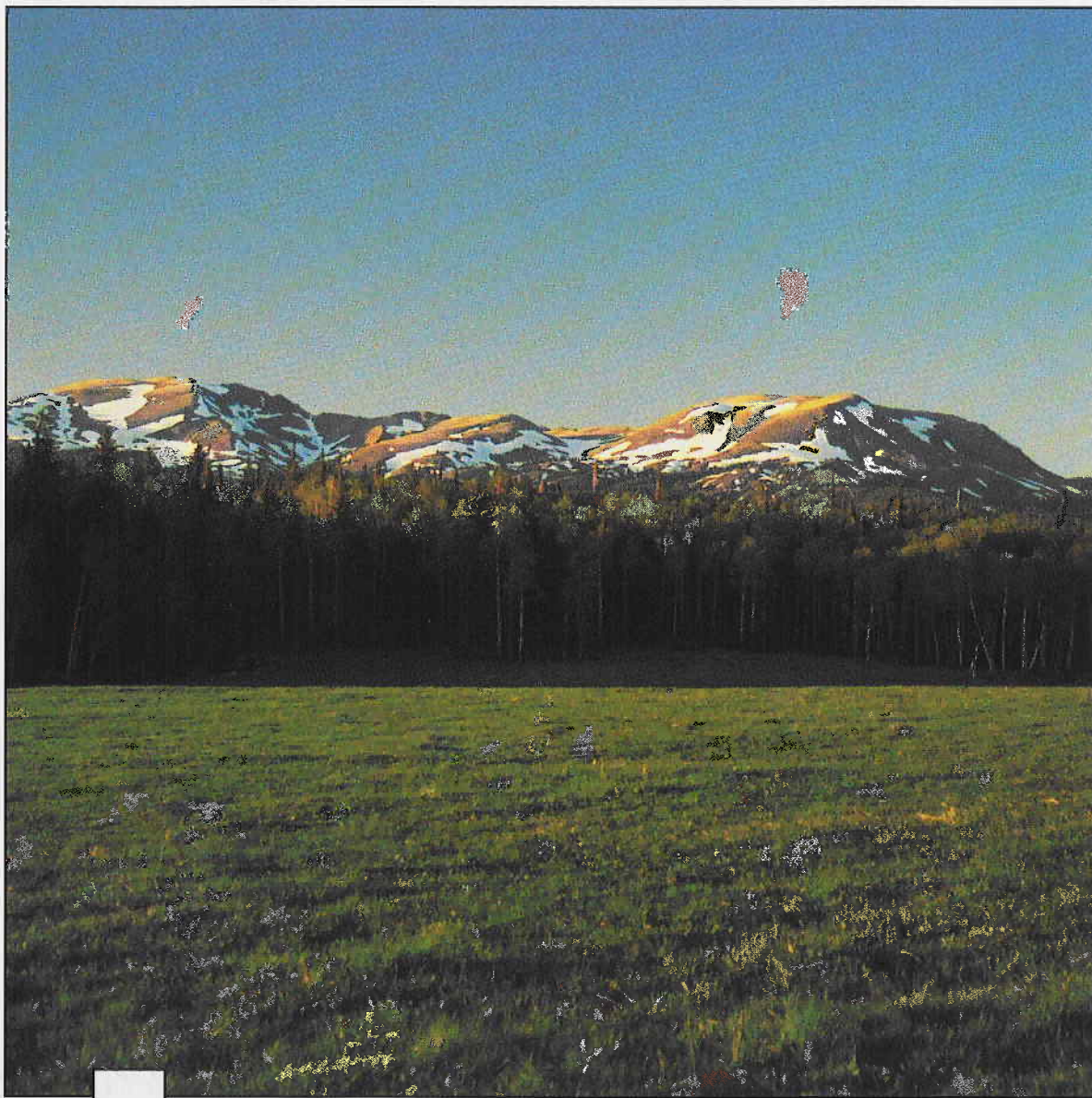


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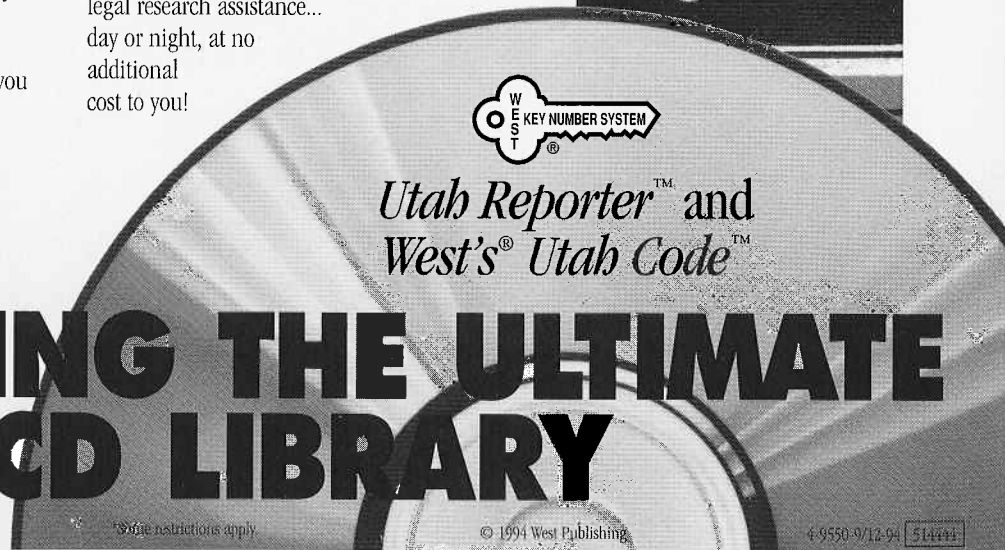
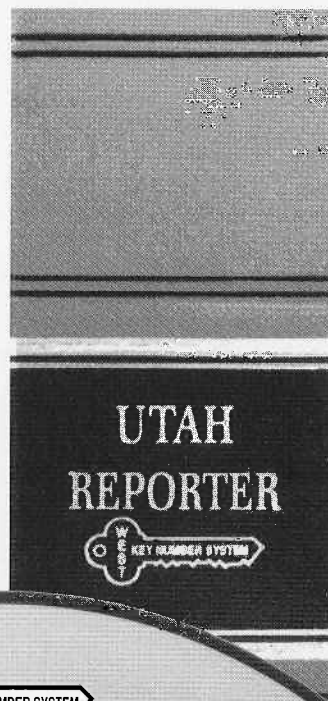
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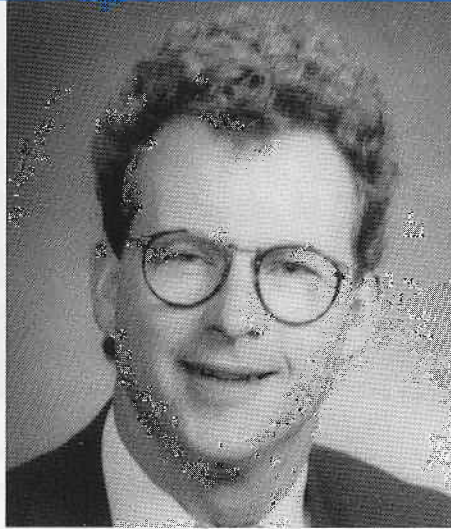
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COVER: Delano Peak, Tushar Mountains, Beaver County, by Phillip E. Lowry of Howard, Lewis & Petersen.

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How Professional are We?

By Paul T. Moxley

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

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

in any of its guidelines.

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

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

ABEL GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

motions and counter-motions for sanctions.

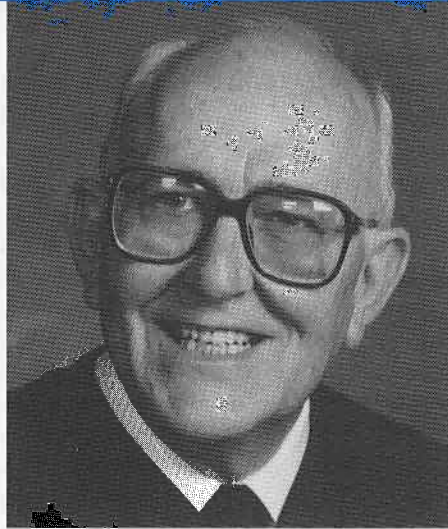
If requested by both sides, ABEL will provide at no cost a disinterested mediator to assist in the consensual resolution of the dispute.

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

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

CONCLUSION

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



Some Brief Thoughts on Lawyer Jokes

By D. Frank Wilkins

U.S. *News and World Report*, in an article "How Lawyers Abuse the Law", dated Jan. 30, 1995, opines that lawyers in this country "are the butt of the most vicious jokes in the English language".

What should we do or think about these jokes that many lawyers believe are meant to inflict scorching abuse and destruction upon the legal profession — even though they are at times adorned in the beguiling guise of "good-natured" humor.

This same article tells us that the President of the American Bar Association believes lawyer jokes are "funny", but his predecessor "wanted to improve the 'image' of his profession" through "an expensive public-relations campaign" as a counterpoise to them. Other thoughts abound, undoubtedly, about this topic in our profession.

One reflection. Let us not overburden ourselves with agonies or hyperventilation searching for a magic solution. A friend of mine once told me that "there are some problems we don't solve . . . we live with them". And at times, problems do go away or become insignificant. Remember the demise of the Polish jokes.

Our agitated spirits may, however, demand a more robust response. So, here is another reflection. Possibly we lawyers should pursue an enlarged analysis of our-

selves through the conduit of our finest legal traditions, which includes, of course, a duty to encourage and embrace elevated language and conduct — particularly in this time of hard and unyielding cynicism that holds vocations, professions, churches, politics, and other institutions and groups up to ridicule. And in this process of self-analysis, let us not be transfixed by results of public opinion polls or wisecracks by jesters that depict lawyers with withering scorn. I must say it seems to me most ironic that some of the public's adverse feeling toward lawyers grows, at least here in Utah, as the Utah State Bar, local bar associations, and individual attorneys on their own *expand* their performance of charitable and volunteer work — as well as work at greatly reduced fees — for thousands of Utah residents each year. But analysis of this irony must await another day.

If we lawyers solve, partially solve, or do not solve this matter of revilement by "the most vicious jokes in the English language", let us retain our *own* sense of humor. And, more importantly, with or without disdain from critics, we should engage in expanded self-examination of our responsibilities to provide services of professional excellence for clients in a setting of courtesy, ethics, respect for the rule of law, and justice. Additionally, our defects and faults should

be acknowledged; our improvements, continuously sought; and our efforts to preserve the best in the law, increased.

Socrates believed that the unexamined life is not worth living. If that is too strong, might we, at least, agree that the examined life is preferred.



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Highlights of the Bankruptcy Reform Act of 1994

Part II

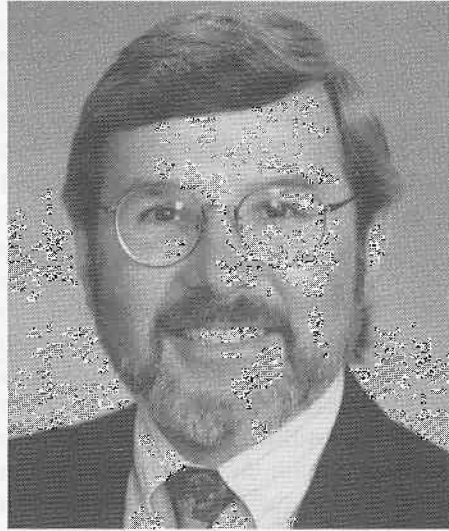
By David E. Leta

The first segment of this two part article (see, *Utah Bar Journal*, March 1995) focused on the commercial bankruptcy and related administrative issues of the Bankruptcy Reform Act of 1994 (the "Act").¹ This second part will highlight some of the major consumer and related administrative issues under the Act. As noted in Part I, with a few limited exceptions, the new amendments only apply to cases filed on and after October 22, 1994.

CONSUMER AND RELATED ADMINISTRATIVE BANKRUPTCY ISSUES

A. Expedited Procedures for Reaffirmation of Debts.

Before the Act became effective, there was a split of authority about whether a separate hearing was required for a debtor to reaffirm a debt, even when the debtor was represented by an attorney who stated that the reaffirmation was voluntary and would not impose a hardship on the debtor.² Section 103 of the Act amends section 524(c) of the Code to now require that reaffirmation agreements contain "a clear and conspicuous statement which advises the debtor that (the reaffirmation) agreement is not required under . . . title [11], under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection." (Emphasis added.) The amendment also requires that the debtor's attorney fully advise the debtor "of the legal effect and consequences" of the reaffirmation agreement including "any default under such agreement." These changes are designed to ensure adequate notice to debtors of their right to discharge the debt *before* they reaffirm the obligation and to make sure that debtors understand that a reaffirmation will continue the obligation as though the bankruptcy had not been filed. Section 524(d) of the Code also was amended to



DAVID E. LETA is a partner in the firm SNELL & WILMER L.L.P. where his practice focuses on bankruptcy, business reorganizations and creditor's rights. Mr. Leta, a member of the Utah State Bar, was first chairman of the Bankruptcy Section, and initial member of the Board of Trustees for the Utah Bankruptcy Lawyer's Forum. Mr. Leta received his B.A. Degree from State University of New York (1973) and his J.D. from the University of Utah (1976).

clarify that a hearing is required on reaffirmation agreements *only* if the debtor "was not represented by an attorney during the course of negotiating [the reaffirmation] agreement."

B. Additional Compensation For Trustees.

1. Additional incentive compensation for trustees under Chapters 7 and 11. Section 107 of the Act amends section 326(a) of the Code by increasing the percentage compensation from current levels to 25% on the first \$5,000 or less, 10% on amounts greater than \$5,000, but less than \$50,000, 5% on amounts greater than \$50,000, but less than \$1,000,000, and "rea-

sonable compensation not to exceed 3%" on amounts in excess of \$1,000,000. These percentages are a ceiling not a floor. The actual compensation awarded to a trustee in a case under Chapter 7 or 11 must be "reasonable," and must not *exceed* the above percentage limitations on all monies disbursed or turned over in the case.

2. Additional regular compensation.

In addition to increasing incentive compensation, section 117 of the Act also increased regular compensation for Chapter 7 trustees. Section 330(b) of the Code now permits trustees to be paid \$15.00 more per case beginning October 22, 1995.³ The Judicial Conference of the United States may prescribe additional fees under 28 U.S.C. § 1914(b) and also may prescribe "notice of appearance fees and fees charged against distributions in cases" to generate revenue for the payment of this additional compensation. These changes apply to all of the cases that were pending as of October 22, 1994, as well as to new cases filed thereafter.

C. New Dollar Limitations and Automatic Future Adjustments.

The debt limits established in the Bankruptcy Code have not undergone any significant adjustment since the Code was enacted in 1978. Section 108 of the Act revises the current debt limits applicable under various sections of the Code. These adjustments affect the eligibility of an individual to be a debtor under Chapter 13, the qualification of creditors to file involuntary cases, the priority claims under section 507 of the Code and the dollar amount of certain federal exemptions.

1. Qualification to be a debtor under Chapter 13. Section 109 of the Code has been amended to increase the maximum amount of unsecured debt from \$100,000 to \$250,000, and to increase the maximum amount of secured debt from \$350,000 to \$750,000, in connection with qualification

to be a debtor under Chapter 13. In part, these changes were made to encourage more individual debtors to elect Chapter 13 repayment plans over Chapter 7 liquidations. Obviously, a broader spectrum of individual entrepreneurs and sole proprietors will now be able to use Chapter 13 to obtain debt relief.

2. Involuntary cases. Section 303(b) of the Code has been amended by increasing the aggregate amount of petitioning creditor claims from \$5,000 to \$10,000. This change should not be a barrier in the typical involuntary case.

3. Priority claims. Section 507(a)(3) of the Code has been amended to increase the amount of an allowed unsecured priority claim from \$2,000 to \$4,000 for each individual or corporation, provided the obligation arises within 90 days before the date of the petition or the date of cessation of the debtor's business, whichever occurs first. In addition, section 507(a)(3)(B) also grants priority claim status to "sales commissions earned by an individual or by a corporation with only one employee." The same dollar change also was made in section 507(a)(4)(B)(i) for allowed unsecured priority claims for contributions to an

employee benefit plan. Sixth priority claims for deposits of money in connection with the purchase, lease or rental of property that was not delivered or provided before the filing of the petition also has been increased from \$900 to \$1,800.

4. Federal exemptions. The federal exemptions under section 522(d) of the Code have been increased, in each instance, by doubling the dollar amount of the allowed exemption. These changes will not affect Utah debtors, however, who must claim their exemptions under Utah law.⁴

"Congress apparently believed that many debtors seeking relief under Chapter 7 had not been effectively or fully advised about the effects of filing bankruptcy."

5. Future adjustments. In an attempt to stay current with the effects of inflation, section 104 of the Code was amended to

add a new subsection (b) which now provides that on April 1, 1998, and at each three-year interval ending on April 1 thereafter, the dollar amounts under sections 109(e), 303(b), 507(a), 522(d) and 523(a)(2)(C) of the Code shall be adjusted "to reflect the change in the Consumer Price Index for all urban consumers, published by the Department of Labor for the most recent three-year period ending immediately before January 1 preceding such April 1, rounded to the nearest \$25.00." The changes will be published in the federal register not later than March 1, 1998, and at each three-year interval ending on March 1 thereafter. The adjustments, however, will not apply to cases commenced "before the date of such adjustments."

D. Trustees Must Advise Debtors About Consequences of Bankruptcy.

Congress apparently believed that many debtors seeking relief under Chapter 7 had not been effectively or fully advised about the effects of filing bankruptcy. As a result, section 115 of the Act amends section 341 of the Code to add a new subsection (d) which requires that, prior to the conclusion of the meeting of creditors,

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the trustee shall "orally examine" the debtor "to ensure" that the debtor in a case under Chapter 7 is aware of: (1) the potential consequences of seeking a discharge in bankruptcy, *including the effects on credit history*; (2) the debtor's ability to file a petition under a different chapter; (3) the effect of receiving a discharge of debts; and (4) the effect of reaffirming debt. Since the trustee must "ensure" that the debtor is aware of these consequences, presumably the trustee must *discuss* the positive and negative aspects of the petition with *each* debtor. Many judicial districts, including Utah, are employing the use of "fact sheets" designed by the Executive Office of the United States Trustees in an attempt to comply with these new requirements and, at the same time, expedite the creditor meetings. The "fact sheets" discuss the requirements of the Act and attempt to answer questions about dischargeability, the effect of reaffirming a debt, and the options available under other chapters of the Code. At the moment, it is uncertain whether a simple inquiry by the trustee to the debtor such as, "Have you read and do you understand the fact sheet?" complies with the spirit and intent of the Act, particularly in the case of a pro se debtor. It also is unclear how far the trustee must go in explaining bankruptcy law to the debtor if the answer to such a question is "No" or "I don't know."

E. New Dollar Amounts and Time Limits in Establishing Debts from Credit Card Binges as Nondischargeable.

The Act modifies section 523(a)(2)(C) of the Code, which creates an exception to discharge for pre-petition credit card binges. First, consumer debts owed to a single creditor and aggregating more than \$1,000 for "luxury goods or services" incurred by an individual debtor within sixty (60) days before the order for relief are excepted from the discharge. The previous dollar amount was \$500 and the time period was 40 days. In addition, cash advances aggregating more than \$1,000 that are extensions of consumer credit under an open-end credit plan obtained within 60 days before the order for relief are presumed to be nondischargeable. The previous time period was 20 days before the order for relief. This expansion of the exception to discharge for "credit card binges" should make it easier for credit card companies and other providers of

consumer credit to obtain nondischargeable judgments.⁵

F. Certain Debts Incurred to Pay Taxes Are Nondischargeable.

Section 221 of the Act creates a new exception to discharge in section 523(a)(14) for an obligation "incurred to pay a tax to the United States that would be nondischargeable pursuant to (section 523(a)(1))." The purpose for this change was to discourage debtors from borrowing new money to pay their nondischargeable tax obligations, and then filing bankruptcy to discharge the new debt. It is important to note, however, that it is *not* necessary to file a complaint to determine the nondischargeability of such a tax payment debt.⁶ Moreover, there is no time limit specified in subsection (a)(14). Presumably, *any debt* incurred to pay taxes "to the United States" is excepted from discharge. A creditor seeking to establish the nondischargeability of such a debt, however, may face an uphill battle in tracing the debtor's use of the borrowed funds. It also is unclear whether the creditor must establish intent on the part of the debtor. Most of these issues probably will be resolved in state courts when creditors seek to establish and collect these nondischargeable obligations.

"The Act creates a new exception to discharge for an obligation 'incurred to pay a tax to the United States that would be nondischargeable.'"

G. New Nondischargeable Obligations in Connection With Divorce or Separation.

Section 304 of the Act created a number of amendments intended to protect child support and alimony. One of the most important amendments creates a new exception to discharge. This new amendment is a potential mine field for the uninitiated domestic relations practitioner. Under section 523(a)(5) of the Code, an obligation to a spouse, former spouse or child of the debtor for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, is

excepted from a debtor's discharge, if the obligation was not assigned to another entity and was "actually in the nature of alimony, maintenance or support." Now, under new section 523(a)(15) of the Code, if the obligation is not of the kind described in section 523(a)(5), but *is* "incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, it *also* is excepted from discharge *unless* the debtor does not have *the ability to pay* such debt from income or property of the debtor *not reasonably necessary* to be expended for the maintenance or support of the debtor or a dependent of the debtor and, *if the debtor is engaged in a business*, for the payment of expenditures necessary for the continuation, preservation and *operation of such business*; or discharging such debt would result in a benefit to the debtor that *outweighs the detrimental consequences to a spouse, former spouse or child of the debtor.* (emphasis added)

Even an untrained eye can see the ambiguity in this statute.⁷ Unlike a debtor under section 523(a)(5), however, a creditor *must file an adversary proceeding* in a timely manner, to establish the nondischargeability of a debt under subsection (a)(15). Such an action will be fact intensive. The limiting language quoted above is full of spicy litigation nuggets. Domestic relations practitioners should be mindful of this new discharge exception when drafting divorce or separation agreements, when trying contested divorce cases and when drafting findings of fact in a divorce decree.

H. Some Condo Fees and Assessments are Now Nondischargeable.

Obligations to pay fees and assessment to a condominium owners association were dischargeable before enactment of the Act.⁸ Section 309 of the Act amends section 523(a) of the Code by adding a new subsection (16) which now excepts from discharge fees or assessments that become due and payable to a condominium membership association *after* the order for relief. The exception only applies to the debtor's interest in a dwelling unit in a condominium or in a share of a cooperative housing corporation, and only if

the fees and assessments are payable for periods during which the debtor physically occupied the dwelling unit or rented the dwelling unit to a tenant and received payments from the tenant. In addition, fees or assessments for periods arising *before* entry of the order of relief in a pending or subsequent case *are not excepted* from the discharge. It is not necessary to file an adversary proceeding to establish the nondischargeability of these obligations.

I. Criminal Fines of a Chapter 13 Debtor Are Nondischargeable.

Section 302 of the Act amends section 1328(a)(3) of the Code by including a "criminal fine" among those debts which are excepted from the discharge in a Chapter 13 case. As with restitution obligations, the criminal fine must be included in the debtor's sentence.

J. Curing Defaults on Home Mortgages Under Chapter 13.

In a Chapter 13 case, a debtor may cure defaults under the plan, including defaults on a home mortgage loan.⁹ Section 301 of the Act amends section 1322 to safeguard

a debtor's right in a Chapter 13 case to cure a default under a home mortgage at least until completion of a foreclosure sale under applicable non-bankruptcy law.¹⁰ In addition, if the last payment on the original payment schedule of the home mortgage is due before the date on which the final payment under the Chapter 13 plan is due, the plan may modify the mortgage debt under section 1325(a)(5). Thus, mortgages which come due prior to the end of the Chapter 13 may be modified notwithstanding the non-modification provisions of section 1322(b)(2). For example, a home mortgage which has "ballooned" prior to or during the case, may now be paid in full during the term of the Chapter 13 plan.

K. Judgment Liens Are Now More Easily Avoided.

Section 303 of the Act amends section 522(f) of the Code to clarify that judgment liens can be avoided on property even where other unavoidable liens remain. For example, a judgment lien which is junior to a purchase money mortgage can be fully or partially avoided "to the extent that (the

judgment) lien impairs the debtor's exemption." The formula for determining when a judgment lien "impairs an exemption" is now set forth in new section 522(f)(2)(A) of the Code. If the sum of the judgment lien, all other liens on the property, and the amount of the debtor's exemption exceeds the value of the debtor's interest in the property, then the judgment lien is avoided to the extent necessary to preserve the full amount of the debtor's exemption.¹¹ In addition, the definition of "judicial lien" specifically *excludes* a judicial lien that secures a debt to a spouse, former spouse or child of the debtor for alimony to, maintenance for, or support of such spouse or child in connection with a separation agreement, divorce decree or order of a court of record, but only to the extent that such debt for alimony, maintenance or support is not assigned to another entity and is actually in the nature of alimony, maintenance or support.¹² Notwithstanding these amendments, it still is unclear at what point in time the court determines the "value of the



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debtor's interest in the property" for the purpose of applying the formula under new section 522(f)(2)(A).

The intent of this section is to overrule several cases that have precluded debtors from avoiding judgment liens where there is no equity in the property over and above senior secured debt. Some courts have not permitted debtors to avoid liens in these situations.¹³ In Utah, the new amendment to section 522(f)(2)(A) *may not* overrule *In re Sanders*, 156 B.R. 667 (D. UT 1993), which held that judicial liens were subordinate to the homestead exemption and, therefore, did not "impair" the debtor's exemption.¹⁴ Section 522(f) as amended, retains the language "impairs an exemption" which was the focal point in the *Sanders* case. On the other hand, the Utah courts might construe new section 522(f)(2)(A) as *preempting* the Utah Exemption Act by creating a universal definition of when a judicial lien "impairs an exemption." If this interpretation were applied to the new law, and if the courts valued the debtor's interest as of the petition date, then the holding in *Sanders* might not survive.

L. Protection For Domestic Relations Claims.

As mentioned above, the Act contains several amendments designed to protect child support and alimony. The impact of the Act on domestic relations claims may be one of the most profound and potentially far-reaching aspects of the new law.

1. Relief from automatic stay. A new exception to the automatic stay has been created in section 362(b)(2) of the Code. Now, the commencement or continuation of actions or proceedings for "the establishment of paternity" or "the establishment or modification of an order for alimony, maintenance or support" are not subject to the automatic stay.¹⁵

2. Priority of claims. Section 507(a) of the Code has been amended to add a new seventh priority for allowed claims for debts "to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record." As with other such support obligations under section 523(a)(5) of the Code, the debt cannot be assigned to another entity and must be actually in the nature of alimony, maintenance or sup-

port. This priority comes *before* tax debts. The inability of a debtor to use assets in the estate to pay nondischargeable tax debts, however, may create a defense to the nondischargeability of other divorce or separation obligations in an action under section 523(a)(15).

3. Protection against trustee avoidance. Another new provision has been added to section 547(c) of the Code. Now a trustee may not recover a preferential transfer if the transfer "was a bona fide payment" of a debt to a spouse, former spouse, or child of the debtor for alimony to, maintenance for or support of such spouse or child, and if such debt would be nondischargeable under section 523(a)(5) of the Code.

"The impact of the Act on domestic relations claims may be one of the most profound and potentially far-reaching aspects of the new law."

4. Appearances permitted without fee or counsel. Section 304(g) of the Act which, unfortunately, is not incorporated into any section of the Bankruptcy Code, permits "child support creditors or their representatives" to appear and intervene "without charge, and without meeting any special local court rule requirement for attorney appearances" in any bankruptcy case or proceeding in any bankruptcy court or district court of the United States, if the creditors or representatives file a form containing information about the child support debt, its status, and other characteristics. Presumably, such a creditor or representative can participate in *any aspect of the case*. It will be up to the courts to prevent this new privilege from being abused, and to prevent the administration of bankruptcy cases from being substantially delayed by the intervention of untrained lay advocates. The bankruptcy court's pilot project on pro bono representation of indigent *debtors* probably does not extend to these child support creditors.

M. Payment of Interest on Interest.

Section 305 of the Act amends section 1123 of Chapter 11, section 1222 of Chap-

ter 12 and section 1322 of Chapter 13 to provide, in essence, that if a plan proposes to cure a default, the amount necessary to cure the default "shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." The intent of this change was to overrule *Rake v. Wade*, 113 S.C. 2187 (1993) by specifically allowing the cure of a default without paying additional interest on the arrearages. Although this section only applies to cases filed on and after October 22, 1994, it may have an impact on agreements which are made prior to October 22, 1994. Because of the way the statute is drafted, however, Congressional intent can easily be thwarted by lenders who revise their loan documents to provide for the payment of interest to cure an arrearage. So long as such provisions are enforceable under applicable nonbankruptcy law they would be enforceable under Chapters 11, 12 and 13. More importantly, a mortgage document could provide for payment of an arrearage at a "default rate" different than the "loan rate." As drafted, the new law appears to require application of the rate *stated in the agreement* and could preclude the application of a different court imposed market rate.

N. Regulation of Bankruptcy Petition Preparers.

Section 38 of the Act adds a new section 110 to the Bankruptcy Code entitled "penalty for persons who negligently or fraudulently prepare bankruptcy petitions." This lengthy section defines a "bankruptcy petition preparer" as a person, "other than an attorney or an employee of an attorney, who prepares for compensation a document for filing." (Emphasis added). A "document for filing" is any petition or other document prepared for filing by a debtor in a bankruptcy case. Various requirements are set out in the Act for bankruptcy petition preparers. The Act also establishes penalties, usually not more than \$500 for *each such failure*, unless the failure is due to reasonable cause. Any person who is a bankruptcy petition preparer, or any attorney representing such a person, should familiarize themselves with the requirements of new section 110 of the Code.

O. Nonavoidability of Liens on Certain Exempt Assets.

Section 310 of the Act amends § 522(f) by adding a new subsection (3) which

precludes a debtor from avoiding a non-possessory, non-purchase money security interest in certain implements, professional books, or tools of trade to the extent the value of such items exceeds \$5,000.

P. Exclusion of Post-Petition Property From the Estate of a Case Converted to Chapter 7 From Chapter 13.

There has been a split of authority on the question of whether property acquired during a Chapter 13 case becomes property of the estate if the case is converted to Chapter 7. Some courts have held that if the case is converted, all of the after-acquired property becomes part of the Chapter 7 estate.¹⁶ Other cases have held that the property in the estate is only that property which existed when the original Chapter 13 petition was filed.¹⁷ Section 311 of the Act creates a new section 348(f) of the Code which, in essence, provides that property acquired during the case does not become property of the estate when the case is converted. If the case is converted "in bad faith," however, then the postpetition property does become property of the converted estate. In addition, section 348(f)(1)(B) now provides that valuations of property and of allowed secured claims which occur during a Chapter 13 case apply in the converted case, with such allowed secured claims reduced to the extent they have been paid during the course of the Chapter 13 proceeding.

Q. Protection Against Discriminatory Treatment of Student Loans.

Section 313 of the Act amends section 525(c)(1) of the Code and was intended to prohibit discrimination in the making of student loans and student loan guarantees to persons that are or have been debtors in bankruptcy. This amendment is so poorly drafted, however, it is a potential trap for any unwary financial institution engaged in the business of making loans guaranteed or insured under a student loan program. Read literally, the statute prohibits a governmental unit that operates a student grant or loan program as well as "a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program" from denying "a grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor . . . because the person was a debtor." Thus, the anti-discrimination provisions could apply to a wide spectrum of

non-student loans and could prohibit financial institutions from discriminating against any potential borrower that is or was a debtor in a bankruptcy case.¹⁸ Hopefully, Congress will correct the drafting problems in this section before it discourages financial institutions from participating in the student loan program.

R. Bankruptcy Fraud.

Section 312 of the Act amends and replaces former sections 152, 153 and 154 of Title 18 and, in addition, adds new sections 156 and 157 to the Bankruptcy Crimes sections of the Federal Criminal Code. The sections now set out criminal penalties for persons who knowingly and fraudulently conceal assets, make false oaths, file false claims, receive property after a case has been filed, attempt to obtain property through bribery, transfer property out of the estate, destroy records or retain information from a trustee or custodian. Section 153 of Title 18 proscribes a person's knowing and fraudulent use, embezzlement, or transfer of property or documents from an estate. Section 154 proscribes custodians, including trustees, from knowingly purchasing property from an estate or from refusing to permit a reasonable opportunity for inspection of property.

New section 156 makes it a criminal offense for a bankruptcy petitioner to knowingly attempt to prepare a petition in any manner which disregards the requirements of Title 11. Finally, new section 157 creates a criminal offense for persons who devise or intend to devise schemes or artifices to defraud through the filing of a petition under Title 11, the filing of documents in a proceeding under Title 11 or the making of a false or fraudulent representation, claim or promise in relation to a case under Title 11.

CONCLUSION

This article has only touched upon the highlights of the Bankruptcy Reform Act of 1994. A practitioner with questions about a particular amendment should first refer to the new statute. Cases decided under the former Code may be useful in explaining the purpose or intent of the amendments. As with any new comprehensive law, the full impact of the amendments will not be understood until courts and lawyers have had an opportunity to apply their training in actual cases and controversies.

¹HR 5116, Public Law 103-394, 108 stat. 4106. As used in this article, references to sections of the Act refer to sections of H.R. 5116. References to sections of the Code refer to sections in Title 11 of the United States Code, commonly known as the "Bankruptcy Code."

²See, *In re Richardson*, 102 B.R. 254 (Bankr. M.D. FL 1989); *In re James*, 120 B.R. 582 (Bankr. W.D. OK 1990) (reaffirmation hearing required); *In re Carey*, 51 B.R. 294 (Bankr. D.D.C. 1985); *In re Pendlebury*, 94 B.R. 120 (Bankr. E.D. TN 1988) (reaffirmation hearing not required). In Utah it has not been the practice to not hold separate reaffirmation hearings except in pro se cases.

³The \$15.00 is in addition to the \$45.00 per case as now prescribed in Section 330(b)(1) of the Code.

⁴See, Utah Exemptions Act, §§ 78-23-1, et seq. U.C.A. Efforts are underway to modernize the Utah Exemption Act, which, if successful, will also increase the dollar amounts of certain exemptions.

⁵A complaint to establish the nondischargeability of this type debt, however, still must be filed in a timely manner or the debt will be discharged. See section 523(c)(1) and Rule 4007, F. R. Bk. P.

⁶Section 523(c) does not list subsection (a)(14) among those sections which require the filing of a nondischargeability action.

⁷One of the principal unanswered questions is when the court examines the debtor's "ability to pay." Is it at the date of the petition, when the debtor is "insolvent," or at some later date. Will courts read the word "current" or "future" into the phrase "ability to pay?" How much money will a debtor need to "continue, preserve and operate" a business? Will a debtor be able to "expand" the business? The courts also will be asked to perform a balancing act between "benefit" to the debtor and "detrimental consequence" to the spouse.

⁸See, *Matter of Rosteck*, 899 F.2d 694 (7th Cir. 1990).

⁹Section 1332(b)(3) and (5) of the Code.

¹⁰The effect of this change is to overrule cases like *Matter of Roach*, 824 F.2d 1370 (3rd Cir. 1987) which held that a debtor's right to cure was extinguished at the time of a foreclosure judgment which occurred in advance of the foreclosure sale.

¹¹If the property is subject to more than one lien, a lien that has been avoided is not considered in making the calculation with respect to other liens. This subsection also does not apply with respect to a judgment arising out of mortgage foreclosure. See section 522(f)(2)(B) and (C).

¹²See section 522(f)(1)(A); *Farrey vs. Sanderfoot*, 500 U.S. 291 (1991).

¹³*In re Gonzales*, 149 B.R. 9 (Bankr. D. MA 1993); *In re Chabot*, 992 F.2d 891 (9th Cir. 1993); *In re Dixon*, 885 F.2d 327 (6th Cir. 1989).

¹⁴*In Sanders* the Court held: "Under Utah law, a homestead interest is automatically exempt from judicial liens, rendering it unnecessary to eliminate the lien to enjoy the exemption." *Id.* at 672. The effect of this decision is to permit the holder of the judgment lien to enjoy any post-petition appreciation in the value of the debtor's real property during the time that the judgment remains enforceable.

¹⁵The new Act continues the exception of the automatic stay for the "collection" of alimony, maintenance or support from property that is not property of the estate.

¹⁶*Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991).

¹⁷*In re Bobroff*, 766 F.2d 797 (3rd Cir. 1985).

¹⁸The statute should have been written as follows: "A governmental unit . . . and a person engaged in a business that includes the making of loans, guaranteed or insured under a student loan program may not deny [a student] a grant, loan, loan guarantee or loan insurance to [such] person that is or has been a debtor . . . [solely] because [the student] . . . has been a debtor . . ." The absence of these qualifying words in the section greatly expands the reach of this amendment.

The LLC Revolution Continues Under the New IRS Guidelines

By Brent R. Armstrong

LLCs — limited liability companies — have swept across the U.S.A. in less than four years. In that process, some observers have doubted whether IRS would continue its recognition of LLCs. Now, with publication of Revenue Procedure 95-10, the IRS has given guidelines for classifying LLCs and has re-affirmed that LLCs are here to stay.

This article is based on a chapter in the recently-released book *LLC REVOLUTION — LLCs vs. S Corporations*, and is printed in the *Utah Bar Journal* with permission of the publisher, Hamilton Square Press. Copying or re-printing of this article is not allowed without permission of the publisher. Copyright © 1995 by Brent R. Armstrong.

OVERVIEW

The 1991 Utah Legislature passed the Utah Limited Liability Company Act¹, to be effective July 1, 1991. In doing so, Utah became the sixth state to adopt LLC legislation. Since then, forty-two other states (including the District of Columbia) have

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adopted LLC statutes. Of the three remaining states, two have LLC legislation pending.²

In Utah, the number of new entity filings with the Utah Division of Corporations and Commercial Code shows a shift towards LLCs. The following table gives the figures for new entity filings in Utah for the fiscal years 1992, 1993 and 1994:³

	1992	1993	1994	1992-1994 % Change
Corporations	6,361	6,883	7,735	+22%
Limited Partnerships	590	659	920	+56%
LLCs	440	1,700	3,119	+609%

Why this shift towards LLCs? The answer is that limited liability companies, when properly formed, offer several distinct advantages over other common business forms:

(a) limited liability for all owners from debts of the entity;

(b) flow-through income tax treatment, whereby the LLC's income is taxed to its owners; and

(c) flexibility in structure and operations.

HISTORY OF LLCs

The LLC concept did not originate in the U.S.A. The idea has been used in Europe and South America for many years. In Germany, an entity with similar features — the *GmbH* — was authorized by legislation in 1892 and has been utilized in business transactions since then. In South America,

the *limitada* — an entity similar to the *GmbH* — has been in use for many years.

In 1978, legislation was passed in Wyoming to allow the formation of "limited liability companies". But, a glitch arose: IRS would not recognize any LLC formed under the Wyoming statute as a "flow-through" entity for income tax purposes. Instead, IRS wanted to impose corporate income taxes on the entity. This attitude of the IRS put a chilling effect on the use of LLCs. Consequently, LLCs did not become popular at that time.

In 1982, Florida also passed an LLC statute. But, due to lack of IRS approval, few LLCs were formed in that State. From 1979 until 1988, the IRS continued its view that LLCs were to be taxed as corporations — one tax at the entity level and, if the income was distributed to the owners, a second level of income tax on the owners. Needless to say, with that treatment of LLCs, few people were interested in using them.

Finally, in 1988, the IRS saw the light. After ten years, IRS changed its view of LLCs and issued a ruling which classified a Wyoming LLC as a partnership for tax purposes⁴ — i.e., the LLC's income would be subject to only one level of income tax, at the owner level. That announcement was greeted with both relief and skepticism by the professional communities. LLC enthusiasts started touting LLCs as "the entity of choice" for nearly all business and investment applications. However, a sizeable group of observers were skeptical that the favorable IRS position would continue.

After the IRS went "favorable" on LLCs, other states began passing LLC statutes. What started first as a trickle soon turned into a torrent. Now, in 1995, forty-eight states (including the District of Columbia) have enacted LLC statutes and legislation is pending in all but one of the

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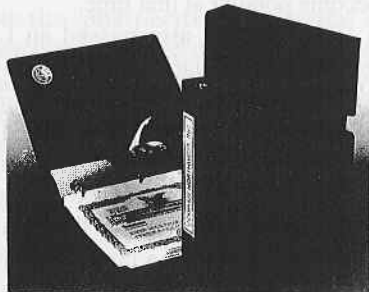
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remaining states.

Even with this rapid adoption of LLC legislation across the U.S.A., concern was often expressed whether IRS would continue to recognize LLCs as "flow-through" entities for tax purposes.

BULLET-PROOF STATUTES

Because of concern over tax classification of LLCs, seven states adopted LLC legislation designed to make LLCs formed in those states automatically have partnership tax status. Those statutes are now commonly referred to as "bullet-proof", since they guarantee that LLCs formed under them will receive partnership tax treatment. But, they allow little flexibility in the LLC's organization documents. The bullet-proof states are Colorado, Michigan, Nevada, South Dakota, Virginia, West Virginia and Wyoming.

"Forty-eight states (including the District of Columbia) have enacted LLC statutes and legislation is pending in all but one of the remaining states."

Under the bullet-proof statutes, an LLC will dissolve upon the death, bankruptcy or resignation of *any* member of the LLC. Upon dissolution, the LLC must be wound-up and terminated unless all of the remaining members consent (usually within 90 days) to continue the LLC. Also, those statutes require *unanimous* consent of all LLC members to approve any transfer of an LLC interest to a non member.

FLEXIBLE STATUTES

In contrast to the bullet-proof states, the remaining states, including Utah, have adopted "flexible" LLC statutes, which allow variations in the language of the LLC's organization documents. Utah was a leader in adopting a "flexible" statute. But, under flexible statutes, special care must be exercised in preparing an LLC's organization documents (and amendments) to be sure that the LLC will be classified as a partnership for tax purposes.

**TAX CLASSIFICATION
RULES FOR LLCs**

The tax goal of most LLCs is to achieve "flow-through" to its members of all income and deductions for income tax purposes. Such flow-through is available only for LLCs that are classified as partnerships. But, flow-through treatment is not automatic for LLCs formed in a "flexible" state, such as Utah. An LLC could be classified as a partnership or as a corporation, depending on a number of factors. In Utah, the language in an LLC's organization documents — its Articles of Organization and Operating Agreement — is critical in determining the tax status of an LLC.

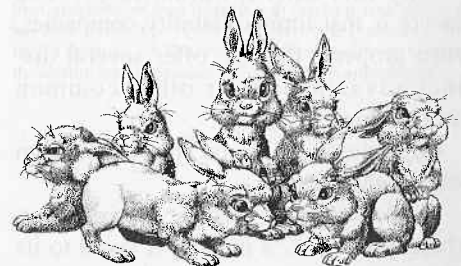
All LLCs and other unincorporated entities and business arrangements (other than corporations) are subject to "classification" rules to determine how they will be treated for tax purposes. All corporations are treated as corporations for tax purposes without being subjected to any classification tests.

**HISTORICAL PERSPECTIVES ON
TAX CLASSIFICATION**

Years ago, many business trusts, joint ventures and other business arrangements were formed which looked and acted like corporations. Often, they were attempting to be treated as corporations for tax purposes so they could sponsor qualified pension and profit-sharing plans. It was difficult to distinguish some arrangements from real corporations.

Because of similarities of those entities with corporations and in response to the

*Happy
Easter!*



Kintner case⁵, the U.S. Treasury Department adopted a set of regulations⁶ in 1960 to "classify" all unincorporated business arrangements. Under those regulations, a business arrangement could be classified as a partnership, a trust, a co-ownership arrangement or an *association taxable as a corporation*. Thus, entities which were not legally formed as corporations could, nonetheless, be classified as corporations due to their characteristics. However, those regulations contained a built-in bias in favor of partnership treatment to advance the Treasury Department's misguided attempts in the early 1960's to prevent professionals from participating in corporate-type pension plans. Those regulations, called the *Kintner* regulations or the "classification" regulations, have been used for several decades now, for classifying unincorporated arrangements for tax purposes.

Due to uncertain tax status under the classification regulations, many business arrangements request private letter rulings from the IRS. During the 1970's and early 1980's, most of those requests came from

limited partnerships and joint ventures involved in various tax shelters. With passage of the Tax Reform Act of 1986, however, most tax shelters disappeared and the need for tax rulings on limited partnerships dropped off.

In earlier times, the IRS established several "rules of thumb" for issuing letter rulings on classification issues. One of the first sets of rules dealt with limited partnerships which have only corporations as general partners. That set of rules was published in 1972 as Rev. Proc. 72-13.⁷ Later, as part of the IRS updating and republication program, Rev. Proc. 72-13 was superseded by Rev. Proc. 89-12.⁸

ADVENT OF LLCs

Because the LLC concept is relatively new to the U.S.A., the classification regulations do not mention LLCs. As state after state passed LLC statutes during the early 1990's, requests were made to the IRS to classify LLCs under each state's LLC laws. IRS responded by issuing several private letter rulings which classified LLCs as partnerships. A Utah LLC was classified in Rev.

Rul. 93-91.⁹ Other Revenue Rulings have been published on LLCs from other states.¹⁰

Despite the issuance of several rulings which classified LLCs as partnerships, there was still anxiety expressed among some professionals that such favorable treatment would not continue.

Just what is "classification" anyway? A closer look is warranted.

SIX CHARACTERISTICS OF CLASSIFICATION

The classification regulations include six characteristics which must be examined to classify an LLC. Those six regulations are:¹¹

- (a) Associates;
- (b) An objective to carry on business and divide the gains therefrom;
- (c) Continuity of life;
- (d) Centralization of management;
- (e) Liability for entity debt limited to entity property; and
- (f) Free transferability of interests.

These six characteristics have been the basic tests of classification for several decades. The first two characteristics

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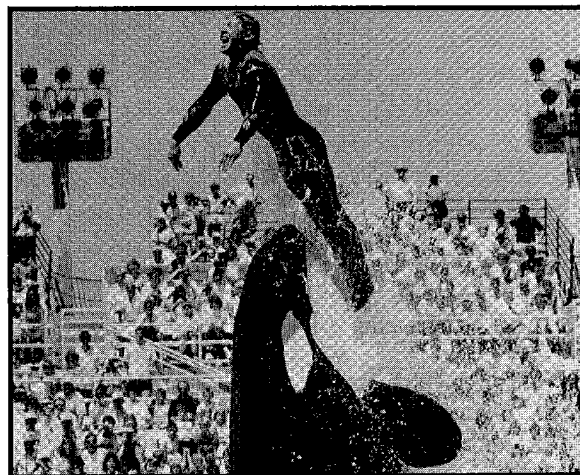


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are basic:

(a) **Associates.** To be classified as a partnership, any entity must have "associates". Associates refers to the owners of the entity. Because that term is plural, there must be two or more owners. Thus, a one-person LLC could not be classified as a partnership.¹²

(b) **An Objective to Carry on Business and Divide the Gains Therefrom.** This characteristic implies that the objective of the entity must be to carry on business for profit. Non-profit ventures would fail this test. Thus, only LLCs formed for possible profit could satisfy this test.

The classification regulations indicate that having "associates" and "an objective to carry on business for joint profit" are characteristics of all organizations engaged in business for profit (other than one-person ventures). Further, the absence of either of these two essential characteristics would cause an arrangement to be viewed as merely a relationship between co-owners of property rather than as a partnership.

THE "FOUR HORSEMEN" OF CLASSIFICATION

The remaining four characteristics of classification (items c, d, e and f above) are the pivotal characteristics in determining whether an LLC will be taxed as a partnership or as a corporation. Because of their importance, those characteristics have been referred to as the "four horsemen" of classification.

These four criteria are all characteristics of corporations, according to the regulations.¹³ To be classified as a partnership (receive "flow-through" treatment), an LLC must *not* have a majority — *more than two* — of these classification criteria. What are the basic rules for satisfying these criteria?

(a) **Continuity of Life.** This characteristic exists in a corporation because a corporation does not dissolve merely because one or more shareholders dies or retires. The test here is whether an owner can cause a dissolution of the entity. If so, then the entity lacks "continuity of life".¹⁴

The regulations provide that an organization *has* continuity of life if the *death, insanity, bankruptcy, retirement, resignation or expulsion* of any member (the "Big Six" dissolution events) will *not* cause a dissolution of the organization. But, if any of these events would cause the organiza-

tion to dissolve, then the organization lacks continuity of life.

(b) **Centralization of Management.** An organization has centralization of management if any person, or any group of persons which does not include all of the members, has "... continuing exclusive authority to make the management decisions necessary to conduct the business for which the organization was formed."¹⁵

(c) **Limited Liability.** An organization has limited liability if, under local law, there is no member who is personally liable for the debts of the organization. Personal liability means that a creditor of the organization can seek satisfaction from an owner's personal assets where the assets of the organization are insufficient to satisfy the claim.¹⁶

*"On January 17, 1995, IRS
published its most important
announcement yet on LLCs."*

(d) **Free Transferability of Interests.** An organization has free transferability of interests if each of its members (or those members owning "substantially all" of the interests in the organization) has the power, without the consent of the other members, to substitute for themselves a person who is not a member. But, this characteristic does not exist in a case where a member can, without the consent of the other members, assign only her rights to share in profits, but cannot assign her rights to participate in management of the organization.¹⁷

REVENUE PROCEDURE 95-10

On January 17, 1995, IRS published its most important announcement yet on LLCs — Revenue Procedure 95-10.¹⁸ Rev. Proc. 95-10 gives comprehensive guidelines for obtaining letter rulings on the classification of LLCs. It supersedes Rev. Proc. 89-12 regarding classification of LLCs but applies many of the rules in Rev. Proc. 89-12 to the LLC context.

A revenue procedure is an official statement of IRS practices that affects the rights or duties of taxpayers under the Internal Revenue Code or that contains information IRS believes should be public knowledge.

Revenue procedures are published in the *Federal Register* and in the *Internal Revenue Bulletin*. They are published for guidance of the public as well as of IRS personnel.

Revenue Procedure 95-10 is the first comprehensive IRS announcement on LLCs apart from rulings on state LLC laws. Although its purpose is to give the requirements for obtaining a letter ruling from the IRS on LLC classification, it could be viewed as giving the IRS position on LLCs, whether or not an IRS ruling is obtained. The issuance of Rev. Proc. 95-10 re-affirms the acceptance of LLCs by the IRS. There should no longer be doubts as to whether LLCs will be recognized by the IRS.

For purposes of this discussion, the term "operating agreement" includes the Articles of Organization, operating agreement, and all other governing documents of an LLC.

Scope and Application. Rev. Proc. 95-10 applies to both domestic LLCs and to foreign organizations which provide limited liability to their owners. Specifically, it applies to all organizations.

(i) formed as LLCs under the laws of any state (or foreign country) providing for or allowing limited liability to any of their members; and
(ii) that are not:

- incorporated organizations; or
- trusts; or
- partnerships formed under statutes corresponding to the Uniform Partnership Act or the Revised Uniform Limited Partnership Act.¹⁹

Three Groups of LLCs Based on Management Structure. In describing the rules for classifying LLCs, Rev. Proc. 95-10 divides all LLCs into two groups based on how the LLCs are managed. In reality, there is a third group — LLCs whose managers are not LLC members. Thus, there are three groups:

- LLCs that are managed by all of the LLC's members,
- LLCs that are managed by one or more (but less than all) of the LLC's members, and
- LLCs that are managed by non-members.

Rev. Proc. 95-10 uses the term "member-manager" to mean a manager who is also a member of the LLC in which *less than all* of the members are managers.²⁰ In this discussion, managers in the third group are

referred to as “non-member managers”.

Example: Suppose Mario, Jim and Orrin are members of an LLC. Due to his experience, Orrin is appointed as the only manager for the LLC. Thus, less than all of the members are managers. Accordingly, Orrin would be called a “member-manager”.

But, what about those LLCs which are managed by all of their members? What are those managers called? Rev. Proc. 95-10 doesn't give them a name. To keep things straight, it is necessary to remember that a “member-managed” LLC is not one where all of the members are managers but only where *some* of the members are managers.

(a) LLCs Managed by All Members. Some LLCs are managed by all of their members. Under Rev. Proc. 95-10, the following classification rules apply to these LLCs:

(i) Continuity of Life. IRS will generally rule that an LLC lacks continuity of life where any of the Big Six dissolution events (*death, insanity, bankruptcy, retirement, resignation, or expulsion of any member*) dissolves the LLC *without further action* of the members, unless the LLC is continued by the consent of not less than a majority in interest of the remaining members. IRS requires that *all* of the members must be subject to the specified dissolution events.²¹

Dissolution is not the same as termination. After an event of dissolution, there are two possible paths for an LLC: it can either wind up its affairs and terminate or it can continue on by consent of the remaining members.

–not all of the Big Six events must be specified if those that are specified provide a “meaningful possibility of dissolution” [for example, insanity would not provide a meaningful possibility of dissolution for LLC members who are corporations or other entities]²²

–all members must be subject to the events which are specified

–“majority in interest” means those members who own a majority of the profits interests and a majority of the capital interests of the LLC.²³

–consent must be obtained within a set period after dissolution (90 days in Utah).²⁴

Remaining Questions on Continuity of Life. Rev. Proc. 95-10 does not answer

the following questions about these rules:

–In LLCs with both individual and entities as members, how can all members be subject to the same dissolution events (*death, insanity, etc.*)?

–What is a meaningful possibility of dissolution?

–What does “without further action of the members” mean?

(ii) Centralization of Management. This rule is easy. For an LLC in which all of the members participate in management, the LLC lacks centralization of management.²⁵

(iii) Limited Liability. This rule is also easy for most LLCs. Since most LLCs limit the liability of their members, they will have the characteristic of limited liability. But, some LLC statutes (not Utah's) permit LLCs to provide in their operating agreements that one or more members may assume personal liability for the obligations of the LLC and, therefore, negate limited liability. Rev. Proc. 95-10 states that the IRS —

“... generally will not rule that an LLC lacks limited liability unless at least one ‘assuming member’ validly assumes personal liability for all (but not less than all) obligations of the LLC, pursuant to express authority granted in the controlling statute.” (emphasis added)²⁶

“The issuance of Rev. Proc. 95-10 re-affirms the acceptance of LLCs by the IRS.”

In this situation, the assuming member must meet the “10 percent net worth” test. That test requires an aggregate net worth equal to at least 10 percent of the total contributions to the LLC throughout the life of the LLC.²⁷ An assuming member(s) who cannot meet the 10 percent net worth test must have “substantial assets” (other than her interests in the LLC) that could be reached by a creditor of the LLC.²⁸

(iv) Free Transferability of Interests. An LLC lacks free transferability of interests where the controlling statute or the LLC operating agreement provides

that no member has the power, without the consent of at least a majority of the other members, to confer upon a non-member all the attributes of the member's interests in the LLC.²⁹ There are some additional rules:

–at least 80% of the LLC interests must be subject to consent for transfers³⁰

–“majority” for this purpose means:

– a majority in interest (majority of capital *and profits* interests); or

– a majority of the capital interests in the LLC; or

– a majority of the profits interests in the LLC; or

– a majority of the LLC members determined on a per capita basis.³¹

–consent must be a “meaningful restriction” on transfers. [For example, an operating agreement should not merely provide: “An interest cannot be transferred without consent of the other members, which consent shall not be unreasonably withheld.”]³²

(b) LLCs Managed by Member-Managers. LLCs managed by member-managers are subject to certain rules in addition to the rules for LLCs managed by all of the members. Yet, most of the rules are identical.

(i) Continuity of Life. An LLC with one or more member-managers will lack continuity of life where the *death, insanity, bankruptcy, retirement, resignation, or expulsion* of any member-manager dissolves the LLC without further action of the members, unless the LLC is continued by the consent of not less than a majority in interest of the remaining members.³³

Example: BK Contractors, LLC has more than three members. It is managed by A, B and C, all of whom are members. To meet the “all are subject” rule, the operating agreement must provide that a dissolution event with respect to any of the member-managers will dissolve the LLC instead of providing that dissolution only occurs upon a dissolution event with respect to only one of the named member-managers (a dissolution event only with respect to A but not B or C).

The remainder of the rules regarding continuity of life are essentially the same as the rules for LLCs managed by all of the members [please see discussion under paragraph (a)(i) above] *except* that the member-managers.

– must all be subject to the specified dissolution events.³⁴

– must own, in the aggregate, at least 1% interest in the LLC's income, gain, loss, deduction and credit at all times.³⁵ (The 1% level is reduced where contributions to the LLC exceed \$50 million — this is the “Jumbo contributions” rule)³⁶

– must maintain at all times, in the aggregate, capital account balance at least as large as:

– 1% of total positive capital accounts in the LLC, or

– \$500,000,³⁷

unless at least one of the member-managers contributes “substantial services” in the capacity as a member and contributes make-up contributions when the LLC dissolves and terminates.³⁸

(ii) Centralization of Management.

The IRS will not rule that an LLC with member-managers lacks centralization of management unless the member-managers, in the aggregate, own at least 20 percent of the total interests in the LLC and are not subject to control by the members (such as being subject to periodic elections by the members or to removal by the members).³⁹

(iii) Limited Liability. The rules on limited liability are the same for LLCs managed by member-managers as for LLCs managed by all of the members [please refer to paragraph (a)(iii) above] except that, where the LLC seeks to avoid the characteristic of limited liability, the assuming members must, in the aggregate, meet the capital account standard.⁴⁰

(iv) Free Transferability of Interests.

An LLC with one or more member-managers lacks free transferability of interests where the controlling statute or the LLC operating agreement provides that no member has the power, without the consent of at least a majority of the non-transferring member-managers, to confer upon a non-member all the attributes of the member's interests in the LLC. The remainder of the rules on free transferability of interests are the same for LLCs managed by member-managers as for LLCs managed by all of the members [please refer to paragraph (a)(iv) above] *except that* the member-managers must meet the 1% ownership

Highlights of Rev. Proc. 95-10:

- LLC must have two or more members to be recognized for tax purposes
- only majority of remaining members must consent to continue LLC upon dissolution
- only majority of other members must consent to transfers of LLC interests
- member-managers must hold:
 - 1% of total positive capital account balances or provide “substantial services”
 - 1% ownership of all LLC items to be recognized as a member
 - 20% ownership in LLC to avoid centralization of management
 - to avoid limited liability, an “assuming member” must assume liability for all LLC debts and:
 - assuming member must have independent net worth greater than 10% of LLC contributions, and
 - state law must expressly allow for such assumptions.

rule⁴¹ and the capital account standard.⁴²

(e) LLCs Managed by Non-Member Managers. Rev. Proc. 95-10 does not discuss any rules for LLCs managed by non-member managers. However, logic would indicate that the classification rules in those situations would be similar to the rules for LLCs which are managed by all of the members. This would seem to be the case since non-member managers, by definition, do not own any interests in the LLC and could not satisfy the 1% ownership rule or the capital account standard or the 20% ownership test.

CONCLUSION

IRS has validated LLCs as alternative entities for business and investment applications. Although LLCs have been growing in number at a rapid rate, the future will likely see an accelerated rate of growth. It appears that LLCs are here to stay.

¹Utah Code §48-2b-101 et seq.

²Hawaii, Massachusetts, Pennsylvania and Vermont do not have LLC statutes. Only Hawaii has no pending LLC legislation.

³Figures furnished by Utah Division of Corporations and Commercial Code.

⁴Revenue Ruling 88-76, 1988-2 C.B. 360.

⁵*United States v. Kintner*, 216 F.2d 418 (9th Cir. 1954).

⁶Treas. Reg. §301.7701-2.

⁷Rev. Proc. 72-13, 1972-1 C.B. 735.

⁸Rev. Proc. 89-12, 1989-1 C.B. 798.

⁹1993-41 I.R.B. 22.

¹⁰Alabama: Rev. Rul. 94-6

Arizona: Rev. Rul. 93-93

Colorado: Rev. Rul. 93-6

Connecticut: Rev. Rul. 94-79

Delaware: Rev. Rul. 93-38

Florida: Rev. Rul. 93-53

Illinois: Rev. Rul. 93-49

Kansas: Rev. Rul. 94-30

Louisiana: Rev. Rul. 94-5

Nevada: Rev. Rul. 93-30

New Jersey: Rev. Rul. 94-51

Oklahoma: Rev. Rul. 93-92

Rhode Island: Rev. Rul. 93-81

Utah: Rev. Rul. 93-91

Virginia: Rev. Rul. 93-91

West Virginia: Rev. Rul. 93-50

Wyoming: Rev. Rul. 88-76

¹¹Treas. Reg. §301-7701-2(a)(1).

¹²See Section 401 of Rev. Proc. 95-10, 1995-3 I.R.B. 20.

¹³Treas. Reg. §301-7701-2(a)(2).

¹⁴Treas. Reg. §301-7701-2(b)(1).

¹⁵Treas. Reg. §301-7701-2(c)(1).

¹⁶Treas. Reg. §301-7701-2(d)(1).

¹⁷Treas. Reg. §301-7701-2(e)(1).

¹⁸1995-3 I.R.B. (January 17, 1995).

¹⁹Section 1.02, Rev. Proc. 95-10, 1995-3 I.R.B. 20.

²⁰Section 1.03, Rev. Proc. 95-10, 1995-3 I.R.B. 20.

²¹Section 5.01(2), Rev. Proc. 95-10.

²²Section 5.01(4), Rev. Proc. 95-10.

²³Section 5.01(3), Rev. Proc. 95-10; *see also* Rev. Proc. 94-46, 1994-28 I.R.B. 129.

²⁴Utah Code §48-2b-137(3).

²⁵Section 5.03(1), Rev. Proc. 95-10.

²⁶Section 5.04, Rev. Proc. 95-10.

²⁷*Id.*

²⁸*See* Section 4.03, Rev. Proc. 92-88, 1992-2 C.B. 496.

²⁹Section 5.02(2), Rev. Proc. 95-10.

³⁰*Id.*

³¹Section 5.02(3), Rev. Proc. 95-10.

³²Section 5.02(4), Rev. Proc. 95-10.

³³Section 5.01(1), Rev. Proc. 95-10.

³⁴*Id.*

³⁵Section 4.02, Rev. Proc. 95-10.

³⁶Section 4.03, Rev. Proc. 95-10.

³⁷Section 4.04, Rev. Proc. 95-10.

³⁸Section 4.05, Rev. Proc. 95-10.

³⁹Section 5.03(2), Rev. Proc. 95-10.

⁴⁰*See* text accompanying footnote 38.

⁴¹*See* footnote 36.

⁴²*See* text accompanying footnote 38.



Checklist for Utah State Court-Annexed Arbitration

by James R. Holbrook

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I. BEFORE THE PRE-HEARING CONFERENCE

1. Review the Utah Alternative Dispute Resolution Act [Utah Code Ann. § 78-31b-1, et seq.], Code of Judicial Administration Rule 4-510 [Rule 4-510], and Court Annexed Dispute Resolution Rules for arbitration [Rule 102], confidentiality [Rule 103], and the code of ethics [Rule 104].
2. Inform the clerk of the court and the ADR program director that the arbitrator has been selected [Rule 4-510(10)(B)].
3. No interlocutory appeal may be taken from an order referring a pre-1995 civil action into the ADR program [Rule 102(m)].
4. Arbitrators are immune from liability to the same extent as state judges [§ 78-31b-4(4) and Rule 4-510(13)].
5. Arbitrators cannot be required to testify except as to claims about impartiality or misconduct of the arbitration proceeding [Rule 4-510(14)].
6. Check for and avoid interests, relationships and other reasons requiring recusal or disclosure [Rule 104: Canon I(c)].
7. The arbitrator is to obtain fees in

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- advance or an acceptable fee agreement from the parties [Rule 4-510(12)].
8. Discovery under the Utah Rules of Civil Procedure is stayed and timelines are tolled [§ 78-31b-8(1) and Rule 4-510(6)(C)].
9. Schedule a pre-hearing conference within 30 days after selection of the arbitrator [Rule 102(b)(1)].
10. Unless otherwise agreed to by the parties, arbitration proceedings shall be held at the arbitrator's office or at such place designated by the arbitrator [Rule 4-510(16)].
11. Parties should consider and confer about the purposes of the pre-hearing conference as described in Section II of this checklist [Rule 102(b)(1) and (2)].
12. At any time during the arbitration proceedings the parties may submit the dispute

or issues therein to private arbitration, in which event the court may dismiss or stay the case [§ 78-31b-6(4)].

II. AT THE PRE-HEARING CONFERENCE

1. All participating parties or their counsel shall attend the pre-hearing conference [Rule 102(b)(1)].
2. The purposes of the pre-hearing conference include [Rule 102(b)(1) and (2)]:
 - (a) reviewing the case;
 - (b) defining and narrowing the issues to be arbitrated;
 - (c) determining the scope and timing of any discovery, including exchange of disclosure statements;
 - (d) stipulating admission of facts and documents;
 - (e) identifying witnesses;
 - (f) determining necessity of subpoenas;
 - (g) scheduling arbitration hearing within 120 days of pre-hearing conference;
 - (h) encouraging use of stipulations, affidavits, proffers of testimony, written expert opinions, and other time-saving evidentiary procedures;
 - (i) limiting live testimony to factual

disputes and witness credibility; and
(j) limiting issues to be heard to those defined in the pre-hearing conference;
3. Additional purposes of the pre-hearing conference may include:

- (a) discussing the arbitrator's authority to issue interim orders and grant up to a 30-day continuance of the arbitration hearing [Rule 102(c)];
- (b) reviewing the prohibitions against ex parte communications with arbitrator [Rule 102(c)];
- (c) discussing the parties' right and the procedures to change to mediation at any time prior to the conclusion of the arbitration hearing [Rule 102(d)];
- (d) setting dates for exchange of exhibits not less than 20 days before the arbitration hearing and written objections not less than 7 days before the arbitration hearing [Rule 102(e)];
- (e) requiring pre-marked exhibits [Rule 102(e)];
- (f) explaining that discovery is stayed, except by the parties' agreement [Rule 4-510(6)(C) and Rule 102(f)];
- (g) explaining that subpoenas are obtained from and enforced by the court [Rule 102(f)];

(h) discussing the right to make a non-video record of arbitration hearing, and the inadmissibility of any such record at trial [Rule 102(g)];

(i) advising that the arbitration hearing can proceed in the absence of any party having notice [Rule 102(h)];

(j) discussing that arbitration proceedings are private unless the parties agree they are to be open [§ 78-31b-8(2)(a) and Rule 103]; and

(k) advising that a party who unilaterally terminates nonbinding arbitration after the hearing has begun shall be responsible for the arbitrator's fee and may have to pay the other party's attorneys fees [Rule 4-510(8)].

4. Parties should complete and execute a form of final arbitration agreement governing the conduct of the arbitration hearing.

III. AT THE ARBITRATION HEARING

- 1. The arbitrator commences and conducts the hearing at the designated date, time and place; if a panel of three arbitrators is used, the chair presides [Rule 102(h)].
- 2. All oral testimony shall be taken under oath [Rule 102(j)]. The arbitrator may

administer oaths [Rule 102(h)].

3. The arbitration hearing can proceed in the absence of any party having written notice of the hearing [Rule 102(h)].

4. Upon any party's request, the arbitrator shall exclude non-party witnesses except when testifying [Rule 102(h)].

5. The arbitrator determines the mode and order of issues, argument, testimony and other evidence and may limit the amount of time for each party [Rule 102(h)].

6. The burdens of proof and presumptions are the same as at trial [Rule 102(h)].

7. The arbitrator cannot rule on summary judgment or other motions pending in the litigation [Rule 102(h)].

8. Each party is entitled to be heard, present material evidence, and cross-examine witnesses [Rule 102(h)(1)].

9. Upon notification to the parties, the arbitrator can make an inspection or other outside investigation [Rule 102(h)(2)].

10. The arbitrator shall close the hearing upon completion of the evidence or receipt of post-hearing briefs [Rule 102(h)(3)].

11. The hearing may be reopened by the arbitrator or, upon good cause, a party [Rule 102(h)(4)].

12. The arbitrator can decide only those

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issues defined at the pre-hearing conference, unless all parties agree that additional issues are to be considered [Rule 102(h)(4) and (i)].

13. The arbitrator may take judicial notice of adjudicative facts [Rule 102(j)].

14. The arbitrator rules on the admissibility of evidence in general conformity with the Utah Rules of Evidence, but may receive inadmissible evidence which is not unfairly prejudicial and does not violate any privilege [Rule 102(j)].

15. Unless stipulated to by the parties, arbitration proceedings are private and confidential [§ 78-31b-8(2), Rule 102(k) and Rule 103].

16. Motions, memoranda, exhibits, affidavits, etc., submitted to the arbitrator shall not be filed with the court or become part of the court record or transmitted to the assigned judge, except as required by the ADR rule [Rule 103(a)].

17. Arbitrators shall preserve the confidentiality of all arbitration proceedings and shall not disclose any information to anyone, except as required by the ADR rule [§ 78-31b-8(2)(c) and Rule 103(b)].

IV. AFTER THE ARBITRATION HEARING

1. If the parties settle their dispute during

the arbitration proceedings, the arbitrator may include the settlement terms in an arbitration award [Rule 102(h)(5)].

2. Within 20 days after the arbitration hearing, the arbitrator shall prepare and file the arbitration award [Rule 102(1)(1)].

3. The award shall be in writing, signed by the arbitrator, and designate the prevailing party, the losing party, and the amount of the award. No explanation of a monetary award is required; resolution of issues of law must be specified; and equitable or non-monetary relief shall be stated with particularity [§ 78-31b-6(1) and Rule 103(b)].

4. If the case is dismissed, the award need not be filed with the court unless third party rights are affected [§ 78-31b-6(3)].

5. The award shall be final and enforceable as any other judgment unless within 30 days a party files either a demand for trial de novo with the clerk or a written request with the arbitrator to modify the award [§ 78-31b-6(2)].

6. A request to modify the award may be filed if the award contains an evident miscalculation or misdescription, or if not all issues were decided, or if issues were decided which were not submitted to arbitration [§78-31b-6(2)(b)]. The arbitrator must act upon such request within 30 days

during which the period to file a demand for trial de novo is tolled [§ 78-31b-6(2)(c)]. An arbitration hearing transcript may be used in connection with a request to modify an award [Rule 102(g)].

7. If a judicial hearing is required [e.g., in order to obtain a divorce decree], the award shall be treated as a stipulation [Rule 102(I)(4)].

8. Once the award becomes final or upon a demand for trial de novo, hearing transcripts shall be destroyed [Rule 102(g)].

9. At the conclusion of the arbitration proceedings, the arbitrator shall return all arbitration records to the submitting parties [Rule 103(b)].

10. The arbitrator shall notify the court and the ADR program director of the final conclusion of the arbitration proceedings [Rule 4-510(10)(C)].

11. If upon trial de novo the demanding party does not better the arbitration award, that party shall pay arbitration fees and attorney fees up to \$2,000 [Rule 102(I)(5)].

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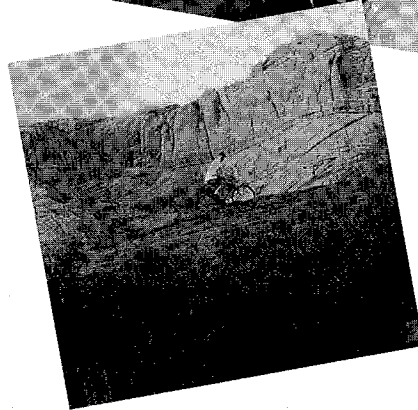
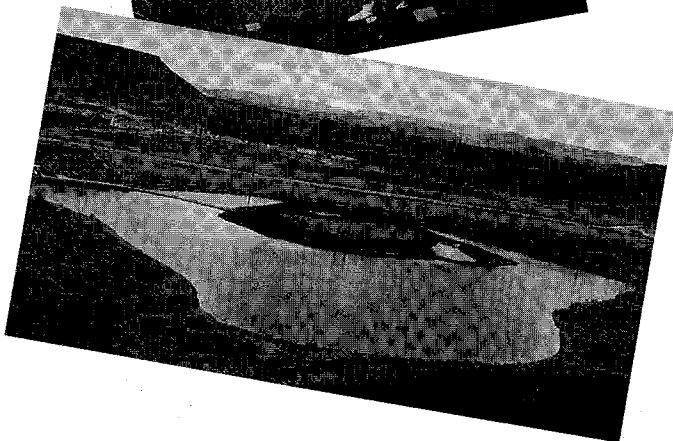
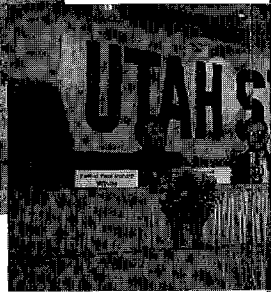
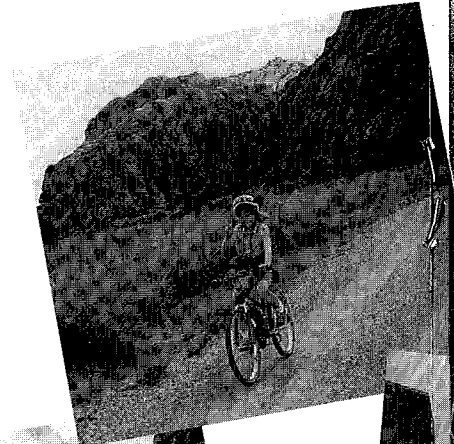


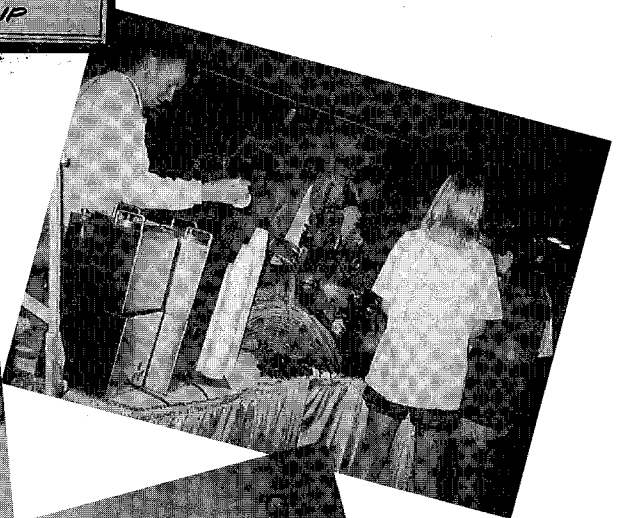
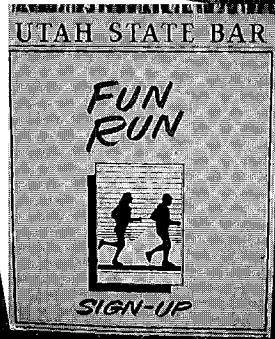
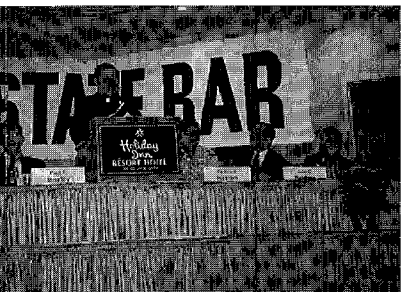
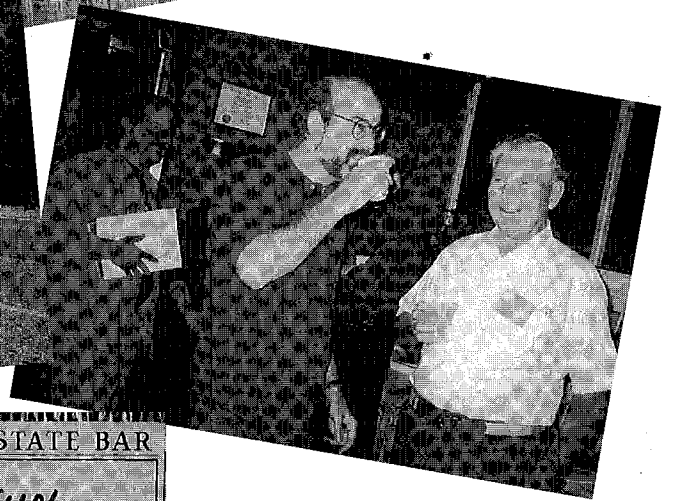
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1995 Annual Mid-Year Meeting





1995 Annual Meeting Awards

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2. Distinguished Lawyer of the Year
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6. Distinguished Pro Bono Lawyer/Law Firm of the Year

Supreme Court Seeks Attorneys to Serve on Advisory Committee

Article VIII of the Utah Constitution grants the Utah Supreme Court the authority to adopt rules of procedure, rules of evidence, and rules governing the practice of law. To assist it in its rulemaking responsibilities, the Court has established the following advisory committees: Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Juvenile Procedure, Rules of Appellate Procedure, Rules of Evidence, and Rules of Professional Conduct.

The Court is seeking applicants to fill vacancies on each of the advisory committees. Each interested attorney should submit a resume and a letter indicating interest, qualifications and the committee of choice to Brent M. Johnson, 230 South 500 East #300, Salt Lake City, Utah 84102. Applications must be received no later than May 1, 1995. Questions may be directed to Mr. Johnson at (801) 578-3800.

Ethics Advisory Opinion Committee Announcement

The Utah State Bar is now accepting applications for positions on the Ethics Advisory Opinion Committee for terms beginning July 1, 1995. The Committee comprises 12 members who are appointed to three-year terms upon application to a Bar selection committee.

The charge of the Committee is to prepare written opinions concerning the ethical propriety of anticipated professional or personal conduct and to forward these opinions to the Board of Bar Commissioners for its approval.

Because the written opinions of the Committee have major and enduring significance to the Bar and the general public, the Board solicits the participation of lawyers and members of the judiciary who can make a significant commitment to the goals of the Committee and the Bar.

If you are interested in serving on the Ethics Advisory Opinion Committee, please submit an application with the following information, either in résumé or narrative form:

- Basic information, such as years and location of practice, type of practice (large

firm, solo, corporate, government, etc.), and substantive areas of practice.

- A brief description of your interest in the Committee, including relevant experience, interest in or ability to contribute to well-written, well-researched opinions. This should be a statement in the nature of what you can contribute to the Committee.

Appointments will be made to accomplish two general goals:

- Maintaining a Committee that is willing to dedicate the effort necessary to carry out the responsibilities of the Committee and is committed to the issuance of timely, well-reasoned, articulate opinions.
- Creation of a balanced Committee that incorporates as many diverse views and backgrounds as possible.

If you would like to contribute to this important function of the Bar, please submit a letter indicating your interest to:

**Ethics Advisory Committee
Selection Panel
Utah State Bar
640 South 200 East
Salt Lake City, Utah 84111**

13th Annual Bob Miller Memorial Law Day Run

The Thirteenth Annual Bob Miller Memorial Law Day Run is set for 10:00 on Saturday morning, April 29th. As in the past, we encourage the legal community to join us in this annual rite of spring. The course is a "friendly" one, only 5 kilometers and mostly flat and downhill, sure to generate some good early season times. It begins at Red Butte Garden, passes through Fort Douglas, heads north in front of the University of Utah and Primary Children's Hospitals, drops down to Wasatch Drive and proceeds south along the University Golf Course, head west past the Huntsman Center on South Campus Drive, and concludes at the Law School parking lot. We will again have divisions for attorneys, paralegals, legal personnel, law students, law

faculty, and the usual age group divisions, from children 11 and under to seniors 70 and over. The typically heated competition will again involve teams of two women and three men. Medals for the top three in each division will be awarded, as well as a trophy to the winning team. T-shirts will be provided for all registrants. Registration is \$12 prior to race day, and \$14 at the race. Registration forms are available from Dawn Hales at 322-2516 or Howard Young at 521-3200.

Senator Orrin Hatch to Speak

The Federal Bar Association presents Senator Orrin Hatch "Advice and Consent: The Judicial Confirmation Process" Wednesday, April 12, 1995 at 12:00 Noon at the Little America. The cost is \$18.00 for 1 hour of CLE.

Thank You

I would like to thank all the members of the Bar Examiners Committee, Bar Examiners Review Committee and Character and Fitness Committee for a successful February Bar Examination that was given February 21st and 22nd. Your voluntary time for the bar examination was very much appreciated.

Thank you again,
Darla C. Murphy
Admissions Administrator

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Attorneys Needed to Assist the Elderly Needs of the Elderly Committee Senior Center Legal Clinics

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

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

The Needs of the Elderly committee instituted the Senior Center Legal Clinics program to address the elderly's acute need for attorney help in locating available resources for resolving their legal or quasi-legal problems. Without this assistance, the elderly often unnecessarily endure confusion and anxiety over problems which an

attorney could quickly address by simply directing the elderly person to the proper governmental agency or pro bono/low cost provider of legal services. Attorneys participating in the clinics are able to provide substantial comfort to the elderly, with only a two hour time commitment.

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

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

Project Coordinator Wanted

The U.S. Courts for the Tenth Circuit are seeking a Project Coordinator to provide staff support to the Circuit's Gender Bias Task Force in developing gender fairness programs impacting all participants in the judicial process. Under the general direction of the Task Force and the Circuit Executive, the Project Coordinator will plan and coordinate all aspects of the project, including general administration, gathering and analyzing data, scheduling and conducting meetings and hearings, preparing reports and recommendations. Requirements include: a degree in a social science field or comparable program involving research methodology; excellent writing, organizational, interviewing, and analytical skills; maturity and discretion; min. 3 yrs. exp. conducting research projects and add'l 3

yrs. managing such projects, ideally in court or legal environment. Law degree helpful if combined with soc. science research skills. Some travel. Temp. pos. in Denver for up to two yrs. With salary range of \$51,688-\$79,402 depending on ed., exper. and previous salary. To apply submit ltr. and resume by May 5, '95, to Robert L. Hoecker, Circuit Executive, 1823 Stout St., Denver, CO 80257. EOE

1995-1996 Utah State Bar Request for Committee Assignment DEADLINE – APRIL 28, 1995

When the Utah Supreme Court organized the Bar to regulate and manage the legal profession in Utah, it defined our mission to include regulating admissions and discipline and fostering integrity, learning, competence, public service and high standards of conduct. The Bar has standing and special committees dedicated to fulfilling this mission. Hundreds of lawyers spend literally thousands of hours in volunteer service on these committees.

Many committee appointments are set to expire July 1, 1995. If you are currently serving on a committee, please check your appointment letter to verify your term expiration date. If your term expires July 1, 1995 and we do not hear from you, we will assume that you do not want to be reappointed, and we will appoint someone to take your place. If your term expires in 1996 or 1997, you do not need to reapply until then. If you are not currently serving on a committee and wish to become involved, please complete this form. See bottom of this page for a brief explanation of each Committee.

COMMITTEE SELECTION

Applicant Information

Name _____

Office Address _____ Telephone _____

Choice	Committee Name	Past Service On This Committee?	Length of Service On this Committee?
1st Choice	_____	Yes/No	1, 2, 3, 3+ yrs.
2nd Choice	_____	Yes/No	1, 2, 3, 3+ yrs.
3rd Choice	_____	Yes/No	1, 2, 3, 3+ yrs.

ADDITIONAL COMMENTS (to include qualifications, reason for serving and other past committee affiliation):

For over 60 years, the Utah State Bar has relied on its members to volunteer time and resources to advance the legal profession, improve the administration of justice, and to serve the general public. The Bar has many outstanding people whose talents have never been tapped.

Instructions to Applicants: Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday. Members from outside Salt Lake are encouraged to participate in committee work.

COMMITTEES

1. **Advertising.** Makes recommendations to the Office of Bar Counsel regarding violations of professional conduct and reviews procedures for resolving related offenses.
2. **Alternative Dispute Resolution.** Recommends involvement and monitors developments in the various forms of alternative dispute resolution programs.
3. **Annual Meeting.** Selects and coordinates CLE program topics, panelists and speakers, and organizes appropriate social and sporting events.
4. **Bar Examiner Review.** Drafts and grades essay questions for the February and July Bar Examinations.
5. **Bar Examiner Committee.** Reviews essay questions for the February and July Bar Exams to ensure that they are fair, accurate and consistent with federal and local laws.
6. **Bar Journal.** Annually publishes ten monthly editions of the *Utah Bar Journal* to provide comprehensive coverage of the profession, the Bar, articles of legal importance and announcements of general interest.
7. **Character & Fitness.** Reviews applicants for the Bar Examination to make recommendations on their character and fitness for admission to the Utah State Bar.
8. **Continuing Legal Education.** Reviews the educational programs provided by the Bar to assure variety, quality and conformance with mandatory CLE requirements.
9. **Courts and Judges.** Coordinates the formal relationship between the judiciary and the Bar including review of the organization of the court system and recent court reorganization developments.
10. **Delivery of Legal Services.** Explores and recommends appropriate means of providing access to legal services for indigent and low income people.
11. **Ethics and Discipline.** Screens complaints made against members of the Bar to determine violations of Rules of Professional Conduct and issues either non-public sanctions or formal complaints.
12. **Fee Arbitration.** Holds arbitration hearings to resolve voluntary disputes between members of the Bar and clients regarding fees.
13. **Law Practice Management.** Studies, evaluates and recommends improved

methods of managing the practice of law.

14. **Law Related Education and Law Day.** Helps organize and promote law related education and the annual Law Day including mock trial competitions.
15. **Law & Technology.** Creates a network for the exchange of information and acts as a resource to Bar members about new and emerging technologies and the implementation of these technologies.
16. **Lawyer Benefits.** Reviews requests for sponsorship and involvement in various group benefit programs, including health, malpractice, disability, term life insurance and other potentially beneficial group activities.
17. **Lawyers Helping Lawyers.** Provides assistance to lawyers with substance abuse or other various impairments and make appropriate referral for rehabilitation or dependency help.
18. **Legal/Health Care.** Assists in defining and clarifying the relationship between the medical and legal professions.
19. **Legislative Affairs.** Monitors pending or proposed legislation which falls within the Bar's legislative policy and makes recommendations for appropriate action.
20. **Mid-Year Meeting.** Selects and coordinates CLE program topics, panelists and speakers, and organizes appropriate social and sporting events.
21. **Needs of Children.** Raises awareness among Bar members about legal issues affecting children and formulates positions on children's issues.
22. **Needs of the Elderly.** Assists in formulating positions on issues involving the elderly and recommending appropriate legislative action.
23. **New Lawyers CLE.** Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality and conformance with mandatory New Lawyer CLE requirements.
24. **Professional Liability.** Monitors the Bar's continuous liability insurance program with carriers under a fully standard policy form.
25. **Securities Advisory Committee.** Provides input to the Utah Securities Division on issues regarding the regulation of the securities marketplace.
26. **Small Firm and Solo Practitioners.** Assesses the needs and requirements of solo/small firm practitioners and develops recommendations and programs to meet those needs.
27. **Unauthorized Practice of Law.** Reviews and investigates complaints made regarding unauthorized practice of law and recommends appropriate action, including civil proceedings.

DETACH & RETURN to Dennis Haslam, President-Elect, 645 South 200 East, Salt Lake City, UT 84111-3834.

Profile of Michael R. Murphy

By Marnie Funk

The rare attorney who irritates Presiding 3rd District Judge Michael Murphy has only one recourse: Profess a profound admiration for former Pittsburgh Pirates right fielder Roberto Clemente.

A picture of Clemente sits on Murphy's desk. A larger photo hangs on the wall.

"The guy was a superstar. Not only as a player, but as a human being," Murphy said. "He's the only hero I've ever had."

There are some similarities. The Puerto Rican player's vast humanity outlasted poverty and the racism of his own teammates. He was killed in a 1972 plane crash at the age of 38 while taking a plane load of supplies he had bought with his own money to Nicaragua to help earthquake victims.

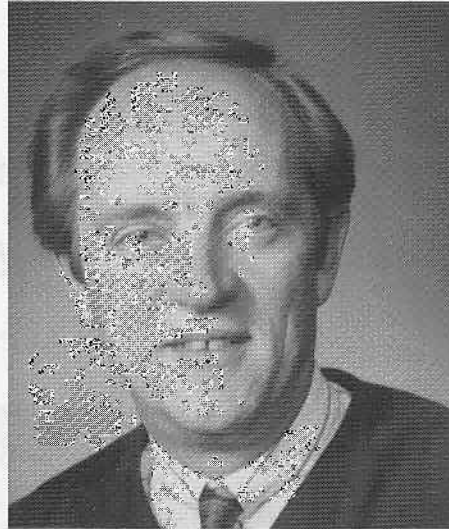
Like Clemente, Murphy charted his own course against some imposing odds. Like Clemente, Murphy tempers talent with humanity. He relishes the intellectual demands of evidentiary issues in the heat of a trial, but he's hard on attorneys who disregard a juror's time or intellect.

"I'm not quick to be irritated . . . but keeping jurors waiting is one of my biggest frustrations."

Lawyers should put themselves in the juror's shoes. That's the common sense thing to do, Murphy said. He understands how attorneys can forget about jurors. Arguing a case can make a lawyer a bit narcissistic, he acknowledged. But Murphy doesn't have much use for narcissism. Like Clemente, he values common sense and decency.

His roots are the common sense kind: a mining town in the heart of Wyoming's Red Desert. It was a tough area, Murphy said. That's when he discovered Clemente. He played Little League ball in Rawlings, Wyoming, in 1955, the same year Clemente started with the Pirates.

Like Clemente, Murphy rode out a tough start without becoming hard. He essentially left home at 13, when his mother sent him to a Kansas boarding school so he could get the kind of education she wanted him to have.



Judge Michael R. Murphy
Third District Court

Appointed: Judge, Third District Court, October, 1986
 Law Degree: University of Wyoming
 J.D. with Honor, 1972
 Practice: Jones, Waldo, Holbrook & McDonough,
 1973-86
 Activities: Presiding Judge, Third District Court ;
 Chair, Third District Committee on Court
 Reorganization; Chair, Courts Complex
 Steering Committee; Board of District
 Court Judges, 1989-90; Commission on
 Justice in the 21st Century; Utah Supreme
 Court Advisory Committee on Rules of
 Civil Procedure; State Sentencing
 Commission; State Advisory Committee on
 Child Support Guidelines; Executive
 Committee, Salt Lake County Bar
 Association, 1989-92

He didn't live in Wyoming again until law school. He had no money and realized that as a state resident, a Wyoming law degree was probably the cheapest one he could get.

"I went to law school because I didn't know what else I wanted to do."

When he clerked for former 10th Circuit Court Judge David Lewis, he decided on trial law. Lewis always talked about his trial law experiences, never his appellate work, Murphy remembered. "I started to get interested."

Six months after signing on with Jones, Waldo, Holbrook & McDonough, he was neck deep in his new interest, arguing a 10-week antitrust case. The jury returned the

largest verdict in the state's history and Murphy knew he'd found his niche.

But even the discovery of his passion didn't blunt the down-to-earth attitude Wyoming gave him. Murphy would be the first to tell someone that his record verdict was topped within a week.

His concern for humanity and common sense makes Murphy approachable. He likes that about himself. "That's who I am."

He recognizes that as presiding judge, he is the only recourse for attorneys who are having problems with other judges in his district, he said. He appreciates the skittish dance attorneys do when they approach him about a particular judge.

"I understand what they are doing. They are coming to me and saying 'Will you do something?' without outright asking me to."

His response is typically, "Thank you for the information." Little more. But later the issue, such as a delay in issuing rulings, may show up on an agenda and be addressed without the judge in question being offended.

The presiding judge stint is a tough one, said attorney Scott Daniels, Murphy's predecessor in the post. "You have to decide who gets what parking place, those little things that can be a real problem."

For Daniels, parking places is a euphemism for talking about the egos of the constitutionally appointed.

"Judge Murphy is seen as being very fair and he has everyone's respect. That's what it takes to be a presiding judge," Daniels said. It's not like you are these people's supervisor. You have to administer by persuasion. It doesn't work unless everyone respects you, thinks you are fair and is willing to go along with what you suggest."

Murphy has helped drive progress in Utah's judiciary and takes an equally progressive view of his own career. He has applied for a vacancy on the federal bench because "repotting is good for any plant."

And for any court. He has been one of the leaders in the move to build a court

complex across the street from the City/County Building, consolidating most courts onto the new site.

He was on the Judicial Council Task Force on Alternative Dispute Resolution, now a legislatively-mandated pilot program in his district.

A progressive view means Murphy is

not a likely friend for a father who hopes to get away with scant child support. He chaired the Judicial Oversight Committee in Child Support Guidelines in 1988 and is currently chair of the State Advisory Committee on Child Support Guidelines. That committee has recommended that current child support guidelines for non-custodial

parents be increased, a recommendation the Legislature has resisted.

He's also a player in the move toward state sentencing guidelines, serving on the guidelines task force in 1991 and currently serving on the state's sentencing commission.

Like Clemente, he looks forward.

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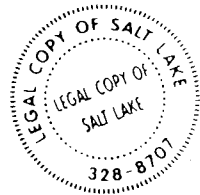
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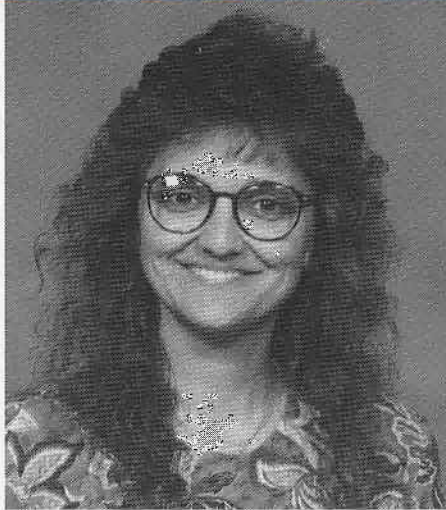
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Young Attorney Profile Narda Beas-Nordell

By Michael L. Mower

Growing up in the barrios of East Los Angeles, Narda Beas-Nordell often heard her mother say, "Narda, never forget you are a descendent of a long line of Proud Peasants." Narda, now a Deputy Salt Lake District Attorney, never forgot her mother's admonition. Today, Narda attributes profound pride in her family heritage, along with a healthy dose of gritty determination and desire for an education, for her success in achieving her professional goals.

Narda's father, Rudolfo Beas, one of eight children, was born in California to a Tarascan Indian mother and a Mexican father. Shortly after Rudolfo's birth, his family returned to Mexico where he spent his youth ranching. Later, he attended veterinary school at the University in Mexico City. After serving in the U.S. Army in World War II, Rudolfo sought employment as a veterinarian, but was only offered work cleaning kennels. Realizing he could make more money harvesting crops, he abandoned his dream of working with animals and became a grape picker. After years of working in the fields, he was able to find work as a meat packer and eventually as a warehouseman.

Narda's mother, Leonor Sanchez Haykiss, was born in Mexico City while her father, a former peasant and ardent communist, was serving as a diplomat for the U.S.S.R. Shortly after her birth, Stalin ordered all Soviet embassy personnel to return to the Soviet Union. Leonor's mother had heard rumors that upon their return to the U.S.S.R. their children were to be taken from them to be raised by the Soviet state. Fearing Stalin, she took her infant daughter into hiding, living with a Mexican Indian tribe for seven years. Her father fled to France where he tragically and mysteriously died soon after his arrival.

Leonor and Rudolfo met in Mexico. She moved to the United States when Rudolfo was discharged by the U.S. Army. Leonor soon became a U.S. citizen. Like her husband, Leonor had great professional aspirations. More than anything, she wanted to be an attorney. However, her growing family and the family's ongoing economic struggle prevented the intelligent Leonor from ever obtaining higher education.

It was into this proud yet poor family Narda was born. The fifth of six children, Narda recalls sleeping in a crib until she was seven because her parents couldn't

afford a bed for her. The entire family of eight lived in a one-bedroom house. However, Narda never felt sorry or pity for herself. She knew her life was no better or worse than that of the other children in her neighborhood whose parents were also former migrant laborers. She knew she was loved and that her parents had great expectations for her.

Narda worked hard in elementary and junior high school to be an academic success. However, a high school counselor, who she respected, told her she was not capable of becoming a professional. He told her she should concentrate on learning secretarial skills. Narda quit striving for college. It took her several years working minimum wage jobs after graduating from high school before Narda regained desire and determination to attend college.

She attended Sonoma State University and Humboldt State in Northern California and the University of Utah. Narda loved the academic challenge of higher education. But she found financing her dream challenging. She often had to quit school for periods at a time to save up enough money for tuition and books. Her hard work and success did not go unnoticed or

unrewarded. She received the University of Utah College of Health's Continuing Student Departmental Scholarship in 1984-85. She eventually received her B.S. from the University of Utah and earned recognition in several honor societies.

After graduating, Narda worked as a Spanish, P.E. and Dance teacher in the Granite School District. She also was elected an officer in the local teacher's union, taught Kung Fu and spent three years teaching Sunday School classes at her local Catholic parish.

Narda realized she wanted greater professional challenges, even though she enjoyed her work as a teacher. She decided to become an attorney. Narda

attended the University of Utah College of Law from 1989-1992. She found law school to be academically challenging and intellectually rewarding. During law school, she still found time to be involved in the law school's Minority Bar Association and worked as a volunteer for numerous projects aimed at providing legal services to those in need. Narda was the first recipient of the Ned Spurgeon Fellowship — a stipend developed for students who demonstrate exceptional dedication and service to the community.

Narda graduated from the University of Utah College of Law in 1992 and is currently employed by the Salt Lake District Attorney's office as a prosecutor in the

juvenile court system. Narda thoroughly enjoys her work as a prosecutor and also continues to be actively involved in many legal and community service organizations. She served as Ex Officio Bar Commissioner for the Utah State Bar and is the President-Elect of the Utah Minority Bar Association.

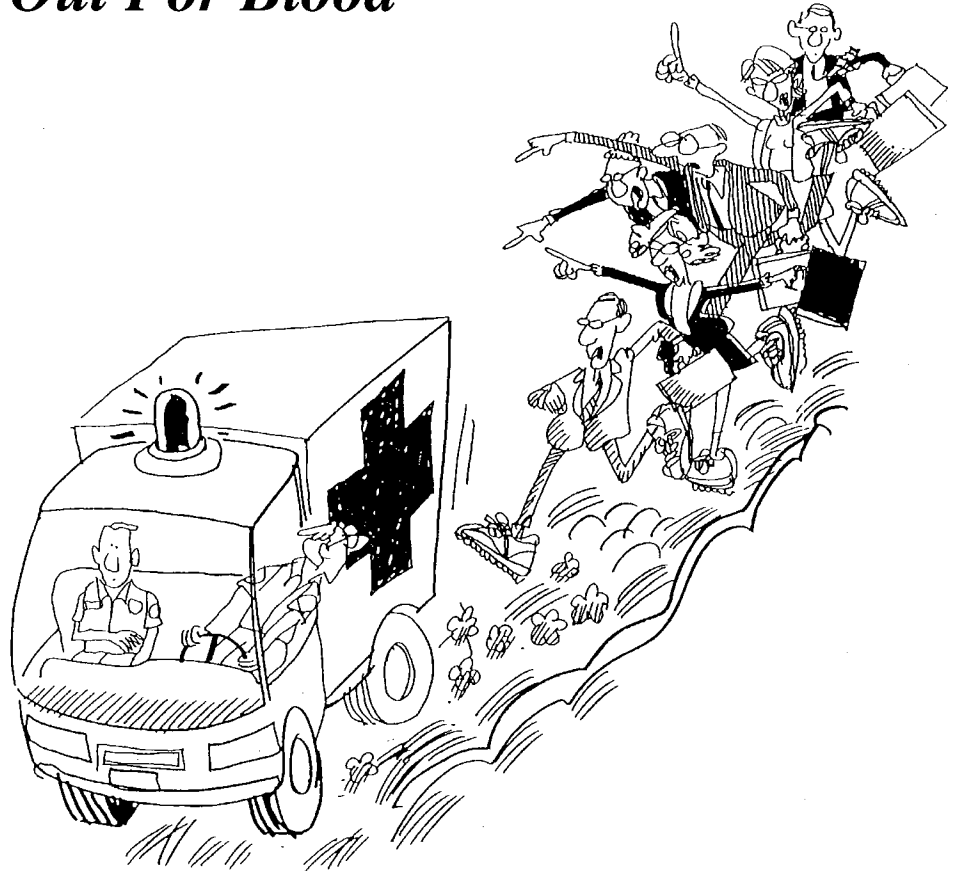
Narda remarks that attaining her present position has at times been challenging for her but that it was well worth it. She comments that she wasn't doing this just for herself, but also for all of her family members who have struggled for so many years for an education.

Needs of Elderly Committee Distributes Legal Handbook and Coordinates Speaking Engagements

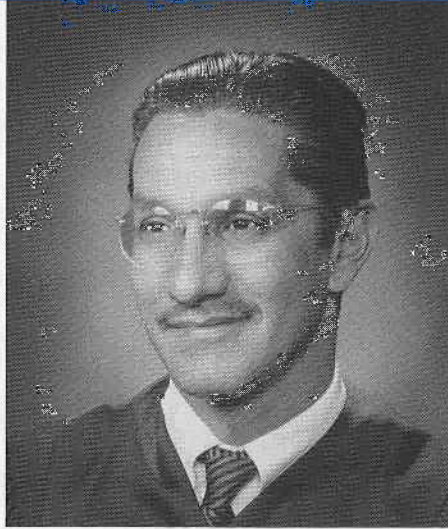
The Young Lawyers Division's **Needs of Elderly Committee**, led by attorneys Karen Small and Chris Nelson, will be distributing 5,000 copies of the second edition of its popular Senior Citizens Legal Handbook. The handbook, which totals approximately 100 pages, includes a resource directory and synopsis of legal issues commonly faced by elderly citizens. Phone numbers for the American Association of Retired Persons, Medicaid, Medicare, Utah Legal Services and several local nursing homes are just a few of the resources listed. In the past, the handbook has been distributed through Salt Lake County Aging Services and Utah Legal Services. This year, the Committee hopes to reach a broader audience by coordinating its efforts with senior centers in Salt Lake's neighboring counties.

Senior centers are also hosting free informational presentations arranged by the Committee. The presentations address legal matters relating to probate, taxes, pension, consumer fraud and health fraud. If you would like to know more about either of these projects, contact Ms. Small at 572-0347 or Mr. Nelson at 531-2000.

YOUNG LAWYERS: *Out For Blood*



A blood drive sponsored by the Young Lawyers Division will be held Tuesday, April 11, 1995 between 10 a.m. and 2:45 p.m. on the 20th Floor of the Utah One Center (Parsons Behle & Latimer conference room) in Salt Lake City. "There is always a critical need for blood, so we encourage as many lawyers and their friends who are able to participate," said Doug McDougal, a member of Young Lawyers Division Community Services Committee and the Coordinator of this blood drive.



Challenges of the Youth in the 1990's

By Judge Andrew Valdez

FACT #1: In the 1990's one in three marriages will end in divorce.

FACT #2: 90% of all children will be raised by a single parent.

FACT #3: 80% of all children will go home to an empty household.

FACT #4: 38% of all children will live below the poverty level.

FACT #5: There will be a 1000% increase in child abuse in this country.

FACT #6: There are 28,000 referrals made to the Juvenile Court per year for criminal behavior.

FACT #7: There are approximately 12,500 dependency referrals to the Court each year for abuse, neglected and abandoned children. Their ages range from infancy to 18 years of age. These dependency cases are, of course, tomorrow's criminal cases.

The above facts are not "fiction" for the 1990's. Needless to say many Utah youth and families that are court referred and incarcerated include kids from single parent homes, divorced, neglected and impoverished households. Utah communities, families and youth are not immune from the dire future predicted by many social scientists.

While schools, jobs and the social safety net continue to erode, more kids are

ANDREW A. VALDEZ is a juvenile court judge for the Utah Third District Court. Prior to his judicial appointment in 1993 Judge Valdez was trial counsel for nine years with the Salt Lake Legal Defender Association. As a criminal defense attorney he represented poor people charged with murder and other serious felony offenses.

He also served as a Commissioned Captain in the U.S. Army and practiced law in Central Europe representing soldiers in five countries. He was a member of the statewide Youth Parole Authority from 1986 to 1993 and served as chair in 1988 and 1992.

Judge Valdez graduated from West High School and received his baccalaureate degree in political science from the University of Utah and his juris doctor degree from the University of Utah College of Law.

finding themselves caught in an ever expanding criminal justice system, where a high proportion of youth incarcerated in secure youth facilities go on to have problems as adults; 89.9% have subsequent adult criminal arrests.

What I am seeing as Juvenile Court Judge, after having practiced law as a criminal defense lawyer for 12 years prior to my appointment, are generational problems. Generations of under-educated people and

generations of criminal behavior and dysfunctional families.

It is no surprise that if a child is raised in an environment where the adults lie, drink, cheat and steal, it is usually passed on to the child. Children learn what they live. If the adult is not responsible the child never learns how to be responsible. "The apple does not fall far from the tree."

Responsibility means more than room and board. It requires responsible lifestyles, as well as spending time providing hope and opportunity for our children.

If you ever attend a juvenile court proceeding, or a probation or parole hearing, you rarely see fathers in attendance. You see mothers and grandmothers, more often than not, overwhelmed by work, kids and trouble. Where are the fathers? Usually they have left the home, or are in the bars, work, pool halls, golf courses, diners, or with their friends, or in jail. Responsible adult males are not taking responsibility for their children. They need to be there for them. The mothers and grandmothers cannot do it alone.

We stand at a crossroads in this community. The gang situation is not at this point generational like in other metropolitan cities. However, the criminal behavior,

continued on pg 36

Selected Highlights of the 1995 Legislative Session

By Jane Peterson and Lisa Watts Baskin

AUTHOR'S NOTES: This summary provides basic information about introduced legislation which presumably passed during the 1995 annual General Session. Due to the time constraints of publication and because some of the final actions have not been entered in the House and Senate journals by this date, this summary may not be completely accurate regarding which bills actually passed in this session. Please contact the Office of Legislative Research and General Counsel for a final update.

BUSINESS, LABOR, AND ECONOMIC DEVELOPMENT

• **SB 70 Financial Institution Amendments (Watson, D.)**

Regulates interstate acquisition, branching, and banking; clarifies the fee structure and jurisdiction of the department; provides no state concentration limit; prohibits deposit production offices; provides coordinated supervision and examination of activities; amends regulation of loan production offices; provides an affiliate depository institution to act as an agent under certain circumstances; amends regulation of conduct and powers of banks and bank holding companies; and requires branches to be federally insured.

• **SB 248 Trust Deed and Mortgage Amendments (Mansell, L.)**

After giving notice and receiving no objections, authorizes a title insurer or title agent to reconvey a trust deed or release a mortgage, if the obligation secured by the trust deed or mortgage has been fully paid by the title insurer or agent or if there is satisfactory evidence that the obligation has been paid in full. The legislation also provides penalties for reconveying a trust deed or releasing a mortgage under certain circumstances. Finally, the trustee of trust property is required to reconvey the trust property upon written request by the beneficiary when the obligation secured by the trust deed has been satisfied.

• **Workers' Compensation** — including

legislation in various areas of workers' compensation law:

• **SB 117 – Workers' Compensation Safety (Buhler, D.)**

• **SB 123 – Permanent Total Disability Amendments (Steele, D.)**

• **SB 124 – Uninsured Employer Penalty (Buhler, D.)**

• **SB 125 – Settlement of Workers' Compensation Claims (Steele, D.)**

• **SB 126 – Workers' Compensation Insurance Coverage (Steele, D.)**

• **SB 127 – Workers' Compensation — Physicians (Steele, D.)**

• **SB 128S2 – Workers' Injury Prevention (Buhler, D.)**

• **SB 130 – Workers' Compensation — Mental Stress (Buhler, D.)**

• **Consumer Protection** — including legislation in various areas of consumer protection law:

• **HB 102 – Regulation of Prize Notices (Stephens, N.)**

• **HB 144 – Consumer Sales Practices (Waddoups, M.)**

• **SB 35 – Credit Services Organization Act (Watson, D.)**

• **SB 39S1 – Telephone Fraud Prevention (Watson, D.)**

• **SB 54 – Health Spa Services Protection Act (Mansell, L.)**

COMMUNICATIONS AND INFORMATION TECHNOLOGY

• **HB 364S1 Telecommunications Reform Act (Stephens, M.)**

Provides for competitive entry within the telecommunications industry, interconnection of facilities, and pricing flexibility for services subject to competition. The legislation prohibits any increase in prices of telecommunications services not subject to competition during a three-year period. Thereafter the prices may increase according to a pricing index.

• **SB 82 Digital Signatures Act (Peterson, C.)**

Minimizes the incidence of forged digital signatures and enables the reliable authentication of computer-based information. The legislation also enables and fosters the verification of digital signatures on computer-based documents and facilitates commerce by means of computerized communications.

CONSTITUTIONAL ISSUES

• **SJR 5 Resolution — Veterans Military Service Property Tax Exemption (Black, W.)**

Proposes to amend the Utah constitution by amending the provisions that permit the property tax exemption of a disabled person who served in military service during war, international conflict, or military training and any unmarried surviving spouse of the disabled person.

EDUCATION

• **HB 2 Education Technology Amendments (Garn, K.)**

Establishes the Technology Initiative Project Office within the State Office of Education and shifts duties and responsibilities from the steering committee to the project office. The legislation also establishes the Utah Education Network as a consortium and partnership between public and higher education to coordinate and support the telecommunications needs and initiatives of public and higher education and provides that the legislature must make annual appropriations to pay for ongoing costs associated with EDNET and UtahLink.

• **HB 32S2 Prohibition of School Impact Fees (Garn, K.)**

Prohibits the imposition of school impact fees not authorized prior to March 21, 1995 and repeals fees authorized prior to March 21, 1995 on May 1, 1996. The legislation directs the Revenue and Taxation Interim Committee to study school

impact fees and make a recommendation to the legislature.

- **HB 41 School Discipline Amendments (Garn, K.)**

Provides that conduct and discipline policies include procedures and standards for dealing with student conduct off-campus if the conduct threatens harm or does harm to persons or property. The legislation also provides for distribution of a school's discipline and conduct policy, expands grounds for suspension or expulsion, and provides delegation of the authority to expel or suspend and alternatives to suspension.

- **HB 106 Applied Technology Education Coordination (Wright, B.)**

Restructures the composition of the joint liaison committee for public and higher education and provides that the committee coordinate and facilitate the appropriate governance and administration of applied technology education programs. The legislation also establishes a joint liaison applied technology education advisory committee, requiring the committee to make recommendations relating to applied technology education.

- **HB 172 Highly Impacted Schools (Jensen, S.)**

Appropriates \$4,000,000 for additional resources at highly impacted schools to provide individual assistance for students at those schools. The appropriation will be distributed to individual schools.

- **SB 215 Minimum School Program Act Amendments (Rees, S.)**

Provides state and local funding for the Minimum School Program Act and a ceiling for the state contribution to the maintenance and operation portion of the act. The legislation also sets the value of the weighted pupil unit and distribution formulas.

ENERGY, NATURAL RESOURCES AND AGRICULTURE

- **HB 105 Water Reuse — Sewage Effluent (Ure, D.)**

Provides for the use and change in point of discharge of sewage effluent by municipalities and other governmental entities.

- **HB 250 Wildlife Board Consolidation (Bodily, S.)**

Combines the Board of Big Game Control with the Wildlife Board and creates a wildlife board nominating committee and wildlife regional advisory councils.

- **HB 336 Wildlife License Restructure (Styler, M.)**

Creates the Wildlife Habitat Authorization which must be purchased before any other wildlife license or permit is purchased. Wildlife permit fees are increased, age requirements for certain licenses are changed, and limited day fishing licenses are modified. Selected application fees, the waterfowl stamp, and upland game stamp are eliminated. Compensation for wildlife license agents is modified.

- **SB 49S2 Sales Tax for Water Projects (Holmgren, J.)**

Modifies the sales tax earmarking provisions for water and transportation projects, changes the effective date of the earmark, and adds wastewater projects as an approved use of earmarked funds. Specified portions of the funds will go to various uses. The Bear River Development Account is closed and any remaining money is transferred to the Water Resources Conservation and Development Fund.

- **SB 210 Personal Watercraft Regulation (Holmgren, J.)**

Clarifies the minimum age requirement for personal watercraft operators and requires certain operations to take a boating safety course. The division may collect a fee not to exceed \$12 to defray the cost of the boating safety course.

HEALTH AND ENVIRONMENT

- **HB 168 Vital Statistics Act Amendments (Killpack, R.)**

Amends functions of vital records registrars, recording procedures, contents of reports, and penalties of the Vital Statistics Act.

- **HB 178 Petroleum Storage Tank Fee Amendments (Wright, B.)**

Amends the annual petroleum storage tank fees.

- **HB 305S1 Health System Improvement Act (Harward, B.)**

Amends the duties of the Department of Health and the membership of the Health Data Committee and authorizes the creation of a health quality improvement pilot program and area health education centers. The legislation also establishes a rural hospital optional service designation, requests a Medicaid waiver to expand Medicaid, amends eligibility for the health insurance pool and conversions of policies, establishes a basic benefit plan, enacts a limited open enrollment period for small group and individual health insurance plans, provides

delayed implementation of individual coverage, enacts the medical care savings account; requires commission study of rural health issues, and appropriates \$300,000 to area health education centers and \$500,000 for the quality improvement pilot project.

- **HB 401S1 Department of Environmental Quality Funding Amendments and Apportionment of Liability (Wright, B.)**

Amends liability provisions regarding hazardous substances mitigation actions, provides retroactive application, and requires deposit of all fees from disposal of commercial hazardous, mixed, nonhazardous solid, and PCB wastes into a restricted account. The legislation also clarifies where civil penalties are to be deposited and repeals an annual appropriation to public safety of \$200,000.

- **SB 42 Controlled Substance Prescriptions Database Provisions (Montgomery, R.)**

Creates a controlled substance database regarding prescription drug usage and authorizes the Division of Occupational and Professional Licensing to administer the database. The data to be collected is described as well as use of the data and who will have access. Funding is provided by a general fund appropriation and penalties are provided for inappropriate use of data base information.

HUMAN SERVICES

- **HB 21 Trust Fund for People with Disabilities (Haymond, J.)**

Requires revenue from the sale or lease of land at the Utah State Development Center to be deposited in a restricted account, creates the restricted account, and defines the trust fund's authorized revenues and expenditures.

- **HB 222S1 Electronic Monitoring of Domestic Violence Amendments (Barth, S.)**

Mandates the use of electronic monitoring bracelets, worn on the ankle, in any case where a person violates a domestic violence protective order. The bracelet activates an alarm if the person violates the order and notifies a private provider who calls the police.

- **HB 314 Domestic Violence Amendments (Dillree, M.)**

Mandates arrest for violation of protective orders and provides enhanced

penalties for second or subsequent offenses of domestic violence crimes. The legislation expands the definition of domestic violence crimes and clarifies the duties of law enforcement officers, including notice to victims and mandatory arrest based on probable cause. The bill provides for seizure of weapons, places conditions on release and probation of offenders, and prohibits diversion in crimes of domestic violence. A statewide network of domestic violence protective orders and other court orders is mandated on or before January 1, 1996. Procedures for civil protective orders are revised, requiring the court to make specific findings, including prohibition of possession of weapons, and requiring law enforcement officers to order and carry out service of process on the defendant rather than requiring the victim to serve process. The bill prohibits mutual protective orders and mutual arrest without extenuating circumstances.

• **HB 329 Improvements to Child Support Collection (Mortimer, D.)**

Amends the state law regarding the assignment of support for children in the state's care, clarifying parental liability for support of children who receive services from the state. The legislation also designates sources of revenue for the Office of Recovery Services (ORS) and gives ORS the authority to order genetic testing, determine paternity, and implement federal requirements for consumer credit reporting and income withholding. Court custody orders must include liability for support. Liability for medical expenses is amended as well as declarations of paternity.

• **HB 334 Child Welfare Reform Act Amendments (Haymond, J.)**

Amends procedures and requirements for the Child Welfare Reform Act passed by the 1994 Utah Legislature. Cases of abuse, neglect, and dependency are to be completed (disposition) within 45 days from the shelter hearing. The legislation changes the date of shelter hearings. It also describes educational neglect, repeals the Grievance Council, creates a Consumer Hearing Panel, and a Legislative Oversight Panel.

• **HB 363 Appropriations for Domestic Violence Shelters (Evans, R.)**

Appropriates \$150,000 for domestic violence shelters.

• **SB 101S1 Adoption Act Revision (Stewart, C.)**

Revises notice and consent requirements regarding unmarried biological fathers and defines rights, limitations, and responsibilities of unmarried biological fathers and other parties to adoption proceedings. Cases of sexual assault are excluded from notice and consent requirements, and determination of parties' rights and interests prior to filing of adoption petition is provided.

JUDICIARY

• **HB 46 Habitual Violent Offender Provisions (Hickman, J.)**

Creates enhanced penalties of habitual violent offenders who, within ten years and on at least two previous occasions, have been: 1) convicted of a felony; 2) incarcerated, on parole, or on probation for any felony; or 3) the subject of an unexecuted felony arrest warrant.

• **HB 54 State Versus Local Weapons Control (Waddoups, M.)**

Prohibits cities and counties from passing gun control ordinances unless specifically given authority by the legislature.

• **HB 70S2 Weapons Law Amendments (Waddoups)**

Alters requirements for a permit to carry a concealed firearm, authorizes issuance of a permit for self-protection, and permits access to juvenile records and expunged records of adults.

• **HB 159 Uniformity of Penalty Structure on Criminal Offenses (Ellertson, R.)**

Amends and makes uniform the penalty structure for certain offenses including aggravated assault, homicide by assault, and property offenses.

• **HB 185 Crime Involving a Weapon (Bresnahan, D.)**

Increases a sentence if a dangerous weapon is used during the commission of a crime and makes technical amendments to the definition of a dangerous weapon.

• **SB 14 Weapons Law Changes (Myrin, A.)**

Moves weapons provisions from the wildlife code to the general weapons section, provides definitions, and provides that a person with a blood alcohol level of .08 may not carry a firearm.

• **SB 18 Amendments to Weapons Laws (Myrin, A.)**

Provides significant changes to definitions in the weapons sections of the code and clarifies where a concealed weapon may be carried.

• **SB 48S1 Adjustment of Court Filing**

Fees (Rees, S.)

Adjusts certain court filing fees to fund the Division of Facilities Construction and Management Capital Projects Fund and the State Courts Complex Restricted Account and authorizes the deposit of the fine and bail money in the capital projects fund and state courts complex account.

• **SB 87 Court Commissioner Amendments (Hillyard, L.)**

Permits the use of affidavits for a default divorce decree, amends the provisions relating to court commissioners, and replaces six court commissioners with six district court judges. This legislation sets restrictions on the rulemaking authority of the Judicial Council to delegate authority to court commissioners and appropriates \$100,700 from the General Fund to the Administrative Office of the Courts for fiscal year 1995-96.

• **SB 109 Constitutional Defense Council (Watson, D.)**

Requires interaction between the Constitutional Defense Council and the attorney general, and amends the attorney general's duties. The Constitutional Defense Fund is created and \$50,000 is appropriated to the fund from the General Fund for fiscal year 1995-96.

• **SB 111 Serious Youth Offender (Hillyard, L.)**

Removes the direct file process in district court, adding murder as an offense over which the district court will have exclusive jurisdiction, and including provisions for juveniles who have prior confinement records. The legislation also provides for the filing of an adult information in juvenile court on juveniles 16 years of age and older and the juvenile court judges hold preliminary hearings and set bail.

• **SB 287 Amendments to sentencing Provisions (Beattie, L.)**

Requires the court to consider home confinement as a condition of probation and the Department of Corrections to establish procedures and standards for home confinement and electronic monitoring and provides exemptions. The legislation also amends sentencing provisions by eliminating the minimum mandatory sentencing structure imposed for sexual offenses against children and related offenses. It amends related provisions on probation and parole.

• **SB 81 Expanding the Number of Judges (Peterson, C.)**

Increases the number of judges in the Fourth District Court from nine to 11 and increases the number of Fifth District Juvenile Court judges from one to two. The legislation appropriates \$605,300 from the General Fund to the Administrative Office of the Courts for fiscal year 1995-96 to fund these added judgeships and necessary staff.

• **SB 87 Court Commissioner Amendments (Hillyard, L.)**

Permits the use of affidavits for a default divorce decree, amends the provisions relating to court commissioners, and replaces six court commissioners with six district court judges. This legislation sets restrictions on the rulemaking authority of the Judicial Council to delegate the authority of court commissioners and appropriates \$100,700 from the General Fund to the Administrative Office of Courts for fiscal year 1995-96.

• **SB 96S1 Allocation of Monies Collected on Criminal Fines, Penalties, and Forfeitures (Beattie, L.)**

Provides for concurrent collection of fines, penalties, and forfeitures with surcharges. The legislation provides for proportionate (pro rata) division of monies as they are collected to be retained by the collecting local governmental entity and the state treasurer. It also requires the courts to collect and report financial information.

• **SB 97S1 County Funding for Criminal Defense Costs (Blackham, L.)**

Amends the duties of the Utah Prosecution Council by requiring the council to administer the contract for legal defense counsel for an indigent inmate who commits a crime within a state prison located in counties of the third, fourth, fifth, and sixth class. The legislation creates the Criminal Defense Costs Trust Fund along with the Criminal Defense Committee and provides for funding from an optional property tax levy in the affected counties. The legislation also appropriates \$250,000 to the trust fund from the General Fund for fiscal year 1995-96 and provides for retrospective operation except regarding the optional tax levy.

• **SB211 Crime Victim Rights Amendments (Peterson, C.)**

Amends provisions regarding the rights of victims, including restricting access to the crime victim's address, telephone number, and victim impact statement in

accordance with the Government Records Access Management Act. Access to presentence investigation reports is also restricted to defendants and expanded to victims with limitations. The legislation requires age-appropriate language in other judicial proceedings, creates the writ of mandamus remedy in this context, authorizes the victim to petition to file amicus briefs, and provides appellate relief to victims on certain motions. Victim rights are expanded to juvenile court proceedings. Provisions on victim impact statements in capital sentencing proceedings are amended along with the duties of the Victims' Rights Committees.

RETIREMENT

• **HB 107 Post-Retirement Employment (Garn, K.)**

Allows a retired public employee to be reemployed at a different agency from which he retired without a reduction in retirement benefits.

• **HB 124 Retirement Law Amendments (Evans, B.)**

Revises the powers and duties of the State Retirement Board, granting the board rulemaking authority under certain circumstances and revising postretirement reemployment restrictions and the purchase requirements for various benefits. The calculation of benefits under certain circumstances and the application of early retirement provisions of the noncontributory system are clarified. Revisions are made to the disability retirement provisions, the eligibility requirements for the governor's and legislative service pension act, and the duties of the peace officer standards and training council.

• **SB 46 Public Safety Retirement Criteria (Black, W.)**

Establishes certain eligibility criteria for membership in the public safety retirement system to be used by the Peace Officer Standards and Training Council.

REVENUE AND TAXATION

• **HB 20 Tax Incentives to Employ Persons with Disabilities (Haymond, J.)**

Provides an income tax credit to employers of up to \$3,000 per individual hired with a disability. The credit may be taken for only the first two years of employment and carried forward two additional years if necessary.

• **HB 56 Sales Tax — Home Medical Equipment (Adair, G.)**

Exempts home medical equipment and supplies from the sales tax.

• **HB 258S2 Amendments to Property Tax (Hunsaker, R.)**

Provides that the minimum school levy and the assessing and collecting levy will float each year to raise a certain dollar amount as determined by the legislature and requires that all property be factored each year by the State Tax Commission and revalued every five years by the county assessors.

• **HB 279 Income Tax — Credit for Providers of Individuals with Disabilities (Protzman, G.)**

Provides an income tax credit for cash contributions made to private nonprofit providers of services to individuals with disabilities. The maximum credit allowed under the corporation income tax is \$2,000. The maximum under the individual income tax is \$500.

• **SB 43 Agricultural Sales Tax Exemptions (Hillyard, L.)**

Modifies the sales tax exemptions for sprays and insecticides, tangible personal farm property, and seasonal sale of crops.

• **SB 56 Property Tax — Residential Exemption (Montgomery, R.)**

Raises the exemption for primary residential property from 32% to 45%.

• **SB 89 Sales Tax — Manufacturing Exemption (Stephenson, H.)**

Modifies the disallowance for nonreporting of certain sales tax exemptions.

• **SB 105 Sales Tax — Manufacturing Equipment (Stephenson, H.)**

Extends the sales tax exemption for manufacturing equipment used in new and expanding operations to include replacement equipment. The exemption is phased in as follows: beginning July 1, 1996, 30% of the exemption will be allowed; beginning July 1, 1997, 60% of the exemption will be allowed; and beginning July 1, 1998, 100% of the exemption will be allowed.

• **SB 159 Corporate Tax Amendments (Hillyard, L.)**

Imposes a tax on homeowner's taxation to the extent taxed for federal purposes and provides various subtractions from unadjusted income. A carry-over is provided for unused charitable contributions. Clarifications are made for the taxation of real estate investment trusts, exemptions from penalty for estimated tax payments, and timing of payments. The legislation

has retroactive operation.

• **SB 162 Severance Tax Amendments (Myrin, A.)**

Creates the Uintah Basin Revitalization Fund and Board and provides definitions. The legislation determines what monies are to be deposited in the fund and provides priority uses of fund monies and distribution. \$400,000 is appropriated for fiscal year 1995-96.

• **SB 177 Income Tax on Estates or Trusts (Hillyard, L.)**

Amends the state income tax law for estates and trusts and provides retroactive operation.

• **SB 254 Property Tax Rates and Minimum School Levy (Blackham, L.)**

Lowers the minimum school levy by \$90 million and fixes the dollar amount of property taxes to be raised from the minimum basic school levy, allowing the rate to float this year. The gross receipts tax rate on non-profit electrical utilities is raised and a new gross receipts tax on other electrical utilities is imposed. Both gross receipts tax changes are to offset property tax reductions. The legislation provides for the pass through of property tax reductions to other utilities to ratepayers and requires counties to inform taxpayers of the property tax reductions attributable to legislative action.

• **SB 273 Sales Tax Exemption on School Fund Raisers (Poulton, S.)**

Provides a sales tax exemption for school fund raisers.

• **SB 289 Sales Tax — Mobile Homes (Hillyard, L.)**

Provides a definition of manufactured home and an exemption from the sales and use tax for the sale of manufactured homes.

STATE AND LOCAL

• **HB 58 Election Recodification — Phase III (Bradshaw, A.)**

Recodifies sections of Utah's election law.

• **HB 433S1 Election Law Amendment (Bradshaw, A.)**

Eliminates certain information required by the federal motor voter act and amends financial disclosure requirements for candidates, political parties, political action committees, political issues committees, and corporations. The legislation also modifies certain declarations of candidacy requirements and the voter registration form. A statewide database is created and counties will be required to provide infor-

mation to it.

• **HB 452 Boards and Commissions Amendments (Bradshaw, A.)**

Eliminates certain boards, gives the governor the power to appoint the executive directors, and requires Senate confirmation. Certain boards are placed under the administration of the Division of Occupational and Professional Licensing. The wildlife and big game boards are combined, and the Sports Authority is moved to the Department of Administrative Services. The legislation also creates the committee on employment for people with disabilities in statute and defines its powers and duties.

• **SB 95S7 Development Fees Act (Mansell, L.)**

Limits the scope of impact fees that are imposed by political subdivisions on new development and defines the circumstances under which these fees may be used. The legislation specifically exempts school impact fees for a year for study by the legislature.

TRANSPORTATION AND PUBLIC SAFETY

• **HB 48S1 UDOT — Internal Performance Audit (Evans, R.)**

Adds performance auditors to the Department of Transportation.

• **HB 55 Motor Vehicle Customer Changes (Evans, R.)**

Amends procedures for collecting certain motor vehicle fees and the content of the governor's budget.

• **HB 67 Vehicle Emissions — County Program Amendments (Ellertson, R.)**

Changes the interlocal agreements for counties with emissions inspection and maintenance programs from mandatory to voluntary.

• **HB 80 Implements of Husbandry on Highway (Bodily, S.)**

Amends the definition of implements of husbandry and specifies certain escort vehicle requirements. Penalties are provided, oversize permit requirements are amended, and rulemaking authority is granted.

• **HB 163 Commercial Vehicle Operator Amendments (Dillree, M.)**

Adds disqualification offenses for commercial driver licenses.

• **HB 220 Regulation of Intrastate Motor Carriers (Fox, C.)**

Repeals certain motor carrier provisions related to the regulation of prices, routes, and services and makes conforming amendments.

• **HB 224 Employment Criminal Background Checks (Waddoups, M.)**

Expands access to criminal history records for certain employment purposes, authorizes fees and rulemaking, and limits liability for dissemination of this information.

• **SB 4 Tow Truck and Impound Regulation Act Amendments (Black, W.)**

Makes towing, impound, and storage fees a possessory lien on a vehicle and restricts the regulatory powers of local authorities for tow trucks.

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lack of education and lack of responsible adults in children's lives is generational. What I see in court are the children of the adult defendants I once represented. These children are the second and third generations involved in the criminal justice system. Likewise when gang kids have kids they may very well follow the pattern set in large cities where gangs not only are generational, but are formed for economic gain, specifically the distribution and control of crack and drug "houses." In my opinion we are not at this point yet. However, it is true that criminal gangs are recruiting young children because youngsters have little sense of the risks and consequences.

We, as a community, share a moral and social responsibility to upgrade the quality of life and help to eliminate the environ-

ment of despair that is a breeding ground for hopelessness, joblessness and hostility; gangs have become a solution to many of these kids. If we want to eliminate gangs, we need to replace them with economic, social and political options.

I think we have the opportunity to mold and shape our community and provide hope and opportunity for our children. Whether you are a parent, community leader, government official or court worker we need a call to arms from every segment of this community to take more responsibility, not only for ourselves and our families but all the children in our community. With this collective energy and the resources of all the individual members of our community, we can turn things around. We are in jeopardy of losing this opportunity if we don't do something about it now.



The Senior Lawyer Volunteer Project 1994 IOLTA Grant Recipient

by Mary Jane Ciccarello¹

The Senior Lawyer Volunteer Project (SLVP) celebrates its second anniversary this spring. Since its founding in 1993, the project has provided free legal assistance to well over 400 persons who could not otherwise have afforded to pay for private attorneys. SLVP utilizes retired, or semi-retired, lawyers to help low-income clients with wills, simple estate planning, advance medical directives, and planning for incapacity. The project was originally conceived of as a way to make use of the wonderful resource of senior lawyers to help meet some of the unmet legal needs of the elderly population in Utah. Currently, the project does have income and asset eligibility guidelines, but no age criterion. Nonetheless, the vast majority of its clients are over age sixty.

Services include simple wills, wills with straightforward testamentary trust provisions, simple living trusts, and pour-over wills. Lawyers also help with related necessary title changes. Although living trusts are sometimes used to protect against incapacity and to avoid probate, the project does not provide for corporate trustees. Also, the project will not do any tax-planning wills and trusts or any post-mortem administration (except in the case of a surviving spouse where the project did the estate plan, the spouse meets the eligibility criteria, and the estate goes to the spouse).

As the project has developed and is now firmly a part of the network for the aging in the state, it provides more and more assistance with planning for incapacity, powers of attorney, property transfers, and financial exploitation of seniors. Many people request help in planning for incapacity (their own or that of a family member). SLVP is generally able to help seniors identify legal problems and give them referrals to appropriate resources, such as tax abatement, reverse mortgages,

health-care expenses and management, and probate. The project also serves many clients under age 60 who are disabled, who are parents planning for their own aging children with disabilities, or often, young single mothers who need to make guardianship provisions in their wills for their children.

The privately funded project, while essentially self-contained, is affiliated with Utah Legal Services (ULS). Housed in the main office suite of the Salt Lake City office of Utah Legal Services, the project has three separate spaces — an office for the senior volunteers, an office for the project attorney/coordinator, and a large conference room. The project is managed by a ULS staff attorney and governed by an advisory board. SLVP maintains its own files, computers, and library materials, but is tied into ULS's computer network and telephone system. ULS also provides the volunteer lawyers with professional liability coverage, bar fees, CLE training opportunities, and access to its libraries and staff attorneys. Major funding for the project has come from the R. Harold Burton Foundation and the Borchard Foundation. Other funding has come from donations by private individuals and an IOLTA grant from the Utah Bar Foundation.

The affiliation with ULS is essential to the functioning of the project. ULS is the largest provider of free legal services to the poor in Utah, the Senior Citizens Law Center (SCLC) is part of the ULS Salt Lake office, and the state legal assistance developer for the elderly is also in that office. In addition, ULS is part of Utah's network of services for the aging. For example, the Salt Lake Aging office works closely with ULS and SCLC and refers any potential client to them. ULS does outreach throughout the state by going to senior centers and nursing homes to meet with clients. Therefore, SLVP easily taps into an existing referral system.

Additional help for the project comes from law student interns from the Univer-

sity of Utah College of Law and the J. Reuben Clark Law School of Brigham Young University. The experience thus far with the student interns has been wonderful: they provide energy and enthusiasm while learning from the opportunity to work with and be mentored by older, experienced lawyers.

SERVICES PROVIDED BY SLVP

Telephone inquiries about wills, estate planning, property transfers, advance directives, and powers of attorney that come into the main ULS office are referred to SLVP or SCLC. In addition, potential clients are informed of the project at outreach locations around the state and by Elderlocator, the American Association of Retired Persons' national telephone hotline. The staff attorney responds to clients calls and mails out applications and information to all interested parties. The staff attorney evaluates completed applications for legal merit and financial eligibility. Appointments are made for eligible clients to meet with one of the volunteer attorneys. Clients are also sent an estate planning questionnaire, if appropriate, to be completed and brought to the appointment.

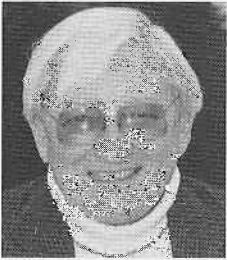
The volunteer lawyer meets with the client for an initial interview in the project's office. Arrangements are often made for the staff attorney or a volunteer lawyer to meet with frail and/or ill clients in their own homes. The lawyer then drafts the necessary documents and sends them to the client for review. A final appointment is made with the client to execute the documents.

A client intake form, an estate planning questionnaire, and simple will and trust forms were developed by attorney volunteers when the project began and are available in both software and hard copy for use by the volunteers.

THE SLVP VOLUNTEERS

Several lawyers have participated in SLVP during its two years of existence. The original volunteer organizers and active volunteers of the project included Peter Billings, Sr., John Horsely, John Marshall, Carol Olson, Ben Rawlings, Bryce Roe, and University of Utah College of Law Professors Emeriti Alfred Emery and Robert Schmid.

The most active current volunteers are two recently retired lawyers: Richard Bojanowski and Rene Nelson. Both attorneys have met with approximately four new clients a week since joining the project in the spring of 1994. This past January alone, the two lawyers have donated time equivalent to at least \$5,000.00.



Richard Bojanowski

Richard Bojanowski was a bankruptcy and patent lawyer in private practice in Salt Lake City since 1972. Richard's background includes undergraduate and graduate

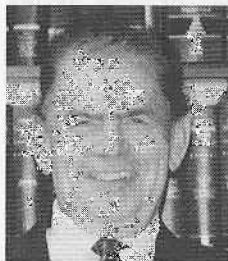
work in chemistry and biochemistry and service as a U.S. Air Force pilot during the Korean War.

Richard regularly spends Mondays at the project's offices meeting clients and drafting documents. He has recently become the in-house expert on home equity conversion mortgages, among other things. Richard states that before he worked with SLVP, he wasn't aware of the gaps in the legal services provided to people without the financial means to hire a lawyer. When he first started with the project, he was struck with the number of children and grandchildren attempting to exploit elderly parents. He believes that SLVP has to provide eligible clients with not only estate planning assistance but life planning as well.

Richard enjoys his work at SLVP and enthusiastically says, "I am impressed with Utah Legal Services and the quality of the personnel here." He encourages other retired, and semi-retired, colleagues to get involved if they have the time. "I'm involved because I feel I owe it to the community. The law treated me well and I think I owe something in return." Smiling, Richard adds, "Being retired, I appreciate

being out of the house one day a week."

Richard also serves on the Needs of the Elderly Committee of the Utah State Bar. He was instrumental in organizing the new Simple Probate Panel, a panel of lawyers who provide legal assistance at reduced fees to eligible clients. Richard was encouraged to start such a panel after working with SLVP for a few weeks and witnessing firsthand the need to help low-income families deal with probate matters as well as to protect seniors from doing detrimental things to themselves while alive — such as unnecessary property transfers — in order to avoid the supposed horrors of probate.



Rene Nelson

Rene Nelson has been a member of the Utah State Bar since 1962. He served for many years as an executive officer in an insurance company, primarily responsible for directing trial lawyers in 36 different states. Recently retired, Rene has been donating two half days a week to SLVP for over a year.

Rene describes many of the SLVP clients as coming in for their initial interview, "clutching papers in fear and anxiety. After meeting with us, they go out more at ease, at least with this aspect of their lives." Musing about his experience with the project, Rene explains, "Everyone, whatever their place in life, has a need to be noticed

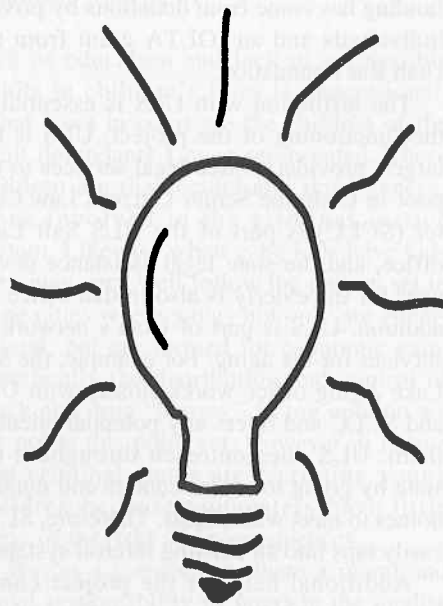
and nurtured. And that's true of us, either as volunteers, or of those we help as clients. Attorneys have a mixed reputation in the community. Most of us are sick to death of attorney jokes. The community needs to be aware that people of great talent can sometimes make time for unmet societal needs. Each attorney needs to look into his own personal life and see if there isn't some room for unpaid service. Small contributions by many can meet major needs."

When asked whether he enjoys his volunteer work, Rene relates the story of how one day in the middle of a will interview, an elderly lady client looked up at him and said, "You really like this, don't you?" "Indeed, I do," was his answer.

The senior lawyers who have participated in SLVP have had an enormous impact on their community by providing free legal assistance to persons who would otherwise have gone without help. SLVP clients are deeply appreciative of the help they receive. Many clients express relief at finally finding someone who will treat them with respect and actually listen to what they are saying. The senior lawyers volunteers provide clients with both their sound legal expertise and their rich experience in living.

For more information about the Senior Lawyer Volunteer Project, contact Mary Jane Ciccarello, at 328-8891, ext. 345.

¹Mary Jane Ciccarello is staff attorney at Utah Legal Services, Inc., where she coordinates the Senior Lawyer Volunteer Project.



Great idea.

Advertising in the *Utah Bar Journal* is a really great idea. Reasonable rates and a circulation of approximately 6,000!

Call for more information.

Shelley Hutchinsen
(801) 532-4949

CLE CALENDAR

APPELLATE PRACTICE SECTION ROUND TABLE DISCUSSION

Please note: This program was originally scheduled for March 29, 1995. It has been rescheduled as stated below. Also, there will be NO CLE credit for this program.

Date: Thursday, April 6, 1995
Time: 6:30 p.m.
Place: Utah Law & Justice Center
CLE Credit: NONE

ALI-ABA SATELLITE SEMINAR: ANNUAL SPRING PENSION LAW AND PRACTICE UPDATE

Date: Thursday, April 6, 1995
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$155.00 (To register call 1-800-CLE-NEWS)
CLE Credit: 4 HOURS

ALI-ABA SATELLITE SEMINAR: CUSTODY VISITATION DECISION-MAKING WHEN THEY ARE ALLEGATIONS OF DOMESTIC VIOLENCE

Date: Thursday, April 13, 1995
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$100.00 (To register call Diane Cowdrey at 578-3822)
Registration fee waived for judges.

CLE Credit: 4 HOURS

***For more information, please call Diane Cowdrey at 578-3822.

ANNUAL EDUCATION LAW SECTION SEMINAR

Date: Wednesday, April 19, 1995
Time: 8:00 a.m. to 1:30 p.m.
Place: Utah Law & Justice Center
Fee: To be announced
CLE Credit: ~4 HOURS

***Watch for more detailed information to come in your mail.

ANNUAL REAL PROPERTY SECTION SEMINAR

Date: Wednesday, April 26, 1995
Time: 8:00 a.m. to 12:00 noon
Place: Utah Law & Justice Center
Fee: To be announced
CLE Credit: ~4 HOURS

***Watch for more detailed information to come in your mail.

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: Friday, April 28, 1995
Time: 7:30 a.m. to 12:00 noon
Place: Utah Law & Justice Center
Fee: To be announced
CLE Credit: ~4 HOURS
***Watch for more detailed information to come in your mail.

EIGHTH ANNUAL ROCKY MOUNTAIN TAX PLANNING INSTITUTE

Date: Thursday & Friday, May 11 & 12, 1995
Time: 8:00 a.m. to 5:00 p.m.
Place: Utah State Tax Commission Auditorium
Fee: \$175.00 for both days
\$95.00 for one day
\$25.00 late fee
CLE Credit: 15.5 HOURS

ANNUAL FAMILY LAW SECTION SEMINAR

Date: Friday, May 19, 1995
Time: 8:00 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: To be announced
CLE Credit: ~4 HOURS
***Watch for more detailed information to come in your mail.

1995 UTAH STATE BAR ANNUAL MEETING

Date: June 28 - July 1, 1995
Place: Hotel del Coronado, San Diego, California
Fee: To be announced
CLE Credit: ~12 HOURS
Watch your mail for brochures and mailings on these and other upcoming seminars. Questions regarding any Utah State Bar CLE seminar should be directed to Monica Jergensen, CLE Coordinator, at (801) 531-9095.

CLE REGISTRATION FORM

TITLE OF PROGRAM	FEE
1. _____	_____
2. _____	_____

Make all checks payable to the Utah State Bar/CLE	Total Due
_____	_____
Name	Phone
_____	_____
Address	City, State, ZIP
_____	_____
Bar Number	American Express/MasterCard/VISA
_____	_____
Signature	Exp. Date
_____	_____

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

Registration Policy: Please register in advance as registrations are taken on a space available basis. Those who register at the door are welcome but cannot always be guaranteed entrance or materials on the seminar day.

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

NOTE: It is the responsibility of each attorney to maintain records of his or her attendance at seminars for purposes of the 2 year CLE reporting period required by the Utah Mandatory CLE Board.

CLASSIFIED ADS

For information regarding classified advertising, please contact (801) 531-9077. Rates for advertising are as follows: 1-50 words — \$10.00; 51-100 words — \$20.00; confidential box numbers for positions available \$10.00 in addition to advertisement.

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

BOOKS FOR SALE

Current Utah Code for sale: Call (801) 486-5287

POSITIONS AVAILABLE

Litigation Attorney: Prominent AV rated downtown Salt Lake City law firm seeks an experienced litigation attorney to associate with firm. 5+ years of litigation experience required. Competitive salary and benefits package. Send cover letter and resume in confidence to: Utah State Bar Journal, Box #12, 645 South 200 East, Salt Lake City, Utah 84111.

WANTED: Attorney, part-time, to review standardized guardianship documents with clients. Please respond to (801) 752-2199.

Deputy SL County attorney, grade 29 pay scale, Utah Bar Membership plus 3 yrs. Experience in real property condemnation, administrative, environmental, regulatory or other government law. Description of duties, application and achievement history questionnaire available @ SL County Personnel, 2010 So. State N4600, SLC, Ut. Return application, transcripts and questionnaire to Personnel by 5:00 pm, 4/10/94.

OFFICE SPACE/SHARING

Small downtown Salt Lake City firm has

prime office space for one attorney, complete with receptionist, secretary, conference room, telephone/fax, underground parking, copier and library. Ask for Debbie, (801) 521-8900.

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

Deluxe Office Sharing Space: Downtown Salt Lake law firm has space to rent on a month to month basis. Close to courts, single or multiple office suites, with or without secretary space. Complete facilities available including: receptionist, conference rooms, library, Westlaw, fax, telephone, copier and parking. Please call Ronald Mangone @ (801) 524-1000.

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CHILD SEXUAL ABUSE — CASE EVALUATION: Statement Validity Assessment (SVA). An objective method for determining the validity of child statements and interviewer quality — time saving and concise — advanced graduate training. No fee for initial consultation. Bruce M. Giffen, M.S. Investigative Specialist — (801) 485-4011.

UTAH VALLEY LEGAL ASSISTANT JOB BANK: Resumes of legal assistants for full, part time, or intern work from our graduating classes are available upon request. Contact: Kathryn Bybee, UVSC Legal Assistant Department, 800 West 1200

South, Orem, Utah 84058 or call @ (801) 222-8489 / fax (801) 225-1229.

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


MISCELLANEOUS

Anyone with knowledge of the whereabouts of a will prepared by or on the behalf of **MANUEL MIRANDA LUCERO**, dob: 5/16/34, please contact Connie L. Mower, attorney at Law, 623 East 100 South, P.O. Box 11643, Salt Lake City, Utah 84147-0643; telephone, (801) 363-9345. Mr. Lucero's address at the time of his death was 347 North 600 West, Salt Lake City, Utah.



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

Strike back.
Give to your Red Cross today.

 American
Red Cross

CONTINUING LEGAL EDUCATION
Utah Law and Justice Center
645 South 200 East
Salt Lake City, Utah 84111-3834
Telephone (801) 531-9077 FAX 9801) 531-0660

CERTIFICATE OF COMPLIANCE
For Years 19 _____ and 19 _____

NAME: _____ UTAH STATE BAR NO. _____

ADDRESS: _____ TELEPHONE: _____

Professional Responsibility and Ethics*

(Required: 3 hours)

1. _____
Program name _____
Provider/Sponsor _____ Date of Activity _____ CLE Credit Hours _____ Type** _____
2. _____
Program name _____
Provider/Sponsor _____ Date of Activity _____ CLE Credit Hours _____ Type** _____
3. _____
Program name _____
Provider/Sponsor _____ Date of Activity _____ CLE Credit Hours _____ Type** _____

Continuing Legal Education*

(Required 24 hours) (See Reverse)

1. _____
Program name _____
Provider/Sponsor _____ Date of Activity _____ CLE Credit Hours _____ Type** _____
2. _____
Program name _____
Provider/Sponsor _____ Date of Activity _____ CLE Credit Hours _____ Type** _____
3. _____
Program name _____
Provider/Sponsor _____ Date of Activity _____ CLE Credit Hours _____ Type** _____
4. _____
Program name _____
Provider/Sponsor _____ Date of Activity _____ CLE Credit Hours _____ Type** _____

* Attach additional sheets if needed.

** (A) audio/video tapes; (B) writing and publishing an article; (C) lecturing; (D) law school faculty teaching or lecturing outside your school at an approved CLE program; (E) CLE program – list each course, workshop or seminar separately. NOTE: No credit is allowed for self-study programs.

I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the State of Utah including Regulation 5-103 (1) and the other information set forth on the reverse.

Date: _____
_____ (signature)

Regulation 5-103(1) Each attorney shall keep and maintain proof to substantiate the claims made on any statement of compliance filed with the board. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders or materials claimed to provide credit. This proof shall be retained by the attorney for a period of four years from the end of the period for which the statement of compliance is filed, and shall be submitted to the board upon written request.

EXPLANATION OF TYPE OF ACTIVITY

A. Audio/Video Tapes. No more than one-half of the credit hour requirement may be obtained through study with audio and video tapes. See Regulation 4(d)-101(a)

B. Writing and Publishing an Article. Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. An application for accreditation of the article must be submitted at least sixty days prior to reporting the activity for credit. No more than one-half of the credit hour requirement may be obtained through the writing and publication of an article or articles. See Regulation 4(d)-101(b)

C. Lecturing. Lecturers in an accredited continuing legal education program and part-time teachers who are practitioners in an ABA approved law school may receive 3 hours of credit for each hour spent in lecturing or teaching. No more than one-half of the credit hour requirement may be obtained through lecturing and part-time teaching. No lecturing or teaching credit is available for participation in a panel discussion. See Regulation 4(d)-101(c)

D. CLE Program. There is no restriction on the percentage of the credit hour requirement which may be obtained through attendance at an accredited legal education program. However, a minimum of one-third of the credit hour requirement must be obtained through attendance at live continuing legal education programs.

THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

Regulation 8-101 — Each attorney required to file a statement of compliance pursuant to these regulations shall pay a filing fee of \$5 at the time of filing the statement with the Board.

1995 Mid-Year Meeting Sponsors

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

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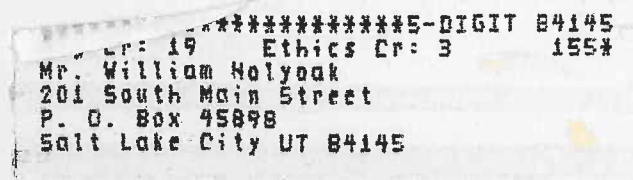
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